

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY)
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Airports	DATE: 6/4/2015
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SUBJECT: Metropolitan Airpark, LLC Solar Ground Lease at Brown Field Airport

PRIMARY CONTACT (NAME, PHONE): Brandi Mulvey, 858-573-1433	SECONDARY CONTACT (NAME, PHONE): Rod Propst, 858-573-1441
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COMPLETE FOR ACCOUNTING PURPOSES

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE): N/A

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Environmental Analysis	ORIG DEPT.	Thompson, Cybele	06/05/2015
Financial Management	CFO		
Equal Opportunity Contracting	DEPUTY CHIEF	LoMedico, Stacey	06/16/2015
Liaison Office	COO		
	CITY ATTORNEY		
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

1. Authorize the Mayor or his designee to execute a Solar Ground Lease Agreement between the City of San Diego and Metropolitan Airpark, LLC.

STAFF RECOMMENDATIONS:
Approve Requested Action

SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)

COUNCIL DISTRICT(S): 8

COMMUNITY AREA(S):	Otay Mesa
ENVIRONMENTAL IMPACT:	This activity which is part of a series of subsequent discretionary actions is not considered to be a separate project pursuant to CEQA Guidelines §15378(c) and is covered under the FEIR for the Metropolitan Air Park Project (No. 208889/SCH No. 2010071054) prepared in compliance with CEQA and local guidelines; certified by City Council on 7/22/13 and covers the project components identified this Solar Ground Lease. Pursuant to Section 21166 of CEQA, there is no change in circumstance, additional information or project changes to warrant additional environmental review.
CITY CLERK INSTRUCTIONS:	DO NOT RECORD OR FURTHER EXECUTE FOR SIGNATURES-Please call: Brandi Mulvey, Airports Division (MS-14), 858-573-1433 for document pick up. Thank you

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 6/4/2015

ORIGINATING DEPARTMENT: Airports

SUBJECT: Metropolitan Airpark, LLC Solar Ground Lease at Brown Field Airport

COUNCIL DISTRICT(S): 8

CONTACT/PHONE NUMBER: Brandi Mulvey/858-573-1433

DESCRIPTIVE SUMMARY OF ITEM:

This action is to approve a Solar Ground Lease with Metropolitan Airpark, LLC, successor in interest to Brown Field International Business Park, LLC.. The lease will provide the City with mitigation land required for the development of Brown Field Airport as well as 5-8 MW of renewable energy for the region, Brown Field Airport and/or other City facilities.

STAFF RECOMMENDATION:

Approve Requested Action

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

In 2013, a Leasehold Development Agreement between the City of San Diego and Brown Field International Business Park, LLC (now assigned to Metropolitan Airpark, LLC) was approved by City Council for the purpose of developing defined portions of Brown Field Airport. A Site Development Permit and a certified Environmental Impact Report were also approved for this development. The entire development will expand and renovate the existing airport facilities and add numerous related aviation, commercial, renewable energy and industrial facilities. This Solar Ground Lease addresses the renewable energy portion of the development.

This Solar Ground Lease will be for a term of 50 years wherein the Initial Term of 25 years will be required to be used as a solar field and, during the remaining term of 25 years, can either continue as a solar field or be used for anything which is compatible with the then-applicable Airport Layout Plan, SDM Airport Land Use Compatibility Plan, and as allowed by the Site Development Permit. The solar field will be developed to produce between 5-8 MW (Megawatts) of renewable energy subject to FAA approval that will both contribute to the regional demand while potentially powering the airport and/or other City facilities. The first phase will consist of 5-6 MW of energy and will go straight towards regional demand. There will be an approximate potential of 2-3 MW of energy that would be available to power the airport and/or other City facilities.

CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S):

Goal #2 Work in partnership with all of our communities to achieve safe and livable neighborhoods.

Objective #3 Invest in Infrastructure.

Goal #3 Create and sustain a resilient and economically prosperous City.

Objective #1 Create dynamic neighborhoods that incorporate mobility, connectivity and sustainability.

Objective #4 Prepare and respond to climate change.

FISCAL CONSIDERATIONS:

In lieu of monthly rent being paid to City by Lessee during the Initial Term of 25 years, Lessee will acquire and convey the required mitigation land to the City.

If Lessee continues to use the Premises as a solar field after the Initial Term, Lessee shall pay the City as rent 50% of any revenues received, or the value of any compensation (monetary or non-monetary) received, by Lessee from the operation of the solar field.

If Lessee puts the Premises to a non-solar field use following the Initial Term, then Lessee shall lease said Premises from City subject to the terms of a Parcel Ground Lease then applicable for other leaseholds granted to Lessee.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee): None

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

This lease has been discussed at the monthly Airport Advisory Committee meetings with the committee members and the general public and they will continue to be updated as the project progresses.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Both Metropolitan Airpark, LLC and the City are key stakeholders - This lease will provide renewable energy to offset greenhouse gas and will provide fully mitigated land for when the lease is contemplated to change to aeronautical use at the end of the lease.

Thompson, Cybele
Originating Department

LoMedico, Stacey
Deputy Chief/Chief Operating Officer

DOCKET SUPPORTING INFORMATION CITY OF SAN DIEGO EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION	DATE: June 15, 2015
SUBJECT: Metropolitan Airpark, LLC Solar Ground Lease at Brown Field Airport	

GENERAL CONTRACT INFORMATION

Recommended Consultant: Metropolitan Airpark, LLC (Not Certified, M – Cauc.)

Amount of this Action: N/A

Funding Source: N/A

Goal: N/A

SUBCONSULTANT PARTICIPATION

There is no subconsultant participation associated with this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required.

Metropolitan Airpark, LLC submitted a Work Force Report for their San Diego employees dated, May 13, 2015 indicating 2 employees in their Administrative Work Force.

The firm has fewer than 15 employees and therefore, is exempt from the employment category goals.

This agreement is subject to the City’s Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

ADDITIONAL COMMENTS

This action is to approve a Solar Ground Lease with Metropolitan Airpark, LLC, successor in interest to Brown Field International Business Park, LLC. The lease will provide the City with mitigation land required for the development of Brown Field Airport as well as 5-8 MW of renewable energy for the region, Brown Field Airport and/or other City facilities.

In lieu of monthly rent being paid to the City by Lessee during the initial term of 25 years, Lessee will acquire and convey the required mitigation land to the City. If Lessee continues to use the premises as a solar field after the initial term, Lessee shall pay the City as rent 50% of any revenues received, or the value of any compensation (monetary or non-monetary) received by Lessee from the operation of the solar field.

KM

SOLAR GROUND LEASE

BROWN FIELD AIRPORT

SAN DIEGO, CALIFORNIA

LESSOR: CITY OF SAN DIEGO

LESSEE: METROPOLITAN AIRPARK LLC

PARCEL _____

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1.4 City's and Lessee's Lease Administrators. This Solar Lease shall be administered on behalf of City by City's Director of the Real Estate Assets Department, and/or by such person's duly-authorized designee (referred to collectively hereinafter as "City's Lease Administrator"), and on behalf of Lessee by Metropolitan Airpark LLC, or by such other person as may be designated in writing by Lessee (referred to hereinafter as "Lessee's Lease Administrator").

1.5 Effective Date. The "Effective Date" of this Solar Lease shall be defined as the later date of the passage of the resolution authorizing this Solar Lease by City Council, execution by City, and approval by the City Attorney. See Section 3.1 below.

1.6 Commencement Date. The term ("Term") shall commence upon the issuance of a Notice of Completion (or similar-type document) for the solar field. See Section 3.1 below.

1.7 Initial Term. The initial term of this Solar Lease shall be twenty-five (25) years ("Initial Term") commencing on the Commencement Date. The Initial Term and Remainder Term (defined below) may be referred to individually as their defined name, or collectively as the "Term".

1.8 Remainder Term. The twenty-five (25) year term following expiration of the Initial Term shall be referred to as the "Remainder Term". Lessee shall have the right to lease the Premises for the duration of the Remainder Term for any use which is compatible with the then-applicable Airport Layout Plan, SDM Airport Land Use Compatibility Plan, and as allowed by the Site Development Permit ("Permitted Uses"). If the Premises continues to be used as a solar field for the duration of the Remainder Term, the terms of this Solar Lease will remain in effect for the balance of the Term. If the Lessee elects to use the Premises for some other Permitted Use, then the Premises will be governed by the terms of a Parcel Ground Lease then applicable for other leaseholds granted to Lessee for a period not to exceed twenty-five (25) years.

1.9 Rent Due Date. See Section 4.1.

1.10 Rent. Pursuant to Article 3, Section 3.13(c) of the Leasehold Development Agreement and Section 4.1.1 of this Solar Lease, no Base Monthly Rent will be paid to City by Lessee, or any assigned solar operator, during the Initial Term of this Solar Lease, for the lease of the Premises, so long as the Premises is used as a solar field and the required mitigation land is acquired and conveyed to the City of San Diego prior to the issuance of a Construction Permit, or whatever is the first permit required to commence any development activities on the Premises. Failure of Lessee, at its sole cost, to acquire and convey the required mitigation land shall be deemed a material breach of this Solar Lease and shall give the City the right to immediately terminate this Solar Lease with no liability to City. The Base Monthly Rent for the Remainder Term shall be determined as set forth in Section 4.1.2.

1.11 Cost of Living Adjustments. RESERVED.

1.12 Additional Rent. Other than Base Monthly Rent, any and all sums of money or charges required to be paid by Lessee to City pursuant to the provisions of this Solar Lease shall be paid as "Additional Rent" (for example: late charges, interest, equity payments, processing fees, etc.).

1.13 General Description of Lessee’s Use of Premises. Lessee shall use the Premises solely for a solar field during the Initial Term. Lessee shall use the Premises solely for any uses which are compatible with the then-applicable Airport Layout Plan, SDM Airport Land Use Compatibility Plan, and as allowed by the Site Development Permit during the Reminder Term.

1.14 Definitions. As used in this Solar Lease, the following terms shall have the meanings attached to them in this Section unless otherwise apparent from their context:

1.14.1 “Agreement” means the Leasehold Development Agreement for Brown Field Airport approved by the San Diego City Council on October 21, 2013, by City Council Resolution R-308482.

1.14.2 “Airport” means Brown Field Airport, San Diego, California.

1.14.3 “Airports Director” means the Airports Director for the City of San Diego, or upon written notice to Lessee, such other person as shall be designated from time to time by City.

1.14.4 “ALP” means the FAA-approved Airport Layout Plan for Brown Field Airport.

1.14.5 “As Is” means in its current condition as of the date of appraisal with no express or implied warranty of suitability for use, not including any improvements, infrastructure or entitlements paid for by the Developer.

1.14.6 “City” means the City of San Diego.

1.14.7 “City Council” means the City Council of the City of San Diego.

1.14.8 “FAA” means the Federal Aviation Administration.

1.15 Exhibits To Lease. The following drawings and special provisions are attached hereto as exhibits and made a part of this Solar Lease:

- EXHIBIT “A” - Description and Plat of the Premises
- EXHIBIT “B” - FAA Requirements
- EXHIBIT “C” - Insurance Requirements
- EXHIBIT “D” - Form of Sublease
- EXHIBIT “E” - Site Development Permit

1.16 Construction of Solar Lease Provisions. The foregoing provisions of this Article summarize for convenience only certain key terms of the Solar Lease delineated more fully in

the Articles and Sections referenced therein. In the event of a conflict between the provisions of this Article and the balance of the Solar Lease, the latter shall control.

ARTICLE 2 LEASE OF PREMISES

2.1 Description. City hereby leases to Lessee and Lessee hereby leases from City, for the rent and upon the covenants and conditions hereinafter set forth, the Premises described in Section 1.3 above, together with, as applicable during the Remainder Term, the non-exclusive use of all public airport facilities at the Airport including, but not limited to, taxiways, runways, aprons, navigational aids and facilities relating thereto, for the purpose of landings, takeoffs and taxiing of Lessee's and Lessee's sublessee's aircrafts and/or Lessee's and Lessee's sublessee's customers' aircraft.

2.2 Mineral Rights. Notwithstanding any provision of this Solar Lease to the contrary, City hereby expressly reserves all rights, title and interest in and to any and all gas, oil, mineral and water deposits located upon or beneath the surface of the Premises. City shall have the right to enter the Premises at any time during the Term for the purpose of operating or maintaining such drilling or other installations as may be necessary or desirable for the development of any such gas, oil, mineral or water deposits, provided that such installations do not unreasonably interfere with Lessee's or its sublessees' and customers' use and quiet enjoyment of the Premises.

2.3 Reservations to City/Easement Reservations. Lessee accepts the Premises subject to any and all existing easements and encumbrances as of the Effective Date of this Solar Lease. City reserves the right to establish, to grant or to use easements or rights-of-way over, under, along and across the Premises for access, underground sewers, utilities, thoroughfares or such other facilities as it deems necessary for public health, convenience and welfare, whether or not such facilities directly or indirectly benefit the Premises, and to enter the Premises for any such purpose; provided, however, that any such grant of rights by City shall require that the Premises be restored to their preexisting condition and shall not unreasonably interfere with the Lessee's use thereof. City hereby reserves unto itself, for the benefit and use for aviation purposes by the City and the public, an easement over the taxiways shown in Exhibit "A" (Description and Plat of Premises), or any taxiways developed by Lessee, within the Premises; provided however, no right reserved by City in this Section 2.3 shall be so exercised as to interfere unreasonably with Lessee's operations hereunder. City agrees that should the exercise of any of the rights reserved by City in this Section 2.3 temporarily interfere with the use of any or all of the Premises by Lessee, the Rent, if any, shall be reduced in proportion to the interference with Lessee's use of the Premises.

2.4 Solar Lease Subordinate to Conditions and Restrictions Imposed by Public Agencies on Airport Operations. This Solar Lease shall be subordinate and subject to the terms, conditions, restrictions and other provisions of any existing or future permit, lease and agreement between City and any Federal, State or local agency governing City's control, operation or maintenance of the Airport, or affecting the expenditure of federal funds for the Airport. Lessee shall be bound by all such terms and conditions, and shall, whenever City may so demand, execute, acknowledge or consent to any instrument evidencing such terms, conditions, restrictions or provisions. Without limiting the generality of the foregoing, this Solar Lease and Lessee's

occupancy of the Premises are expressly made subordinate and subject to the terms, conditions, restrictions and other provisions of those requirements of the FAA specifically set forth in Exhibit “B” (FAA Requirements), and Lessee shall be bound by all such requirements.

ARTICLE 3 TERM OF SOLAR LEASE

3.1 Term. This Solar Lease shall take effect on the “Effective Date,” defined as the later date of the passage of the resolution authorizing this Solar Lease by City Council, execution by City, and approval by the City Attorney. Subject to the approval of this Solar Lease by the City Council, the Term shall commence upon the issuance of a Notice of Completion (or similar-type document) for the solar field and shall continue thereafter for the period specified in Section 1.7, unless sooner terminated as hereinafter provided in this Solar Lease. Except as otherwise specifically stated in this Solar Lease or in any subsequent amendments hereof, the terms and conditions of this Solar Lease shall remain in effect following any holdover of the Term of this Solar Lease

3.2 Early Termination Through City Buy-Out.

3.2.1 Removal of Improvements. Upon any termination of this Solar Lease, Lessee shall remove, or cause to be removed, all Improvements of whatever nature located on the Premises, within one hundred eighty (180) days following termination of this Solar Lease at Lessee’s sole expense; subject to Article 9 hereof.

3.3 Surrender of the Premises; Quitclaim of Lessee’s Interest Upon Termination. Lessee shall surrender possession of the Premises to City upon expiration of the Term, or upon the earlier termination of this Solar Lease, as provided for in this Solar Lease. Upon termination of this Solar Lease for any reason, including but not limited to termination because of default by Lessee, Lessee shall execute, acknowledge and deliver to City, within thirty (30) days following receipt of written demand therefor, a good and sufficient deed whereby Lessee quitclaims all of its right, title and interest in the Premises to City; the Mayor or his/her designee, on behalf of the City, shall be authorized to accept such a surrender of possession and quitclaim deed. Should Lessee fail or refuse to deliver such quitclaim deed to City, City may prepare and record a notice reciting the failure of Lessee to do so, and such notice shall be conclusive evidence of the termination of this Solar Lease and of all rights of Lessee, or those claiming under Lessee, to the Premises.

ARTICLE 4 RENT

4.1 Base Monthly Rent. Lessee shall pay as rent for the use and occupancy of the Premises, Base Monthly Rent as follows:

4.1.1 Initial Term Rent. No Base Monthly Rent will be paid to City by Lessee, or any assigned solar operator, during the Initial Term of this Solar Lease for the lease of the Premises so long as the Premises is used as a solar field and the required mitigation land has been acquired and timely conveyed to the City of San Diego (see Section 1.10). The conveyance to the City of the fee interest in and to all the land purchased as mitigation

for the solar field, as more fully described in the Mitigation and Monitoring Plan certified by the City as part of the EIR associated with the solar field, has been determined to be adequate consideration for Lessee's Initial Term for said Premises.

4.1.2 Remainder Term Rent. Remainder Term Rent shall be paid as follows:

4.1.2.1 If Lessee continues to use the Premises as a solar field, then Lessee shall lease said Premises and shall pay the City as rent 50% of any revenues received, or the value of any compensation (monetary or non-monetary) received, by Lessee from the operation of the solar field (hereinafter referred to as "Solar Rent" regardless of whether the "use" of the Premises remains as a solar field). The Solar Rent shall commence in year 26 (immediately after the expiration of the Initial Term of the Solar Lease).

4.1.2.2 If Lessee puts the Premises to a non-solar field use following the Initial Term, then Lessee shall lease said Premises from City subject to the terms of a Parcel Ground Lease then applicable for other leaseholds granted to Lessee.

4.2 Delivery of Rent Payments. All rent (base monthly rents and additional rents) due under this Solar Lease and any applicable Parcel Ground Lease, shall be made payable to the City of San Diego, shall be paid on or before the time period/date indicated in this Solar Lease or any applicable Parcel Ground Lease. Payments shall be sent by mail to:

City of San Diego
P.O. Box 129030
San Diego, CA 92112-9030

or hand-delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, CA 92101

City may change the place of payment at any time by written notice to Lessee. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt. City may, but is not obligated to, send monthly rent invoices to Lessee.

**ARTICLE 5
POSSESSION AND USE**

5.1 Permitted Uses. During the Initial Term, Lessee shall use the Premises solely for a solar field (the parties hereto acknowledge that Lessee intends to sublease the Premises to a solar provider for purposes of constructing, operating and maintaining the solar field). During the Remainder Term, the Premises may continue to be used as a solar field, or may be put to any use

which is compatible with the then-applicable Airport Layout Plan, SDM Airport Land Use Compatibility Plan, and as allowed by the Site Development Permit. Such potential compatible uses include: outdoor storage; jet aviation FBO (including a restaurant); aircraft hangars; helicopter FBO (including a fire fighting aviation facility or other agency aviation hub); aircraft apron; business hotel, access road; alternative fuels station; transit transfer station (not part of lease area); light industrial; parking lot; office; commercial and all infrastructure required incident to these uses. If Lessee elects to use the Premises for a permitted use other than as a solar field, the terms of a then-applicable Parcel Ground Lease shall control the terms of that use.

5.2 Duties and Prohibited Conduct. Lessee shall operate and manage the services and facilities which it offers to the public in a competent and efficient manner at least comparable, in the opinion of the Airports Director, to other Airport operations of similar type. Where Lessee is reasonably in doubt as to the propriety of any particular use, Lessee may request the written determination of the Airport Director that such use is or is not permitted, and Lessee will not be in breach or default under this Solar Lease if Lessee abides by such determination. Notwithstanding the foregoing, however, Lessee shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance. Lessee shall not use, or permit any person or persons to use the Premises for the sale or display of any goods and/or services which, in the sole discretion of City, are inconsistent with the permitted uses of the Premises pursuant to this Solar Lease. Lessee shall keep the Premises, and every part thereof, in a decent, safe and sanitary condition, free from any objectionable glare, noises, or odors, or other nuisances, except as may be typically present for the permitted uses specified above, and shall comply with all local, State and Federal ordinances and regulations in all respects. Lessee shall deposit all trash and rubbish of Lessee only within receptacles provided by Lessee and located in the areas designated by City. Lessee shall not allow or permit installation of any billboards or advertising signs, or aerials or antennas, upon the Premises without first obtaining, in each instance, the prior written consent of the Airports Director, which consent the Airports Director may give or withhold in his or her sole discretion. Any such signs or antenna installed without such written consent shall be subject to removal without notice at any time, at Lessee's expense.

5.3 Compliance with Laws.

5.3.1 Lessee, at Lessee's sole expense, shall procure, maintain and hold available for City's inspection any governmental license or permit required for the proper and lawful conduct of Lessee's business. Lessee shall not use the Premises for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations and requirements of the State of California, the City of San Diego, or of other lawful authorities. Lessee shall, at Lessee's expense, comply promptly with all applicable statutes, laws, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the Term, regulating the use by Lessee of the Premises. The final judgment of any court of competent jurisdiction, or the admission of Lessee or any sublessee or permittee in any action or proceeding against them or any of them, whether or not the City is a party to such action or proceeding, that Lessee, or any such sublessee or permittee, has violated any such ordinance, law, statute, regulation, covenant, restriction or requirement pertaining to the use of the Premises, shall be conclusive as to that fact as between City and Lessee.

5.3.2 Notwithstanding any other provision of this Solar Lease to the contrary, Lessee shall be responsible for payment of all costs of complying with the requirements of the Americans with Disabilities Act of 1990 (“ADA”) (42 USCS §§ 12101-12213), Title 24 of the California Code of Regulations (“Title 24”) and California Civil Code § 54.1, or any successor statutes thereto, as they may apply to the Premises. Lessee’s obligations hereunder shall include, without limitation, all costs of bringing the Premises into compliance, and thereafter maintaining such compliance, with the requirements of Title III of the ADA (“Title III”) (42 USCS §§ 12181 - 12189) applicable during the Term to public accommodations and commercial facilities, irrespective of whether or not the particular requirements of such compliance (i) are specifically required by Lessee’s intended use of the Premises, or (ii) may also be required of City under Title II of the ADA (“Title II”) (42 USCS §§ 12131 - 12165).

5.3.3 Lessee’s duty to comply with applicable laws and regulations shall include compliance with any and all zoning and land use regulations applicable to the Premises and Lessee’s intended use thereof (“Land Use Regulations”). City’s execution of this Solar Lease shall in no way be deemed to constitute a determination by City that Lessee’s intended use of the Premises complies with applicable Land Use Regulations, nor shall it infer any such conclusion by City, even if City is the agency which enacts or implements the Land Use Regulations applicable to the Premises.

5.4 Substance Abuse. Lessee and its employees and agents shall not use or knowingly allow the use of the Premises for the purpose of unlawfully driving a motor vehicle or aircraft under the influence of an alcoholic beverage or any drug, or for the purpose of unlawfully selling, serving, using, storing, transporting keeping, manufacturing or giving away alcoholic beverages or any “controlled substance,” precursor or analog specified in Division 10 of the California Health and Safety Code (including any amendment thereto or similar specification(s) listed elsewhere within California Codes), and violation of this prohibition shall be grounds for immediate termination of this Solar Lease.

5.5 Control of Premises. Failure of Lessee to exercise control of the use of the Premises to materially conform to the provisions of this Article shall constitute a material breach of this Solar Lease and such shall be grounds for termination of this Solar Lease.

ARTICLE 6 UTILITIES

6.1 Lessee shall provide and pay for all initial utility deposits and fees, and for all utilities and services necessary for its use and occupancy of the Premises during the Initial Term and Remainder Term, including but not limited to gas, water, electricity, trash, sewer/septic tank charges and telephone; City shall have no responsibility to pay for such services. If any such services are not separately metered or billed to Lessee but rather are billed to and paid by City, Lessee will pay to City its pro rata share of the cost of such services, as determined by City, together with its pro rata share of the cost of making such determination, within 30 days’ receipt of each such invoice therefor. City will not be liable for any reason for any loss or damage resulting from an interruption of any of these services. Lessee shall indemnify, defend and hold City harmless from any and all liability, loss, damage, costs, attorney’s fees and all other

expenses on account of, or resulting from, the provision of any utilities and services, and losses or damages resulting therefrom.

ARTICLE 7 MECHANICS LIENS

7.1 Mechanics' Liens. Lessee shall pay, or cause to be paid, all costs for work done by it, or caused to be done by it, on the Premises, and for all materials furnished for or in connection with any such work. If any lien is filed against the Premises, Lessee shall cause the lien to be discharged of record within ten (10) days after it is filed. Lessee shall indemnify, defend and hold City harmless from any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for Lessee or persons claiming under Lessee.

7.2 Contest of Lien. If Lessee shall desire to contest any lien filed against the Premises, it shall, at the option of the Airports Director, furnish City, within the ten-day period following filing of the lien, security reasonably satisfactory to City of at least one hundred percent (100%) of the amount of the lien, plus estimated costs and interest, or a bond of a responsible corporate surety in such amount, conditioned on the discharge of the lien. If a final judgment establishing the validity or existence of a lien for any amount is entered, Lessee shall immediately pay and satisfy the same.

7.3 Right to Cure. If Lessee shall be in default in paying any charge for which a mechanics' lien claim and suit to foreclose the lien have been filed, and shall not have given City security to protect the Premises and City from liability for such claim of lien, City may (but shall not be required to) pay said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Lessee to City as additional rent, and Lessee shall pay the same to City with interest at the rate specified in Section 15.5 below.

7.4 Notice of Lien. Should any claim of lien be filed against the Premises or any action against the Premises or any action affecting the title to such property be commenced, the party receiving notice of such lien or action shall immediately give the other party written notice thereof.

7.5 Notice of Nonresponsibility. City or its representatives shall have the right to go upon and inspect the Premises at all reasonable times and shall have the right to post and keep posted thereon notices of nonresponsibility or such other notices which City may deem to be proper for the protection of City's interest in the Premises. Lessee shall, before the commencement of any work which might result in any such lien, give to City written notice of its intention to do so in sufficient time to enable posting of such notices.

ARTICLE 8 SECURITY

8.1 Lessee shall be responsible for and shall provide for the security of the Premises, and City shall have no responsibility therefor. Lessee shall construct and maintain fences, gates,

walls and/or barriers on the Premises in a manner designed, in the Airports Director's reasonable judgment, to prevent unauthorized access to the taxiways, runways and Lessee's ramp and hangar area and Lessee shall prevent such unauthorized access. Unless otherwise approved in writing by the Airports Director, Lessee shall construct and maintain fences and/or walls no less than six feet in height along the boundaries of the Premises, in locations specified and approved by the Airports Director. Such fences and/or walls shall be constructed of materials and in such a manner as to reasonably prevent access to the Premises. Ingress and egress through gates and access points in the fences or walls shall be controlled by Lessee at all times. Unless otherwise approved in writing by the Airports Director, such control must be by the use of automated gate controls utilizing key, card or keypad technology. All plans for security fencing and/or walls and access gates must be submitted to and approved by the Airports Director prior to construction. The Airport Director/Airport Staff shall be given the right of access through all such gates and access points, along with current keys, cards and/or keypad codes. Lessee shall provide lighting adequate, in the judgment of the Airports Director, to prevent unobserved entry onto the Premises during the hours of darkness. All construction required by this clause shall be completed on or before the Commencement Date.

Notwithstanding the foregoing, any and all fences, gates, walls and/or barriers constructed on the Premises must conform to CFR 77 and AC 150/5300-13A and have prior approval of the FAA, as evidenced by an approved Form 7460-1.

**ARTICLE 9
LESSEE'S RIGHT TO MAKE IMPROVEMENTS;
PERSONAL PROPERTY; FIXTURES**

9.1 Improvements. With the prior written approval of the Airports Director, said approval not to be unreasonably withheld, Lessee may, at Lessee's own expense, from time to time make such structural and nonstructural alterations, replacements, additions, changes, and/or improvements (collectively referred to in this Solar Lease as "Improvements") to the Premises as Lessee may find necessary or convenient for its purposes; provided, however, that the value of the Premises is not thereby diminished. Lessee and City have agreed that Lessee, or an approved sublessee, shall, within twenty four (24) months of the issuance of necessary construction permits by the City, state and federal agencies, complete the Improvements on the Premises for a solar field, as generally depicted in the Site Development Permit attached hereto as Exhibit "E". Lessee shall at all times conduct its construction operations so that such operations do not interfere with the normal operation and use of the Airport by City.

9.2 Construction Requirements. All Improvements to be made to the Premises shall be made in conformity with the applicable ALP and Development Standards which are or may be adopted by City and the FAA and are in effect at the time of construction of such Improvements, and in conformity with those building permits issued by the City.

9.3 Personal Property. Subject to the provisions of Section 9.4, all of Lessee's trade fixtures, furniture, furnishings, signs, solar panels and associated equipment including but not limited to substations, conductors, control rooms and equipment, other personal property not permanently affixed to the Premises (collectively referred to as "Personal Property" in this Solar Lease) shall

remain the property of Lessee. Lessee shall, at its expense, immediately repair any damage occasioned to the Premises by reason of the removal of any such Personal Property.

9.4 Fixtures. All Improvements constructed by Lessee (or approved sublessee), together with all other fixtures, including Lessee's trade fixtures, attached to the Premises (collectively referred to in this Solar Lease as "Fixtures") shall remain the property of Lessee (or approved sublessee) upon expiration or earlier termination of the Initial Term. Lessee shall remove any and all Fixtures at Lessee's own expense upon termination of the Initial Term of this Solar Lease provided that Lessee does not intend to continue the generation of solar power during the Remainder Term of this Solar Lease. Any damage to the Premises occasioned by the placement and removal of the Fixtures shall be repaired by Lessee in a good and workmanlike manner and the Premises shall be left in as substantially the same or better condition as when Lessee took possession thereof. In the event Lessee does not remove any Fixtures or equipment following direction by City, City may remove, sell or destroy the same, and Lessee shall pay to City the reasonable cost of such removal, sale or destruction, together with the reasonable cost of repair of damages to City's property or improvements or to the Premises resulting therefrom.

9.5 Signs and Lighting Lessee (or approved sublessee) shall not construct, nor permit the erection of, any signs on the Premises without the prior written approval of the Airports Director, which approval shall be at the sole discretion of the Airport Director. Lessee shall submit sketches of proposed signs to the Airports Director for approval showing size, materials, colors and location. Such signs must conform with all City and FAA standards, laws, rules, and regulations, and to any laws or ordinances of governmental agencies having jurisdiction over the Premises. All exterior lighting on the Premises must receive prior written approval from the Airport Director, which approval shall be at the sole discretion of the Airport Director, and, if approved, must conform to any laws or ordinances of governmental agencies having jurisdiction over the Premises.

9.6 Onsite and Offsite Utilities. Lessee shall be responsible for the cost of all onsite utility upgrades or relocations required for the construction, completion or operation of Lessee's Improvements. City shall assist in determining the location of existing utilities. Lessee shall not be responsible for the upgrading or relocation of wet or dry public utilities or surface improvements necessary to serve the Airport in general or other leaseholds other than the Premises, unless required as a condition of any approved Improvements. Notwithstanding the foregoing, should any such upgrades or relocations benefit the Airport in general or other leaseholds, neither City nor any such other leaseholds shall be charged any pro rata share of or incur any additional expenses therefor.

ARTICLE 10 TAXES, ASSESSMENTS AND FEES

10.1 Definition of "Taxes." As used herein, the term "taxes" means all taxes, governmental bonds, special assessments, Mello-Roos assessments, charges, rent income or transfer taxes, license and transaction fees, including, but not limited to, (i) any state, local, federal, personal or corporate income tax, or any real or personal property tax, (ii) any estate inheritance taxes, (iii) any franchise, succession or transfer taxes, (iv) interest on taxes or penalties resulting from Lessee's failure to pay taxes, (v) any increases in taxes attributable to the sale of Lessee's

leasehold interest in the Premises, or (vi) any taxes which are essentially payments to a governmental agency for the right to make improvements to the Premises.

10.2 Responsibility for Payment of Taxes. City shall not be obligated to pay any taxes or assessments accruing against Lessee on the Premises or any interest of Lessee therein before, during or after the Initial Term or the Remainder Term; all such payments shall be the sole responsibility of Lessee. In addition, Lessee shall be solely responsible for payment of any taxes or assessments levied upon any Improvements, Fixtures or Personal Property located on the Premises, to the extent that such taxes or assessments result from the business or other activities of Lessee upon, or in connection with, the Premises. Ad valorem taxes and assessment levied, assessed, or imposed on the Solar Lease leasehold(s) commencing after the Effective Date, shall be borne by Lessee when due and payable. Lessee shall be responsible for payment of any Development Impact fees (“DIFs”) or any other exactions, assessments or taxes relating to construction of the Improvements and/or Lessee’s development at the Airport.

10.3 Creation of Possessory Interest. Pursuant to the provisions of Revenue and Taxation Code Section 107.6, or any successor statute thereto, Lessee is hereby advised that the terms of this Solar Lease may result in the creation of a possessory interest. If such a possessory interest is vested in Lessee, Lessee may be subjected to the payment of real property taxes levied on such interest. Lessee shall be solely responsible for the payment of any such real property taxes. Lessee shall pay all such taxes prior to delinquency, and shall not allow any such taxes, assessments or fees to become a lien against the Premises or any improvement thereon; provided, however, that nothing herein shall be deemed to prevent or prohibit Lessee from contesting the validity of any such tax, assessment or fee in a manner authorized by law.

ARTICLE 11 REPAIRS; MAINTENANCE

11.1 Acceptance of Premises. Lessee acknowledges that Lessee has made a thorough inspection of the Premises prior to the Effective Date of this Solar Lease, and that it accepts the Premises as of the Effective Date in its then condition. Lessee further acknowledges that City has made no oral or written representations or warranties to Lessee regarding the condition of the Premises, and that Lessee is relying solely on its inspection of the Premises with respect thereto.

11.2 Lessee’s Repair and Maintenance Obligations. Lessee shall at all times from and after the Effective Date, at its own cost and expense, repair, maintain in good and tenable condition and replace, as necessary, the Premises and every part thereof; and all such items of repair, maintenance, alteration, improvement or reconstruction as may be required at any time or from time to time by a governmental agency having jurisdiction thereof. Lessee’s obligations hereunder shall apply regardless of whether the repairs, restorations and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or noncapital, or the fault or not the fault of Lessee, its agents, employees, invitees, visitors, sublessees or contractors. All replacements made by Lessee in accordance with this Section shall be of like size, kind and quality to the items replaced and shall be subject to prior written approval by the Airports Director, such approval not to be unreasonably withheld. Lessee shall provide for trash removal, at its expense, and shall maintain all trash receptacles and trash areas in a clean, orderly and first class condition.

11.3 Lessee's Failure to Maintain. If Lessee refuses or neglects to repair, replace, or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to City, City shall have the right (subject to any applicable notice and cure periods), upon giving Lessee reasonable written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Lessee. If City makes or causes any such repairs to be made or performed, as provided for herein, Lessee shall pay the cost thereof to City, as Additional Rent, promptly, but in no event later than thirty (30) days, upon receipt of an invoice therefor.

11.4 Right to Enter. Lessee shall permit City, or its authorized representatives, to enter the Premises at all times during usual business hours to inspect the same, and to perform any work therein (a) that may be necessary to comply with any laws, ordinances, rules or regulations of any public authority, (b) that City may deem necessary to prevent waste or deterioration in connection with the Premises if Lessee does not make, or cause to be made, such repairs or perform, or cause to be performed, such work promptly after receipt of written demand from City, and (c) that City may deem necessary in connection with the expansion, reduction, remodeling, protection or renovation of any City-constructed or owned facilities on or off of the Premises or at the Airport. Nothing herein contained shall imply any duty on the part of City to do any such work which, under any provision of this Solar Lease, Lessee may be required to do, nor shall City's performance of any repairs on behalf of Lessee constitute a waiver of Lessee's default in failing to do the same. No exercise by City of any rights herein reserved shall entitle Lessee to any compensation, damages or abatement of rent from City for any injury or inconvenience occasioned thereby, but City shall be responsible for any unreasonable damage caused by City.

11.5 Annual Leasehold Compliance Surveys. In addition to City's right to enter pursuant to Section 11.4, above, Lessee acknowledges and accepts City's right and intent to conduct periodic, but not more frequently than annual, Leasehold Compliance Surveys ("Surveys"). Said Surveys shall be scheduled at a mutually convenient time for City and Lessee, following written notice by City of its intent to conduct a Survey. Said Survey will focus on, but not be limited to, the condition of all leasehold improvements for proper maintenance and building code compliance, compliance with laws, interference with aircraft and Airport operations, and a verification of all subleases on the Premises. Lessee agrees to cooperate with City, or its authorized representative, during the Survey process and provide access to all areas of the Premises, both interior and exterior (as applicable). In the event City, or its authorized agent, is not able to access all areas of the Premises during the time of the scheduled Survey, Lessee will reschedule a mutually convenient time for a follow up survey to allow access to areas inaccessible during the initial Survey appointment, and Lessee agrees to compensate City for the personnel cost of the follow up Survey at the rate of \$50 for each hour, for each necessary member of City's staff, for such follow up Survey. Refusal by Lessee to provide access to all areas of the Premises shall be considered a material breach of this Solar Lease and grounds for termination of this Solar Lease.

11.6 City Not Obligated to Repair or Maintain; Lessee's Waiver of California Civil Code Section 1942. To the extent that any remedies specified in this Solar Lease conflict or are inconsistent with any provisions of California Civil Code Section 1942, or any successor statute thereto ("CC §1942"), the provisions of this Solar Lease shall control. Lessee specifically

waives any right it may have pursuant to CC §1942 to effect maintenance or repairs to the Premises and to abate the costs thereof from rent due to the City under this Solar Lease.

ARTICLE 12 INDEMNIFICATION AND INSURANCE

12.1 Definition of “Lessee Parties” and “City Parties”. For purposes of this Article 12, the term “Lessee Parties” refers singularly and collectively to Lessee and Lessee’s officers, members, partners, agents, employees, independent contractors, and sublessees, as well as to all persons and entities claiming through any of these persons or entities. The term “City Parties” refers singularly and collectively to City and its City Council, officers, directors, affiliated entities, personal representatives, assigns, licensees, invitees, agents, servants, employees, and independent contractors of these persons or entities.

12.2 Indemnification.

12.2.1 Lessee’s Indemnification of City Parties. To the fullest extent permitted by law, Lessee shall, at Lessee’s sole expense, indemnify, protect, defend, and hold harmless City Parties from and against all Claims, as defined in Section 12.2.2, from any cause, arising out of or relating (directly or indirectly) to this Solar Lease, the tenancy created under this Solar Lease, or the Premises, including, without limitation:

12.2.1.1 The use or occupancy, or manner of use or occupancy, of the Premises by Lessee Parties;

12.2.1.2 Any act, error, omission, or negligence of Lessee Parties or of any invitee, guest, or licensee of Lessee Parties, including, without limitation, detainees, in, on, or about the Premises;

12.2.1.3 Lessee Parties’ conducting of its business;

12.2.1.4 Any alterations, activities, work, or things done, omitted, permitted, allowed, or suffered by Lessee Parties in, at, or about the Premises, including construction of Improvements, and also including the violation of or failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, decrees, or judgments in existence on the Effective Date or enacted, promulgated, or issued after the Effective Date; and

12.2.1.5 Any breach or default in performance of any obligation on Lessee Parties’ part to be performed under this Solar Lease, whether before or during the Initial Term or Remainder Term or after the Solar Lease’s expiration or earlier termination.

12.2.2 Definition of Claims. For purposes of this Solar Lease, “Claims” means any and all claims, losses, costs, damage, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, law or equity, or otherwise), charges, assessments, fines, and penalties of any kind (including consultant and expert expenses, court costs, and reasonable attorneys’ fees actually incurred).

12.2.3 Type of Injury or Loss. This indemnification extends to and includes Claims for:

12.2.3.1 Injury to any persons (including death at any time resulting from that injury);

12.2.3.2 Loss of, injury or damage to, or destruction of property (including all loss of use resulting from that loss, injury, damage, or destruction); and

12.2.3.3 All economic losses and consequential or resulting damage of any kind.

12.2.4 Active or Passive Negligence; Strict Liability. Except as provided in this Section 12.2.4, the indemnification in Section 12.2.1 shall apply, without limitation, to Claims caused by the concurrent negligent act or omission, whether active or passive, of City Parties, and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on City Parties. The indemnification in Section 12.2 shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a Claim against one or more City Parties was caused by the sole negligence or willful misconduct of one or more of such City Parties. In that event, however, this indemnification shall remain valid for all other City Parties.

12.2.5 Indemnification Independent of Insurance Obligations. The indemnification provided in this Article 12 may not be construed or interpreted as in any way restricting, limiting, or modifying Lessee's insurance or other obligations under this Solar Lease and is independent of Lessee's insurance and other obligations. Lessee's compliance with the insurance requirements and other obligations under this Solar Lease shall not in any way restrict, limit, or modify Lessee's indemnification obligations under this Solar Lease.

12.2.6 Survival of Indemnification. The clauses of this Article 12 shall survive the expiration or earlier termination of this Solar Lease until all claims against City Parties involving any of the indemnified matters are fully, finally, and absolutely resolved and/or barred by the applicable statutes of limitations.

12.2.7 Duty To Defend. Lessee's duty to defend City Parties is separate and independent of Lessee's duty to indemnify City Parties. The duty to defend includes claims for which City Parties may be liable without fault or strictly liable. The duty to defend applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Lessee Parties have been determined. The duty to defend applies immediately, regardless of whether City Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the parties that City Parties be entitled to obtain summary adjudication or summary judgment regarding Lessee's duty to defend City Parties at any stage of any claim or suit within the scope of this Section 12.2.

12.3 Insurance. Lessee shall provide and maintain, during the Term and for such other period as may be required herein, at its sole expense, insurance in the amounts and form specified in this Section and in Exhibit "C" (Insurance Requirements) attached hereto.

12.3.1 Compliance with Insurer Requirements. Lessee shall, at Lessee's sole expense, comply with all requirements, guidelines, rules, orders, and similar mandates and directives pertaining to the use of the Premises, whether imposed by Lessee's insurers, City's insurers, or both. If Lessee's business operations, conduct, or use of the Premises cause any increase in the premium for any insurance policies carried by City, Lessee shall, within ten (10) business days after receipt of written notice from City, reimburse City for the increase. Lessee shall, at Lessee's sole expense, comply with all rules, orders, regulations, or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and of any similar body.

12.3.2 Insurance Independent of Indemnification. The insurance requirements set forth in this Section are independent of Lessee's indemnification and other obligations under this Solar Lease and shall not be construed or interpreted in any way to restrict, limit, or modify Lessee's indemnification, and other obligations or to limit Lessee's liability under this Solar Lease.

ARTICLE 13 HAZARDOUS MATERIALS

13.1 Hazardous Materials Laws - Definition. As used in this Section, the term "Hazardous Materials Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., § 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C., § 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., § 6901 et seq.), and the California Environmental Quality Act of 1970, or the successor statutes to any of the foregoing, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, soil and ground water conditions or other similar substances or conditions.

13.2 Hazardous Materials - Definition. As used in this Section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that:

13.2.1 is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;

13.2.2 is controlled, designated in or governed by any Hazardous Materials Laws;

13.2.3 gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws; or

13.2.4 is any other material or substance giving rise to any liability, responsibility or duty upon the City or Lessee with respect to any third person under any Hazardous Materials Law.

13.3 Lessee's Representations and Warranties. Lessee represents and warrants that, during the Term or any extension thereof, or for such longer period as may be specified herein, Lessee shall comply with the following provisions of this Section unless otherwise specifically approved in writing by City's Real Estate Assets Administrator:

13.3.1 Lessee shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the Premises by Lessee, its agents, employees, sublessees, assigns, contractors or invitees, in violation of any applicable Hazardous Materials Laws;

13.3.2 any handling, transportation, storage, treatment or usage by Lessee of Hazardous Materials that is to occur on the Premises following the Commencement Date shall be in compliance with all applicable Hazardous Materials Laws;

13.3.3 any leak, spill, release, discharge, emission or disposal of Hazardous Materials which may occur on the Premises following the Commencement Date shall be promptly and thoroughly cleaned and removed from the Premises by Lessee at its sole expense, and any such discharge shall be promptly reported in writing to City, and to any other appropriate governmental regulatory authorities;

13.3.4 no friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by Lessee in the Premises;

13.3.5 no underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells, shall be located by Lessee on the Premises without City's prior written consent;

13.3.6 Lessee shall conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from, or affecting the Premises resulting from a violation of the representations and warranties set forth in this Section 13.3 in accordance with all applicable Hazardous Materials Laws and to the satisfaction of City;

13.3.7 Lessee shall promptly supply City with copies of all notices, reports, correspondence, and submissions made by Lessee to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws;

13.3.8 Lessee shall promptly notify City of any liens threatened or attached against the Premises pursuant to any Hazardous Materials' Law. If such a lien is filed against the Premises resulting from a violation of the representations and warranties set forth in this Section 13.3, then, within the earlier of (i) twenty (20) days following such filing, or (ii) before any governmental authority commences proceedings to sell the Premises pursuant to the lien, Lessee shall either: (a) pay the claim and remove the lien from the Premises, or (b) furnish either (1) a bond or cash deposit reasonably satisfactory to City in an amount not less than the claim from which the lien arises, or (2) other security satisfactory to City in an amount not less than that which is sufficient to

discharge the claim from which the lien arises at the end of this Solar Lease. Lessee shall surrender the Premises to City free of any and all Hazardous Materials resulting from a violation of the representations and warranties set forth in this Section 13.3 and in compliance with all Hazardous Materials Laws affecting the Premises, if any such laws were breached resulting from a violation of the representations and warranties set forth in this Section 13.3.

13.3.9 At the end of this Solar Lease, Lessee shall surrender the Premises to City free of any and all Hazardous Materials resulting from a violation of the representations and warranties set forth in this Section 13.3 and in compliance with all Hazardous Materials' Laws affecting the Premises, if any such laws were breached resulting from a violation of the representations and warranties set forth in this Section 13.3.

13.4 Indemnification by Lessee. Lessee (and, if applicable, each of its general partners) and its successors, assigns, and guarantors, if any, jointly and severally agree to protect, indemnify, defend (with counsel approved by City) reimburse and hold City and its officers, employees and agents harmless from any claims, judgments, damages, penalties, fines, costs or expenses (known or unknown, contingent or otherwise), liabilities (including sums paid in settlement of claims), personal injury (including wrongful death), property damage (real or personal) or loss, including attorneys' fees, consultants' fees, and experts' fees (consultants and experts to be approved by City) which arise during or after the Term from or in connection with the presence or suspected presence of Hazardous Materials anywhere in the Premises, including the soil, ground water or soil vapor on or under the Premises, resulting from a violation of the representations and warranties set forth in Section 13.3 above. Without limiting the generality of the foregoing, the indemnification provided by this Section shall specifically cover costs incurred in connection with investigation of site conditions or any cleanup, remedial, removal or restoration work required by any Hazardous Materials Laws because of the presence of Hazardous Materials in the soil, ground water or soil vapor on the Premises, and the release or discharge of Hazardous Materials by Lessee during the course of Lessee's alteration or improvement of the Premises.

13.5 Remedies Cumulative; Survival. The provisions of this Article 13 shall be in addition to any and all obligations and liabilities Lessee may have to City at common law, and any remedies and the environmental indemnities provided for herein shall survive the expiration or termination of this Solar Lease and/or any transfer of all or any portion of the Premises, or of any interest in this Solar Lease, and shall be governed by the laws of the State of California.

13.6 Inspection. City and City's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by City, may (but without the obligation or duty so to do), at any time and from time to time, on reasonable notice to Lessee (except in the event of an emergency in which case no notice shall be required), inspect the Premises to determine whether Lessee is complying with Lessee's obligations set forth in this Article, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as City and Lessee may agree. If Lessee is not in compliance, City shall have the right, in addition to City's other remedies available at law and in equity, to enter upon the Premises immediately and take such action as City in its sole judgment deems appropriate to remediate any actual or threatened contamination

caused by Lessee's failure to comply. City will use reasonable efforts to minimize interference with Lessee's use of the Premises but will only be liable for any interference caused by City's entry and remediation efforts conducted in a grossly negligent or unlawful manner. Upon completion of any sampling or testing City will (at Lessee's expense if City's actions are a result of Lessee's default under this Section) restore the affected area of the Premises from any damage caused by City's sampling and testing.

ARTICLE 14 ASSIGNMENT, SUBLETTING AND ENCUMBRANCES

14.1 City's Consent to Transfer Required. Lessee shall not voluntarily or involuntarily assign, sublease, mortgage, encumber, condominiumize, or otherwise transfer (collectively, a "Transfer") all or any portion of its interest in this Solar Lease, the Premises, or Improvements thereto, without City's prior written consent, which consent shall not be unreasonably withheld. Any attempted Transfer without City's consent shall be void and shall constitute a material breach of this Solar Lease. As used herein, the term "Transfer" shall include the transfer of any stock or interest in Lessee as a corporation, partnership or other business entity which, in the aggregate, exceeds fifty percent (50%) of the total ownership interest in Lessee.

14.2 City's Election to Consent to a Transfer by Assignment or Sublease. Lessee's request for consent to any Transfer shall be accompanied by a written statement setting forth the details of the proposed Transfer by assignment or sublease, including (i) the name, address, business, business history and financial condition of the proposed assignee or sublessee (collectively, "Transferee") sufficient to enable City to determine the financial responsibility and character of the Transferee, (ii) a copy of the proposed assignment or sublease and the financial details of the proposed Transfer (including the duration, the rent and any security deposit payable under an assignment or sublease), (iii) the Transferee's proposed use of the Premises, and (iv) any other related information which City may reasonably require. City shall have the right to reasonably withhold consent to the Transfer. Any permitted sublease shall contain all the material terms and provisions included within this Solar Lease, or otherwise agreed to by City and Lessee.

14.3 Effectiveness of City's Consent to Assignment or Sublease. City's consent to an assignment or sublease will not be effective until after the date of City's written consent thereto (which includes the City Attorney's approval) and (i) a fully executed copy of the instrument proposing to accomplish a Transfer ("Transfer Instrument") has been delivered to City, including, without limitation, a copy of any trust deed encumbering Lessee's leasehold and the note secured thereby, (ii) in the case of a sublease, City has received from Lessee an executed original of the proposed sublease, and (iii) in the case of an assignment, City has received a written instrument in which the proposed assignee has assumed and agreed to perform all of Lessee's obligations under this Solar Lease. In the case of a sublease, City agrees to enter into a reasonable nondisturbance and attornment agreement with City-consented sublessees. Any rights acquired by a Transferee pursuant to any Transfer Instrument shall be subject to each and every covenant, condition and restriction set forth in this Solar Lease and to all of the rights and interest of City hereunder except as may be otherwise herein specifically provided. In the event of any conflict between the provisions of this Solar Lease and the provisions of any Transfer Instrument, the provisions of this Solar Lease shall control.

14.4 Denial of Consent to Assignment or Sublease. If City denies its consent to the proposed Transfer, City shall provide to Lessee a written statement of the basis on which City denied its consent within fifteen (15) business days after the receipt of Lessee's request for consent to a Transfer. Notwithstanding any of the foregoing provisions of this Section to the contrary, the following shall be deemed to be reasonable grounds for City to withhold consent to a Transfer for purposes of compliance with California Civil Code Section 1951.4, or successor statute thereto.

14.4.1 Lessee or any of its successors, assigns or sublessees are in default as to any term, covenant or condition of this Solar Lease.

14.4.2 The prospective assignee or sublessee has not agreed in writing to keep, perform and be bound by all of the terms, covenants and conditions of this Solar Lease.

14.4.3 City reasonably objects to the business or financial condition of the prospective assignee or sublessee and/or to the financial details of the proposed Transfer.

14.4.4 All of the terms, covenants and conditions of the assignment or sublease, including any consideration therefor, have not been disclosed in writing to City.

14.4.5 Any construction of improvements required of Lessee as a condition of this Solar Lease has not been completed to the reasonable satisfaction of City.

If Lessee believes that City has unreasonably withheld its consent to a Transfer, Lessee's sole remedy will be to seek a declaratory judgment, through a court of competent jurisdiction, that City has unreasonably withheld its consent.

14.5 Transfers by Encumbrance/Mortgage. Any Transfer by Lessee to secure the beneficial interest of a lender ("Beneficiary") in Lessee's interests under this Solar Lease shall be subject to City's prior written approval, which approval shall not be unreasonably withheld, and shall be subject to the following terms and conditions:

14.5.1 No mortgage entered into by Lessee and any Beneficiary shall encumber the fee title to the Premises or another portion of the Airport, at any time;

14.5.2 Immediately following the recordation of any mortgage affecting Lessee's interest in this Solar Lease, Lessee, at Lessee's expense, shall cause to be recorded in the Office of the Recorder, San Diego County, California, a written request for delivery to City of a copy of any notice of default and of any notice of sale under such mortgage, as provided by the statutes of the State of California pertaining thereto. Inclusion in the body of the recorded mortgage itself of a request for notice having the effect described above shall constitute compliance with this provision. Neither City's right to cure any default nor any exercise of such a right shall constitute an assumption of liability under the mortgage.

14.6 Notice. City, upon serving Lessee with any notice under this Solar Lease shall also serve a copy of that notice upon an approved Beneficiary in the same manner as required by this Solar Lease for notices to be delivered to Lessee. The delivery shall be made at the address

Beneficiary shall have designated in writing to City from time to time. No notice from City to Lessee shall be deemed to have been duly given unless and until a copy of the notice has been so served on Beneficiary. Notwithstanding the foregoing, City shall not be held responsible for any incorrect address given to City, or for any party failing to give City a revised/corrected address.

14.7 Rights of Foreclosing Leasehold Mortgage. If Beneficiary forecloses the mortgage or otherwise acquires title to Lessee's leasehold interest in the Premises by assignment in lieu of foreclosure, bankruptcy sale or otherwise (any of the foregoing being a "Foreclosure"), the following terms and conditions will govern the respective rights and obligations of City and Beneficiary or its designee as new owner of the leasehold interest in the Premises (Beneficiary or its designee, as the case may be, being the "New Owner"):

14.7.1 City will, upon notice of the transfer and subject to City's prior written consent to the Transfer, said consent not be unreasonably withheld, recognize the New Owner as the tenant under this Solar Lease. City expressly agrees that the mere fact that a Foreclosure has taken place will not constitute a default under this Solar Lease nor will it result in termination of this Solar Lease;

14.7.2 The New Owner and its successors shall have the right to assign this Solar Lease or sublet all or a portion of the Premises in accordance with terms of this Solar Lease and with the prior written consent of City, said consent not to be unreasonably withheld.

14.8 New Lease. If this Solar Lease is terminated before its stated termination date on account of a default by Lessee that by its nature is incurable by Beneficiary (including, without limitation, a rejection of this Solar Lease by the trustee of Lessee's bankruptcy estate), City agrees that Beneficiary or its City-approved designated affiliate shall have the option to enter into a new lease with City. Any such new lease shall have the same priority as this Solar Lease and shall be for a period equal to the remainder of the term of this Solar Lease, at the same rent, and upon each and all of the terms, covenants, agreements and conditions contained in this Solar Lease. It shall be a condition of City's obligation to enter into a new lease with Beneficiary that Beneficiary cure all of Lessee's defaults, including any monetary defaults.

14.9 Insurance Proceeds. Notwithstanding any other provision in this Solar Lease, in the event of any casualty of Lessee's leasehold interest during the Remainder Term wherein the leasehold has been put to a Non-Solar use, and any mortgage is unsatisfied, all insurance proceeds if greater than \$100,000 shall be deposited with an independent third party financial institution selected by Beneficiary to act as escrow agent. Any such institution shall have assets in excess of \$100 million, and Beneficiary shall have the right to appoint itself escrow agent.

14.9.1 Subject to subsection 14.9.2 below, Lessee shall as fully as possible repair and reconstruct the Improvements to their condition before the casualty, and Lessee shall be responsible for any deficiency between the amount of the proceeds and the cost to so restore. The escrow agent shall pay Lessee and its agents from the escrow account for such restoration in accordance with usual and customary disbursement requirements for construction loans, including upon being presented evidence (i) that the billed-for

services have been performed, (ii) that the remaining escrowed amount is sufficient to complete restoration, and (iii) that the Premises have been kept free of mechanics' liens.

14.9.2 If a substantial portion of the Premises is subject to the casualty and City and Lessee agree that restoration is commercially impracticable, then Lessee shall have the right to terminate this Solar Lease or applicable Parcel Ground Lease, in which event the insurance proceeds shall be payable as follows: first, to City in such amount to compensate City for the fair market value, as determined by a qualified appraiser (selected in the same manner as appraisers are selected pursuant to this Solar Lease), of its reversionary interests in the Improvements to the Premises; second, to compensate Beneficiary for outstanding amounts secured by the Mortgage; and third, to Lessee for its remaining interests in the Premises and the Improvements thereon.

14.10 Miscellaneous. City agrees from time to time, upon no less than thirty (30) days' prior written request of Beneficiary, or any subtenant or assignee to execute, acknowledge, and deliver a statement that certifies, if true and accurate, the following:

14.10.1 This Solar Lease is unmodified and in full force and effect, or, if there have been any modifications, that this Solar Lease is in full force and effect as modified (and stating the modifications);

14.10.2 The dates for which the rent has been paid and the amounts of those rental payments; and

14.10.3 That the Lessee is not in default of any provision of this Solar Lease.

14.11 Defaults Under the Solar Lease; City's Covenant of Forbearance. Where City has consented to a Mortgage encumbering Lessee's leasehold interest in the Premises pursuant to this Article, then City, notwithstanding anything to the contrary in this Solar Lease, shall not exercise its remedies under this Solar Lease for Lessee's defaults, including, without limitation, terminating the Solar Lease, evicting Lessee, or exercising any self-help rights, during the periods specified in this Section so long as the Beneficiary of such mortgage takes the following actions.

14.11.1 If a breach of the Solar Lease occurs, a Beneficiary shall have the right to begin foreclosure proceedings and to obtain possession of Lessee's leasehold interest in the Premises, so long as Beneficiary complies with the conditions set forth below:

14.11.1.1 Cures Lessee's default(s) within the same time period allotted to Lessee for cure of such default, plus an additional thirty (30) days for all non-money defaults and an additional fifteen (15) days for all defaults resulting from the failure of Lessee to make payments of money to City;

14.11.1.2 Notifies City, within thirty (30) days following receipt of City's notice of Lessee's default, of its intention to effect this remedy;

14.11.1.3 Institutes within thirty (30) days steps or legal proceedings to foreclose on or recover possession of Lessee's leasehold interest in the Premises,

and thereafter prosecutes the remedy or legal proceedings to completion with due diligence and continuity; and

14.11.1.4 Keeps and performs, during the period until Lessee's leasehold interest in the Premises shall be either (i) upon prior written approval of City, sold upon foreclosure pursuant to the mortgage, or (ii) upon prior written approval of City, released or reconveyed pursuant to the mortgage (such period being referred to hereinafter as the "Foreclosure Period"), all of the covenants and conditions of this Solar Lease, including, without limitation, payment of all rent, taxes, assessments, utility charges and insurance premiums required by this Solar Lease to be paid by Lessee and which become due during the Foreclosure Period.

14.11.2 If Lessee fails to cure any default within the time period allowed for such cure in this Solar Lease, no cure by a Beneficiary of any such default in the manner allowed under this Section shall reinstate Lessee in good standing under this Solar Lease. If, following expiration of the cure period applicable to Lessee, the Beneficiary shall fail or refuse to comply with any or all of the conditions of this Section applicable to Lessee's default, including failing to expeditiously obtain title to Lessee's leasehold interest in the Premises, then City shall be released from its covenant of forbearance hereunder, and may immediately terminate this Solar Lease.

14.11.3 Transfer of Leasehold Interest; City's Option to Purchase. Any Beneficiary who acquires title to the leasehold interest in the Premises shall immediately provide City with written notice of such transfer. Notwithstanding any provision of this Section to the contrary, within thirty (30) days after receipt of notice of the transfer of the leasehold interest in the Premises to a Beneficiary in any manner, City shall have the option to purchase all right, title and interest in and to the leasehold directly from the Beneficiary for the amounts, and pursuant to the terms, set forth in Section 3.2 above.

14.11.4 Should City elect to not exercise its option to purchase the leasehold interest within the period described above, then, subject to the provisions of Sections 14.16 and 14.17 below, and so long as the Beneficiary shall have observed all of the conditions of this Section 14.11, then the following breaches, if any, relating to the prior Lessee shall be deemed cured: (i) attachment, execution of or other judicial levy upon the leasehold estate, (ii) assignment of creditors of Lessee, (iii) judicial appointment of a receiver or similar officer to take possession of the leasehold estate or the Premises or (iv) filing any petition by, for or against Lessee under any chapter of the Federal Bankruptcy Code. Any further transfer of the leasehold estate, however (whether by a Beneficiary or by a third-party bidder acquiring the estate at a foreclosure sale), shall be subject to the following conditions:

14.11.4.1 The provisions of Sections 14.1 and 14.2 above, shall apply to such further Transfer, and City's consent shall be required to such further Transfer; and

14.11.4.2 By its acceptance of the leasehold estate, the Transferee of such further Transfer assumes this Solar Lease as to the entire leasehold estate and covenants with City to be bound hereby.

14.12 Article Controlling. In the event of any conflict between the provisions of this Article and any other provision of this Solar Lease, this Article shall control.

14.13 Failure to Give Notice. Except as expressly set forth in this Article, City shall have no obligation to any Beneficiary or to give any notice to any Beneficiary, and City's failure to provide any Beneficiary with any notice of any default hereunder except as expressly set forth in this Article shall not create any right or claim against City on behalf of Lessee or any Beneficiary.

14.14 Transfer Processing Fee. If City is requested to consent to a Transfer hereunder, Lessee shall pay City's a nonrefundable fee of \$2,000, or the City's then-current fee amount ("Transfer Processing Fee"), to reimburse City or City's agent for costs and expenses incurred in connection with such request. The Transfer Processing Fee shall be delivered to City concurrently with Lessee's request for each consent.

14.15 Transfer Percentage Fee. City shall be entitled to a fee of two percent (2%) ("Transfer Percentage Fee") of the value of the full sale price/consideration (monetary and non-monetary) for any Transfer of all or a portion of Lessee's leasehold interest in the Premises; provided, however, that the provisions of this Section 14.15 shall not apply to Lessee's initial sale or lease of any building, hangar or other structure, or portion thereof.

14.15.1 Transfer Percentage Fee Payments. Lessee shall pay to the City the Transfer Percentage Fee concurrently with the Transfer of all or a portion of the Solar Lease.

14.15.2 Exemption From Recapture. This Section 14.15 does not apply to any "Exempt Transfer." An Exempt Transfer consists of any of the following:

14.15.2.1 Any Transfer for which City's consent is not required; or

14.15.2.2 Any Transfer to an Affiliate of Lessee, as defined below.

As used herein, the term "Affiliate" means any entity that controls, is controlled by, or is under common control with Lessee. "Control" means the direct or indirect ownership of fifty-one percent (51%) of the voting securities of an entity or possession of the right to vote fifty-one percent (51%) of the voting interest in the ordinary direction of the entity's affairs.

14.16 No Release of Lessee. No permitted Transfer shall release or change Lessee's primary liability to pay the rent and to perform all other obligations of Lessee under this Solar Lease, except to the extent the Solar Lease is terminated as described above. Lessee may not amend the assignment or sublease in such a way as to reduce or delay payment of amounts that are provided in the assignment or sublease approved by City. City's acceptance of rent from any other person is not a waiver of any provision of this Article or a consent to Transfer. City's consent to one Transfer shall not be deemed to imply City's consent to any subsequent Transfer. If Lessee's Transferee defaults under this Solar Lease, City may proceed directly against Lessee without pursuing remedies against the Transferee. City may consent to subsequent assignments or modifications of this Solar Lease by Lessee's Transferee, without notifying Lessee or obtaining

its consent, and such action shall not relieve Lessee of its liability under this Solar Lease unless City elects to do so in writing.

14.17 Approval of Temporary or Limited Activities. Notwithstanding any provision of this Article to the contrary, the City's Airport Director, or designee, may, at his or her sole discretion, and without charging a Transfer Percentage Fee, give written authorization for the following activities on the Premises: (i) activities of a temporary nature, not to exceed one hundred twenty (120) calendar days, and (ii) activities of a limited nature which do not exceed ten (10) hours per week. Lessee shall maintain, on an approved City form, a listing of all such activities approved by the City, stating the nature, duration and other relevant matters regarding such activities, and shall make such form available to City for inspection upon request. Nothing herein shall relieve Lessee from its responsibilities under this Solar Lease, and Lessee shall be responsible for insuring that any such activity approved by the City complies with all of the provisions of this Solar Lease. Any such temporary or limited activity shall be subject to immediate termination upon delivery of written notification thereof from the City.

ARTICLE 15 DEFAULTS BY LESSEE; CITY'S REMEDIES

15.1 Events of Default. The occurrence of any of the following shall constitute a default by Lessee and a breach of this Solar Lease:

15.1.1 Failing or refusing to pay any amount of Base Monthly Rent, Solar Rent, or Additional Rent when due in accordance with the provisions of this Solar Lease, and the default continues for ten (10) business days after written notice from City;

15.1.2 Failing or refusing to perform fully and promptly any covenant or condition of this Solar Lease, other than those specified in subparagraph 15.1.1 above, the breach of which Lessee is capable of curing after reasonable notice, as provided in Article 15.2 below, from City;

15.1.3 Failing or refusing to cooperate in permitting City access to all areas of the Premises as set forth in this Solar Lease and Section 11.5 (Annual Leasehold Compliance Surveys) above; or

15.1.4 The occurrence of any of the events set forth in Section 18.1 below.

15.2 Notices. Following the occurrence of any of the defaults specified in Section 15.1, City shall give Lessee a written notice specifying the nature of the default and the provisions of this Solar Lease breached and demanding that Lessee either fully cure each such default within the time period specified in the subparagraphs below or quit the Premises and surrender the same to City:

15.2.1 For nonpayment of Base Monthly Rent, Solar Rent, or Additional Rent, ten (10) business days;

15.2.2 For any non-monetary default, a reasonable period not to exceed twenty (20) business days, provided, however, that if such default cannot reasonably be cured

within said time period, Lessee shall be deemed to have cured such default if Lessee so notifies City in writing, commences cure of the default within said time period, and thereafter diligently and in good faith continues with and actually completes said cure; and

15.2.3 For a noncurable default, City shall give Lessee a written notice specifying the nature of the default and the provisions of this Solar Lease breached and City shall have the right, but not the obligation, to demand in said notice that Lessee, and any subtenant, (subject to any nondisturbance and attornment rights, if applicable) quit the Premises within twenty (20) business days.

To the extent permitted by applicable State law, the time periods provided in this Section for cure of Lessee's defaults under this Solar Lease or for surrender of the Premises shall be in lieu of, and not in addition to, any similar time periods described by California law as a condition precedent to the commencement of legal action against Lessee for possession of the Premises.

15.3 City's Rights and Remedies. Should Lessee fail to cure any such defaults within the time periods specified in the immediately preceding Section, or fail to quit the Premises as required thereby, City may exercise any of the following rights without further notice or demand of any kind to Lessee or any other person, except as may be required by Section 15.2 above or otherwise be required by applicable California law:

15.3.1 The right of City to terminate this Solar Lease and Lessee's right to possession of the Premises and to reenter the Premises, take possession thereof and remove all persons therefrom, following which Lessee shall have no further claim on the Premises or under this Solar Lease;

15.3.2 The right of City without terminating this Solar Lease and Lessee's right to possession of the Premises, to reenter the Premises and occupy the whole or any part thereof for and on account of Lessee and to collect any unpaid rents and other charges, which have become payable, or which may thereafter become payable pursuant to Civil Code Section 1951.4, or successor statute thereto; or

15.3.3 The right of City, even though it may have reentered the Premises in accordance with the immediately preceding subparagraph 15.3.2 of this Section, to elect thereafter to terminate this Solar Lease and Lessee's right to possession of the Premises.

Should City have acted under the provisions of subparagraph 15.3.2 of this Section, City shall not be deemed to have (i) terminated this Solar Lease, (ii) assumed the liability of Lessee to pay rent or other charges thereafter accruing, or (iii) assumed Lessee's liability for damages under any of the provisions hereof, by any such reentry or by any action, in unlawful detainer or otherwise, to obtain possession of the Premises, unless City shall have notified Lessee in writing that it has so elected to terminate this Solar Lease and Lessee's right to possession. Lessee further covenants that the service by City of any notice pursuant to the unlawful detainer statutes of the State of California and the surrender of possession pursuant to such notice shall not (unless City elects to the contrary at the time of, or at any time subsequent to, the serving of such notice and such election is evidenced by a written notice to Lessee) be deemed to be a termination of

this Solar Lease. In the event of any reentry or taking possession of the Premises as aforesaid, City shall have the right, but not the obligation, at Lessee's expense, to remove therefrom (i) all or any part of any buildings or structures placed on the Premises by Lessee or its agents, and (ii) any or all merchandise, Fixtures or Personal Property located therein and to place the same in storage at a public warehouse at the expense and risk of Lessee. The rights and remedies given to City in this Section shall be additional and supplemental to all other rights or remedies which City may have under laws in force when the default occurs.

15.4 City's Damages. Should City terminate this Solar Lease and Lessee's right to possession of the Premises pursuant to the provisions of this Article 15, City may recover from Lessee as damages any or all of the following:

15.4.1 The worth at the time of award (as defined below) of any unpaid rent that had accrued at the time of such termination;

15.4.2 The worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of such rent loss that Lessee proves could have been reasonably avoided;

15.4.3 The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rent loss that Lessee proves could be reasonably avoided;

15.4.4 Any other amount necessary to compensate City for all the detriment proximately caused by Lessee's failure to perform its obligations under this Solar Lease including, without limitation, any costs or expense incurred by City in (i) retaking possession of the Premises, including reasonable attorneys' fees therefor, (ii) maintaining or preserving the Premises after such default, (iii) preparing the Premises for reletting to a new tenant, including repairs or alterations to the Premises for such reletting, (iv) leasing commissions, and (v) any other direct costs necessary or appropriate to relet the Premises; and

15.4.5 At City's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of California.

As used in subparagraphs 15.4.1 and 15.4.2 of this Section, the "worth at the time of award" is computed by allowing interest at the maximum rate allowed by California law. As used in subparagraph 15.4.3 of this Section, "the worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

All rent shall, for the purposes of calculating any amount due under the provisions of subparagraph 15.4.3 of this Section, be computed on the basis of the average monthly amount thereof accruing during the immediately preceding sixty (60) month period, except that, if it becomes necessary to compute such rent before such a sixty (60) month period has occurred, then such rent shall be computed on the basis of the average monthly amount hereof accruing during such shorter period.

15.5 Interest. Any amounts, other than rent, due from Lessee under the provisions of this Solar Lease which are not paid when due shall bear interest at the rate of four percent (4%) over the discount rate charged from time to time by the Federal Reserve Bank of San Francisco, but not to exceed the maximum rate which City is permitted by law to charge.

ARTICLE 16 DEFAULTS BY CITY; REMEDIES

16.1 If City shall neglect or fail to perform or observe any of the terms, covenants, or conditions contained in this Solar Lease on its part to be performed or observed within thirty (30) days after written notice of default or, when more than thirty (30) days shall be required because of the nature of the default, if City shall fail to proceed diligently to cure such default after written notice thereof, then City shall be liable to Lessee for any and all damages sustained by Lessee as a result of City's breach; provided, however, that (a) any money judgment resulting from any default or other claim arising under this Solar Lease shall be satisfied only out of the current rents, issues, profits and other income City receives from its operation of the Premises, net of all current operating expenses, liabilities, reserves and debt service associated with said operation ("Net Income" for purposes of this Article only), (b) no other real, personal or mixed property of City, wherever located, shall be subject to levy on any such judgment obtained against City, (c) if such Net Income is insufficient to satisfy such judgment, Lessee will not institute any further action, suit, claim or demand, in law or in equity, against City for or on the account of such deficiency, and (d) such neglect or failure shall not constitute consent by City for Lessee to perform or observe such terms, covenants or conditions at City's expense. Lessee hereby waives, to the extent permitted under law, any right to satisfy said money judgment against City except from Net Income.

ARTICLE 17 ABANDONMENT

17.1 Lessee shall not vacate or abandon the Premises at any time during the term of this Solar Lease nor permit the Premises to remain unoccupied for a period longer than sixty (60) consecutive days during the Term of this Solar Lease. If Lessee shall abandon, vacate or surrender the Premises, or be dispossessed by process of law, or otherwise, any personal property or fixtures belonging to Lessee and left on the Premises shall, at the option of City, be deemed abandoned. In such case, City may dispose of said personal property and fixtures in any manner provided by California law and is hereby relieved of all liability for doing so. These provisions shall not apply if the Premises should be closed and business temporarily discontinued therein on account of strikes, lockouts, or similar causes beyond the reasonable control of Lessee.

ARTICLE 18 BANKRUPTCY

18.1 Right of Termination. Should any of the following events occur, City may terminate this Solar Lease and any interest of Lessee therein, effective with the last day of the event:

18.1.1 Proceedings are instituted whereby all, or substantially all, of Lessee's assets are placed in the hands of a receiver, trustee or assignee for the benefit of Lessee's creditors, and such proceedings continue for at least ninety (90) days;

18.1.2 Any creditor of Lessee institutes judicial or administrative process to execute on, attach or otherwise seize any of Lessee's merchandise, fixtures or personal property, located on the Premises and Lessee fails to discharge, set aside, exonerate by posting a bond, or otherwise obtain a release of such property within ninety (90) days;

18.1.3 A petition is filed for an order of relief under the Federal Bankruptcy Code or for an order or decree of insolvency or reorganization or rearrangement under any state or federal law, and is not dismissed within ninety (90) days;

18.1.4 Lessee makes a bulk sale of all, or substantially all, of Lessee's merchandise, fixtures or personal property located on the Premises, except in accordance with the provisions of Article of this Solar Lease or except in connection with a permitted assignment or subletting under this Solar Lease, and fails to replace the same with similar items of equal or greater value and utility within three (3) days.

If a court of competent jurisdiction determines that any of the foregoing events is not a default under this Solar Lease, and a trustee is appointed to take possession (or if Lessee remains a debtor in possession), and such trustee or Lessee transfers Lessee's interest hereunder, then City shall receive, as Additional Rent, the difference, if any, between the rent (or other consideration) paid in connection with such transfer, minus the rent payable by Lessee hereunder. Any assignee pursuant to the provisions of any bankruptcy law shall be deemed without further act to have assumed all of the obligations of the Lessee hereunder arising on or after the date of such assignment. Any such assignee shall upon demand execute and deliver to City an instrument confirming such assumption.

18.2 Request for Information. Within ten (10) days after City's request therefor, Lessee shall provide City and any mortgagee or proposed mortgagee of City, as City shall specify, such financial, legal and business information concerning any of the events described in this Article as City shall request.

ARTICLE 19 DAMAGE OR DESTRUCTION

19.1 Insured Casualty. Should the Lessee's merchandise, Fixtures, Improvements or personal property be damaged by fire, or other perils covered by the insurance Lessee is required to carry under the terms of this Solar Lease, Lessee shall undertake to restore such merchandise, Fixtures, Improvements or personal property to substantially the same condition as they were in immediately preceding such damage or destruction. In the event of a total destruction of the Premises so that the Premises are rendered unusable, Lessee shall have the option (i) to terminate this Solar Lease with City's consent, said consent not to be unreasonably withheld, or (ii) restore the Premises to substantially the same condition as they were in immediately preceding such damage or destruction. Should the parties agree to terminate this Solar Lease under option "(i)", City shall be paid an amount, as determined by a qualified appraiser (selected in the same

manner as appraisers are selected pursuant to this Solar Lease), determined to be the fair market value of the City's reversionary interests in the Improvement to the Premises that were damaged or destroyed.

19.2 Reconstruction. In the event of any reconstruction of the Premises required of Lessee, Lessee shall at its sole cost and expense repair or rebuild such building and Improvements to substantially the same condition they were in immediately preceding such damage or destruction.

19.2.1 Abatement of Rent Due to Reconstruction. In the event of reconstruction by Lessee, Lessee shall continue the operation of its business on the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management and shall not be entitled to any abatement of rent for said reconstruction period unless it has been determined by a Court of Law, or otherwise agreed to by the parties, that the damage to the Premises was directly caused by the sole negligence of City. Lessee shall not be entitled to any compensation or damages from City for loss of use of the whole or any part of the Premises, Lessee's Personal Property, or any inconvenience or annoyance occasioned by such damage, reconstruction or replacement. Lessee hereby waives any statutory rights of termination which may arise by reason of any partial or total destruction of the Premises.

19.3 Release of Liability Due to Damage or Destruction. Upon the termination of this Solar Lease due to the total destruction of the Premises (pursuant to the terms of this Solar Lease therefor), and upon payment to City of the fair market value of the City's reversionary interests in the Improvements to the Premises that were damaged or destroyed: (i) Lessee and City shall be released from this Solar Lease without further obligation to the other party coincident with the surrender of possession of the Premises to City, excepting therefrom Lessee's obligation to return the Premises to its original condition, and any other obligation(s) and liability(ies) that had theretofore accrued and/or is then unpaid; and (ii) the Base Monthly Rent and Solar Rent shall be apportioned and paid to the time of the occurrence of the damage and destruction.

ARTICLE 20 EMINENT DOMAIN

20.1 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of City and Lessee (or Lessee's Beneficiary or Mortgagee, pursuant to Lessee and its Beneficiary or Mortgagee's agreement(s) thereto) will be as follows:

20.2 Full Taking. If the entire Premises are taken, this Solar Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs, and any advance rents paid to City shall be prorated and paid to Lessee based upon the actual number of calendar days the Premises was held by Lessee.

20.3 Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the reasonable opinion of City, the remaining part of the Premises are unsuitable for the Solar Lease operation, this Solar Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

20.4 Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the reasonable opinion of City, the remaining part of the Premises are suitable for continued Solar Lease operation, this Solar Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The then Base Monthly Rent and/or Solar Rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that Lessee's operations are reduced or impaired. At its cost, Lessee shall restore so much of the remaining portion of the Premises as is required to create a reasonably sound architectural (or economically feasible) unit substantially suitable for the purposes for which they were used immediately before the taking, using good workmanship and new first class materials.

20.5 Award. All monies awarded in any taking of the fee interests of the Premises, and City's reversionary interests in the installments and Improvements thereon, shall belong to City, whether the taking results in diminution in value of the leasehold or the fee or both. However, Lessee (or its beneficiary or mortgagee) shall be entitled to any award attributable to the taking of, or damages to Lessee's then remaining leasehold interest in the Premises, to Lessee's then remaining interests in the installations and Improvements of Lessee thereon, and for any loss of or damage to Lessee's trade fixtures and removable personal property. City shall have no liability to Lessee for any award not provided by the condemning authority.

20.6 Transfer. City has the right to transfer City's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, Lessee shall retain whatever interest it may have in any monies awarded, as set forth above in Section 20.5.

20.7 No Inverse Condemnation. The exercise of any City right under this Solar Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon City for inverse condemnation.

20.8 Lessee's Separate Claim. In connection with any taking, Lessee may prosecute its own claim by separate proceedings against the condemning authority for damages legally due to it (such as the loss of fixtures that Lessee was entitled to remove and moving expenses, improvements made by Lessee, and the value of the unexpired term of the leasehold).

ARTICLE 21 SALE OR MORTGAGE BY CITY

21.1 Sale or Mortgage. City may at any time, without the consent of Lessee, sell, purchase, exchange, transfer, assign, lease, encumber or convey City's interest in whole or in part, in the Solar Lease, the Premises, the realty underlying the Premises and/or any portion of or interest in the realty or improvements on the Premises (collectively referred to in this Article as a "Sale").

21.2 Release on Sale. From and after a Sale, City shall be released from all liability toward Lessee and Lessee's successors and assigns arising from this Solar Lease because of any act, occurrence or omission of City occurring after such Sale.

ARTICLE 22
SUBORDINATION; ATTORNMENT

22.1 Subordination. Without the necessity of any other document being executed and delivered by Lessee, this Solar Lease is and shall be junior, subject and subordinate to any existing or future permits, agreements, contracts or approvals issued by the United States of America or any local, State or federal agency affecting the control or operation of the Premises; Lessee shall be bound by the terms and provisions of such permits, agreements, contracts or approval.

Nothing contained in this Section 22.1 shall prohibit the Lessee from commencing a takings claim against the United States of America or any local, State, or federal agency affecting the control or operation of the Premises. If the Lessee elects to commence such a takings claim, Lessee agrees to indemnify and hold City harmless from, in and against all losses, damages or injuries suffered or incurred resulting from any proceedings related to such a claim.

22.2 Attornment. Concurrent with the execution of this Solar Lease, City shall provide Lessee with a Nondisturbance and Attornment Agreement (“NDA”) from City in a form acceptable to City and Lessee for the benefit of any sublessee. In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Lessee covering the Premises, Sublessee or purchaser shall attorn to the City upon any such foreclosure or sale and recognize City as landlord under this Solar Lease.

ARTICLE 23
CITY’S RIGHT OF ACCESS

23.1 City’s Right to Enter the Premises. City, its agents, employees, and contractors may enter the Premises at any time in response to an emergency, and at reasonable hours to (a) inspect the Premises, (b) exhibit the Premises to prospective purchasers or lessees, (c) determine whether Lessee is complying with its obligations in this Solar Lease (including its obligations with respect to compliance with Hazardous Materials Laws), (d) supply cleaning service and any other service that this Solar Lease requires City to provide, (e) post notices of nonresponsibility or similar notices, (f) make repairs that this Solar Lease requires City to make, or make repairs to any adjoining space or utility services, or make repairs, alterations, or improvements to any other portion of the Premises, or (g) exercise its rights pursuant to Section 2.3, “Reservations to City/Easement Reservations,” above; provided, however, that all work will be done as promptly as reasonably possible and so as to cause as little interference to Lessee as reasonably possible.

23.2 Lessee’s Waiver of Damages Claims. Lessee waives any claim of injury or inconvenience to Lessee’s business, interference with Lessee’s business, loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by such entry unless due to the sole negligence or willful misconduct of City or its employees or agents. If necessary, Lessee shall provide City with keys to unlock all of the doors in the Premises (excluding Lessee’s vaults, safes, and similar areas designated in writing by Lessee in advance). City will have the right to use any means that City may deem proper to open doors in the Premises and to the Premises in an emergency. No entry to the Premises by City by any means will be a forcible or

unlawful entry into the Premises or a detainer of the Premises or an eviction, actual or constructive, of Lessee from the Premises, or any part of the Premises, nor will the entry entitle Lessee to damages or an abatement of rent or other charges that this Solar Lease requires Lessee to pay. Notwithstanding any provision of this Solar Lease to the contrary, however, should City's entry on the Premises temporarily interfere with the use of any or all of the Premises by Lessee, City's Lease Administrator, in his or her sole discretion, may temporarily reduce the rent in proportion to the interference, as determined by City's Lease Administrator, with Lessee's use of the Premises. Nothing in this Section shall apply to any actions in eminent domain which shall be governed solely by Article 20, "Eminent Domain," above.

ARTICLE 24 QUIET ENJOYMENT

24.1 If Lessee is not in breach under the covenants made in this Solar Lease, City covenants that Lessee shall have peaceful and quiet enjoyment of the Premises without hindrance on the part of City. City will defend Lessee in the peaceful and quiet enjoyment of the Premises against claims of all persons, excepting superior authorities or as otherwise set forth in this Solar Lease, claiming through or under the City.

ARTICLE 25 HOLDING OVER

25.1 If Lessee remains in possession of the Premises, for any reason, after the expiration of the Term of this Solar Lease without executing a new lease, or after City has declared a forfeiture by reason of a default by Lessee, then such holding over shall be construed as a tenancy from month-to-month, subject to all the conditions, provisions and obligations of this Solar Lease insofar as they are applicable to a month-to-month tenancy. The Solar Rent payable during any period of holding over shall be equal to one hundred fifty percent (150%) of the Rent payable during the period immediately preceding Lessee's holding over.

ARTICLE 26 NOTICES

26.1 Notices. Whenever in this Solar Lease it shall be required or permitted that notice or demand be given or served by either party to this Solar Lease to or on the other, such notice or demand shall be in writing, mailed or delivered to the other party at the addresses specified in Article 1. Mailed notices shall be sent by United States Postal Service, certified or registered mail, postage prepaid and shall be deemed to have been given, delivered and received three (3) business days after the date such notice or other communication is posted by the United States Postal Service. All other such notices or other communications shall be deemed given, delivered and received upon actual receipt. Either party may, by written notice delivered pursuant to this provision, at any time designate a different address to which notices shall be sent.

26.2 Default Notices. Notwithstanding anything to the contrary contained within this Article, any notices City is required or authorized to deliver to Lessee in order to advise Lessee of alleged violations of Lessee's covenants under this Solar Lease must be in writing but shall be deemed to have been duly given or served upon Lessee by City attempting to deliver at the

Premises during normal business hours a copy of such notice to Lessee or its managing employee and by City mailing a copy of such notice to Lessee in the manner specified in the preceding Section.

**ARTICLE 27
NONDISCRIMINATION**

27.1 Lessee hereby covenants by and for itself, its successors, assigns and all persons claiming under or through it, that this Solar Lease is made and accepted upon and subject to the condition that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises, nor shall Lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the Premises.

**ARTICLE 28
RECORDS, ACCOUNTS AND AUDITS**

28.1 Lessee's Duty to Keep Records. Lessee shall, at all times during the term of this Solar Lease, and for a period of at least five (5) years following termination or expiration of this Solar Lease, keep or cause to be kept, true and complete books, records and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted pursuant to the rights granted herein. Such records shall also include the source and disposition of all trash collected and disposed of by Lessee in the operation of its business. Said records must be supported by source documents such as sales slips, cash register tapes, purchase invoices or other pertinent documents.

28.2 City's Right to Audit. All Lessee's books or accounts and records shall be kept and made available at one location within the limits of the City of San Diego. City shall have the right at any reasonable time to examine and perform audits of Lessee's records pertaining to its operations on the Premises. The full cost of each audit shall be borne by City, unless one or both of the following conditions exists, in which case Lessee shall reimburse City for all costs of the audit:

28.2.1 For any given lease year, if an audit reveals an underpayment of rent of more than five percent (5%) on an annual basis, calculated as the difference between the rent reported as payable by Lessee and the rent payable as determined by the audit; or

28.2.2 Lessee failed to maintain true, accurate, and complete books, records, accounts, and supporting source documents as required by this Lease.

Any rent deficiency determined by the audit shall be delinquent rent, subject to all penalties and remedies provided to City for delinquent rent. City shall credit any overpayment determined by the audit, without interest, against future rents due under this Lease. If no future rents are then

due under this Lease, City shall refund to Lessee any overpayment determined by the audit, without interest, within sixty (60) days after City's certification of the audit.

ARTICLE 29 GENERAL PROVISIONS

29.1 Authority. Lessee represents and warrants that it has full power and authority to execute and fully perform its obligations under this Solar Lease pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this Solar Lease on behalf of Lessee are the duly designated agents of Lessee and are authorized to do so.

29.2 Brokers. Lessee warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation and/or execution of this Solar Lease. In the event any broker other than the brokers acknowledged in writing by City make a claim for monies owed, Lessee shall indemnify, defend and hold City harmless therefrom.

29.3 Captions. The captions, headings and index appearing in this Solar Lease are inserted for convenience only and in no way define, limit, construe, or describe the scope or intent of the provisions of this Solar Lease.

29.4 City Approval. Except where stated herein to the contrary, the phrases "City's approval," and "City's written approval" or such similar phrases shall mean approval of City's Lease Administrator or said Administrator's representative as authorized by said Administrator in writing.

29.5 Cumulative Remedies. In the event of a default under this Solar Lease, each party's remedies shall be limited to those remedies set forth in this Solar Lease; any such remedies are cumulative and not exclusive of any other remedies under this Solar Lease to which the non-defaulting party may be entitled.

29.6 Estoppel Certificate. Lessee shall at any time during the term of this Solar Lease, within five (5) business days of written notice from City, execute and deliver to City a statement in writing certifying that this Solar Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification. Lessee's statement shall include other details requested by City, such as the date to which rent and other charges are paid, Lessee's knowledge concerning any outstanding defaults with respect to City's obligations under this Solar Lease and the nature of such defaults if they are claims. Any such statement may be relied upon conclusively by any prospective purchaser or encumbrancer of the Premises. Lessee's failure to deliver such statements within such time shall be conclusive upon Lessee that this Solar Lease is in full force and effect, except to the extent any modification has been represented by City, and that there are no uncured defaults in the City's performance, and that not more than one month's rent has been paid in advance (subject to the provisions of Sections 1.10 and 4.1.1.).

29.7 Exhibits. All exhibits referred to herein are attached hereto and incorporated by reference.

29.8 Force Majeure. In the event either party is prevented or delayed from performing any act or discharging any obligation hereunder, except for the payment of rent by Lessee, because of

any and all causes beyond either party's reasonable control, including abnormal adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, any hostile government actions, civil commotion and fire or other casualty, or any other casualties beyond the reasonable control of either party ("Force Majeure"). Excepting casualties resulting from Lessee's negligent operation or maintenance of the Premises, performance of such act shall be excused for the period of such delay, and the period for performance of such act shall be extended for a period equivalent to the period of such delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial inability on the part of either party hereto.

29.9 Governing Law. This Solar Lease shall be governed, construed and enforced in accordance with the laws of the State of California.

29.10 Interpretation. The parties have each agreed to the use of the particular language of the provisions of this Solar Lease, and any question of doubtful interpretation shall not be resolved by any rule of interpretation providing for interpretation against the parties who cause an uncertainty to exist or against the draftsman.

29.11 Water Quality Assurances. Lessee shall, at its sole cost and expense, comply with all laws, rules, regulations and direction of competent governmental authority (such as the San Diego Regional Water Quality Control Board) relating to water quality assurance and storm water management. Lessee acknowledges and agrees that such legal requirements may change at any time and from time to time.

29.11.1 NPDES. Lessee shall comply with all applicable requirements of the National Pollutant Discharge Elimination System ("NPDES") permit in force on the Effective Date of this Permit (i.e., Permit No. R9-2013-0001), and any and all amendments thereto and all applicable succeeding NPDES permits.

29.11.2 Stormwater Management. Lessee shall comply with all applicable requirements of the San Diego Municipal Code Chapter 4, Article 3, Division 3: Stormwater Management and Discharge Control (the "Stormwater Code"), and employ "Best Management Practices," as that term is defined by the Stormwater Code, and as approved by City, in its governmental capacity, under its Stormwater Management Program.

29.11.2.1 Notwithstanding the forgoing, the Parties agree that should it be determined by the applicable regulatory agency(ies) that the Project has a Prior Lawful Approval as that term is defined in Provision E.3.e(1)(a) of Permit No. R9-2013-0001 prior to the time the BMP Design manual is effective pursuant to Provision E.3.d. of Permit No. R9-2013-0001, the City will allow Lessee to utilize the previous land development requirements set forth in Permit No. R9-2007-0001 to apply.

29.12 Prevailing Wages. Pursuant to San Diego Municipal Code section 22.3019, or any successor statute thereto, construction, alteration, demolition, repair and maintenance work

performed under this Lease is subject to State prevailing wage laws. For construction work performed under this Lease cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Lease cumulatively exceeding \$15,000, the Lessee and its contractors and subcontractors (the entirety of these Prevailing Wage Provisions shall apply to all *covered employers* and *covered employees*, as those terms are defined in the City's Living Wage Ordinance, whether or not the parties are individually called out in each instance in these provisions) shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

29.12.1 Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, or any successor statutes thereto, the Lessee, its contractors and subcontractors shall ensure that all workers who perform work under this Lease are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

29.12.1.1 Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Lessee and its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

29.12.1.2 The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Lease. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Lease in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Lease, each successive predetermined wage rate shall apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Lease, such wage rate shall apply to the balance of the Lease.

29.12.2 Penalties for Violations. Lessee and its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed.

29.12.3 Payroll Records. Lessee and its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them

available for inspection. Lessee shall require its contractors and subcontractors to also comply with section 1776. Lessee and its contractors and subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Lessee is responsible for ensuring its contractors and subcontractors submit certified payroll records to the City.

29.12.3.1 In addition to certified payroll record submission to the City, for contracts entered into on or after April 1, 2015, Lessee and its contractors and subcontractors shall furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

29.12.3.2 Apprentices. Lessee and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Lessee shall be held responsible for the compliance of its contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.

29.12.4 Working Hours. Lessee and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

29.12.5 Required Provisions for Subcontracts. Lessee shall include, or require the inclusion of, at a minimum, a copy of the following provisions in any contract that is entered into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

29.12.6 Labor Code Section 1861 Certification. Lessee in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its, or its contractors' and subcontractors', employees and by signing this Lease, Lessee certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work under this Lease."

29.12.7 Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will instruct Lessee to withhold contract payments pursuant to the agreement(s) between Lessee and its contractors when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

29.12.8 Contractor and Subcontractor Registration Requirements. The construction work conducted under/as part of this Lease is subject to compliance monitoring and enforcement by the DIR. As of March 1, 2015, no contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. As of April 1, 2015, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid or proposal, or enter into any Contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. By entering into this Lease with the City, Lessee is certifying that it has verified that all contractors and subcontractors used on any public works project conducted under or as part of this Lease are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Lessee shall provide proof of registration to the City upon request.

29.12.8.1 A Contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

29.12.9 DIR Determination of Coverage. Notwithstanding the foregoing prevailing wage determination and provisions, prior to any design or preconstruction activities (as defined and covered by California Labor Code section 1720(a)(1)) or issuance of the first development permit (for purposes of this section, "development permit" is defined as the permit(s) required under the San Diego Municipal Code for purposes of the grading of the Property and/or construction of the first improvements on the leasehold) for development activities on the leasehold, Lessee may seek "a request to determine coverage" (Title 8 Cal. Code of Regs. section 16001) from the State's Department of Industrial Relations ("DIR") as to whether Lessee's proposed development activity(ies) is/are subject to prevailing wage provisions of the California Labor Code. Prior to seeking said determination, Lessee shall have received City's prior written approval of the request to be sent to the DIR; said prior written approval by City is required in order to ensure the City's agreement as to the correctness and completeness of the request; to ensure that the City is involved in the process should the City be asked to, or want to, supply supplemental information to the DIR; and to ensure receipt of all applicable correspondence during the DIR's determination period. In the event the DIR determines that prevailing wages do **not** apply to the specific activity(ies) for which a DIR determination was sought, then, subject to the Lessee agreeing to be bound by the below indemnification provision – which agreement shall be evidenced by the Lessee's execution of this Lease, City shall agree to amend this Lease to remove the requirement of prevailing wages requirements for that/those activity(ies) for which the DIR has determined that prevailing wages do not apply.

29.12.10 Indemnification by Lessee Should Prevailing Wages Not Be Paid. Lessee shall protect, defend, indemnify and hold City and its elected officials, officers, employees, representatives and agents harmless from and against any and all claims asserted or liability established for damages by any person, including, but not limited to any damages, fees, and penalties claimed or assessed by the State of California - Director of Industrial Relations, which arise out of or are in any manner directly or indirectly connected with Lessee's, its contractors', subcontractors' or other applicable parties' decision(s) to not pay prevailing wages for activities performed under this Lease, and all expenses of investigating and defending against same, including without limitation attorney fees and costs.

29.13 Joint and Several Liability. If more than one person or entity executes this Solar Lease as Lessee, each of them is jointly and severally liable for all of the obligations of Lessee hereunder.

29.14 Lessee's Lease Administration. Lessee confirms that Lessee's Lease Administrator has been given full operational responsibility for compliance with the terms of this Solar Lease. Lessee shall provide City with a written schedule of its normal hours of business operation on the Premises, and, if applicable, post notice of such schedule in an area visible to pilots, and Lessee's Lease Administrator or a representative designated thereby shall be (i) available to City on a twenty-four (24) hour a day, seven (7) days a week, basis, and (ii) if applicable, be present on the Premises or other noticed location during Lessee's normal business hours, to resolve problems or answer question pertaining to this Solar Lease and Lessee's operations on the Premises.

29.15 Modification. The provisions of this Solar Lease may not be modified, except by a written instrument signed by both parties.

29.16 Partial Invalidity. If any provision of this Solar Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Solar Lease shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.

29.17 Payments. Except as may otherwise be expressly stated, each payment required to be made by Lessee shall be in addition to and not in substitution for other payments to be made by Lessee.

29.18 Successors & Assigns. This Solar Lease shall be binding on and inure to the benefit of the parties and their successors and assigns, all of whom shall be jointly and severally liable hereunder, except as may otherwise be provided herein.

29.19 Time of Essence. Time is of the essence of each and every provision of this Solar Lease.

29.20 Memorandum of Solar Lease. Concurrent with the execution of this Solar Lease, City and Lessee may execute, have notarized and cause to be recorded, a memorandum of this Solar Lease in the records of the San Diego County Recorder's Office.

29.21 Waiver. No provision of this Solar Lease or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. The waiver by either Party of any breach of any term, covenant or condition contained in this Solar Lease shall not be

deemed to be a waiver of such term, covenant or condition of any subsequent breach thereof, or of any other term, covenant or condition contained in this Solar Lease. Either Party's subsequent acceptance of partial rent or performance by Lessee shall not be deemed to be an accord and satisfaction or a waiver of any preceding breach by Lessee of any term, covenant or condition of this Solar Lease or of any right of either Party to a forfeiture of the Solar Lease by reason of such breach, regardless of either Party's knowledge of such preceding breach at the time of either Party's acceptance. The failure on the part of either Party to require exact or full and complete compliance with any of the covenants, conditions of agreements of this Solar Lease shall not be construed as in any manner changing or waiving the terms of this Solar Lease or as estopping either Party from enforcing in full the provisions hereof. No custom or practice which may arise or grow up between the parties hereto in the course of administering this Solar Lease shall be construed to waive, estop or in any way lessen the right of either Party to insist upon the full performance of, or compliance with, any term, covenant or condition hereof by Lessee, or construed to inhibit or prevent the rights of either Party to exercise its rights with respect to any default, dereliction or breach of this Solar Lease by Lessee.

29.22 Entire Agreement. This Solar Lease, together with any addenda, exhibits and riders attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded.

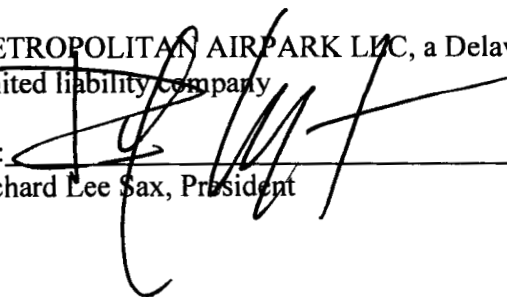
IN WITNESS WHEREOF, City and Lessee have duly executed this Solar Lease as of the day and year first above written.

LESSEE:

CITY:

METROPOLITAN AIRPARK LLC, a Delaware limited liability company

CITY OF SAN DIEGO, a California municipal corporation

By:  _____
Richard Lee Sax, President

By: _____
Name: _____
Title: _____

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This activity is: _____

_____.

Date: _____

BY: _____
Name: _____
Title: _____

Approved as to form this _____
day of _____, 20 _____.

JAN I. GOLDSMITH, City Attorney

By: _____
Name: _____
Title: Deputy City Attorney

EXHIBIT A
DESCRIPTION AND PLAT OF THE PREMISES
[Located behind this cover page.]

J-15818-B

EXHIBIT "A"

SOLAR FIELD LEASE PARCEL

Being a portion of Lot 13 of Metropolitan Air Park in the City of San Diego, County of San Diego, State of California, according to Map thereof No.15979 filed in the Office of the County Recorder of San Diego County June 25, 2014 said portion being more particularly described as follows:

Beginning at the Southeast corner of said Lot 13 of Map No. 15979; thence along the Southerly line of said Lot 13 North 83°59'32" West 1308.83 feet to the **TRUE POINT OF BEGINNING**; thence continuing North 83°59'32" West 1438.81 feet; thence leaving said Southerly line North 00°00'00" East 530.92 feet to the South line of that 100 feet wide portion of said Lot 13 Irrevocably Offered to the City of San Diego to dedicate for Public Street purposes on said Map 15979, hereafter referred to as "IOD"; thence along said "IOD" South 89°01'20" East 124.26 feet; thence continuing along said "IOD" South 89°01'10" East 2495.88 feet to a line that is 125.00 feet Westerly of and parallel to the East line of said Lot 13; thence leaving said "IOD" and along said parallel line South 00°54'16" West 719.46 feet; thence leaving said parallel line North 84°41'19" West 1160.27 feet; thence South 41°55'43" West 33.22 feet to the **TRUE POINT OF BEGINNING**.

Containing 37.856 acres, more or less.

 4-3-2015
Patrick A. McMichael, LS 6187 Date



PAM:BJ:sr:L:Files\15818\B\Text\Legals\Solar Field Lease Parcel

EXHIBIT 'B'

SHEET 1 OF 1

LEGEND



INDICATES LEASE PARCEL,
CONTAINS 37.856± ACRES

POB INDICATES POINT OF BEGINNING

TPOB INDICATES TRUE POINT OF BEGINNING



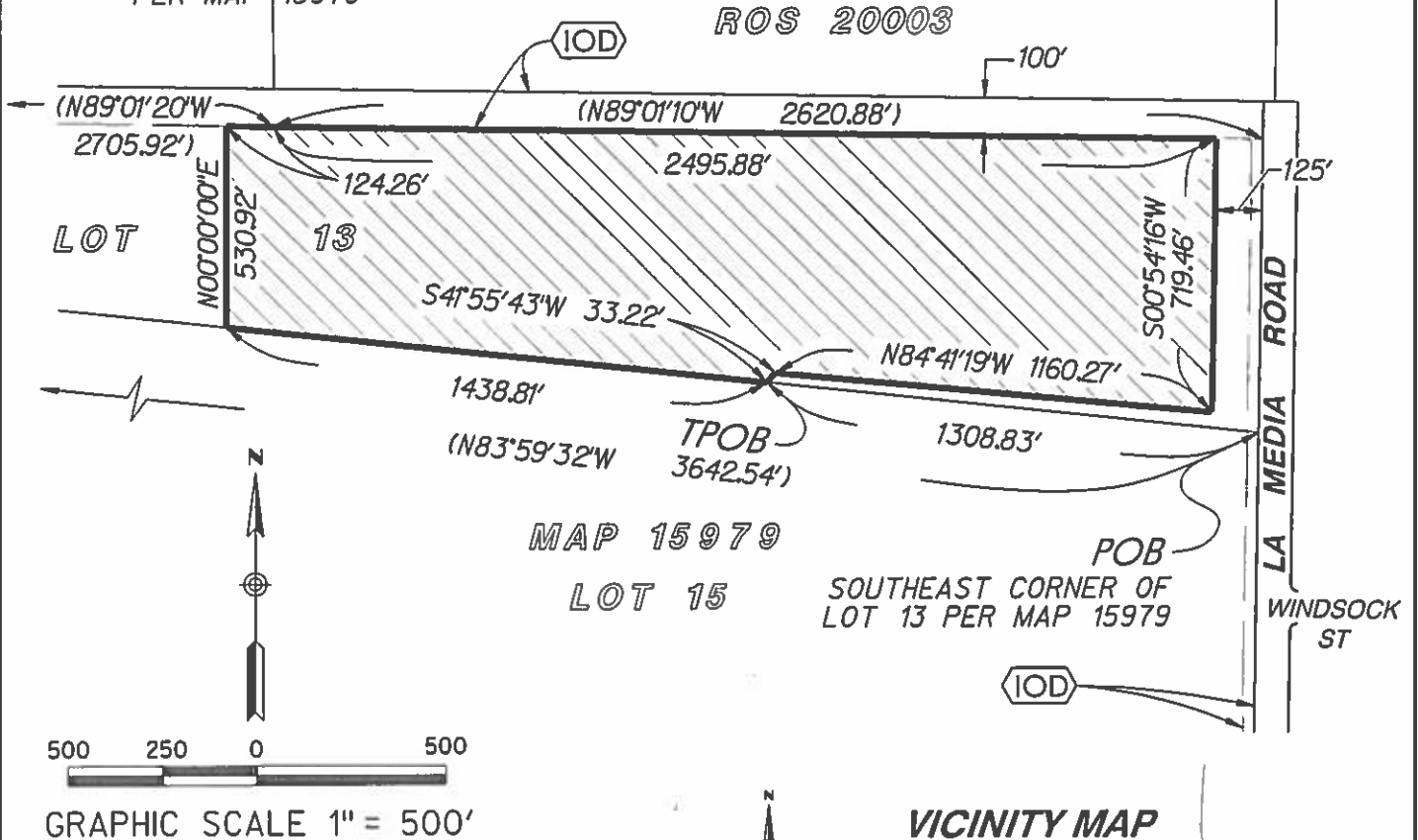
INDICATES IRREVOCABLE OFFER TO
DEDICATE PUBLIC STREET PER MAP 15979

() INDICATES RECORD INFORMATION
PER MAP 15979

BASIS OF BEARINGS

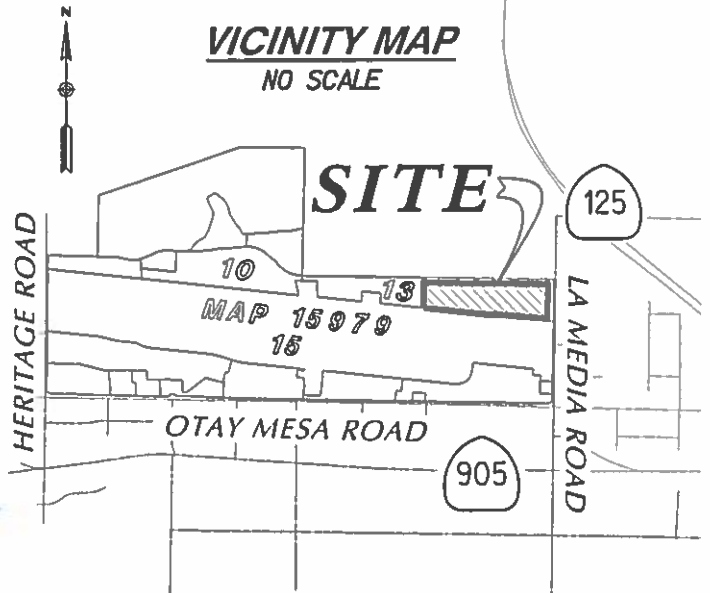
BASIS OF BEARINGS FOR THIS PLAT IS
THE SOUTHERLY LINE OF LOT 13, MAP
NO. 15979, I.E. N83°59'32"W

NOTE: MEASURED AND RECORD
COURSES ARE EQUIVALENT FOR THOSE
COURSE SHOWING RECORD INFORMATION
ONLY.



Patrick A. McMichael
PATRICK A. McMICHAE, LS 6187 4-2-2015 DATE

VICINITY MAP NO SCALE



5620 FRIARS ROAD J. 15818b
SAN DIEGO, CA 92110
619.291.0707
(FAX)619.291.4165

EXHIBIT B
FAA REQUIREMENTS

Lessee and its officers, employees, contractors, agents, sublessees, and all others operating through Lessee shall conform to the following FAA covenants and reservations of rights.

1. The Lessee's Use and Construction to Conform with Federal Aviation Regulations. The Lessee agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the Site and the Airport. The Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (which may be amended or replaced by other regulations from time to time) before constructing any improvements or modifying or altering any structure on the Site and the Airport.
2. The Lessee's Noninterference with Aircraft. The Lessee and the Lessee's successors, assigns agree not to in any manner interfere with any aircraft landing or taking off from Montgomery Field Airport or otherwise create a hazard. If this covenant is breached in any way, City reserves the right to abate or eliminate the interference at the expense of the Lessee.
3. Agreement Subordinate to City/United States Agreements. This Lease shall be subordinate to the terms of any existing or future agreements between City and the United States, or to any United States legal requirement relative to the development, operation or maintenance of the Airport.
4. Height Limitation. The Lessee and the Lessee's successors and assigns agree not to erect or permit any structure unless it complies with all FAA and ALUCP height limitations. If this covenant is breached in any way, City reserves the right to remove the structure or object at the expense of the Lessee.
5. War or National Emergency. In the event of war or national emergency, this Lease and all of its provisions shall be subject to any United States Government right, existing now or in the future, affecting the control, operation, regulation, take over, or exclusive or nonexclusive use of Montgomery Field Airport. During any war or national emergency, City shall have the right to lease, or allow the use of, any part of the Airport, including its landing areas, to the United States Government. In this event, any provisions of this Lease which are inconsistent with the provisions of the lease to the Government shall be suspended. City shall not be liable for any loss or damages alleged by the Lease as a result of this action. However, nothing in this Lease shall prevent the Lessee from pursuing any rights it may have for reimbursement from the United States Government.
6. Airport Development. City reserves the right to further develop, change or improve the Airport, including its routes and landing areas, as City sees fit, without the Lessee's interference or hindrance and regardless of the Lessee's views and desires. City shall have the right to perform any and all such actions referred to in this Section 9.6 - - including the right to shut parts or all of the Airport down - - at no liability to City, regardless of any damages or losses Lessee or any of its sublessees may suffer from said actions.

7. Nonexclusive Right. The Lessee understands and agrees that nothing in this Lease shall be construed to grant or authorize an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958 (Title 49, Section 1349 of the United States Code).

8. Landing Area Maintenance. City reserves the right, but not the obligation, to maintain and repair the Airport landing area and all other public facilities. City also has the right to direct and control all of Lessee's activities affecting the maintenance and repair of the Airport land area and all other public facilities.

9. FAA Nondiscrimination Covenant. The Lessee and the Lessee's representatives, successors, sublessees and assigns agree, as part of the consideration, that:

9.1. No person shall be denied benefits, participation or subjected to discrimination in the use of facilities on the Premises based on race, color, sex or national origin.

9.2. No person shall be denied benefits, excluded from participation in or subject to discrimination in the construction of any improvements nor the furnishing of any services on the Premises, based on race, color, sex or national origin.

9.3. The Lessee shall conduct all activities contemplated by this Lease in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations (CFR), Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964," as now exists or may be amended in the future.

In the event of the breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Lease and to reenter and repossess said Premises and facilities thereon, and hold the same as if said Lease had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

10. Equal Opportunity. The Lessee, the Lessee's successors and assigns agree to undertake an equal opportunity program as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to insure that no person shall be excluded from any employment program or opportunity, nor be denied any service described, based on race, creed, color, national origin or sex.

11. City to Mitigate Impacts of Subordination. If subordination agreements between City and United States of America result in the Lessee's inability to conduct activities contemplated by this Lease on the Premises or if the Lessee's activities are materially affected during a period of subordination: (1) City agrees to make a reasonable time extension or adjustment, as determined by City; or (2) upon written request from the Lessee, City will terminate this Lease. The Lessee agrees that any damages claimed during this subordination period will be limited to this time extension/adjustment relief.

12. Employee Conduct. The Lessee shall be responsible for the conduct of all employees, contractors, agents, invitees, and guests on the Premises and Airport, if that employee,

contractor, agent, invitee or guest is on Airport property during any period of employment or in connection with the construction and development of the Improvements.

13. Subordination to Montgomery Field Quitclaim Deed. The Lessee agrees that this Lease is subordinate to the provisions of the Montgomery Field Quitclaim Deed to City.

14. Minority Business Policy. Lessee agrees that it and its contractors will ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts and subcontracts. The Lessee and the Lessee's contractors agree not to discriminate on the basis of race, color, national origin or sex in the award and performance of any Federal Department of Transportation-assisted contracts.

15. Right of Flight. There is hereby reserved to City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises herein leased. This public right of Flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or land at, taking off from or operation on the Airport.

16. No Interference with Aircraft. Lessee, by accepting this Lease, agrees for itself, its successors and assigns that it will not make use of the leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, City reserves the right to enter upon the Premises and cause the abatement of such interference and/or hazard at the expense of Lessee.

17. Provisions to be Included in All Pertinent Documents. Lessee agrees that it shall insert all of the FAA Requirements provisions set forth in this Exhibit C in all subleases, contracts or agreement by which said Lessee grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Premises.

EXHIBIT C INSURANCE REQUIREMENTS

Without limiting Lessee's indemnification obligations to City, Lessee shall provide and maintain, during the Term and for such other period as may be required herein, at its sole expense, insurance in the amounts and form specified herein.

1. Insurance: Lessee shall not enter upon or do any work at the Premises until it has: (a) provided to City insurance certificates reflecting evidence of all insurance required below; however, the City reserves the right to request, and the Lessee shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each insurance company or companies; and (c) confirmed with City that all policies contain the specific provisions required below. Lessee's liabilities, including but not limited to Lessee's indemnity obligations, under this Lease, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Lease and Lessee's failure to maintain or renew coverage or to provide evidence of renewal during the Term may be treated as a material breach of contract by the City. The Lessee shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the Term.
 - 1.1 Types of Insurance: At all times during the term of this Lease, the Lessee shall maintain insurance coverage as follows:
 - a. Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
 - b. Commercial Automobile Liability. For all of the Lessee's automobiles including owned, hired and non-owned automobiles, the Lessee shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
 - c. Workers' Compensation. For all of the Lessee's employees who are subject to this Lease and to the extent required by the applicable state or federal law, the Lessee shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the Lessee shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives

- 1.2 Deductibles: All deductibles on any policy shall be the responsibility of the Lessee and shall be disclosed to the City at the time the evidence of insurance is provided.
- 1.3 Acceptability of Insurers: Except for the State Compensation Insurance Fund, all insurance required by this Permit shall only be carried by insurance companies with a rating of at least “A-, VI” by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City. City will accept insurance provided by non-admitted, “surplus lines” carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
- 1.4 Modification: To assure protection from and against the kind and extent of risk existing with the Project, City, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving Lessee thirty (30) days prior written notice. Lessee shall also obtain any additional insurance required by City for new improvements, changed circumstances, or City’s reasonable re-evaluation of risk levels related to the Lease.
- 1.5 Accident Reports: Lessee shall immediately report to City any accident causing property damage or injury to persons on the Premises and Airport, or otherwise related to the Lease. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 1.6 Required Endorsements: The following endorsements to the policies of insurance are required to be provided to City before any work is initiated under this Lease.
 - 1.6.1 Commercial General Liability Insurance Endorsements:
 - i. Additional Insured: To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.
 - ii. Primary and Non-Contributory Coverage: The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and

representatives shall be in excess of Lessee's insurance and shall not contribute to it.

- iii. Severability of Interest. The policy or policies must be endorsed to provide that the Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

1.6.2 Automobile Liability Insurance Endorsements:

- i. Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the Lessee.
- ii. Severability Of Interest. The policy or policies must be endorsed to provide that Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

1.6.3 Worker's Compensation Insurance Endorsements:

- i. Waiver of Subrogation: The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured related to the Lease.

A. Liability Insurance. Lessee shall procure either Comprehensive General Liability insurance or Commercial General Liability insurance applying to its use and occupancy of the Premises, or any part thereof, or any areas adjacent thereto, and the business operated by Lessee or any other occupant on the Premises, in the amounts and form set forth below:

(1) Comprehensive General Liability Insurance. A policy of Comprehensive General Liability Insurance which provides limits of:

(a) Combined Single Limit per occurrence:	\$2,000,000
(b) Fire Damage Limit (Any One Fire):	\$ 300,000
(c) Medical Expense (Any One Person):	\$ 5,000

OR

(2) Commercial General Liability Insurance. A policy of Commercial General Liability Insurance which provides limits of:

(a) Per Occurrence:	\$2,000,000
(b) Location Specific Aggregate:	\$2,000,000
(c) Products/Completed Operations:	\$2,000,000
(d) Personal & Advertising Injury limit:	\$2,000,000
(e) Fire Damage Limit (Any One Fire):	\$ 300,000
(f) Medical Expense Limit (Any One Person):	\$ 5,000

(3) Required Liability Policy Coverage. Any liability policy provided by Lessee hereunder shall contain the following coverage:

- (a) Premises and Operations
- (b) Products/Completed Operations
- (c) Contractual Liability expressly including liability assumed under this Solar Lease.
- (d) Personal Injury Liability
- (e) Independent Contractors' Liability
- (f) Severability of Interest clause providing that the coverage applies separately to each insured, except with respect to the limits of liability, and that an act or omission by one of the named insureds shall not reduce or avoid coverage to the other named insureds.

(4) Additional Insured Endorsement. Any general liability policy provided by Lessee hereunder shall contain an endorsement which applies its coverage to the City, the members of the City Council, and the officers, agents, employees and volunteers of the City, individually and collectively, as additional insureds.

(5) Primary Insurance Endorsement. The coverage afforded by the additional insured endorsement described above shall apply as primary insurance, and any other insurance maintained by the City, the members of the City Council, or its officers, agents, employees and volunteers, or any City self-funded program, shall be excess only and not contributing with such coverage.

(6) Form of Liability Insurance Policies. All liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Lessee of that part of the indemnity agreement contained in this Solar Lease relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, City may require additional coverage to be purchased by Lessee to restore the required limits. Lessee may combine primary, umbrella and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the Additional Insured Endorsement described below.

B. All Risk Fire Insurance. A standard fire policy including all-risk or special form perils, in an amount of ninety percent 90% of the full replacement cost of the Building and Improvements, without deduction for depreciation, including costs of demolition and debris removal. Such

policy or policies of insurance shall include coverage for (i) Lessee's merchandise, (ii) fixtures owned by Lessee, (iii) any items identified in this Solar Lease as improvements to the Premises constructed or owned either by City or Lessee, and (iv) the personal property of Lessee, its agents and employees.

(1) Deductible. The deductible for the required fire insurance policy shall not exceed \$10,000 per occurrence and shall be borne by Lessee.

(2) Rental Income Insurance. Lessee shall, at its sole cost and expense, maintain rental income insurance which shall assure City of receiving the minimum monthly rent from the time the Premises are damaged or destroyed by a risk insured against by the standard fire policy including all-risk or special form perils, until such time as they are returned to a tenantable condition, with a minimum period of coverage of one (1) year.

(3) Loss Payee. The required fire insurance policy shall name City of San Diego as Loss Payee.

(4) Proceeds of Insurance. In the event of damage or destruction to the Premises covered by the fire or physical hazard insurance required of Lessee hereunder, the proceeds of such insurance shall be allocated as follows:

(a) Subject to Section 14.9.2 of the Solar Lease, proceeds from any or all of said insurance policies shall be payable: first, to City in such amount to compensate City for the fair market value, as determined by a qualified appraiser (selected in the same manner as appraisers are selected pursuant to this Solar Lease), of its reversionary interests in the Improvements to the Premises; second, to compensate Beneficiary for outstanding amounts secured by the Mortgage; and third, to Lessee for its remaining interests in the Premises and the Improvements thereon.;

(b) Any balance remaining after application of insurance proceeds in the manner indicated in subparagraph (a), above, shall be credited to Lessee. If Lessee, or City, is required to rebuild or restore the Premises pursuant to the provisions of this Solar Lease, the amount of insurance proceeds credited to Lessee shall be impounded with an independent depository acceptable to City in accordance with a rider to the insurance policy setting forth this procedure, to be disbursed to pay, to the extent such portion of proceeds may be sufficient, Lessee's obligations to repair and restore the Premises pursuant to the provisions of this Solar Lease;

(c) In the event that, after paying all of the costs and expenses of repair and restoration referenced in subparagraph (b), above, any balance of insurance proceeds remains, it shall be retained by Lessee. Should it be anticipated that the proceeds of insurance to be received by Lessee will be insufficient to repair or restore the Premises as required by this Solar Lease, Lessee shall have the option to either (i) terminate this Solar Lease and all insurance proceeds shall be distributed pursuant to Section 14.9.2 of the Solar Lease, or (ii) repair or restore the Premises as required hereunder using the available insurance proceeds, with any shortfall in the amount necessary to repair or restore the Premises being contributed, in cash, by Lessee.

(5) Increased Cost of Construction and Demolition Costs. Lessee shall maintain coverage for the cost of repair or reconstruction that is in excess of replacement cost due to

building codes. Lessee shall maintain coverage for the cost of demolition of the undamaged portion of the building as required by building codes.

C. Comprehensive Automobile/Aircraft/Watercraft Liability Insurance. Lessee shall procure Comprehensive Automobile/Aircraft/Watercraft Liability Insurance, applying to its use and occupancy of the Premises and the business operated by Lessee or any other occupant on the Premises. Such policy shall be written for bodily injury, including death, and property damage, however occasioned, occurring during the policy term, in the amount of not less than One Million Dollars (\$1,000,000), combined single limit per occurrence, applicable to all owned, non-owned and hired vehicles/aircraft/watercraft. Notwithstanding any provision of the foregoing to the contrary, however, such coverage may be waived in writing by City if it determines there is no significant exposure to these risks. This coverage shall include contractual liability.

D. Statutory Workers' Compensation and Employer's Liability Insurance. Lessee shall provide the statutory amount of workers' compensation insurance, with a broad form all-states endorsement, and with employer's liability coverage of no less than One Million Dollars (\$1,000,000) per occurrence for all employees engaged in services or operations under this Solar Lease. Lessee shall also provide U.S. Longshoremens' and Harbor Workers' Act coverage, when applicable.

E. General Provisions.

(1) Certificates of Insurance. Lessee shall, as soon as practicable following the placement of insurance required hereunder, but in no event later than ten (10) days prior to the Commencement Date, deliver to City certified copies of the actual insurance policies specified herein, and certificates evidencing the same, together with appropriate separate endorsements thereto, evidencing that Lessee has obtained such coverage for the period of the Solar Lease. Thereafter, copies of renewal policies, and certificates and appropriate separate endorsements thereof, shall be delivered to City within thirty (30) days prior to the expiration of the term of any policy required herein. Lessee shall permit City at all reasonable times to inspect any policies of insurance of Lessee which Lessee has not delivered to City.

(2) Claims Made Coverage. If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly state so. In addition to the coverage requirements specified above, such policy shall provide that:

(a) The policy retroactive date coincides with or precedes Lessee's possession of the Premises (including subsequent policies purchased as renewals or replacements).

(b) Lessee will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Solar Lease, including the requirement of adding all additional insureds.

(c) If insurance is terminated for any reason, Lessee shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Solar Lease.

(d) The policy allows for reporting of circumstances or incidents that might give rise to future claims.

(3) Failure to Obtain or Maintain Insurance; City's Remedies. Lessee's failure to procure the insurance specified herein, or failure to deliver certified copies and appropriate certificates of such insurance, or failure to make the premium payments required by such insurance, shall constitute a material breach of the Solar Lease, and City may, at its option, terminate the Solar Lease for any such default by Lessee.

(4) No Limitation of Obligations. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Lessee, and any approval of said insurance by the City or its insurance consultant(s), are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Lessee pursuant to the Agreement, including, but not limited to, the provisions concerning indemnification.

(5) Notice of Cancellation or Change of Coverage. All certificates of insurance provided by Lessee must evidence that the insurer providing the policy will give City thirty (30) days' written notice, at the address shown in the section of this Solar Lease entitled "Notices," above, in advance of any cancellation, lapse, reduction or other adverse change respecting such insurance.

(6) Qualifying Insurers. All policies of insurance required hereby shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A, VII according to the current Best's Key Rating Guide, or a company of equal financial stability that is approved in writing by City's Risk Manager.

(7) Review of Coverage. City shall retain the right at any time to review the coverage, form and amount of insurance required herein and may require Lessee to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

(8) Self-Insurance. Lessee may, with the prior written consent of City's Risk Manager, fulfill some or all of the insurance requirements contained in this Solar Lease under a plan of self-insurance. Lessee shall only be permitted to utilize such self-insurance, however, if, in the opinion of City's Risk Manager, Lessee's (i) net worth, and (ii) reserves for payment of claims of liability against Lessee, are sufficient to adequately compensate for the lack of other insurance coverage required by this Solar Lease. Lessee's utilization of self-insurance shall not in any way limit liabilities assumed by Lessee under this Solar Lease.

(9) Sublessees' Insurance. Lessee shall require any sublessee, and any sub-sublessee, of all or any portion of the Premises to provide the insurance coverage described herein prior to occupancy of the Premises.

(10) Waiver of Subrogation. Lessee and City waive all rights to recover against each other or against any other tenant or occupant of the building, or against the officers, directors, shareholders, partners, employees, agents or invitees of each other or of any other occupant or tenant of the building, from any Claims (as defined in the Article entitled "Indemnity," above)

against either of them and from any damages to the fixtures, personal property, Lessee's improvements, and alterations of either City or Lessee in or on the Premises and the Property, to the extent that the proceeds received from any insurance carried by either City or Lessee, other than proceeds from any program of self-insurance, covers any such Claim or damage. Included in any policy or policies of insurance provided by Lessee hereunder shall be a standard waiver of rights of subrogation against City by the insurance company issuing said policy or policies.

EXHIBIT D
FORM OF SUBLEASE
[Located behind this cover page.]

SOLAR SUBLEASE
BROWN FIELD AIRPORT
SAN DIEGO, CALIFORNIA

LESSOR: CITY OF SAN DIEGO

LESSEE & SUBLESSOR: METROPOLITAN AIRPARK LLC

SUBLESSEE: _____

PARCEL _____

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1.4 Premises. The “Premises” means that approximate _____ gross acres designated as on Exhibit “A” (DESCRIPTION AND PLAT OF THE PREMISES) attached hereto and by this reference incorporated herein, located at the Brown Field Airport, San Diego, California.

1.5 Sublessor’s and Sublessee’s Sublease Administrators. This Solar Sublease shall be administered on behalf of Sublessor or by such other person(s) as may be designated in writing by Sublessor (referred to collectively hereinafter as “Sublessor’s Sublease Administrator”), and on behalf of Sublessee by _____, or by such other person as may be designated in writing by Sublessee (referred to hereinafter as “Sublessee’s Sublease Administrator”).

1.6 Effective Date. The “Effective Date” of this Solar Sublease shall be defined as the later date of execution of this agreement by Sublessee and Sublessor.

1.7 Commencement Date. The term (“Term”) shall commence upon the issuance of a Notice of Completion (or similar-type document) for the solar field. See Section 3.1 below.

1.8 Term. The term of this Solar Sublease shall be twenty-five (25) years (“Term”) commencing on the Commencement Date.

1.9 Rent Due Date. See Section 4.1.

1.10 Rent. Pursuant to Article 3, Section 3.13(c) of the Leasehold Development Agreement and Section 4.1.1 of this Solar Sublease, no Base Monthly Rent will be paid to Sublessor by Sublessee during the Term of this Solar Sublease, for the sublease of the Premises, so long as the Premises is used as a solar field, the required mitigation land is acquired and conveyed to the City of San Diego prior to the issuance of a Construction Permit, or whatever is the first permit required to commence any development activities on the Premises, and the Contribution of two hundred fifty thousand dollars (\$250,000.00) is made to the Sublessor by Sublessee at execution of the Sublease. Failure of Sublessee, at its sole cost, to acquire and convey the required mitigation land shall be deemed a material breach of this Solar Sublease and shall give the Sublessor the right to immediately terminate this Solar Sublease with no liability to Sublessor.

1.11 Cost of Living Adjustments. RESERVED.

1.12 Additional Rent. Other than the Contribution, any and all sums of money or charges required to be paid by Sublessee to Sublessor pursuant to the provisions of this Solar Sublease shall be paid as "Additional Rent" (for example: late charges, interest, equity payments, processing fees, etc.).

1.13 General Description of Sublessee’s Use of Premises. Sublessee shall use the Premises solely for a solar field during the Term. Sublessee shall use the Premises solely for any uses which are compatible with the then-applicable Airport Layout Plan, SDM Airport Land Use Compatibility Plan, and as allowed by the Site Development Permit during the Reminder Term.

1.14 Definitions. As used in this Solar Lease, the following terms shall have the meanings attached to them in this Section unless otherwise apparent from their context:

1.14.1 “Agreement” means the Leasehold Development Agreement for Brown Field Airport approved by the San Diego City Council on October 21, 2013, by City Council Resolution R-308482.

1.14.2 “Airport” means Brown Field Airport, San Diego, California.

1.14.3 “Airports Director” means the Airports Director for the City of San Diego or upon written notice to Lessee, such other person as shall be designated from time to time by City.

1.14.4 “ALP” means the FAA-approved Airport Layout Plan for Brown Field Airport.

1.14.5 “As Is” means in its current condition as of the date of appraisal with no express or implied warranty of suitability for use, not including any improvements, infrastructure or entitlements paid for by the Developer.

1.14.6 “Contribution” means the amount payable to by Sublessee to Sublessor upon execution of the Sublease.

1.14.7 “City” means the City of San Diego.

1.14.8 “City Council” means the City Council of the City of San Diego.

1.14.9 “FAA” means the Federal Aviation Administration.

1.15 Exhibits to Lease. The following drawings and special provisions are attached hereto as exhibits and made a part of this Solar Lease:

EXHIBIT “A” - Description and Plat of the Premises

EXHIBIT “B” - FAA Requirements

EXHIBIT “C” - Insurance Requirements

EXHIBIT “D” - Site Development Permit

1.16 Construction of Solar Sublease Provisions. The foregoing provisions of this Article summarize for convenience only certain key terms of the Solar Sublease delineated more fully in the Articles and Sections referenced therein. In the event of a conflict between the provisions of this Article and the balance of the Solar Sublease, the latter shall control.

ARTICLE 2 LEASE OF PREMISES

2.1 Description. Sublessor hereby subleases to Sublessee and Sublessee hereby subleases from Sublessor, for the rent and upon the covenants and conditions hereinafter set forth, the Premises described in Section 1.3 above.

2.2 Mineral Rights. Notwithstanding any provision of this Solar Sublease to the contrary, Sublessor hereby expressly reserves all rights, title and interest in and to any and all gas, oil, mineral and water deposits located upon or beneath the surface of the Premises. City shall have the right to enter the Premises at any time during the Term for the purpose of operating or maintaining such drilling or other installations as may be necessary or desirable for the development of any such gas, oil, mineral or water deposits, provided that such installations do not unreasonably interfere with Lessee's or its sublessees' and customers' use and quiet enjoyment of the Premises.

2.3 Reservations to City/Easement Reservations. Sublessee accepts the Premises subject to any and all existing easements and encumbrances as of the Effective Date of this Solar Sublease. City reserves the right to establish, to grant or to use easements or rights-of-way over, under, along and across the Premises for access, underground sewers, utilities, thoroughfares or such other facilities as it deems necessary for public health, convenience and welfare, whether or not such facilities directly or indirectly benefit the Premises, and to enter the Premises for any such purpose; provided, however, that any such grant of rights by City shall require that the Premises be restored to their preexisting condition and shall not unreasonably interfere with the Sublessee's use thereof. City hereby reserves unto itself, for the benefit and use for aviation purposes by the City and the public, an easement over the taxiways shown in Exhibit "A" (Description and Plat of Premises), or any taxiways developed by Lessee, within the Premises; provided however, no right reserved by City in this Section 2.3 shall be so exercised as to interfere unreasonably with Lessee's or Sublessee's operations hereunder. City agrees that should the exercise of any of the rights reserved by City in this Section 2.3 temporarily interfere with the use of any or all of the Premises by Lessee, the Rent, if any, shall be reduced in proportion to the interference with Lessee's or Sublessee's use of the Premises.

2.4 Solar Sublease Subordinate to Conditions and Restrictions Imposed by Public Agencies on Airport Operations. This Solar Sublease shall be subordinate and subject to the terms, conditions, restrictions and other provisions of any existing or future permit, lease and agreement between City and any Federal, State or local agency governing City's control, operation or maintenance of the Airport, or affecting the expenditure of federal funds for the Airport. Sublessee shall be bound by all such terms and conditions, and shall, whenever City may so demand, execute, acknowledge or consent to any instrument evidencing such terms, conditions, restrictions or provisions. Without limiting the generality of the foregoing, this Solar Sublease and Sublessee's occupancy of the Premises are expressly made subordinate and subject to the terms, conditions, restrictions and other provisions of those requirements of the FAA specifically set forth in Exhibit "B" (FAA Requirements), and Sublessee shall be bound by all such requirements.

ARTICLE 3 TERM OF SOLAR SUBLEASE

3.1 Term. This Solar Sublease shall take effect on the "Effective Date," defined as the later date of the execution of this agreement by Sublessor and Sublessee. The Term shall commence upon the issuance of a Notice of Completion (or similar-type document) for the solar field and shall continue thereafter for the period specified in Section 1.7, unless sooner terminated as hereinafter provided in this Solar Sublease. Except as otherwise specifically stated in this Solar

Sublease or in any subsequent amendments hereof, the terms and conditions of this Solar Sublease shall remain in effect following any holdover of the Term of this Solar Sublease

3.2 Early Termination through City Buy-Out.

3.2.1 Removal of Improvements. Upon any termination of this Solar Sublease, Sublessee shall remove, or cause to be removed, all Improvements of whatever nature located on the Premises, within one hundred eighty (180) days following termination of this Solar Sublease at Sublessee's sole expense; subject to Article 9 hereof.

3.3 Surrender of the Premises; Quitclaim of Sublessee's Interest upon Termination.

Sublessee shall surrender possession of the Premises to Sublessor upon expiration of the Term, or upon the earlier termination of this Solar Sublease, as provided for in this Solar Sublease. Upon termination of this Solar Sublease for any reason, including but not limited to termination because of default by Sublessee, Sublessee shall execute, acknowledge and deliver to Sublessor, within thirty (30) days following receipt of written demand therefor, a good and sufficient deed whereby Sublessee quitclaims all of its right, title and interest in the Premises to Sublessor. Should Sublessee fail or refuse to deliver such quitclaim deed to Sublessor, City or Sublessor may prepare and record a notice reciting the failure of Sublessee to do so, and such notice shall be conclusive evidence of the termination of this Solar Sublease and of all rights of Sublessee, or those claiming under Sublessee, to the Premises.

**ARTICLE 4
RENT**

4.1 Base Monthly Rent. No Base Monthly Rent will be paid to Sublessor by Sublessee during the Term of this Solar Sublease for the sublease of the Premises so long as the Premises is used as a solar field, the required mitigation land has been acquired and timely conveyed to the City of San Diego (see Section 1.10), and Sublessee has paid to Sublessor Sublessee's contribution of two hundred, fifty thousand dollars ("250,000.00"). The conveyance to the City of the fee interest in and to all the land purchased as mitigation for the solar field, as more fully described in the Mitigation and Monitoring Plan certified by the City as part of the EIR associated with the solar field, and payment of the Contribution to Sublessor has been determined to be adequate consideration for Sublessee's Term for said Premises.

4.2 Delivery of Rent Payments. All rent (base monthly rents and additional rents) due under this Solar Sublease and any applicable Parcel Ground Lease, shall be made payable to Metropolitan Airpark, LLC, and shall be paid on or before the time period/date indicated in this Solar Sublease and shall be considered paid when hand-delivered or delivered by mail to:

Metropolitan Airpark, LLC
2100 Palomar Airport Road, Suite 209
Carlsbad, CA 92011

ARTICLE 5 POSSESSION AND USE

5.1 Permitted Uses. During the Term, Sublessee shall use the Premises solely for a solar field (the parties hereto acknowledge that Lessee intends to sublease the Premises to a solar provider for purposes of constructing, operating and maintaining the solar field). If Lessee elects to use the Premises for a permitted use other than as a solar field, the terms of a then-applicable Parcel Ground Lease shall control the terms of that use.

5.2 Duties and Prohibited Conduct. Sublessee shall operate and manage the services and facilities which it offers to the public in a competent and efficient manner at least comparable, in the opinion of the Airports Director, to other Airport operations of similar type. Where Sublessee is reasonably in doubt as to the propriety of any particular use, Sublessee may request the written determination of the Lessor that such use is or is not permitted, and Sublessee will not be in breach or default under this Solar Sublease if Sublessee abides by such determination. Notwithstanding the foregoing, however, Sublessee shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance. Sublessee shall not use, or permit any person or persons to use the Premises for the sale or display of any goods and/or services which, in the sole discretion of Sublessor, are inconsistent with the permitted uses of the Premises pursuant to this Solar Sublease. Sublessee shall keep the Premises, and every part thereof, in a decent, safe and sanitary condition, free from any objectionable glare, noises, or odors, or other nuisances, except as may be typically present for the permitted uses specified above, and shall comply with all local, State and Federal ordinances and regulations in all respects. Sublessee shall deposit all trash and rubbish of Sublessee only within receptacles provided by Sublessee and located in the areas designated by Sublessor. Sublessee shall not allow or permit installation of any billboards or advertising signs, or aerials or antennas, upon the Premises without first obtaining, in each instance, the prior written consent of the Airports Director, which consent the Airports Director may give or withhold in his or her sole discretion. Any such signs or antenna installed without such written consent shall be subject to removal without notice at any time, at Sublessee's expense.

5.3 Compliance with Laws.

5.3.1 Sublessee, at Sublessee's sole expense, shall procure, maintain and hold available for Sublessor's inspection any governmental license or permit required for the proper and lawful conduct of Sublessee's business. Sublessee shall not use the Premises for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations and requirements of the State of California, the City of San Diego, or of other lawful authorities. Sublessee shall, at Sublessee's expense, comply promptly with all applicable statutes, laws, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the Term, regulating the use by Sublessee of the Premises. The final judgment of any court of competent jurisdiction, or the admission of Sublessee or any permittee in any action or proceeding against them or any of them, whether or not the City or Sublessor is a party to such action or proceeding, that Sublessee, or any such permittee, has violated any such ordinance, law, statute, regulation, covenant, restriction or requirement pertaining to the

use of the Premises, shall be conclusive as to that fact as between City and Sublessee and/or Sublessor and Sublessee.

5.3.2 Notwithstanding any other provision of this Solar Sublease to the contrary, Sublessee shall be responsible for payment of all costs of complying with the requirements of the Americans with Disabilities Act of 1990 (“ADA”) (42 USCS §§ 12101-12213), Title 24 of the California Code of Regulations (“Title 24”) and California Civil Code § 54.1, or any successor statutes thereto, as they may apply to the Premises. Sublessee’s obligations hereunder shall include, without limitation, all costs of bringing the Premises into compliance, and thereafter maintaining such compliance, with the requirements of Title III of the ADA (“Title III”) (42 USCS §§ 12181 - 12189) applicable during the Term to public accommodations and commercial facilities, irrespective of whether or not the particular requirements of such compliance (i) are specifically required by Sublessee’s intended use of the Premises, or (ii) may also be required of City under Title II of the ADA (“Title II”) (42 USCS §§ 12131 - 12165).

5.3.3 Sublessee’s duty to comply with applicable laws and regulations shall include compliance with any and all zoning and land use regulations applicable to the Premises and Sublessee’s intended use thereof (“Land Use Regulations”). Sublessor’s execution of this Solar Sublease shall in no way be deemed to constitute a determination by Sublessor that Sublessee’s intended use of the Premises does not comply with applicable Land Use Regulations, nor shall it infer any such conclusion by City, even if City is the agency which enacts or implements the Land Use Regulations applicable to the Premises.

5.4 Substance Abuse. Sublessee and its employees and agents shall not use or knowingly allow the use of the Premises for the purpose of unlawfully driving a motor vehicle or aircraft under the influence of an alcoholic beverage or any drug, or for the purpose of unlawfully selling, serving, using, storing, transporting keeping, manufacturing or giving away alcoholic beverages or any “controlled substance,” precursor or analog specified in Division 10 of the California Health and Safety Code (including any amendment thereto or similar specification(s) listed elsewhere within California Codes), and violation of this prohibition shall be grounds for immediate termination of this Solar Sublease.

5.5 Control of Premises. Failure of Sublessee to exercise control of the use of the Premises to materially conform to the provisions of this Article shall constitute a material breach of this Solar Sublease and such shall be grounds for termination of this Solar Sublease.

ARTICLE 6 UTILITIES

6.1 Sublessee shall provide and pay for all initial utility deposits and fees, and for all utilities and services necessary for its use and occupancy of the Premises during the Term, including but not limited to gas, water, electricity, trash, sewer/septic tank charges and telephone; Neither City nor Sublessor shall have any responsibility to pay for such services. If any such services are not separately metered or billed to Sublessee but rather are billed to and paid by Sublessor, Sublessee will pay to Sublessor its pro rata share of the cost of such services, as determined by Sublessor, together with its pro rata share of the cost of making such determination, within 30 days’ receipt

of each such invoice therefor. Neither City nor Sublessor will be liable for any reason for any loss or damage resulting from an interruption of any of these services. Sublessee shall indemnify, defend and hold City and Sublessor harmless from any and all liability, loss, damage, costs, attorney's fees and all other expenses on account of, or resulting from, the provision of any utilities and services, and losses or damages resulting therefrom.

ARTICLE 7 MECHANICS LIENS

7.1 Mechanics' Liens. Sublessee shall pay, or cause to be paid, all costs for work done by it, or caused to be done by it, on the Premises, and for all materials furnished for or in connection with any such work. If any lien is filed against the Premises, Sublessee shall cause the lien to be discharged of record within ten (10) days after it is filed. Sublessee shall indemnify, defend and hold City and Sublessor harmless from any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for Sublessee or persons claiming under Sublessee.

7.2 Contest of Lien. If Sublessee shall desire to contest any lien filed against the Premises, it shall, at the option of the Sublessor, furnish Sublessor, within the ten-day period following filing of the lien, security reasonably satisfactory to City of at least one hundred percent (100%) of the amount of the lien, plus estimated costs and interest, or a bond of a responsible corporate surety in such amount, conditioned on the discharge of the lien. If a final judgment establishing the validity or existence of a lien for any amount is entered, Sublessee shall immediately pay and satisfy the same.

7.3 Right to Cure. If Sublessee shall be in default in paying any charge for which a mechanics' lien claim and suit to foreclose the lien have been filed, and shall not have given Sublessor security to protect the Premises and Sublessor from liability for such claim of lien, City or Sublessor may (but shall not be required to) pay said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Sublessee to the party responsible for curing the lien, and Sublessee shall pay the same to the Party curing the lien with interest at the rate specified in Section 15.5 below.

7.4 Notice of Lien. Should any claim of lien be filed against the Premises or any action against the Premises or any action affecting the title to such property be commenced, the party receiving notice of such lien or action shall immediately give the other parties to this Sublease written notice thereof.

7.5 Notice of Nonresponsibility. City or Sublessor or their respective representatives shall have the right to go upon and inspect the Premises at all reasonable times and shall have the right to post and keep posted thereon notices of nonresponsibility or such other notices which City or Sublessor may deem to be proper for the protection of City's or Sublessor's interest in the Premises. Sublessee shall, before the commencement of any work which might result in any such lien, give to City and Sublessor written notice of its intention to do so in sufficient time to enable posting of such notices.

ARTICLE 8 SECURITY

8.1 Sublessee shall be responsible for and shall provide for the security of the Premises, and Sublessor shall have no responsibility therefor. Sublessee shall construct and maintain fences, gates, walls and/or barriers on the Premises in a manner designed, in the Airports Director's reasonable judgment, to prevent unauthorized access to the taxiways, runways and Sublessor's ramp and hangar area and Sublessee shall prevent such unauthorized access. Unless otherwise approved in writing by the Airports Director, Sublessee shall construct and maintain fences and/or walls no less than six feet in height along the boundaries of the Premises, in locations specified and approved by the Airports Director. Such fences and/or walls shall be constructed of materials and in such a manner as to reasonably prevent access to the Premises. Ingress and egress through gates and access points in the fences or walls shall be controlled by Sublessee at all times. Unless otherwise approved in writing by the Airports Director, such control must be by the use of automated gate controls utilizing key, card or keypad technology. All plans for security fencing and/or walls and access gates must be submitted to and approved by the Airports Director prior to construction. The Airport Director/Airport Staff shall be given the right of access through all such gates and access points, along with current keys, cards and/or keypad codes. Sublessee shall provide lighting adequate, in the judgment of the Airports Director, to prevent unobserved entry onto the Premises during the hours of darkness. All construction required by this clause shall be completed on or before the Commencement Date.

Notwithstanding the foregoing, any and all fences, gates, walls and/or barriers constructed on the Premises must conform to CFR 77 and AC 150/5300-13A and have prior approval of the FAA, as evidenced by an approved Form 7460-1.

ARTICLE 9 LESSEE'S RIGHT TO MAKE IMPROVEMENTS; PERSONAL PROPERTY; FIXTURES

9.1 Improvements. With the prior written approval of the Airports Director and Sublessor, said approval not to be unreasonably withheld, Sublessee may, at Sublessee's own expense, from time to time make such structural and nonstructural alterations, replacements, additions, changes, and/or improvements (collectively referred to in this Solar Sublease as "Improvements") to the Premises as Sublessee may find necessary or convenient for its purposes; provided, however, that the value of the Premises is not thereby diminished. Sublessee and Sublessor have agreed that Sublessee shall, within twenty four (24) months of the issuance of necessary construction permits by the City, state and federal agencies, complete the Improvements on the Premises for a solar field, as generally depicted in the Site Development Permit attached hereto as Exhibit "D". Sublessee shall at all times conduct its construction operations so that such operations do not interfere with the normal operation and use of the Airport by City.

9.2 Construction Requirements. All Improvements to be made to the Premises shall be made in conformity with the applicable ALP and Development Standards which are or may be adopted by City and the FAA and are in effect at the time of construction of such Improvements, and in conformity with those building permits issued by the City.

9.3 Personal Property. Subject to the provisions of Section 9.4, all of Sublessee’s trade fixtures, furniture, furnishings, signs, solar panels and associated equipment including but not limited to substations, conductors, control rooms and equipment, other personal property not permanently affixed to the Premises (collectively referred to as “Personal Property” in this Solar Sublease) shall remain the property of Sublessee. Sublessee shall, at its expense, immediately repair any damage occasioned to the Premises by reason of the removal of any such Personal Property.

9.4 Fixtures. All Improvements constructed by Sublessee, together with all other fixtures, including Sublessee’s trade fixtures, attached to the Premises (collectively referred to in this Solar Sublease as “Fixtures”) shall remain the property of Sublessee upon expiration or earlier termination of the Term. Sublessee shall remove any and all Fixtures at Sublessee’s own expense upon termination of the Term of this Solar Sublease. Any damage to the Premises occasioned by the placement and removal of the Fixtures shall be repaired by Sublessee in a good and workmanlike manner and the Premises shall be left in as substantially the same or better condition as when Sublessee took possession thereof. In the event Sublessee does not remove any Fixtures or equipment following direction by City or Sublessor, City or Sublessor may remove, sell or destroy the same, and Sublessee shall pay for the reasonable cost of such removal, sale or destruction, together with the reasonable cost of repair of damages to the property of others or improvements or to the Premises resulting therefrom.

9.5 Signs and Lighting. Sublessee shall not construct, nor permit the erection of, any signs on the Premises without the prior written approval of the Airports Director and Sublessor. Sublessee shall submit sketches of proposed signs to the Airports Director and Sublessor for approval showing size, materials, colors and location. Such signs must conform with all City and FAA standards, laws, rules, and regulations, and to any laws or ordinances of governmental agencies having jurisdiction over the Premises. All exterior lighting on the Premises must receive prior written approval from the Airport Director and Sublessor, and, if approved, must conform to any laws or ordinances of governmental agencies having jurisdiction over the Premises.

9.6 Onsite and Offsite Utilities. Sublessee shall be responsible for the cost of all onsite utility upgrades or relocations required for the construction, completion or operation of Sublessee’s Improvements. Sublessor shall assist in determining the location of existing utilities. Sublessee shall not be responsible for the upgrading or relocation of wet or dry public utilities or surface improvements necessary to serve the Airport in general or other leaseholds other than the Premises, unless required as a condition of any approved Improvements. Notwithstanding the foregoing, should any such upgrades or relocations benefit the Airport in general or other leaseholds, neither City, Sublessor, or any such other leaseholds shall be charged any pro rata share of or incur any additional expenses therefor.

ARTICLE 10 TAXES, ASSESSMENTS AND FEES

10.1 Definition of “Taxes.” As used herein, the term “taxes” means all taxes, governmental bonds, special assessments, Mello-Roos assessments, charges, rent income or transfer taxes, license and transaction fees, including, but not limited to, (i) any state, local, federal, personal or

corporate income tax, or any real or personal property tax, (ii) any estate inheritance taxes, (iii) any franchise, succession or transfer taxes, (iv) interest on taxes or penalties resulting from Sublessee's failure to pay taxes, (v) any increases in taxes attributable to the sale of Sublessee's leasehold interest in the Premises, or (vi) any taxes which are essentially payments to a governmental agency for the right to make improvements to the Premises.

10.2 Responsibility for Payment of Taxes. City shall not be obligated to pay any taxes or assessments accruing against Sublessee on the Premises or any interest of Sublessee therein before, during or after the Initial Term or the Remainder Term; all such payments shall be the sole responsibility of Sublessee. In addition, Sublessee shall be solely responsible for payment of any taxes or assessments levied upon any Improvements, Fixtures or Personal Property located on the Premises, to the extent that such taxes or assessments result from the business or other activities of Lessee upon, or in connection with, the Premises. Ad valorem taxes and assessment levied, assessed, or imposed on the Solar Lease leasehold(s) commencing after the Effective Date, shall be borne by Sublessee when due and payable. Sublessee shall be responsible for payment of any Development Impact fees ("DIFs") or any other exactions, assessments or taxes relating to construction of the Improvements and/or Sublessee's development at the Airport.

10.3 Creation of Possessory Interest. Pursuant to the provisions of Revenue and Taxation Code Section 107.6, or any successor statute thereto, Sublessee is hereby advised that the terms of this Solar Sublease may result in the creation of a possessory interest. If such a possessory interest is vested in Sublessee, Sublessee may be subjected to the payment of real property taxes levied on such interest. Sublessee shall be solely responsible for the payment of any such real property taxes. Sublessee shall pay all such taxes prior to delinquency, and shall not allow any such taxes, assessments or fees to become a lien against the Premises or any improvement thereon; provided, however, that nothing herein shall be deemed to prevent or prohibit Sublessee from contesting the validity of any such tax, assessment or fee in a manner authorized by law.

ARTICLE 11 REPAIRS; MAINTENANCE

11.1 Acceptance of Premises. Sublessee acknowledges that Sublessee has made a thorough inspection of the Premises prior to the Effective Date of this Solar Sublease, and that it accepts the Premises as of the Effective Date in its then condition. Sublessee further acknowledges that neither City nor Sublessor has made any oral or written representations or warranties to Sublessee regarding the condition of the Premises, and that Sublessee is relying solely on its inspection of the Premises with respect thereto.

11.2 Sublessee's Repair and Maintenance Obligations. Sublessee shall at all times from and after the Effective Date, at its own cost and expense, repair, maintain in good and tenantable condition and replace, as necessary, the Premises and every part thereof; and all such items of repair, maintenance, alteration, improvement or reconstruction as may be required at any time or from time to time by a governmental agency having jurisdiction thereof. Sublessee's obligations hereunder shall apply regardless of whether the repairs, restorations and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or noncapital, or the fault or not the fault of Sublessee, its agents, employees, invitees, visitors, sublessees or contractors. All

replacements made by Sublessee in accordance with this Section shall be of like size, kind and quality to the items replaced and shall be subject to prior written approval by the Airports Director and Sublessor, such approval not to be unreasonably withheld. Sublessee shall provide for trash removal, at its expense, and shall maintain all trash receptacles and trash areas in a clean, orderly and first class condition.

11.3 Sublessee's Failure to Maintain. If Lessee refuses or neglects to repair, replace, or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to Sublessor, Sublessor shall have the right (subject to any applicable notice and cure periods), but not the obligation, upon giving Sublessee reasonable written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Sublessee. If Sublessor makes or causes any such repairs to be made or performed, as provided for herein, Sublessee shall pay the cost thereof to Sublessor, as Additional Rent, promptly, but in no event later than thirty (30) days, upon receipt of an invoice therefor.

11.4 Right to Enter. Lessee shall permit City or Sublessor, or their authorized representatives, to enter the Premises at all times during usual business hours to inspect the same, and to perform any work therein (a) that may be necessary to comply with any laws, ordinances, rules or regulations of any public authority, (b) that City may deem necessary to prevent waste or deterioration in connection with the Premises if Sublessee does not make, or cause to be made, such repairs or perform, or cause to be performed, such work promptly after receipt of written demand from City, and (c) that City may deem necessary in connection with the expansion, reduction, remodeling, protection or renovation of any City-constructed or owned facilities on or off of the Premises or at the Airport. Nothing herein contained shall imply any duty on the part of City or Sublessor to do any such work which, under any provision of this Solar Sublease, Sublessee may be required to do, nor shall City's or Sublessor's performance of any repairs on behalf of Sublessee constitute a waiver of Sublessee's default in failing to do the same. No exercise by City or Sublessor of any rights herein reserved shall entitle Sublessee to any compensation, damages or abatement of rent from Sublessor for any injury or inconvenience occasioned thereby, but City or Sublessor shall be responsible for any unreasonable damage caused by City or Sublessor, respectively.

11.5 Annual Subleasehold Compliance Surveys. In addition to City's and Sublessor's right to enter pursuant to Section 11.4, above, Sublessee acknowledges and accepts City's and Sublessor's right and intent to conduct periodic, but not more frequently than annual, Subleasehold Compliance Surveys ("Surveys"). Said Surveys shall be scheduled at a mutually convenient time for City and Lessee, following written notice by City of its intent to conduct a Survey. Said Survey will focus on, but not be limited to, the condition of all subleasehold improvements for proper maintenance and building code compliance, compliance with laws, interference with aircraft and Airport operations, and a verification of all subleases on the Premises. Sublessee agrees to cooperate with City, or its authorized representative, during the Survey process and provide access to all areas of the Premises, both interior and exterior (as applicable). In the event City, Sublessor, or their authorized agents, are not able to access all areas of the Premises during the time of the scheduled Survey, Sublessee will reschedule a mutually convenient time for a follow up survey to allow access to areas inaccessible during the initial Survey appointment, and Sublessee agrees to compensate City and/or Sublessor for the personnel cost of the follow up Survey at the rate of \$50 for each hour, for each necessary

member of City's or Sublessor's staff, for such follow up Survey. Refusal by Sublessee to provide access to all areas of the Premises shall be considered a material breach of this Solar Sublease and grounds for termination of this Solar Sublease.

11.6 Sublessor Not Obligated to Repair or Maintain; Sublessee's Waiver of California Civil Code Section 1942. To the extent that any remedies specified in this Solar Sublease conflict or are inconsistent with any provisions of California Civil Code Section 1942, or any successor statute thereto ("CC §1942"), the provisions of this Solar Sublease shall control. Sublessee specifically waives any right it may have pursuant to CC §1942 to effect maintenance or repairs to the Premises and to abate the costs thereof from rent due to the Sublessor under this Solar Sublease.

ARTICLE 12 INDEMNIFICATION AND INSURANCE

12.1 Definition of "Sublessee Parties", "Sublessor Parties", and "City Parties". For purposes of this Article 12, the term "Sublessee Parties" refers singularly and collectively to Sublessee and Sublessee's officers, members, partners, agents, employees, and independent contractors, as well as to all persons and entities claiming through any of these persons or entities. The term "Sublessor Parties" refers singularly and collectively to Sublessor and Sublessor's officers, directors, affiliated entities, personal representatives, assigns, licensees, invitees, agents, servants, employees, and independent contractor of these persons or entities. The term "City Parties" refers singularly and collectively to City and its City Council, officers, directors, affiliated entities, personal representatives, assigns, licensees, invitees, agents, servants, employees, and independent contractors of these persons or entities.

12.2 Indemnification.

12.2.1 Sublessee's Indemnification of City and Sublessor Parties. To the fullest extent permitted by law, Sublessee shall, at Sublessee's sole expense, indemnify, protect, defend, and hold harmless City and Sublessor Parties from and against all Claims, as defined in Section 12.2.2, from any cause, arising out of or relating (directly or indirectly) to this Solar Sublease, the tenancy created under this Solar Sublease, or the Premises, including, without limitation:

12.2.1.1 The use or occupancy, or manner of use or occupancy, of the Premises by Sublessee Parties;

12.2.1.2 Any act, error, omission, or negligence of Sublessee Parties or of any invitee, guest, or licensee of Sublessee Parties, including, without limitation, detainees, in, on, or about the Premises;

12.2.1.3 Sublessee Parties' conducting of its business;

12.2.1.4 Any alterations, activities, work, or things done, omitted, permitted, allowed, or suffered by Sublessee Parties in, at, or about the Premises, including construction of Improvements, and also including the violation of or failure to comply with any applicable laws, statutes, ordinances, standards, rules,

regulations, orders, decrees, or judgments in existence on the Effective Date or enacted, promulgated, or issued after the Effective Date; and

12.2.1.5 Any breach or default in performance of any obligation on Sublessee Parties' part to be performed under this Solar Sublease, whether before or during the Term or after the Solar Sublease's expiration or earlier termination.

12.2.2 Definition of Claims. For purposes of this Solar Sublease, "Claims" means any and all claims, losses, costs, damage, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, law or equity, or otherwise), charges, assessments, fines, and penalties of any kind (including consultant and expert expenses, court costs, and reasonable attorneys' fees actually incurred).

12.2.3 Type of Injury or Loss. This indemnification extends to and includes Claims for:

12.2.3.1 Injury to any persons (including death at any time resulting from that injury);

12.2.3.2 Loss of, injury or damage to, or destruction of property (including all loss of use resulting from that loss, injury, damage, or destruction); and

12.2.3.3 All economic losses and consequential or resulting damage of any kind.

12.2.4 Active or Passive Negligence; Strict Liability. Except as provided in this Section 12.2.4, the indemnification in Section 12.2.1 shall apply, without limitation, to Claims caused by the concurrent negligent act or omission, whether active or passive, of City and/or Sublessor Parties, and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on City and/or Sublessor Parties. The indemnification in Section 12.2 shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a Claim against one or more City and/or Sublessor Parties was caused by the sole negligence or willful misconduct of one or more of such City and/or Sublessor Parties. In that event, however, this indemnification shall remain valid for all other City and/or Sublessor Parties.

12.2.5 Indemnification Independent of Insurance Obligations. The indemnification provided in this Article 12 may not be construed or interpreted as in any way restricting, limiting, or modifying Sublessee's insurance or other obligations under this Solar Sublease and is independent of Sublessee's insurance and other obligations. Sublessee's compliance with the insurance requirements and other obligations under this Solar Sublease shall not in any way restrict, limit, or modify Sublessee's indemnification obligations under this Solar Sublease.

12.2.6 Survival of Indemnification. The clauses of this Article 12 shall survive the expiration or earlier termination of this Solar Sublease until all claims against City and/or Sublessor Parties involving any of the indemnified matters are fully, finally, and absolutely resolved and/or barred by the applicable statutes of limitations.

12.2.7 Duty to Defend. Sublessee’s duty to defend City and/or Sublessor Parties is separate and independent of Sublessee’s duty to indemnify City and/or Sublessor Parties. The duty to defend includes claims for which City and/or Sublessor Parties may be liable without fault or strictly liable. The duty to defend applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Sublessee Parties have been determined. The duty to defend applies immediately, regardless of whether City and/or Sublessor Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the parties that City and/or Sublessor Parties be entitled to obtain summary adjudication or summary judgment regarding Sublessee’s duty to defend City and/or Sublessor Parties at any stage of any claim or suit within the scope of this Section 12.2.

12.3 Insurance. Sublessee shall provide and maintain, during the Term and for such other period as may be required herein, at its sole expense, insurance in the amounts and form specified in this Section and in Exhibit “C” (Insurance Requirements) attached hereto.

12.3.1 Compliance with Insurer Requirements. Sublessee shall, at Sublessee’s sole expense, comply with all requirements, guidelines, rules, orders, and similar mandates and directives pertaining to the use of the Premises, whether imposed by Sublessee’s insurers, City’s insurers, Sublessor’s insurers or any combination of the aforementioned insurers. If Sublessee’s business operations, conduct, or use of the Premises cause any increase in the premium for any insurance policies carried by City or Sublessor, Sublessee shall, within ten (10) business days after receipt of written notice from City or Sublessor, reimburse City or Sublessor for the increase. Sublessee shall, at Sublessee’s sole expense, comply with all rules, orders, regulations, or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and of any similar body.

12.3.2 Insurance Independent of Indemnification. The insurance requirements set forth in this Section are independent of Sublessee’s indemnification and other obligations under this Solar Sublease and shall not be construed or interpreted in any way to restrict, limit, or modify Sublessee’s indemnification, and other obligations or to limit Sublessee’s liability under this Solar Sublease.

ARTICLE 13 HAZARDOUS MATERIALS

13.1 Hazardous Materials Laws - Definition. As used in this Section, the term “Hazardous Materials Laws” means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called “common law”), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., § 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C., § 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., § 6901 et seq.), and the California Environmental Quality Act of 1970, or the successor statutes to any of the foregoing, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, soil and ground water conditions or other similar substances or conditions.

13.2 Hazardous Materials - Definition. As used in this Section the term “Hazardous Materials” means any chemical, compound, material, substance or other matter that:

13.2.1 is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;

13.2.2 is controlled, designated in or governed by any Hazardous Materials Laws;

13.2.3 gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws; or

13.2.4 is any other material or substance giving rise to any liability, responsibility or duty upon the City, Sublessor, or Sublessee with respect to any third person under any Hazardous Materials Law.

13.3 Sublessee’s Representations and Warranties. Sublessee represents and warrants that, during the Term or any extension thereof, or for such longer period as may be specified herein, Sublessee shall comply with the following provisions of this Section unless otherwise specifically approved in writing by City’s Real Estate Assets Administrator and Sublessor’s Sublease Administrator:

13.3.1 Sublessee shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the Premises by Sublessee, its agents, employees, assigns, contractors or invitees, in violation of any applicable Hazardous Materials Laws:

13.3.2 any handling, transportation, storage, treatment or usage by Sublessee of Hazardous Materials that is to occur on the Premises following the Commencement Date shall be in compliance with all applicable Hazardous Materials Laws;

13.3.3 any leak, spill, release, discharge, emission or disposal of Hazardous Materials which may occur on the Premises following the Commencement Date shall be promptly and thoroughly cleaned and removed from the Premises by Sublessee at its sole expense, and any such discharge shall be promptly reported in writing to City and Sublessor, and to any other appropriate governmental regulatory authorities;

13.3.4 no friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by Sublessee in the Premises;

13.3.5 no underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells, shall be located by Sublessee on the Premises without City’s and Sublessor’s prior written consent;

13.3.6 Sublessee shall conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from, or affecting the Premises resulting from a violation of the representations and warranties set forth in this Section 13.3 in accordance

with all applicable Hazardous Materials Laws and to the satisfaction of City and Sublessor;

13.3.7 Sublessee shall promptly supply City and Sublessor with copies of all notices, reports, correspondence, and submissions made by Sublessee to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws;

13.3.8 Sublessee shall promptly notify City and Sublessor of any liens threatened or attached against the Premises pursuant to any Hazardous Materials' Law. If such a lien is filed against the Premises resulting from a violation of the representations and warranties set forth in this Section 13.3, then, within the earlier of (i) twenty (20) days following such filing, or (ii) before any governmental authority commences proceedings to sell the Premises pursuant to the lien, Sublessee shall either: (a) pay the claim and remove the lien from the Premises, or (b) furnish either (1) a bond or cash deposit reasonably satisfactory to City and Sublessor in an amount not less than the claim from which the lien arises, or (2) other security satisfactory to City and Sublessor in an amount not less than that which is sufficient to discharge the claim from which the lien arises at the end of this Solar Sublease. Sublessee shall surrender the Premises to Sublessor free of any and all Hazardous Materials resulting from a violation of the representations and warranties set forth in this Section 13.3 and in compliance with all Hazardous Materials Laws affecting the Premises, if any such laws were breached resulting from a violation of the representations and warranties set forth in this Section 13.3.

13.3.9 At the end of this Solar Sublease, Sublessee shall surrender the Premises to Sublessor free of any and all Hazardous Materials resulting from a violation of the representations and warranties set forth in this Section 13.3 and in compliance with all Hazardous Materials' Laws affecting the Premises, if any such laws were breached resulting from a violation of the representations and warranties set forth in this Section 13.3.

13.4 Indemnification by Sublessee. Sublessee (and, if applicable, each of its general partners) and its successors, assigns, and guarantors, if any, jointly and severally agree to protect, indemnify, defend (with counsel approved by City and Sublessor) reimburse and hold City and/or Sublessor and its officers, employees and agents harmless from any claims, judgments, damages, penalties, fines, costs or expenses (known or unknown, contingent or otherwise), liabilities (including sums paid in settlement of claims), personal injury (including wrongful death), property damage (real or personal) or loss, including attorneys' fees, consultants' fees, and experts' fees (consultants and experts to be approved by City and Sublessor) which arise during or after the Term from or in connection with the presence or suspected presence of Hazardous Materials anywhere in the Premises, including the soil, ground water or soil vapor on or under the Premises, resulting from a violation of the representations and warranties set forth in Section 13.3 above. Without limiting the generality of the foregoing, the indemnification provided by this Section shall specifically cover costs incurred in connection with investigation of site conditions or any cleanup, remedial, removal or restoration work required by any

Hazardous Materials Laws because of the presence of Hazardous Materials in the soil, ground water or soil vapor on the Premises, and the release or discharge of Hazardous Materials by Lessee during the course of Lessee's alteration or improvement of the Premises.

13.5 Remedies Cumulative; Survival. The provisions of this Article 13 shall be in addition to any and all obligations and liabilities Sublessee may have to City and Sublessor at common law, and any remedies and the environmental indemnities provided for herein shall survive the expiration or termination of this Solar Sublease and/or any transfer of all or any portion of the Premises, or of any interest in this Solar Sublease, and shall be governed by the laws of the State of California.

13.6 Inspection. The agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by City and/or Sublessor, may (but without the obligation or duty so to do), at any time and from time to time, on reasonable notice to Sublessee (except in the event of an emergency in which case no notice shall be required), inspect the Premises to determine whether Sublessee is complying with Sublessee's obligations set forth in this Article, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as the Parties may agree. If Sublessee is not in compliance, City and/or Sublessor shall have the right, in addition to City's and Sublessor's other remedies available at law and in equity, to enter upon the Premises immediately and take such action as City and/or Sublessor in its sole judgment deems appropriate to remediate any actual or threatened contamination caused by Sublessee's failure to comply. City and Sublessor will use reasonable efforts to minimize interference with Sublessee's use of the Premises but will only be liable for any interference caused by entry and remediation efforts conducted in a grossly negligent or unlawful manner attributable to the City or Sublessor, respectively. Upon completion of any sampling or testing City and/or Sublessor will (at Sublessee's expense if City's actions are a result of Lessee's default under this Section) restore the affected area of the Premises from any damage caused by City's or Sublessor's sampling and testing.

ARTICLE 14 ASSIGNMENT, SUBLETTING AND ENCUMBRANCES

14.1 No Assignment or Subletting Permitted. Sublessee shall not voluntarily or involuntarily assign, sublease, mortgage, encumber, condominiumize, or otherwise transfer (collectively, a "Transfer") all or any portion of its interest in this Solar Sublease, the Premises, or Improvements thereto without City's and Sublessor's prior written consent, which consent shall not be unreasonably withheld. Any attempted Transfer without City's and Sublessor's consent shall be void and shall constitute a material breach of this Solar Sublease. As used herein, the term "Transfer" shall include the transfer of any stock or interest in Lessee as a corporation, partnership or other business entity which, in the aggregate, exceeds fifty percent (50%) of the total ownership interest in Sublessee

14.2 Transfers by Encumbrance/Mortgage. Any Transfer by Sublessee to secure the beneficial interest of a lender ("Beneficiary") in Sublessee's interests under this Solar Sublease shall be subject to City's and Sublessor's prior written approval, which approval shall not be unreasonably withheld, and shall be subject to the following terms and condition:

14.2.1 No mortgage entered into by Sublessee and any Beneficiary shall encumber the fee title to the Premises or another portion of the Airport, at any time;

14.2.2 : Immediately following the recordation of any mortgage affecting Sublessee's interest in this Solar Lease, Sublessee, at Sublessee's expense, shall cause to be recorded in the Office of the Recorder, San Diego County, California, a written request for delivery to City and Sublessor of a copy of any notice of default and of any notice of sale under such mortgage, as provided by the statutes of the State of California pertaining thereto. Inclusion in the body of the recorded mortgage itself of a request for notice having the effect described above shall constitute compliance with this provision. Neither City's and/or Sublessor's right to cure any default nor any exercise of such a right shall constitute an assumption of liability under the mortgage.

14.3 Notice. City or Sublessor, upon serving Sublessee with any notice under this Solar Sublease shall also serve a copy of that notice upon an approved Beneficiary in the same manner as required by this Solar Sublease for notices to be delivered to Sublessee. The delivery shall be made at the address Beneficiary shall have designated in writing to City and Sublessor from time to time. No notice from City or Sublessor to Sublessee shall be deemed to have been duly given unless and until a copy of the notice has been so served on Beneficiary. Notwithstanding the foregoing, neither City nor Sublessor shall be held responsible for any incorrect address given to City or , or for any party failing to give City or Sublessor a revised/corrected address.

14.4 Rights of Foreclosing Leasehold Mortgagee. If Beneficiary forecloses the mortgage or otherwise acquires title to Sublessee's subleasehold interest in the Premises by assignment in lieu of foreclosure, bankruptcy sale or otherwise (any of the foregoing being a "Foreclosure"), the following terms and conditions will govern the respective rights and obligations of City and Beneficiary or its designee as new owner of the leasehold interest in the Premises (Beneficiary or its designee, as the case may be, being the "New Owner"):

14.4.1 City and Sublessor will, upon notice of the transfer and subject to City's and Sublessor's prior written consent to the Transfer, said consent not be unreasonably withheld, recognize the New Owner as the tenant under this Solar Sublease. City expressly agrees that the mere fact that a Foreclosure has taken place will not constitute a default under this Solar Sublease nor will it result in termination of this Solar Sublease;

14.4.2 The New Owner and its successors shall have the right to assign this Solar Lease or sublet all or a portion of the Premises in accordance with terms of this Solar Lease and with the prior written consent of City and Sublessor, said consent not to be unreasonably withheld.

14.5 New Lease. If this Solar Sublease is terminated before its stated termination date on account of a default by Sublessee that by its nature is incurable by Beneficiary (including, without limitation, a rejection of this Solar Sublease by the trustee of Sublessee's bankruptcy estate), Sublessor agrees that Beneficiary or its Sublessor-approved designated affiliate shall have the option to enter into a new sublease with Sublessor. Any such new sublease shall have the same priority as this Solar Sublease and shall be for a period equal to the remainder of the Term of this Solar Sublease, at the same rent, and upon each and all of the terms, covenants,

agreements and conditions contained in this Solar Sublease. It shall be a condition of City's obligation to approve a new sublease with Beneficiary that Beneficiary cure all of Sublessee's defaults, including any monetary defaults.

14.6 Miscellaneous. Sublessor agrees from time to time, upon no less than thirty (30) days' prior written request of Beneficiary, or any subtenant or assignee to execute, acknowledge, and deliver a statement that certifies, if true and accurate, the following:

14.6.1 This Solar Sublease is unmodified and in full force and effect, or, if there have been any modifications, that this Solar Sublease is in full force and effect as modified (and stating the modifications);

14.6.2 That the Sublessee is not in default of any provision of this Solar Sublease.

14.7 Defaults Under the Solar Sublease; City's and Sublessor's Covenant of Forbearance. Where City and Sublessor have consented to a Mortgage encumbering Sublessee's leasehold interest in the Premises pursuant to this Article, then City, notwithstanding anything to the contrary in this Solar Sublease, shall not exercise its remedies under this Solar Sublease for Sublessee's defaults, including, without limitation, terminating the Solar Sublease, evicting Sublessee, or exercising any self-help rights, during the periods specified in this Section so long as the Beneficiary of such mortgage takes the following actions.

14.7.1 If a breach of the Solar Sublease occurs, a Beneficiary shall have the right to begin foreclosure proceedings and to obtain possession of Sublessee's leasehold interest in the Premises, so long as Beneficiary complies with the conditions set forth below:

14.11.4.1 Cures Sublessee's default(s) within the same time period allotted to Sublessee for cure of such default, plus an additional thirty (30) days for all non-money defaults and an additional fifteen (15) days for all defaults resulting from the failure of Lessee to make payments of money to City;

14.11.4.2 Notifies City and Sublessor, within thirty (30) days following receipt of City's or Sublessor's notice of Sublessee's default, of its intention to effect this remedy;

14.11.4.3 Institutes within thirty (30) days steps or legal proceedings to foreclose on or recover possession of Sublessee's leasehold interest in the Premises, and thereafter prosecutes the remedy or legal proceedings to completion with due diligence and continuity; and

14.11.4.4 Keeps and performs, during the period until Sublessee's leasehold interest in the Premises shall be either (i) upon prior written approval of City and Sublessor, sold upon foreclosure pursuant to the mortgage, or (ii) upon prior written approval of City and Sublessor, released or reconveyed pursuant to the mortgage (such period being referred to hereinafter as the "Foreclosure Period"), all of the covenants and conditions of this Solar Sublease, including, without limitation, payment of all rent, taxes, assessments, utility charges and insurance

premiums required by this Solar Sublease to be paid by Sublessee and which become due during the Foreclosure Period.

14.7.2 If Sublessee fails to cure any default within the time period allowed for such cure in this Solar Sublease, no cure by a Beneficiary of any such default in the manner allowed under this Section shall reinstate Sublessee in good standing under this Solar Sublease. If, following expiration of the cure period applicable to Sublessee, the Beneficiary shall fail or refuse to comply with any or all of the conditions of this Section applicable to Sublessee's default, including failing to expeditiously obtain title to Sublessee's leasehold interest in the Premises, then City and Sublessor shall be released from its covenant of forbearance hereunder, and may immediately terminate this Solar Sublease.

14.7.3 Transfer of Leasehold Interest; Sublessor's Option to Purchase. Any Beneficiary who acquires title to the leasehold interest in the Premises shall immediately provide City and Sublessor with written notice of such transfer. Notwithstanding any provision of this Section to the contrary, within thirty (30) days after receipt of notice of the transfer of the leasehold interest in the Premises to a Beneficiary in any manner, Sublessor shall have the option to purchase all right, title and interest in and to the leasehold directly from the Beneficiary for the amounts, and pursuant to the terms, set forth in Section 3.2 above.

14.7.4 Should Sublessor elect to not exercise its option to purchase the leasehold interest within the period described above, then, subject to the provisions of Sections 14.16 and 14.17 below, and so long as the Beneficiary shall have observed all of the conditions of this Section 14.11, then the following breaches, if any, relating to the prior Sublessee shall be deemed cured: (i) attachment, execution of or other judicial levy upon the leasehold estate, (ii) assignment of creditors of Sublessee, (iii) judicial appointment of a receiver or similar officer to take possession of the leasehold estate or the Premises or (iv) filing any petition by, for or against Sublessee under any chapter of the Federal Bankruptcy Code. Any further transfer of the leasehold estate, however (whether by a Beneficiary or by a third-party bidder acquiring the estate at a foreclosure sale), shall be subject to the following conditions:

14.11.4.1 The provisions of Sections 14.1 and 14.2 above, shall apply to such further Transfer, and City's and Sublessor's consent shall be required to such further Transfer; and

14.11.4.2 By its acceptance of the leasehold estate, the Transferee of such further Transfer assumes this Solar Sublease as to the entire leasehold estate and covenants with Sublessor to be bound hereby.

14.8 Article Controlling. In the event of any conflict between the provisions of this Article and any other provision of this Solar Sublease, this Article shall control.

14.9 Failure to Give Notice. Except as expressly set forth in this Article, Sublessor shall have no obligation to any Beneficiary or to give any notice to any Beneficiary, and Sublessor's failure

to provide any Beneficiary with any notice of any default hereunder except as expressly set forth in this Article shall not create any right or claim against Sublessor on behalf of Sublessee or any Beneficiary.

14.10 Transfer Processing Fee. If Sublessor is requested to consent to a Transfer hereunder, Sublessee shall pay City's nonrefundable fee of \$2,000, or the City's then-current fee amount ("Transfer Processing Fee"), to reimburse City or City's agent for costs and expenses incurred in connection with such request. The Transfer Processing Fee shall be delivered to City concurrently with Sublessee's request for each consent.

14.11 Transfer Percentage Fee. Sublessor shall be entitled to a fee of five percent (5%) ("Transfer Percentage Fee") of the value of the full sale price/consideration (monetary and non-monetary) for any Transfer of all or a portion of Sublessee's leasehold interest in the Premises.

14.11.1 Transfer Percentage Fee Payments. Sublessee shall pay to the Sublessor the Transfer Percentage Fee concurrently with the Transfer of all or a portion of the Solar Sublease.

14.11.2 Exemption From Recapture. This Section 14.15 does not apply to any "Exempt Transfer." An Exempt Transfer consists of any of the following:

14.11.4.1 Any Transfer for which Sublessor's consent is not required; or

14.11.4.2 Any Transfer to an Affiliate of Sublessee, as defined below.

As used herein, the term "Affiliate" means any entity that controls, is controlled by, or is under common control with Sublessee. "Control" means the direct or indirect ownership of fifty-one percent (51%) of the voting securities of an entity or possession of the right to vote fifty-one percent (51%) of the voting interest in the ordinary direction of the entity's affairs.

14.12 No Release of Sublessee. No permitted Transfer shall release or change Sublessee's primary liability to pay the rent and to perform all other obligations of Sublessee under this Solar Sublease, except to the extent the Solar Sublease is terminated as described above. Sublessor's acceptance of rent from any other person is not a waiver of any provision of this Article or a consent to Transfer. Sublessor's consent to one Transfer shall not be deemed to imply Sublessor's consent to any subsequent Transfer. If Sublessee's Transferee defaults under this Solar Sublease, Sublessor may proceed directly against Sublessee without pursuing remedies against the Transferee. Sublessor may consent to subsequent assignments or modifications of this Solar Sublease by Sublessee's Transferee, without notifying Sublessee or obtaining its consent, and such action shall not relieve Sublessee of its liability under this Solar Sublease unless Sublessor elects to do so in writing.

ARTICLE 15 DEFAULTS BY LESSEE; SUBLESSOR'S REMEDIES

15.1 Events of Default. The occurrence of any of the following shall constitute a default by Sublessee and a breach of this Solar Sublease:

15.1.1 Failing or refusing to pay any amount of Additional Rent when due in accordance with the provisions of this Solar Sublease, and the default continues for ten (10) business days after written notice from Sublessor;

15.1.2 Failing or refusing to perform fully and promptly any covenant or condition of this Solar Sublease, other than those specified in subparagraph 15.1.1 above, the breach of which Sublessee is capable of curing after reasonable notice, as provided in Article 15.2 below, from City or Sublessor;

15.1.3 Failing or refusing to cooperate in permitting City and/or Sublessor access to all areas of the Premises as set forth in this Solar Sublease and Section 11.5 (Annual Leasehold Compliance Surveys) above; or

15.1.4 The occurrence of any of the events set forth in Section 18.1 below.

15.2 Notices. Following the occurrence of any of the defaults specified in Section 15.1, Sublessor shall give Sublessee a written notice specifying the nature of the default and the provisions of this Solar Sublease breached and demanding that Sublessee either fully cure each such default within the time period specified in the subparagraphs below or quit the Premises and surrender the same to Sublessor:

15.2.1 For nonpayment of Additional Rent, ten (10) business days;

15.2.2 For any non-monetary default, a reasonable period not to exceed twenty (20) business days, provided, however, that if such default cannot reasonably be cured within said time period, Sublessee shall be deemed to have cured such default if Sublessee so notifies Sublessor in writing, commences cure of the default within said time period, and thereafter diligently and in good faith continues with and actually completes said cure; and

15.2.3 For a noncurable default, Sublessor shall give Sublessee a written notice specifying the nature of the default and the provisions of this Solar Sublease breached and Sublessor shall have the right, but not the obligation, to demand in said notice that Sublessee quit the Premises within twenty (20) business days.

To the extent permitted by applicable State law, the time periods provided in this Section for cure of Sublessee's defaults under this Solar Sublease or for surrender of the Premises shall be in lieu of, and not in addition to, any similar time periods described by California law as a condition precedent to the commencement of legal action against Sublessee for possession of the Premises.

15.3 Sublessor's Rights and Remedies. Should Sublessee fail to cure any such defaults within the time periods specified in the immediately preceding Section, or fail to quit the Premises as required thereby, Sublessor may exercise any of the following rights without further notice or demand of any kind to Sublessee or any other person, except as may be required by Section 15.2 above or otherwise be required by applicable California law:

15.3.1 The right of Sublessor to terminate this Solar Sublease and Sublessee's right to possession of the Premises and to reenter the Premises, take possession thereof

and remove all persons therefrom, following which Sublessee shall have no further claim on the Premises or under this Solar Sublease;

15.3.2 The right of Sublessor without terminating this Solar Sublease and Sublessee's right to possession of the Premises, to reenter the Premises and occupy the whole or any part thereof for and on account of Sublessee and to collect any unpaid rents and other charges, which have become payable, or which may thereafter become payable pursuant to Civil Code Section 1951.4, or successor statute thereto; or

15.3.3 The right of Sublessor, even though it may have reentered the Premises in accordance with the immediately preceding subparagraph 15.3.2 of this Section, to elect thereafter to terminate this Solar Sublease and Sublessee's right to possession of the Premises.

Should Sublessor have acted under the provisions of subparagraph 15.3.2 of this Section, Sublessor shall not be deemed to have (i) terminated this Solar Sublease, (ii) assumed the liability of Sublessee to pay rent or other charges thereafter accruing, or (iii) assumed Sublessee's liability for damages under any of the provisions hereof, by any such reentry or by any action, in unlawful detainer or otherwise, to obtain possession of the Premises, unless Sublessor shall have notified Sublessee in writing that it has so elected to terminate this Solar Sublease and Sublessee's right to possession. Sublessee further covenants that the service by Sublessor of any notice pursuant to the unlawful detainer statutes of the State of California and the surrender of possession pursuant to such notice shall not (unless Sublessor elects to the contrary at the time of, or at any time subsequent to, the serving of such notice and such election is evidenced by a written notice to Sublessee) be deemed to be a termination of this Solar Sublease. In the event of any reentry or taking possession of the Premises as aforesaid, Sublessor shall have the right, but not the obligation, at Sublessee's expense, to remove therefrom (i) all or any part of any buildings or structures placed on the Premises by Sublessee or its agents, and (ii) any or all merchandise, Fixtures or Personal Property located therein and to place the same in storage at a public warehouse at the expense and risk of Sublessee. The rights and remedies given to Sublessor in this Section shall be additional and supplemental to all other rights or remedies which Sublessor may have under laws in force when the default occurs.

15.4 Sublessor's Damages. Should Sublessor terminate this Solar Sublease and Sublessee's right to possession of the Premises pursuant to the provisions of this Article 15, Sublessor may recover from Sublessee as damages any or all of the following:

15.4.1 The worth at the time of award (as defined below) of any unpaid rent that had accrued at the time of such termination;

15.4.2 Any other amount necessary to compensate Sublessor for all the detriment proximately caused by Sublessee's failure to perform its obligations under this Solar Sublease including, without limitation, any costs or expense incurred by Sublessor in (i) retaking possession of the Premises, including reasonable attorneys' fees therefor, (ii) maintaining or preserving the Premises after such default, (iii) preparing the Premises for reletting to a new tenant, including repairs or alterations to the Premises for such

reletting, (iv) leasing commissions, (v) Transfer Processing fees, (vi) Transfer Percentage fees, and (vii) any other direct costs necessary or appropriate to relet the Premises; and

15.4.3 At Sublessor's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of California.

As used in subparagraphs 15.4.1 of this Section, the "worth at the time of award" is computed by allowing interest at the maximum rate allowed by California law.

15.5 Interest. Any amounts, other than rent, due from Sublessee under the provisions of this Solar Sublease which are not paid when due shall bear interest at the rate of four percent (4%) over the discount rate charged from time to time by the Federal Reserve Bank of San Francisco, but not to exceed the maximum rate which Sublessor is permitted by law to charge.

ARTICLE 16 DEFAULTS BY SUBLESSOR; REMEDIES

16.1 If Sublessor shall neglect or fail to perform or observe any of the terms, covenants, or conditions contained in this Solar Sublease on its part to be performed or observed within thirty (30) days after written notice of default or, when more than thirty (30) days shall be required because of the nature of the default, if Sublessor shall fail to proceed diligently to cure such default after written notice thereof, then Sublessor shall be liable to Sublessee for any and all damages sustained by Sublessee as a result of Sublessor's breach; provided, however, that (a) any money judgment resulting from any default or other claim arising under this Solar Sublease shall be satisfied only out of the current rents, issues, profits and other income Sublessor receives from its operation of the Premises, net of all current operating expenses, liabilities, reserves and debt service associated with said operation ("Net Income" for purposes of this Article only), (b) no other real, personal or mixed property of Sublessor, wherever located, shall be subject to levy on any such judgment obtained against Sublessor, (c) if such Net Income is insufficient to satisfy such judgment, Sublessee will not institute any further action, suit, claim or demand, in law or in equity, against Sublessor for or on the account of such deficiency, and (d) such neglect or failure shall not constitute consent by Sublessor for Sublessee to perform or observe such terms, covenants or conditions at Sublessor's expense. Sublessee hereby waives, to the extent permitted under law, any right to satisfy said money judgment against Sublessor except from Net Income.

ARTICLE 17 ABANDONMENT

17.1 Sublessee shall not vacate or abandon the Premises at any time during the term of this Solar Sublease nor permit the Premises to remain unoccupied for a period longer than sixty (60) consecutive days during the Term of this Solar Sublease. If Sublessee shall abandon, vacate or surrender the Premises, or be dispossessed by process of law, or otherwise, any personal property or fixtures belonging to Sublessee and left on the Premises shall, at the option of Sublessor, be deemed abandoned. In such case, Sublessor may dispose of said personal property and fixtures in any manner provided by California law and is hereby relieved of all liability for doing so. These provisions shall not apply if the Premises should be closed and business temporarily

discontinued therein on account of strikes, lockouts, or similar causes beyond the reasonable control of Sublessee.

ARTICLE 18 BANKRUPTCY

18.1 Right of Termination. Should any of the following events occur, Sublessor may terminate this Solar Sublease and any interest of Sublessee therein, effective with the last day of the event:

18.1.1 Proceedings are instituted whereby all, or substantially all, of Sublessee's assets are placed in the hands of a receiver, trustee or assignee for the benefit of Sublessee's creditors, and such proceedings continue for at least ninety (90) days;

18.1.2 Any creditor of Sublessee institutes judicial or administrative process to execute on, attach or otherwise seize any of Sublessee's merchandise, fixtures or personal property, located on the Premises and Sublessee fails to discharge, set aside, exonerate by posting a bond, or otherwise obtain a release of such property within ninety (90) days;

18.1.3 A petition is filed for an order of relief under the Federal Bankruptcy Code or for an order or decree of insolvency or reorganization or rearrangement under any state or federal law, and is not dismissed within ninety (90) days;

18.1.4 Sublessee makes a bulk sale of all, or substantially all, of Sublessee's merchandise, fixtures or personal property located on the Premises, except in accordance with the provisions of Article of this Solar Sublease or except in connection with a permitted assignment under this Solar Lease, and fails to replace the same with similar items of equal or greater value and utility within three (3) days.

If a court of competent jurisdiction determines that any of the foregoing events is not a default under this Solar Sublease, and a trustee is appointed to take possession (or if Sublessee remains a debtor in possession), and such trustee or Sublessee transfers Sublessee's interest hereunder, then Sublessor shall receive, as Additional Rent, the difference, if any, between the rent (or other consideration) paid in connection with such transfer, minus the rent payable by Sublessee hereunder. Any assignee pursuant to the provisions of any bankruptcy law shall be deemed without further act to have assumed all of the obligations of the Sublessee hereunder arising on or after the date of such assignment. Any such assignee shall upon demand execute and deliver to Sublessor an instrument confirming such assumption.

18.2 Request for Information. Within ten (10) days after Sublessor's request therefor, Sublessee shall provide Sublessor and any mortgagee or proposed mortgagee of Sublessor, as Sublessor shall specify, such financial, legal and business information concerning any of the events described in this Article as Sublessor shall request.

ARTICLE 19
DAMAGE OR DESTRUCTION

19.1 Insured Casualty. Should the Sublessee's merchandise, Fixtures, Improvements or personal property be damaged by fire, or other perils covered by the insurance Sublessee is required to carry under the terms of this Solar Sublease, Sublessee shall undertake to restore such merchandise, Fixtures, Improvements or personal property to substantially the same condition as they were in immediately preceding such damage or destruction. In the event of a total destruction of the Premises so that the Premises are rendered unusable, Sublessee shall have the option (i) to terminate this Solar Sublease with Sublessor's consent, said consent not to be unreasonably withheld, or (ii) restore the Premises to substantially the same condition as they were in immediately preceding such damage or destruction. Should the parties agree to terminate this Solar Sublease under option "(i)", Sublessor shall be paid an amount, as determined by a qualified appraiser (selected in the same manner as appraisers are selected pursuant to this Solar Sublease), determined to be the fair market value of the Sublessor's reversionary interests in the Improvement to the Premises that were damaged or destroyed.

19.2 Reconstruction. In the event of any reconstruction of the Premises required of Sublessee, Sublessee shall at its sole cost and expense repair or rebuild such building and Improvements to substantially the same condition they were in immediately preceding such damage or destruction.

19.2.1 Abatement of Rent Due to Reconstruction. In the event of reconstruction by Sublessee, Sublessee shall continue the operation of its business on the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management and shall not be entitled to any abatement of rent for said reconstruction period unless it has been determined by a Court of Law, or otherwise agreed to by the parties, that the damage to the Premises was directly caused by the sole negligence of Sublessor. Lessee shall not be entitled to any compensation or damages from Sublessor for loss of use of the whole or any part of the Premises, Sublessee's Personal Property, or any inconvenience or annoyance occasioned by such damage, reconstruction or replacement. Sublessee hereby waives any statutory rights of termination which may arise by reason of any partial or total destruction of the Premises.

19.3 Release of Liability Due to Damage or Destruction. Upon the termination of this Solar Sublease due to the total destruction of the Premises (pursuant to the terms of this Solar Sublease therefor), and upon payment to Sublessor of the fair market value of the Sublessor's reversionary interests in the Improvements to the Premises that were damaged or destroyed, Sublessee and Sublessor shall be released from this Solar Sublease without further obligation to the other party coincident with the surrender of possession of the Premises to Sublessor, excepting therefrom Sublessee's obligation to return the Premises to its original condition, and any other obligation(s) and liability(ies) that had theretofore accrued and/or is then unpaid.

ARTICLE 20
EMINENT DOMAIN

20.1 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent

domain, the interests of City and Sublessee (or Sublessee's Beneficiary or Mortgagee, pursuant to Sublessee and its Beneficiary or Mortgagee's agreement(s) thereto) will be as follows:

20.2 Full Taking. If the entire Premises are taken, this Solar Sublease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

20.3 Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the reasonable opinion of Sublessor, the remaining part of the Premises are unsuitable for the Solar Sublease operation, this Solar Sublease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

20.4 Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the reasonable opinion of Sublessor, the remaining part of the Premises are suitable for continued Solar Sublease operation, this Solar Sublease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. At its cost, Sublessee shall restore so much of the remaining portion of the Premises as is required to create a reasonably sound architectural (or economically feasible) unit substantially suitable for the purposes for which they were used immediately before the taking, using good workmanship and new first class materials.

20.5 Award. All monies awarded in any taking of the fee interests of the Premises, and City's reversionary interests in the installments and Improvements thereon, shall belong to City, whether the taking results in diminution in value of the leasehold or the fee or both. However, Sublessee (or its beneficiary or mortgagee) shall be entitled to any award attributable to the taking of, or damages to Sublessee's then remaining leasehold interest in the Premises, to Lessee's then remaining interests in the installations and Improvements of Sublessee thereon, and for any loss of or damage to Sublessee's trade fixtures and removable personal property. Sublessor shall have no liability to Sublessee for any award not provided by the condemning authority.

20.6 Transfer. City has the right to transfer City's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, Sublessee shall retain whatever interest it may have in any monies awarded, as set forth above in Section 20.5.

20.7 No Inverse Condemnation. The exercise of any City right under this Solar Sublease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon City for inverse condemnation.

20.8 Sublessee's Separate Claim. In connection with any taking, Sublessee may prosecute its own claim by separate proceedings against the condemning authority for damages legally due to it (such as the loss of fixtures that Sublessee was entitled to remove and moving expenses, improvements made by Sublessee, and the value of the unexpired term of the leasehold).

ARTICLE 21
SALE OR MORTGAGE BY CITY OR SUBLESSOR

21.1 Sale or Mortgage. City or Sublessor may at any time, without the consent of Sublessee, sell, purchase, exchange, transfer, assign, lease, encumber or convey City's interest in whole or in part, in the Solar Lease or Solar Sublease, the Premises, the realty underlying the Premises and/or any portion of or interest in the realty or improvements on the Premises (collectively referred to in this Article as a "Sale").

21.2 Release on Sale. From and after a Sale, both City and Sublessor shall be released from all liability toward Sublessee and Sublessee's successors and assigns arising from this Solar Sublease because of any act, occurrence or omission of City or Sublessor occurring after such Sale.

ARTICLE 22
SUBORDINATION; ATTORNMENT

22.1 Subordination. Without the necessity of any other document being executed and delivered by Sublessee, this Solar Sublease is and shall be junior, subject and subordinate to any existing or future permits, agreements, contracts or approvals issued by the United States of America or any local, State or federal agency affecting the control or operation of the Premises; Sublessee shall be bound by the terms and provisions of such permits, agreements, contracts or approval.

Nothing contained in this Section 22.1 shall prohibit the Sublessee from commencing a takings claim against the United States of America or any local, State, or federal agency affecting the control or operation of the Premises. If the Sublessee elects to commence such a takings claim, Sublessee agrees to indemnify and hold City and Sublessor harmless from, in and against all losses, damages or injuries suffered or incurred resulting from any proceedings related to such a claim.

22.2 Attornment. Concurrent with the execution of this Solar Sublease, Sublessor shall provide Sublessee with a Nondisturbance and Attornment Agreement ("NDA") from City in a form acceptable to City and Sublessor for the benefit of any sublessee. In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Sublessor covering the Premises, Sublessee or purchaser shall attorn to the City upon any such foreclosure or sale and recognize City as landlord under this Solar Sublease.

ARTICLE 23
CITY'S AND SUBLESSOR'S RIGHT OF ACCESS

23.1 City's and Sublessor's Right to Enter the Premises. The agents, employees, and contractors of the City and Sublessor may enter the Premises at any time in response to an emergency, and at reasonable hours to (a) inspect the Premises, (b) exhibit the Premises to prospective purchasers or lessees, (c) determine whether Sublessee is complying with its obligations in this Solar Sublease (including its obligations with respect to compliance with Hazardous Materials Laws), (d) supply cleaning service and any other service that this Solar

Sublease requires City or Sublessor to provide, (e) post notices of nonresponsibility or similar notices, (f) make repairs that this Solar Sublease requires City or Sublessor to make, or make repairs to any adjoining space or utility services, or make repairs, alterations, or improvements to any other portion of the Premises, or (g) exercise its rights pursuant to Section 2.3, "Reservations to City/Easement Reservations," above; provided, however, that all work will be done as promptly as reasonably possible and so as to cause as little interference to Sublessee as reasonably possible.

23.2 Sublessee's Waiver of Damages Claims. Sublessee waives any claim of injury or inconvenience to Sublessee's business, interference with Sublessee's business, loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by such entry unless due to the sole negligence or willful misconduct of City and/or Sublessor or their respective employees or agents. If necessary, Sublessee shall provide City and Sublessor with keys to unlock all of the doors in the Premises (excluding Sublessee's vaults, safes, and similar areas designated in writing by Sublessee in advance). City and Sublessor will have the right to use any means that City or Sublessor may deem proper to open doors in the Premises and to the Premises in an emergency. No entry to the Premises by City or Sublessor by any means will be a forcible or unlawful entry into the Premises or a detainer of the Premises or an eviction, actual or constructive, of Sublessee from the Premises, or any part of the Premises, nor will the entry entitle Sublessee to damages or an abatement of rent or other charges that this Solar Sublease requires Sublessee to pay. Nothing in this Section shall apply to any actions in eminent domain which shall be governed solely by Article 20, "Eminent Domain," above.

ARTICLE 24 QUIET ENJOYMENT

24.1 If Sublessee is not in breach under the covenants made in this Solar Sublease, Sublessor covenants that Sublessee shall have peaceful and quiet enjoyment of the Premises without hindrance on the part of Sublessor. Sublessor will defend Sublessee in the peaceful and quiet enjoyment of the Premises against claims of all persons, excepting superior authorities or as otherwise set forth in this Solar Sublease, claiming through or under the City.

ARTICLE 25 HOLDING OVER

25.1 If Sublessee remains in possession of the Premises, for any reason, after the expiration of the Term of this Solar Sublease without executing a new sublease, or after Sublessor has declared a forfeiture by reason of a default by Sublessee, then such holding over shall be construed as a tenancy from month-to-month, subject to all the conditions, provisions and obligations of this Solar Sublease insofar as they are applicable to a month-to-month tenancy. The Solar Rent payable during any period of holding over shall be equal to one percent (1%) of the then appraised value of the leasehold per month.

**ARTICLE 26
NOTICES**

26.1 Notices. Whenever in this Solar Sublease it shall be required or permitted that notice or demand be given or served by either party to this Solar Sublease to or on the other, such notice or demand shall be in writing, mailed or delivered to the other parties at the addresses specified in Article 1. Mailed notices shall be sent by United States Postal Service, certified or registered mail, postage prepaid and shall be deemed to have been given, delivered and received three (3) business days after the date such notice or other communication is posted by the United States Postal Service. All other such notices or other communications shall be deemed given, delivered and received upon actual receipt. Any party may, by written notice delivered pursuant to this provision, at any time designate a different address to which notices shall be sent.

26.2 Default Notices. Notwithstanding anything to the contrary contained within this Article, any notices City or Sublessor is required or authorized to deliver to Sublessee in order to advise Sublessee of alleged violations of Sublessee's covenants under this Solar Sublease must be in writing but shall be deemed to have been duly given or served upon Sublessee by City or Sublessor attempting to deliver at the Premises during normal business hours a copy of such notice to Sublessee or its managing employee and by City or Sublessor mailing a copy of such notice to Sublessee in the manner specified in the preceding Section.

**ARTICLE 27
NONDISCRIMINATION**

27.1 Sublessee hereby covenants by and for itself, its successors, assigns and all persons claiming under or through it, that this Solar Sublease is made and accepted upon and subject to the condition that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises, nor shall Sublessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants or vendees in the Premises.

**ARTICLE 28
RECORDS, ACCOUNTS AND AUDITS**

28.1 Sublessee's Duty to Keep Records. Sublessee shall, at all times during the term of this Solar Sublease, and for a period of at least five (5) years following termination or expiration of this Solar Sublease, keep or cause to be kept, true and complete books, records and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted pursuant to the rights granted herein. Such records shall also include the source and disposition of all trash collected and disposed of by Sublessee in the operation of its business. Said records must be supported by source documents such as sales slips, cash register tapes, purchase invoices or other pertinent documents.

28.2 Sublessor's Right to Audit. All Sublessee's books or accounts and records shall be kept and made available at one location within the limits of the City of San Diego. Sublessor shall

have the right, but not the obligation, at any reasonable time to examine and perform audits of Sublessee's records pertaining to its operations on the Premises. The full cost of each audit shall be borne by Sublessor, unless one or both of the following conditions exists, in which case Sublessee shall reimburse Sublessor for all costs of the audit:

28.2.1 For any given lease year, if an audit reveals an underpayment of rent of more than five percent (5%) on an annual basis, calculated as the difference between the rent reported as payable by Sublessee and the rent payable as determined by the audit; or

28.2.2 Sublessee failed to maintain true, accurate, and complete books, records, accounts, and supporting source documents as required by this Sublease.

Any rent deficiency determined by the audit shall be delinquent rent, subject to all penalties and remedies provided to Sublessor for delinquent rent. Sublessor shall credit any overpayment determined by the audit, without interest, against future rents due under this Sublease. If no future rents are then due under this Sublease, Sublessor shall refund to Sublessee any overpayment determined by the audit, without interest, within sixty (60) days after Sublessor's certification of the audit.

ARTICLE 29 GENERAL PROVISIONS

29.1 Authority. Sublessee represents and warrants that it has full power and authority to execute and fully perform its obligations under this Solar Sublease pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this Solar Sublease on behalf of Sublessee are the duly designated agents of Sublessee and are authorized to do so.

29.2 Brokers. Sublessee warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation and/or execution of this Solar Sublease. In the event any broker other than the brokers acknowledged in writing by Sublessor make a claim for monies owed, Sublessee shall indemnify, defend and hold Sublessor harmless therefrom.

29.3 Captions. The captions, headings and index appearing in this Solar Sublease are inserted for convenience only and in no way define, limit, construe, or describe the scope or intent of the provisions of this Solar Sublease.

29.4 City Approval. Except where stated herein to the contrary, the phrases "City's approval," and "City's written approval" or such similar phrases shall mean approval of City's Lease Administrator as designated under the original Solar Lease or said Administrator's representative as authorized by said Administrator in writing.

29.5 Sublessor Approval. Except where stated herein to the contrary, the phrases "Sublessor's approval," and "Sublessor's written approval" or such similar phrases shall mean approval of Sublessor's Lease Administrator or said Administrator's representative as authorized by said Administrator in writing.

29.6 Cumulative Remedies. In the event of a default under this Solar Sublease, each party's remedies shall be limited to those remedies set forth in this Solar Sublease; any such remedies are cumulative and not exclusive of any other remedies under this Solar Sublease to which the non-defaulting parties may be entitled.

29.7 Estoppel Certificate. Sublessee shall at any time during the term of this Solar Sublease, within five (5) business days of written notice from Sublessor, execute and deliver to Sublessor a statement in writing certifying that this Solar Sublease is unmodified and in full force and effect or, if modified, stating the nature of such modification. Sublessee's statement shall include other details requested by Sublessor, such as the date to which rent and other charges are paid, Sublessee's knowledge concerning any outstanding defaults with respect to Sublessee's obligations under this Solar Sublease and the nature of such defaults if they are claims. Any such statement may be relied upon conclusively by any prospective purchaser or encumbrancer of the Premises. Sublessee's failure to deliver such statements within such time shall be conclusive upon Sublessee that this Solar Sublease is in full force and effect, except to the extent any modification has been represented by Sublessor, and that there are no uncured defaults in the Sublessor's performance.

29.8 Exhibits. All exhibits referred to herein are attached hereto and incorporated by reference.

29.9 Force Majeure. In the event either party is prevented or delayed from performing any act or discharging any obligation hereunder, except for the payment of rent by Sublessee, because of any and all causes beyond either party's reasonable control, including abnormal adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, any hostile government actions, civil commotion and fire or other casualty, or any other casualties beyond the reasonable control of either party ("Force Majeure"). Excepting casualties resulting from Sublessee's negligent operation or maintenance of the Premises, performance of such act shall be excused for the period of such delay, and the period for performance of such act shall be extended for a period equivalent to the period of such delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial inability on the part of either party hereto.

29.10 Governing Law. This Solar Sublease shall be governed, construed and enforced in accordance with the laws of the State of California.

29.11 Interpretation. The parties have each agreed to the use of the particular language of the provisions of this Solar Sublease, and any question of doubtful interpretation shall not be resolved by any rule of interpretation providing for interpretation against the parties who cause an uncertainty to exist or against the draftsman.

29.12 Water Quality Assurances. Sublessee shall, at its sole cost and expense, comply with all laws, rules, regulations and direction of competent governmental authority (such as the San Diego Regional Water Quality Control Board) relating to water quality assurance and storm water management. Lessee acknowledges and agrees that such legal requirements may change at any time and from time to time.

29.12.1 NPDES. Sublessee shall comply with all applicable requirements of the National Pollutant Discharge Elimination System (“NPDES”) permit in force on the Effective Date of this Permit (i.e., Permit No. R9-2013-0001), and any and all amendments thereto and all applicable succeeding NPDES permits.

29.12.2 Stormwater Management. Sublessee shall comply with all applicable requirements of the San Diego Municipal Code Chapter 4, Article 3, Division 3: Stormwater Management and Discharge Control (the “Stormwater Code”), and employ “Best Management Practices,” as that term is defined by the Stormwater Code, and as approved by City, in its governmental capacity, under its Stormwater Management Program.

29.12.2.1 Notwithstanding the forgoing, the Parties agree that should it be determined by the applicable regulatory agency(ies) that the Project has a Prior Lawful Approval as that term is defined in Provision E.3.e(1)(a) of Permit No. R9-2013-0001 prior to the time the BMP Design manual is effective pursuant to Provision E.3.d. of Permit No. R9-2013-0001, the City will allow Sublessee to utilize the previous land development requirements set forth in Permit No. R9-2007-0001 to apply.

29.13 Prevailing Wages. Pursuant to San Diego Municipal Code section 22.3019, or any successor statute thereto, construction, alteration, demolition, repair and maintenance work performed under this Sublease is subject to State prevailing wage laws. For construction work performed under this Sublease cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Sublease cumulatively exceeding \$15,000, the Sublessee and its contractors and subcontractors (the entirety of these Prevailing Wage Provisions shall apply to all *covered employers* and *covered employees*, as those terms are defined in the City’s Living Wage Ordinance, whether or not the parties are individually called out in each instance in these provisions) shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

29.13.1. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, or any successor statutes thereto, the Sublessee, its contractors and subcontractors shall ensure that all workers who perform work under this Sublease are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

29.13.1.1. Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Sublessee and its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

29.13.1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Sublease. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Sublease in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Sublease, each successive predetermined wage rate shall apply to this Sublease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Sublease, such wage rate shall apply to the balance of the Sublease.

29.13.2. Penalties for Violations. Sublessee and its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed.

29.13.3. Payroll Records. Sublessee and its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Sublessee shall require its contractors and subcontractors to also comply with section 1776. Sublessee and its contractors and subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Sublessee is responsible for ensuring its contractors and subcontractors submit certified payroll records to the City.

29.13.3.1. In addition to certified payroll record submission to the City, for contracts entered into on or after April 1, 2015, Sublessee and its contractors and subcontractors shall furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

29.13.4. Apprentices. Sublessee and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Lessee shall be held responsible for the compliance of its contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.

29.13.5. Working Hours. Sublessee and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

29.13.6. Required Provisions for Subcontracts. Sublessee shall include, or require the inclusion of, at a minimum, a copy of the following provisions in any contract that is entered into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

29.13.7. Labor Code Section 1861 Certification. Sublessee in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its, or its contractors' and subcontractors', employees and by signing this Sublease, Sublessee certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work under this Sublease."

29.13.8. Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will instruct Sublessee to withhold contract payments pursuant to the agreement(s) between Sublessee and its contractors when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

29.13.9. Contractor and Subcontractor Registration Requirements. The construction work conducted under/as part of this Sublease is subject to compliance monitoring and enforcement by the DIR. As of March 1, 2015, no contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. As of April 1, 2015, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid or proposal, or enter into any Contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. By entering into this Sublease, Sublessee is certifying that it has verified that all contractors and subcontractors used on any public works project conducted under or as part of this Lease are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Lessee shall provide proof of registration to the City upon request.

29.13.9.1. A Contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

29.13.10. DIR Determination of Coverage. Notwithstanding the foregoing prevailing wage determination and provisions, prior to any design or preconstruction activities (as defined and covered by California Labor Code section 1720(a)(1)) or issuance of the first development permit (for purposes of this section, “development permit” is defined as the permit(s) required under the San Diego Municipal Code for purposes of the grading of the Property and/or construction of the first improvements on the leasehold) for development activities on the leasehold, Sublessee may seek “a request to determine coverage” (Title 8 Cal. Code of Regs. section 16001) from the State’s Department of Industrial Relations (“DIR”) as to whether Sublessee’s proposed development activity(ies) is/are subject to prevailing wage provisions of the California Labor Code. Prior to seeking said determination, Sublessee shall have received City’s prior written approval of the request to be sent to the DIR; said prior written approval by City is required in order to ensure the City’s agreement as to the correctness and completeness of the request; to ensure that the City is involved in the process should the City be asked to, or want to, supply supplemental information to the DIR; and to ensure receipt of all applicable correspondence during the DIR’s determination period. In the event the DIR determines that prevailing wages do **not** apply to the specific activity(ies) for which a DIR determination was sought, then, subject to the Sublessee agreeing to be bound by the below indemnification provision – which agreement shall be evidenced by the Sublessee’s execution of this Sublease, City shall agree to amend this Lease to remove the requirement of prevailing wages requirements for that/those activity(ies) for which the DIR has determined that prevailing wages do not apply.

29.13.11. Indemnification by Sublessee Should Prevailing Wages Not Be Paid. Sublessee shall protect, defend, indemnify and hold City and its elected officials, officers, employees, representatives and agents, and Sublessor and its officers, employees, representatives and agents, harmless from and against any and all claims asserted or liability established for damages by any person, including, but not limited to any damages, fees, and penalties claimed or assessed by the State of California - Director of Industrial Relations, which arise out of or are in any manner directly or indirectly connected with Sublessee’s, its contractors’, subcontractors’ or other applicable parties’ decision(s) to not pay prevailing wages for activities performed under this Sublease, and all expenses of investigating and defending against same, including without limitation attorney fees and costs.

29.14 Joint and Several Liability. If more than one person or entity executes this Solar Sublease as Sublessee, each of them is jointly and severally liable for all of the obligations of Sublessee hereunder.

29.15 Sublessee’s Sublease Administration. Sublessee confirms that Sublessee’s Sublease Administrator has been given full operational responsibility for compliance with the terms of this Solar Sublease. Sublessee shall provide City and Sublessor with a written schedule of its normal hours of business operation on the Premises, and, if applicable, post notice of such schedule in an area visible to pilots, and Sublessee’s Sublease Administrator or a representative designated thereby shall be (i) available to City on a twenty-four (24) hour a day, seven (7) days a week, basis, and (ii) if applicable, be present on the Premises or other noticed location during

Sublessee's normal business hours, to resolve problems or answer question pertaining to this Solar Sublease and Sublessee's operations on the Premises.

29.16 Modification. The provisions of this Solar Sublease may not be modified, except by a written instrument signed by both parties.

29.17 Partial Invalidity. If any provision of this Solar Sublease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Solar Sublease shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.

29.18 Payments. Except as may otherwise be expressly stated, each payment required to be made by Sublessee shall be in addition to and not in substitution for other payments to be made by Sublessee.

29.19 Successors & Assigns. This Solar Sublease shall be binding on and inure to the benefit of the parties and their successors and assigns, all of whom shall be jointly and severally liable hereunder, except as may otherwise be provided herein.

29.20 Time of Essence. Time is of the essence of each and every provision of this Solar Sublease.

29.21 Memorandum of Solar Sublease. Concurrent with the execution of this Solar Sublease, Sublessor and Sublessee may execute, have notarized and cause to be recorded, a memorandum of this Solar Sublease in the records of the San Diego County Recorder's Office.

29.22 Waiver. No provision of this Solar Sublease or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. The waiver by either Party of any breach of any term, covenant or condition contained in this Solar Sublease shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach thereof, or of any other term, covenant or condition contained in this Solar Sublease. Either Party's subsequent acceptance of partial rent or performance by Sublessee shall not be deemed to be an accord and satisfaction or a waiver of any preceding breach by Sublessee of any term, covenant or condition of this Solar Sublease or of any right of either Party to a forfeiture of the Solar Sublease by reason of such breach, regardless of either Party's knowledge of such preceding breach at the time of either Party's acceptance. The failure on the part of either Party to require exact or full and complete compliance with any of the covenants, conditions of agreements of this Solar Sublease shall not be construed as in any manner changing or waiving the terms of this Solar Sublease or as estopping either Party from enforcing in full the provisions hereof. No custom or practice which may arise or grow up between the parties hereto in the course of administering this Solar Sublease shall be construed to waive, estop or in any way lessen the right of Party to insist upon the full performance of, or compliance with, any term, covenant or condition hereof by Sublessee, or construed to inhibit or prevent the rights of either Party to exercise its rights with respect to any default, dereliction or breach of this Solar Sublease by Lessee.

29.23 Entire Agreement. This Solar Sublease, together with any addenda, exhibits and riders attached hereto, constitutes the entire agreement between the parties with respect to the subject

matter hereof, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded.

IN WITNESS WHEREOF, Sublessor and Sublessee have duly executed this Solar Sublease as of the day and year first above written.

SUBLESSOR:

SUBLESSEE:

METROPOLITAN AIRPARK LLC, a Delaware limited liability company

_____, a _____ corporation

By: _____
Richard Lee Sax, President

By: _____
Name: _____
Title: _____

EXHIBIT E
SITE DEVELOPMENT PERMIT
[Located behind this cover page.]

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON NOV 20, 2013
DOCUMENT NUMBER 2013-0684394
Ernest J. Dronenburg, Jr., COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 10:16 AM

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 23431277

SITE DEVELOPMENT PERMIT NO. 768683
METROPOLITAN AIRPARK PROJECT NO. 208889 - [MMRP]
CITY COUNCIL

This Site Development Permit No. 768683 is granted by the City Council of the City of San Diego to City of San Diego, Owner, and Brown Field International Business Park, LLC, dba DPC Brown Field, Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0506 and 126.0606. The 331 acre site is located north of Otay Mesa Road, east of Heritage Road, west of La Media Road and south of Otay River Valley and City of Chula Vista at 1202 La Media Road on un-zoned land of the Otay Mesa Community Plan. The project site is legally described as those portions of Sections 27 and 28, all in Township 18 South, Range 1 West, San Bernardino Meridian, City of San Diego, County of San Diego, state of California, according to the Official Plan thereof.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to allow a four phase aviation, industrial and commercial development of 331 acres of aviation and non-aviation areas on Brown Field Municipal Airport described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated October 7, 2013, on file in the Development Services Department.

The project shall include:

- a. The project will be developed in four phases over a 20-year period with an estimated construction time of five years for each phase. Design Guidelines Figures 2 and 3 show the overall Master Site Plan and Phasing Map for the project. The first phase of development is not to exceed:
 - A 116,875 square foot Jet Aviation Fixed Base Operator (FBO), including an 11,000 square foot restaurant;
 - 10 large aircraft hangars that would total 178,776 square feet;
 - 45 small aircraft hangars that would total 63,040 square feet;

- A 48,785 square foot Helicopter FBO that would include 3 hangars and facilities for a San Diego Fire Department or other agency aviation hub;
- A 64.61 acre solar field that includes approximately 30 acres of outdoor storage; 8.54 acres of aircraft apron.

The second phase of development is not to exceed:

- 61 small aircraft hangars totaling, 88,680 square feet;
- 29.51 acres of aircraft apron;
- A 150 room business hotel;
- A 3,225 square foot alternative fuels station;
- A 0.74 acre transit transfer station (not part of the lease area);
- 647,600 square feet of light industrial development.

The third phase of development is not to exceed:

- 51 small aircraft hangars totaling 74,304 square feet;
- 157,800 square feet of commercial uses;
- A 120 room business hotel;
- 381,000 square feet of light industrial development.

The fourth phase of development is not to exceed:

- 13 large aircraft hangars totaling 208,280 square feet;
- A 2.31 acre parking lot;
- 31,460 square feet of offices;
- 4.33 acres of aircraft apron;
- 326,400 square feet of light industrial development;
- 43,900 square feet of commercial development.

- The project includes the approval of one deviation from LDC §143.0141(b)(5) which requires impacts to wetlands be avoided and a wetland buffer be maintained around all wetlands as appropriate to protect the functions and values of the wetlands. The project will result in direct impacts to wetlands;
- Landscaping (planting, irrigation and landscape related improvements);
- Off-street parking; and
- Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. Prior to the application of any building permit for Phases Two, Three and Four, the Permittee shall submit for a Substantial Conformance Review for review and approval by the Development Services Department.
3. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner and Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
4. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
5. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner and Permittee and any successor(s) in interest.
6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
7. Issuance of this Permit by the City of San Diego does not authorize the Owner or Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
8. In accordance with authorization granted to the City of San Diego from the United States Fish and Wildlife Service [USFWS] pursuant to Section 10(a) of the federal Endangered Species Act [ESA] and by the California Department of Fish and Wildlife [CDFW] pursuant to California Fish and Game Code section 2835 as part of the Multiple Species Conservation Program [MSCP], the City of San Diego through the issuance of this Permit hereby confers upon Owner and Permittee the status of Third Party Beneficiary as provided for in Section 17 of the City of San Diego Implementing Agreement [IA], executed on July 16, 1997, and on file in the Office of the City Clerk as Document No. OO-18394. Third Party Beneficiary status is

conferred upon Owner and Permittee by the City: (1) to grant Owner and Permittee the legal standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this Permit and the IA, and (2) to assure Owner and Permittee that no existing mitigation obligation imposed by the City of San Diego pursuant to this Permit shall be altered in the future by the City of San Diego, USFWS, or CDFW, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon Owner and Permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this Permit and of full satisfaction by Owner and Permittee of mitigation obligations required by this Permit, in accordance with Section 17.1D of the IA.

9. The Permittee shall secure all necessary building permits. The Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

10. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

11. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements granted by this Permit.

If any condition of this Permit, on a legal challenge by the Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

12. This Permit may be developed in phases.

13. The Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and

employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Permittee.

ENVIRONMENTAL MITIGATION REQUIREMENTS:

14. Mitigation requirements in the Mitigation, Monitoring, and Reporting Program (MMRP) shall apply to this Permit. These MMRP conditions are hereby incorporated into this Permit by reference.

15. The mitigation measures specified in the MMRP, and outlined in Environmental Impact Report No. 208889, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL MITIGATION REQUIREMENTS.

16. The Owner shall comply with the MMRP, as specified in Environmental Impact Report No. 208889, to the satisfaction of the Development Services Department and the City Engineer. Prior to issuance of any construction permit, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. The Owner may assign the obligation to comply with the MMRP to the Permittee. All mitigation measures described in the MMRP shall be implemented for the following issue areas:

- Land Use (MSCP/MHPA)
- Transportation/Circulation
- Biological Resources
- Historical Resources
- Human Health and Public Safety
- Paleontological Resources

AIRPORT REQUIREMENTS:

17. Prior to issuance of each building permit for each building in each phase, the Permittee shall provide a valid "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration.

ENGINEERING REQUIREMENTS:

18. Prior to the issuance of any construction permit, the Permittee shall obtain an Encroachment Maintenance and Removal Agreements for all non-standard storm drains, landscaping and irrigation located within the City's right-of-way.

19. Prior to the issuance of any construction permit, the Permittee shall construct a city standard bus slab, adjacent to the proposed bus stop on Otay Mesa Road, satisfactory to the City Engineer.
20. Prior to the issuance of any construction permit, the Permittee shall incorporate and show the type and location of all post construction Best Management Practices (BMPs) on the final construction drawings, consistent with the approved Water Quality Technical Report.
21. Prior to the issuance of any building permit, the Permittee shall enter into an agreement to indemnify, protect and hold harmless the City, its officials and employees from any and all claims, demands, causes or action, liability or loss because of, or arising out of public drainages that enter into the airport property and post-construction BMPs located within the City's right-of-way, satisfactory to the City Engineer.
22. Development of this project shall comply with all storm water construction requirements of the State Construction General Permit, Order No. 2009-0009-DWQ and the Municipal Storm Water Permit, Order No. R9-2007-0001. In accordance with Order No. 2009-0009DWQ, a Risk Level Determination shall be calculated for the site and a Storm Water Pollution Prevention Plan (SWPPP) shall be implemented concurrently with the commencement of grading activities.
23. Prior to issuance of a grading or a construction permit, a copy of the Notice of Intent (NOI) with a valid Waste Discharge ID number (WDID#) shall be submitted to the City of San Diego as a proof of enrollment under the Construction General Permit. When ownership of the entire site or portions of the site changes prior to filing of the Notice of Termination (NOT), a revised NOI shall be submitted electronically to the State Water Resources Control Board in accordance with the provisions as set forth in Section II.C of Order No. 2009-0009-DWQ and a copy shall be submitted to the City.
24. Prior to the issuance of any building permits, the Permittee shall obtain a bonded grading permit for the grading proposed for this project to be consistent with Exhibit "A". All grading shall conform to requirements in accordance with the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.
25. The drainage system for this project shall be privately owned by Airport/Real Property Division of Real Estate Assets Department, except for the storm drain systems draining Public Street "A," and will be subject to approval by the City Engineer.
26. Prior to the issuance of any construction permit, Airport/Real Property Division of Real Estate Assets Department shall enter into a Memorandum of Understanding (MOU) with the City agreeing to maintain all proposed permanent BMP, satisfactory to the City Engineer.
27. Prior to the issuance of any construction permit, the Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the Municipal Code, into the construction plans and the Storm Water Pollution Prevention Plan (SWPPP).

28. Prior to the issuance of any construction permit, the Permittee shall submit a Water Quality Technical Report (WQTR) and an updated report to comply with Final Hydromodification Management Plan (HMP) Criteria (e.g., 0.1Q2 or a 0.5Q2 in accordance with the approved WQTR and HMP for the applicable outfall locations). In addition to an updated WQTR/HMP, the Permittee shall submit a drainage report to the satisfaction of the City Engineer prior to the issuance of any construction permit.

29. Prior to the issuance of any construction permit, the Permittee shall submit a continuous simulation modeling for final BMP configurations to demonstrate compliance with Final HMP criteria of the City's Storm Water Standards to the satisfactory to the City Engineer, and in accordance with the approved WQTR, to the satisfactory of the City Engineer.

30. Prior to the first occupancy permit for each particular phase, in conjunction with the construction of a particular phase of the Project as shown in the Master Plan and Design Guidelines (MPDG), the Permittee shall underground existing and/or proposed public utility systems and service facilities associated with the project in accordance with the San Diego Municipal Code.

31. Prior to the first occupancy permit for each particular phase, in conjunction with the construction of a particular phase of the Project as shown in the MPDG, the Permittee shall ensure that all existing onsite utilities within that particular phase of the Project shall be undergrounded with the appropriate permits. The Permittee shall provide written confirmation from applicable utilities that the conversion has taken place prior to the first occupancy for that particular phase under construction, or provide other means to assure the undergrounding, satisfactory to the City Engineer.

32. The Permittee shall underground any new service run to any new or proposed structures within each phase of the Project in conjunction with construction of a particular phase under construction.

LANDSCAPE REQUIREMENTS:

33. Prior to issuance of any engineering permits for grading within each phase of development, construction documents for the revegetation and hydroseeding of all disturbed land shall be submitted in accordance with the Landscape Standards as set forth in the MPDG and to the satisfaction of the Development Services Department. All plans shall be in substantial conformance to this permit and Exhibit "A," Metropolitan Airpark MPDG and Development Plans, on file in the Office of the Development Services Department.

34. Prior to issuance of any engineering permits for right-of-way improvements within each phase of development, complete landscape construction documents for right-of-way improvements shall be submitted to the Development Services Department for approval. Improvement plans shall take into account a 40 square foot area around each tree which is unencumbered by utilities. Driveways, utilities, drains, water and sewer laterals shall be designed so as not to prohibit the placement of street trees.

35. Prior to issuance of any construction permits for structures, including any shell structure, within each phase of development, complete landscape and irrigation construction documents consistent with the Landscape Standards as set forth in the MPDG shall be submitted to the Development Services Department for approval. Construction plans shall provide a 40 square foot area around each tree unencumbered by hardscape and utilities unless otherwise approved per LDC 142.0403(b)5. All plans shall be in substantial conformance to this permit and Exhibit "A," Metropolitan Airpark MPDG and Development Plans, on file in the Office of the Development Services Department.

36. In the event a foundation only permit is requested by the Permittee, a site plan or staking layout plan shall be submitted identifying all landscape areas consistent with Exhibit "A," Metropolitan Airpark MPDG and Development Plans. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as 'landscaping area.'

37. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Permittee to install all required landscape and obtain all required landscape inspections. "No Fee" Street Tree Permits shall be obtained for the installation, establishment, and on-going maintenance of all street trees within each phase of development.

38. All required landscape shall be maintained in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted unless specifically noted in this Permit.

39. The Permittee shall be responsible for the maintenance of all landscape improvements shown on the approved plans, including in the right-of-way, consistent with the Landscape Standards as set forth in the MPDG unless long-term maintenance of said landscaping will be the responsibility of a Landscape Maintenance District or other approved entity.

40. If any required landscape, including existing or new plantings, hardscape, landscape features, et cetera, indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or Certificate of Occupancy.

BRUSH MANAGEMENT PROGRAM REQUIREMENTS:

41. The Permittee shall implement the following requirements in accordance with the Brush Management Program shown on Exhibit 'A,' Metropolitan Airpark MPDG and Development Plans, on file in the Office of the Development Services Department.

42. All lots within 100 feet of native or naturalized vegetation shall provide a Brush Management Program consistent with the Brush Management Regulations of the Land Development Code, section 142.0412. The Brush Management zones shall be based on a standard Zone One of 35 feet in width with zone Two of 65 feet in width, extending out from the structure towards the native or naturalized vegetation. All structures shall be set back at least 100 feet from the Multi-Habitat Planning Area.

43. Prior to issuance of any Engineering Permits for grading, landscape construction documents required for the engineering permit shall be submitted showing the brush management zones on the subject property in substantial conformance with Exhibit "A."

44. Prior to issuance of any Building Permits, a complete set of Brush Management Plans shall be submitted for approval to the Development Services Department. The construction documents shall be in substantial conformance with Exhibit "A" and shall comply with the Landscape Standards as set forth in the MPDG and Brush Management Regulations as set forth under Land Development Code Section 142.0412.

45. Within Zone One, combustible accessory structures (including, but not limited to decks, trellises, gazebos, etc.) shall not be permitted while non-combustible and/or one-hour fire-rated accessory structures may be approved within the designated Zone One area subject to Fire Marshal's approval.

46. The following note shall be provided on the Brush Management Construction Documents: 'It shall be the responsibility of the Permittee to schedule a pre-construction meeting on site with the contractor and the Development Services Department to discuss and outline the implementation of the Brush Management Program.'

47. In Zone One, plant material shall be selected to visually blend with the existing hillside vegetation. No invasive plant material shall be permitted as jointly determined by the Landscape Section and the Environmental Analysis Section.

48. Prior to final inspection and issuance of any Certificate of Occupancy, the approved Brush Management Program shall be implemented.

49. The Brush Management Program shall be maintained at all times in accordance with the City of San Diego's Landscape Standards and as set forth in the MPDG.

MULTIPLE SPECIES CONSERVATION PROGRAM:

50. Prior to the issuance of any construction permits within areas where any burrowing owl habitat would be impacted, the Permittee shall provide documentation the Wildlife Agencies (U.S. Fish and Wildlife Service and California Department of Fish and Wildlife) have concurred with the mitigation (i.e., mitigation lands and management requirements) requirements of the Mitigation, Monitoring, and Reporting Program.

51. Prior to the issuance of any construction permits, MSCP staff shall review all construction plans where any burrowing owl habitat and/or wetland impacts would occur for consistency with the requirements of the Mitigation, Monitoring and Reporting Program.

PLANNING/DESIGN REQUIREMENTS:

52. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Permittee.
53. All signs associated with this development shall be consistent with sign criteria established by either the approved Exhibit "A," the approved MPDG or City-wide sign regulations.
54. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.
55. Prior to City Council approval of any ground lease containing any commercial building, an updated market analysis and feasibility study is required to determine whether any commercial use within the proposed ground lease will have a negative impact on the viability of commercially designated lands within the Otay Mesa community planning area. The updated Market Analysis and Feasibility Study will be reviewed by City Council as part of the approval of the ground lease.

TRANSPORTATION REQUIREMENTS:

56. The Owner and Permittee shall maintain a development chart which identifies each approved permitted development. The development chart will identify each previously approved permitted development, the address of each development and phase in which the development is located, the Average Daily Trips (ADTs) associated with each development, and the uses within each development. A current updated development tracking chart shall be provided with every general application for every building submitted for construction permits, to the satisfaction of the City Engineer. As the Owner and Permittee, or other Assignee, updates the development chart, updated copies shall be provided to the Development Services Department for their records.
57. All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code, and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the Director of Development Services Department.

The following are specifically required for Phase 1:

Phase 1 (For all development up to and not to exceed 4,574 ADT):

58. The Permittee shall provide a minimum of 913 off-street automobile parking spaces (with 1,027 off-street parking spaces provided), including 30 accessible automobile parking spaces, shall be permanently maintained on the property. Additionally, 29 motorcycle parking spaces and 56 bicycle parking spaces shall be provided.

59. Prior to issuance of first building permit, the Permittee shall assure by permit and bond the construction of a traffic signal at Otay Mesa Road/Continental Road/Project Access 4 (Mitigation Measure MM-TRA-1), to the satisfaction of the City Engineer with the following lane configurations:

- NB Continental Road approach: Widen to provide a total of one left turn lane and a shared through-right turn lane.
- SB Project Access approach: Widen to provide a total of one left turn lane and a shared through-right turn lane.
- WB Otay Mesa Road approach: Widen to provide an exclusive left turn lane and exclusive right turn lane to provide a total of one left turn lane, three through lanes and a right turn lane.
- EB Otay Mesa Road approach: Widen to provide an exclusive left turn lane to provide a total of one left turn lane, two through lanes and a shared through-right turn lane.

Prior to the issuance of any Certificate of Occupancy for Phase 1 of the Project, the improvements must be constructed and accepted by the City Engineer.

60. Prior to issuance of first building permit, the Permittee shall assure by permit and bond the construction of the following lane configurations at Otay Mesa Road/Project Access 5 (Mitigation Measure MM-TRA-2), to the satisfaction of the City Engineer:

- SB Project Access approach: Provide a right turn lane with a Stop sign (right-in/right-out only access)
- WB Otay Mesa Road approach: Widen to provide an exclusive right turn lane to provide a total of three through lanes and a right turn lane.

Prior to the issuance of any Certificate of Occupancy for Phase 1 of the Project, the improvements must be constructed and accepted by the City Engineer.

61. Prior to issuance of first building permit, the Permittee shall assure by permit and bond the construction of the following lane configurations at Otay Mesa Road/Britannia Boulevard/Project Access 6 (Mitigation Measure MM-TRA-3), to the satisfaction of the City Engineer:

- NB Britannia Boulevard approach: Widen to provide a through lane to provide a total of two left turn lanes, a through lane and a right turn lane.
- SB Project Access approach: Widen to provide a left turn lane and a shared through-right turn lane.
- WB Otay Mesa Road approach: Widen to provide an exclusive right turn lane to provide a total of one left turn lane, three through lanes, and a right turn lane.
- EB Otay Mesa Road approach: Widen to provide an exclusive left turn lane to provide a total of one left turn lane, three through lanes and a right turn lane.

Prior to the issuance of any Certificate of Occupancy for Phase 1 of the Project, the improvements must be constructed and accepted by the City Engineer.

62. Prior to issuance of first building permit, the Permittee shall assure by permit and bond the construction of the following lane configurations at Otay Mesa Road/Otay Mesa Center Road/Project Access 8 (Mitigation Measure MM-TRA-4), to the satisfaction of the City Engineer:

- NB Otay Mesa Center Road approach: Restripe to provide a total of one left turn lane and a shared through-right turn lane.
- SB Project Access approach: Widen to provide one left turn lane and a shared through right turn lane.
- WB Otay Mesa Road approach: Widen to provide an exclusive right turn lane to provide a total of one left turn lane, three through lanes, and a right turn lane.
- EB Otay Mesa Road approach: Widen to provide an exclusive left turn lane to provide a total of one left turn lane, two through lanes and a shared through-right turn lane.

Prior to the issuance of any Certificate of Occupancy for Phase 1 of the Project, the improvements must be constructed and accepted by the City Engineer.

63. Prior to issuance of first building permit, the Permittee shall assure by permit and bond the construction of the following lane configurations at La Media Road/Project Access 9 (Mitigation Measure MM-TRA-5), to the satisfaction of the City Engineer:

- NB La Media Road approach: Provide a shared left turn-through lane.
- SB La Media Road approach: Provide a shared through-right turn lane.
- EB Project Access approach: Provide a shared left turn-right turn lane with a Stop sign.

Prior to the issuance of any Certificate of Occupancy for Phase 1 of the Project, the improvements must be constructed and accepted by the City Engineer.

64. Prior to issuance of first building permit, the Permittee shall assure by permit and bond the construction of the following lane configurations at La Media Road/Project Access 10 (Mitigation Measure MM-TRA-6), to the satisfaction of the City Engineer:

- NB La Media Road approach: Provide a shared left turn-through lane.
- SB La Media Road approach: Provide a shared through-right turn lane.
- EB Project Access approach: Provide a shared left turn-right turn lane with a Stop sign.

Prior to the issuance of any Certificate of Occupancy for Phase 1 of the Project, the improvements must be constructed and accepted by the City Engineer.

65. Prior to issuance of first building permit, the Permittee shall assure by permit and bond the construction of the following lane configurations at La Media Road/Aviator Road (Mitigation Measure MM-TRA-7), to the satisfaction of the City Engineer:

- NB La Media Road approach: Provide a shared left turn-through lane.
- SB La Media Road approach: Provide a shared through-right turn lane.

- EB Aviator Road approach: Provide a shared left turn-right turn lane with a Stop sign.

Prior to the issuance of any Certificate of Occupancy for Phase 1 of the Project, the improvements must be constructed and accepted by the City Engineer.

66. Prior to issuance of first building permit, the Permittee shall assure by permit and bond the construction of the following lane configurations at Aviator Road/Project Access 11 (Mitigation Measure MM-TRA-8), to the satisfaction of the City Engineer:

- NB Project Access approach: Provide a shared left turn-right turn lane with a Stop sign.
- WB Aviator Road approach: Widen to provide a total of one left turn lane and a through lane.
- EB Aviator Road approach: Provide a shared through-right turn lane.

Prior to the issuance of any Certificate of Occupancy for Phase 1 of the Project, the improvements must be constructed and accepted by the City Engineer.

67. Prior to issuance of first building permit, the Permittee shall assure by permit and bond the construction of the eastern portion of Aviator Road between Project Access 11 to La Media Road as a two-lane collector with two-way left turn lane (Mitigation Measure MM-TRA-9), to the satisfaction of the City Engineer.

Prior to the issuance of any Certificate of Occupancy for Phase 1 of the Project, the improvements must be constructed and accepted by the City Engineer.

The following are specifically required for Phase 2:

Phase 2 (For all development up to and not to exceed 15,475 ADT):

68. Prior to issuance of first building permit for development in Phase 2, the Permittee shall demonstrate all conditions for Phase 1 (development up to 4,574 ADT) have been met, to the satisfaction of the City Engineer.

69. The Permittee shall provide a minimum of 2,806 off-street automobile parking spaces (with 3,563 off-street parking spaces provided), including 82 accessible automobile parking spaces, shall be permanently maintained on the property. Additionally, 82 motorcycle parking spaces and 106 bicycle parking spaces shall be provided.

The following are specifically required for Phase 3:

Phase 3 (For all development up to and not to exceed 41,369 ADT):

70. The Permittee shall provide a minimum of 5,599 off-street automobile parking spaces (with 6,408 off-street parking spaces provided), including 154 accessible automobile parking spaces, shall be permanently maintained on the property. Additionally, 142 motorcycle parking spaces and 172 bicycle parking spaces shall be provided.

The following are specifically required for Phase 4:

Phase 4 (Full Project):

71. Prior to issuance of first building permit for development in Phase 4, the Permittee shall demonstrate that all conditions for Phases 1, 2 and 3 (development up to 41,369 ADT) have been met, to the satisfaction of the City Engineer.

72. The Permittee shall provide a minimum of 7,351 off-street automobile parking spaces (with 8,357 off-street parking spaces provided), including 205 accessible automobile parking spaces, shall be permanently maintained on the property. Additionally, 183 motorcycle parking spaces and 223 bicycle parking spaces shall be provided.

PUBLIC UTILITIES REQUIREMENTS:

73. All proposed public water and sewer facilities, including services and meters, must be designed and constructed in accordance with established criteria in the most current edition of the City of San Diego Water and Sewer Facility Design Guidelines and City regulations, standards and practices pertaining thereto.

74. All proposed private sewer facilities located within a single lot are to be designed to meet the requirements of the California Uniform Plumbing Code and will be reviewed as part of the building permit plan check.

75. Prior to the issuance of any building permits, the Permittee shall assure, by permit and bond, the design and construction of all public water and sewer facilities necessary to serve this development.

76. The Permittee shall install fire hydrants at locations satisfactory to the Fire Marshal, the Director of Public Utilities and the City Engineer. If more than two (2) fire hydrants or thirty (30) dwelling units are located on a dead-end water main then the Permittee shall install a redundant water system, in a manner satisfactory to the Director of Public Utilities and the City Engineer.

77. The Permittee shall design and install all necessary irrigation appurtenances to utilize recycled water. If recycled water is unavailable, then the irrigation system shall initially be supplied from the potable water system until recycled water is available. The system shall be designed to allow the conversion from potable to recycled water service and avoid any cross connections between the two systems. This will necessitate a separate irrigation service.

78. Prior to the issuance of any building permits, the Permittee shall assure, by permit and bond, the design and construction of any new water and sewer service(s) outside of any driveway, and the disconnection at the water main of the existing unused water service adjacent to the project site, in a manner satisfactory to the Director of Public Utilities and the City Engineer.

79. Prior to the issuance of any building permits, the Permittee shall apply for a plumbing permit for the installation of appropriate private back flow prevention device(s), on each water service (domestic, fire and irrigation), in a manner satisfactory to the Director of Public Utilities and the City Engineer.

80. No trees or shrubs exceeding three feet in height at maturity shall be installed within ten feet of any water and sewer facilities.

81. The Permittee will participate in and not object to the formation of a Community Facilities District (CFD) or other mechanism, to fund or reimburse the construction of the improvement phases as identified in the Otay Mesa Sewer Master Plan Revisions, dated December 2008.

82. Prior to the issuance of any building permits, the Permittee shall assure, by permit and bond the design and construction of a all public water and sewer facilities as required in the accepted water and sewer study for this project, necessary to serve this development in a manner satisfactory to the Director of Public Utilities and the City Engineer. Public water and sewer facilities and associated easements, as shown on the approved Exhibit "A", shall be modified at final engineering to comply with standards.

GEOLOGY REQUIREMENTS:

83. Prior to issuance of any construction permits, the Permittee shall submit a geotechnical investigation report or update letter that specifically addresses the proposed construction plans. The geotechnical investigation report or update letter shall be reviewed for adequacy by the Geology Section of the Development Services Department.

84. Prior to exoneration of the bond and grading permit close-out, the Permittee shall submit an as-graded geotechnical report prepared in accordance with the City's "Guidelines for Geotechnical Reports" following completion of the grading. The as-graded geotechnical report shall be reviewed for adequacy by the Geology Section of the Development Services Department.

STORMWATER REQUIREMENTS:

85. Prior to issuance of any engineering permit for grading, the City of San Diego Airport's/Real Property Divisions shall enter into an MOU with City of San Diego Street Operations/Maintenance Division to assure the maintenance of the BMPs within the City's right of way.

INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- The Permittee shall be subject to impact fees at the time of building permit issuance.
- The proposed development may be subject to sewer reimbursement fees; Otay Mesa Sewer Surcharge fee (21351-D-O) and Otay La Media Sewer fee (26783-D-F).

APPROVED by the City Council of the City of San Diego on October 7, 2013 and [Approved Resolution Number]. *R-308485*

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT



Mike Westlake
Acting Deputy Director

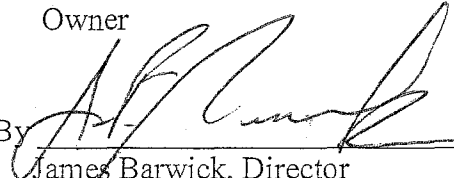
**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

The undersigned Owner and Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Owner or Permittee as specified hereunder.

CITY OF SAN DIEGO

Owner

By

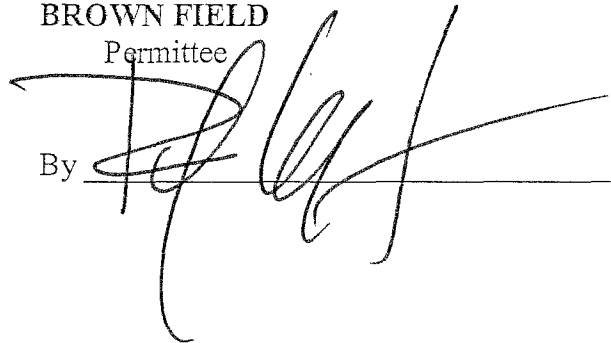


James Barwick, Director
Real Estate Assets Department

**BROWN FIELD INTERNATIONAL
BUSINESS PARK, LLC, DBA DPC
BROWN FIELD**

Permittee

By



**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**



City of San Diego
EQUAL OPPORTUNITY CONTRACTING (EOC)
 1200 Third Avenue • Suite 200 • San Diego, CA 92101
 Phone: (619) 236-6000 • Fax: (619) 236-5904

WORK FORCE REPORT

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

NO OTHER FORMS WILL BE ACCEPTED
CONTRACTOR IDENTIFICATION

Type of Contractor: Construction Vendor/Supplier Financial Institution Lessee/Lessor
 Consultant Grant Recipient Insurance Company Other

Name of Company: Metropolitan Airpark, LLC

ADA/DBA: _____

Address (Corporate Headquarters, where applicable): 2100 Palomar Airport Road, Suite 209

City: _____ County: San Diego State: CA Zip: 92011

Telephone Number: (760) 431-8100 Fax Number: (760) 931-9800

Name of Company CEO: Richard Lee Sax

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: _____

City: _____ County: _____ State: _____ Zip: _____

Telephone Number: () _____ Fax Number: () _____ Email: _____

Type of Business: Land Development Type of License: NA

The Company has appointed: S. Wayne Rosenbaum

As its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: Opper & Varco, I.L.P., 225 W. Broadway, Suite #1900, San Diego, CA 92101

Telephone Number: (619) 231-5858 Fax Number: (619) 231-5853 Email: swr@envirolawyer.com

- One San Diego County (or Most Local County) Work Force - Mandatory
 Branch Work Force *
 Managing Office Work Force

Check the box above that applies to this WFR.

**Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

I, the undersigned representative of Metropolitan Airpark, LLC

(Firm Name)

San Diego County, California hereby certify that information provided

(County)

(State)

herein is true and correct. This document was executed on this 13 day of May, 2015



 (Authorized Signature)

Richard Lee Sax

 (Print Authorized Signature Name)

WORK FORCE REPORT – Page 2

NAME OF FIRM: Metropolitan Airpark, LLC DATE: 5/19/15

OFFICE(S) or BRANCH(ES): Managing Office COUNTY: San Diego

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

ADMINISTRATION OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial	0	0	0	0	0	0	0	0	0	0	2	0	0	0
Professional	0	0	0	0	0	0	0	0	0	0	0	0	0	0
A&E, Science, Computer	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Technical	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sales	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Administrative Support	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Services	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Crafts	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Operative Workers	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Transportation	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Laborers*	0	0	0	0	0	0	0	0	0	0	0	0	0	0

*Construction laborers and other field employees are not to be included on this page

Totals Each Column	0	0	0	0	0	0	0	0	0	0	2	0	0	0
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Grand Total All Employees 2

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled	0	0	0	0	0	0	0	0	0	0	0	0	0	0
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Non-Profit Organizations Only:

Board of Directors	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Volunteers	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Artists	0	0	0	0	0	0	0	0	0	0	0	0	0	0

WORK FORCE REPORT – Page 3

NAME OF FIRM: Metropolitan Airpark, LLC

DATE: 5/19/15

OFFICE(S) or BRANCH(ES): Managing Office

COUNTY: San Diego

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

TRADE OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Brick, Block or Stone Masons	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Carpenters	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Carpet, Floor & Tile Installers Finishers	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Cement Masons, Concrete Finishers	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Construction Laborers	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Drywall Installers, Ceiling Tile Inst	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Electricians	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Elevator Installers	0	0	0	0	0	0	0	0	0	0	0	0	0	0
First-Line Supervisors/Managers	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Glaziers	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Helpers; Construction Trade	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Millwrights	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Misc. Const. Equipment Operators	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Painters, Const. & Maintenance	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pipelayers, Plumbers, Pipe & Steam Fitters	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Plasterers & Stucco Masons	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Roofers	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Security Guards & Surveillance Officers	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sheet Metal Workers	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Structural Metal Fabricators & Fitters	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Welding, Soldering & Brazing Workers	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Workers, Extractive Crafts, Miners	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Totals Each Column	0	0	0	0	0	0	0	0	0	0	0	0	0	0
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Grand Total All Employees

0

Indicate By Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled	0	0	0	0	0	0	0	0	0	0	0	0	0	0
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CITY OF SAN DIEGO WORK FORCE REPORT

HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm's work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (Black, Hispanic, Asian, American Indian, Filipino) for each occupation. Currently, our CLFA data is taken from the 2010 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm's work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report.¹ By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county.² If participation in a San Diego project is by work forces from San Diego County and, for example, from Los Angeles County and from

Sacramento County, we ask for separate Work Force Reports representing your firm from each of the three counties.

MANAGING OFFICE WORK FORCE

Equal Opportunity Contracting may occasionally ask for a Managing Office Work Force (MOWF) Report. This may occur in an instance where the firm involved is a large national or international firm but the San Diego or other local work force is very small. In this case, we may ask for both a local and a MOWF Report.^{1,3} In another case, when work is done only by the Managing Office, only the MOWF Report may be necessary.³

TYPES OF WORK FORCE REPORTS:

Please note, throughout the preceding text of this page, the superscript numbers one ¹, two ² & three ³. These numbers coincide with the types of work force report required in the example. See below:

- ¹ One San Diego County (or Most Local County) Work Force – Mandatory in most cases
- ² Branch Work Force *
- ³ Managing Office Work Force

**Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

Exhibit A: Work Force Report Job categories-Administration

Refer to this table when completing your firm's Work Force Report form(s).

Management & Financial

Advertising, Marketing, Promotions, Public Relations, and Sales Managers
Business Operations Specialists
Financial Specialists
Operations Specialties Managers
Other Management Occupations
Top Executives

Professional

Art and Design Workers
Counselors, Social Workers, and Other Community and

Social Service Specialists
Entertainers and Performers, Sports and Related Workers
Health Diagnosing and Treating Practitioners
Lawyers, Judges, and Related Workers
Librarians, Curators, and Archivists
Life Scientists
Media and Communication Workers
Other Teachers and Instructors
Postsecondary Teachers
Primary, Secondary, and Special Education School Teachers
Religious Workers
Social Scientists and Related Workers

Architecture & Engineering, Science, Computer

Architects, Surveyors, and Cartographers
Computer Specialists
Engineers
Mathematical Science Occupations
Physical Scientists

Technical

Drafters, Engineering, and Mapping Technicians
Health Technologists and Technicians
Life, Physical, and Social Science Technicians
Media and Communication Equipment Workers

Sales

Other Sales and Related Workers
Retail Sales Workers
Sales Representatives, Services
Sales Representatives, Wholesale and Manufacturing
Supervisors, Sales Workers

Administrative Support

Financial Clerks
Information and Record Clerks
Legal Support Workers
Material Recording, Scheduling, Dispatching, and Distributing Workers
Other Education, Training, and Library Occupations
Other Office and Administrative Support Workers
Secretaries and Administrative Assistants
Supervisors, Office and Administrative Support Workers

Services

Building Cleaning and Pest Control Workers
Cooks and Food Preparation Workers
Entertainment Attendants and Related Workers
Fire Fighting and Prevention Workers
First-Line Supervisors/Managers, Protective Service Workers
Food and Beverage Serving Workers
Funeral Service Workers
Law Enforcement Workers
Nursing, Psychiatric, and Home Health Aides
Occupational and Physical Therapist Assistants and Aides
Other Food Preparation and Serving Related Workers
Other Healthcare Support Occupations
Other Personal Care and Service Workers
Other Protective Service Workers
Personal Appearance Workers
Supervisors, Food Preparation and Serving Workers
Supervisors, Personal Care and Service Workers
Transportation, Tourism, and Lodging Attendants

Crafts

Construction Trades Workers
Electrical and Electronic Equipment Mechanics, Installers, and Repairers
Extraction Workers
Material Moving Workers
Other Construction and Related Workers
Other Installation, Maintenance, and Repair Occupations
Plant and System Operators
Supervisors of Installation, Maintenance, and Repair Workers
Supervisors, Construction and Extraction Workers
Vehicle and Mobile Equipment Mechanics, Installers, and Repairers
Woodworkers

Operative Workers

Assemblers and Fabricators
Communications Equipment Operators
Food Processing Workers
Metal Workers and Plastic Workers
Motor Vehicle Operators
Other Production Occupations
Printing Workers
Supervisors, Production Workers
Textile, Apparel, and Furnishings Workers

Transportation

Air Transportation Workers
Other Transportation Workers
Rail Transportation Workers
Supervisors, Transportation and Material Moving Workers
Water Transportation Workers

Laborers

Agricultural Workers
Animal Care and Service Workers
Fishing and Hunting Workers
Forest, Conservation, and Logging Workers
Grounds Maintenance Workers
Helpers, Construction Trades
Supervisors, Building and Grounds Cleaning and Maintenance Workers
Supervisors, Farming, Fishing, and Forestry Workers

Exhibit B: Work Force Report Job categories-Trade

Brick, Block or Stone Masons

Brickmasons and Blockmasons
Stonemasons

Carpenters

Carpet, floor and Tile Installers and Finishers

Carpet Installers
Floor Layers, except Carpet, Wood and Hard Tiles
Floor Sanders and Finishers
Tile and Marble Setters

Cement Masons, Concrete Finishers

Cement Masons and Concrete Finishers
Terrazzo Workers and Finishers

Construction Laborers

Drywall Installers, Ceiling Tile Inst

Drywall and Ceiling Tile Installers
Tapers

Electricians

Elevator Installers and Repairers

First-Line Supervisors/Managers

First-line Supervisors/Managers of Construction Trades and Extraction Workers

Glaziers

Helpers, Construction Trade

Brickmasons, Blockmasons, and Tile and Marble Setters
Carpenters
Electricians
Painters, Paperhangers, Plasterers and Stucco
Pipelayers, Plumbers, Pipefitters and Steamfitters
Roofers
All other Construction Trades

Millwrights

Heating, Air Conditioning and Refrigeration Mechanics and Installers
Mechanical Door Repairers
Control and Valve Installers and Repairers
Other Installation, Maintenance and Repair Occupations

Misc. Const. Equipment Operators

Paving, Surfacing and Tamping Equipment Operators
Pile-Driver Operators
Operating Engineers and Other Construction Equipment Operators

Painters, Const. Maintenance

Painters, Construction and Maintenance
Paperhangers

Pipelayers and Plumbers

Pipelayers
Plumbers, Pipefitters and Steamfitters

Plasterers and Stucco Masons

Roofers

Security Guards & Surveillance Officers

Sheet Metal Workers

Structural Iron and Steel Workers

Welding, Soldering and Brazing Workers

Welders, Cutter, Solderers and Brazers
Welding, Soldering and Brazing Machine Setter, Operators and Tenders

Workers, Extractive Crafts, Miners