ORIGINAL

**FLAT RATE PARCEL GROUND LEASE**

**AND**

**RIGHT OF ENTRY LICENSE AGREEMENT**

**BROWN FIELD MUNICIPAL AIRPORT (SDM)**

**SAN DIEGO, CALIFORNIA**

**PARCEL: E-27**

**LESSOR: CITY OF SAN DIEGO**

**LESSEE: METROPOLITAN AIRPARK LLC**

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**FLAT RATE PARCEL GROUND LEASE**
**AND RIGHT OF ENTRY LICENSE AGREEMENT**
**BETWEEN**
**THE CITY OF SAN DIEGO AND METROPOLITAN AIRPARK, LLC**
**PARCEL: E-27**

THIS FLAT RATE PARCEL GROUND LEASE AND RIGHT OF ENTRY LICENSE AGREEMENT for Parcel E-27 (the entire document is referred to hereinafter as "Agreement", and individual portions of this Agreement may also be referred to as the "ROE portion" or "ROE" and/or "Lease portion" or "Lease") is entered into by and between the CITY OF SAN DIEGO, a California municipal corporation ("CITY"), as lessor and licensor, and METROPOLITAN AIRPARK, LLC, a Delaware limited liability company ("LESSEE"), as lessee and licensee, to be effective as of [the date the Agreement is signed by the parties and approved by the San Diego City Attorney (the "Effective Date").

## RECITALS

A. CITY owns that certain real property consisting of approximately 331 acres of unimproved land (the "Property") located at Brown Field Airport (the "Airport"), as more particularly depicted and described on the attached **EXHIBIT A: Depictions and Lease Descriptions of the "Property" and the "Premises"**.

B. In addition to desiring to lease Lot 27, the 6.23 acre portion of the Property (the "Premises"), LESSEE desires the right to enter upon the Premises prior to the actual commencement of the Lease Term (as defined below) for the Premises, pursuant to an exclusive right of entry license ("ROE"),in order to commence development of the Premises ("Construction Activities") in compliance with the rights granted to LESSEE, as a successor in interest, in and to the ***Leasehold Development Agreement by and between the City of San Diego and Brown Field International Business Park, LLC*** ("LDA"), on file with the San Diego City Clerk as Document No R-308482, filed on October 22, 2013. The LDA is attached to this Agreement as **EXHIBIT C: Leasehold Development Agreement.** The Premises is more particularly depicted and described as "Lot 27" on the attached **EXHIBIT A: Depictions and Lease Descriptions of the "Property" and the "Premises".** Notwithstanding the actual order of presentation in this Agreement, because the Lease portion of this Agreement will be applicable for a much longer time period than the ROE portion of this Agreement, the title of this Agreement has purposefully been written to reference the 'Lease' before the 'ROE'.

C. CITY and LESSEE agree that: (i) the LDA, Site Development Permit ("SDP") No 768683, approved by City Council Resolution No. R-308485, the terms and conditions of the ROE portion of this Agreement, and all other permits and agreements associated with the development contemplated in the LDA (hereinafter, unless individually

referred to, the foregoing documents and permits shall cumulatively be referred to as the "Development Documents") are primarily intended to govern what and how LESSEE's Construction Activities are to take place on the Premises; and (ii) that the terms and conditions of the Lease portion of this Agreement are primarily intended to govern LESSEE's use and possession of the Premises upon commencement of the Lease Term (as defined below) for the Premises. Accordingly, the parties hereto agree that during the ROE Term: (i) the LDA shall be incorporated into, and made a part of, this Agreement; (ii) that the Development Documents shall continue to control LESSEE's Construction Activities and LESSEE's obligations thereto, and that the terms of the Development Documents shall supersede any potentially conflicting provision contained in the ROE portion of this Agreement.

D. CITY and LESSEE further agree that all activities related to, and/or which pertain to, the LESSEE's use and possession of the Premises during the Lease Term (as defined below) of the Lease portion of this Agreement, shall be exclusively controlled by the terms and conditions of the Lease portion of this Agreement and the Lease terms shall supersede the LDA, excepting those provisions which provide for continuing liability such as LESSEE's indemnification responsibilities as provided for under Section 4.24 of the LDA. Notwithstanding the foregoing, all Construction Activities performed by LESSEE upon the Premises shall be consistent with the SDP and Airport Layout Plan, as the same may be amended from time to time.

E. Not by way of limitation of the foregoing, CITY and LESSEE acknowledge and agree that certain Construction Activities pertaining to this Agreement may require the right to enter on upon areas adjacent to, or outside the boundaries of, the Premises; therefore, a separate Right of Entry Permit, dated _____ ("Permit"), has been entered in to, whereby CITY has granted to LESSEE non-exclusive access to portions of the Airport Property and rights of way outside the boundaries of the Premises. It is the Parties intentions that the terms and conditions set forth in this Agreement shall be binding on the Parties in addition to those provided by the Permit.

**FOR VALUABLE CONSIDERATION,** the sufficiency of which is acknowledged, the parties agree as follows:

## ARTICLE 1:
## RIGHT OF ENTRY LICENSE (ROE)

1. Recitals. By this reference, the above Recitals are incorporated into, and made a part of, this ROE portion of this Agreement.

2. Right to Enter. Subject to the terms and conditions of the Development Documents, which include this ROE portion of the Agreement, CITY hereby grants permission to LESSEE, its employees, agents, contractors, and invitees to enter upon the Premises, solely for the purposes of performing authorized Construction Activities on the Premises (ROE Use).

2.1. LESSEE's permission to enter onto Premises is contingent upon LESSEE's agreement that: (a) LESSEE's activities will not interfere with CITY's continuing obligation to operate Brown Field Municipal Airport ("Airport"), which interference shall be determined in the sole discretion of CITY; and (b) LESSEE shall in every instance: (i) at least thirty (30) business days prior to any anticipated Construction Activities on the Premises, submit to CITY's Deputy Director of its Airports Division ("Deputy Director") specific plans for the anticipated Construction Activities and all details therefor; (ii) provide specified time periods for the Construction Activities; and (iii) provide a list of all subcontractors providing Construction Activities work on the Premises, which shall include the name(s) of a contact person(s) who can appropriately and timely respond to all questions/comments regarding the work that is being performed, and corresponding telephone number(s) for each subcontractor providing the work.

3. Use of Premises. LESSEE may use the Premises on an exclusive basis solely for authorized Construction Activities. LESSEE shall obtain all required and related permits, approvals, consents, authorizations, licenses, and the like, at LESSEE's sole expense and LESSEE shall comply with all applicable laws including, but not limited to, environmental laws, and rules and regulations related to the ROE Use.

3.1. Notice to Commence Construction. For each Construction Activity that LESSEE desires to undertake within the Premises, LESSEE shall provide CITY reasonable notice in accordance with the requirement of this ROE prior to commencing any such activity.

3.2. Vehicles. All vehicles (including all construction-related equipment) used in relation to this ROE shall comply with all rules and regulations pertaining to travel on or about the Airport at all times.

4. ROE Term. The term of this ROE (ROE Term) shall be from the Effective Date of this Agreement, until commencement of the Lease Term (as more specifically defined and set forth below).

Notwithstanding the ROE Term, failure or delay by LESSEE to comply with any term or condition of this ROE portion of this Agreement shall constitute a breach of this ROE portion of this Agreement and may subject this ROE to immediate termination by CITY, at its reasonable discretion. For those matters which would allow for a reasonable time to cure, CITY shall use its reasonable discretion to allow time to cure. However, for any matter which would interfere with CITY's operation of the Airport, LESSEE agrees that a time to cure will not be granted.

Should the ROE be terminated by CITY, the parties agree that CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by LESSEE as a result of such revocation or termination of this ROE. LESSEE expressly waives any claim for expense or loss which LESSEE might incur as a result of CITY's termination of this ROE.

5. CITY's Consent/Discretion. For administrative purposes, any activity covered by this ROE which requires the permission or consent of the CITY shall be referred to the Director of the City of San Diego's Real Estate Assets Department ("Director") for handling by the appropriate parties, unless a specific party is already designated (e.g., the Deputy Director).

6. Governmental Approvals. By granting this ROE, neither CITY nor CITY's City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the Premises or LESSEE's use of the Premises under this ROE. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for LESSEE's use of the Premises.

7. Superior Interests. This ROE is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights of way pertaining to the Premises, whether or not of record. LESSEE shall obtain all licenses, permits, approvals, authorizations, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises, relative to any such superior interest.

Additionally, LESSEE shall not use the Premises in any manner which, in the reasonable opinion of the Deputy Director, creates a nuisance, disturbs the quiet enjoyment of the persons in the surrounding area, or interrupts or disturbs any other lessee, licensee, or permittee of/on the Airport.

7.1. Equipment Shutdown. Any equipment installed/used on the Premises may at times require shutdown to allow maintenance of or other operational activities on the Airport. LESSEE shall allow shutdown periods when required for such maintenance/operational activities, provided CITY uses reasonable efforts to ensure that the shutdowns do not unreasonably interfere with LESSEE's use of the Premises. Protection of LESSEE's employees (or contractors, agents, etc.) performing activities on the Airport, and of all users of the Airports (e.g., tenants, licensees, pilots) and all aircraft using the Airport, are of primary concern. Prior to commencement of any Construction Activities, LESSEE shall provide CITY with written shutdown procedures, contact names, and telephone numbers. LESSEE shall notify CITY, in writing, of any changes to the shutdown procedures, contact names or telephone numbers at least ten (10) business days before any such change takes effects.

7.2. Industry Standards. LESSEE shall adhere to industry standards, and the requirements of all applicable regulatory agencies, for all Construction Activities.

7.2.1. LESSEE shall remove all trash and debris generated by LESSEE from the Premises, the Property and the Airport, at the end of each workday and upon completion of any Construction Activity on the Premises.

7.3. Access and Security. LESSEE shall comply with all access rules and procedures for the Airport; said rules and procedures may change, from time to time, in CITY's reasonable discretion.

8. Hazardous Substances. LESSEE shall comply with all hazardous substances requirements, as set forth in the below ARTICLE 2, SECTION 8: HAZARDOUS SUBSTANCES, of this Agreement.

**To effect notice for purposes of the above-referenced Section 8. Hazardous Substances, during the ROE Term, LESSEE shall call the following telephone number: (  ) ____ - _____ which is the telephone number for _____.** If a live person does not answer, LESSEE shall leave a voice message giving adequate information to put CITY on notice of: (1) the date and time of the call; (2) the extent and nature of the release; (3) remediation activities undertaken thus far and those to be undertaken; (4) the name, title, and telephone number of the caller and the person whom the CITY should respond to for further information.

9. Noninterference. LESSEE shall not interfere with CITY's use, operations, events, and activities on the Airport or in any way interfere with, or impede, Airport operations, activities or events. As set forth above, LESSEE shall notify the Deputy Director, in writing, of all proposed dates and times that LESSEE desires to conduct Construction Activities on the Premises. The Deputy Director, at his reasonable discretion, shall notify LESSEE whether those proposed dates and/or times are acceptable. LESSEE shall only utilize the Premises on those dates and times that are acceptable to the Deputy Director and shall cease all activities that cause an interference with Airport activities, prior to/by the date and time demanded by the Deputy Director. LESSEE shall also use such routes and follow such procedures on the Airport as directed by the Deputy Director which shall result in the least damage and inconvenience to CITY, Airport operations, and other users of the Airport. LESSEE agrees that it shall be responsible for, and shall indemnify, defend, and hold CITY harmless from all losses, damages, costs, and expenses claimed by third parties and/or suffered by CITY should LESSEE fail to adhere to the requirements of this Section 9.

10. Property Damage. LESSEE shall pay for all damage to Airport property, CITY's personal property on the Airport, and personal property of third parties on the Airport, resulting from LESSEE's activities related to/under this ROE. LESSEE shall promptly repair and/or restore to its original condition, or reimburse CITY for any expenses CITY may incur in repairing, all damages to any such property.

11. Signs. No signs may be displayed on the Premises during the ROE Term without the Deputy Director's prior written consent.

12. Maintenance of the Premises. LESSEE shall maintain the Premises, at LESSEE's sole cost and expense and to the Deputy Director's reasonable satisfaction, in a decent, safe, healthy and sanitary condition, during all time periods that LESSEE has control over the Premises.

13. Inspection. CITY may, at any and all times, enter and inspect the Premises.

14. Indemnification. LESSEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including

injury to LESSEE's officers, employees, agents, contractors, invitees and guests, which arise out of or are in any manner directly or indirectly connected with this ROE or LESSEE's occupancy, use, development, maintenance, or restoration of the Premises, including damages arising out of release of hazardous materials, and all expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs; provided, however, that LESSEE's duty to indemnify and hold harmless shall not include any established liability arising from the active negligence, sole negligence or willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. This indemnity obligation shall apply for the entire time that any third party can make a claim against or sue any or all of the indemnified parties for liabilities arising out of any activity within or upon or relating to the Premises and this ROE. This indemnity obligation shall include, without limitation, claims for bodily injury, property damage, natural resource damages, emergency response costs, removal costs, clean-up costs, remediation costs, penalties, and/or fines which arise out of or are in any manner directly or indirectly connected to this ROE and/or the acts or omissions of any third party or the LESSEE in connection with the exercise of the rights granted under this ROE, and all expenses of investigating, prosecuting or defending against same, including any appeals. LESSEE shall promptly provide the City with written notice of any event or circumstance, such as damages or losses related to the Construction Activities, which LESSEE reasonably believes may be covered by the defense and indemnification provisions of this ROE. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.

15. Taxes. LESSEE, alone, shall pay any and all taxes, charges, fines, penalties, use fees, and all other charges levied by any governmental agency against LESSEE or against any of CITY's property as a result of LESSEE's activities under this ROE.

16. Encumbrances. LESSEE shall keep CITY's Airport, the Property and the Premises, free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with LESSEE's activities under this ROE. LESSEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, employees, agents, and representatives harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, damage, cost, loss or expense, including without limitation all attorneys' fees and costs, relating to or charged against CITY, the Airport, the Property, or the Premises, including without limitation for LESSEE's failure or the failure of any contractor or subcontractor hired by LESSEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.

17. LESSEE's Risk. All risks in connection with LESSEE's activities under this ROE, LESSEE's Operations, and any damages to the improvements on the Airport, the Property and the Premises shall be borne in full by LESSEE. Unless stated otherwise herein, upon thirty (30)

calendar days written notice, LESSEE shall at its sole expense, repair any damage which occurs as a result of LESSEE's activities and of LESSEE's Operations.

18. Insurance Requirements. LESSEE shall comply with all insurance requirements set forth in **EXHIBIT E**, attached hereto. Said insurance requirements are subject to amendment by CITY in its reasonable discretion.

19. Payment and Performance Bond. Prior to the commencement of any work on the Construction Activities, LESSEE shall deliver to CITY a payment bond (materials and labor bond) in an amount not less than one hundred percent (100%) of the total amount payable under the contract for construction of the Construction Activities to satisfy claims of material suppliers and of mechanics and laborers employed on the Construction Activities. The bond shall be provided in compliance with California Civil Code sections 9550-9566. The bond shall be executed by an admitted surety, consistent with California Code of Civil Procedure section 995.670, that is authorized by the State of California Department of Insurance to transact surety insurance in the State. LESSEE shall maintain the bond in full force and effect until all improvements for the Construction Activities until the Lease Commencement Date (defined in Article 2 of this Agreement) and until all claims for materials and labor are paid, and must otherwise comply with the Government Code. Should the bond become insufficient, LESSEE shall renew, or cause the renewal of, the bond within ten (10) calendar days after receiving notice from CITY.

Prior to the commencement of the Construction Activities, LESSEE shall provide CITY with a faithful performance bond in the amount of one hundred percent (100%) of the estimated cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the work commenced by LESSEE will be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted work will be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY. If during the course of construction, LESSEE's progress and performance reaches either fifty percent (50%) or seventy-five percent (75%) completion, then LESSEE may submit to the City a request for a partial release of the surety which shall be accompanied by (1) a detailed estimate of both the value of work completed as well as the value of work remaining, and (2) written confirmation from CITY's Development Services Department of said completion amount. Upon City's approval of such request, LESSEE's obligations hereunder shall be reduced by the same and the CITY shall release, or if applicable, cause escrow or the trust to release, the surety in the same proportional amount of the work completed; provided however, the surety amount to be released must exceed $25,000 and in no case shall less than 25% of the original bond amount be retained in force until all work is completed. Upon the completion of construction and final approval is given by a "Notice of Completion and Acceptance," or similar, CITY shall release the full amount remaining on the bond.

20. Prevailing Wages. LESSEE shall comply with all prevailing wage requirements, as set forth below in ARTICLE 2, SECTION 11: PREVAILING WAGES, of this Agreement.

21. Safety Management Systems Compliance. Although the use of Safety Management Systems (SMS) are not required by the FAA as of the commencement of this Agreement, it is possible that during the ROE Term, or the below described Lease Term, that the FAA will mandate SMS compliance for general aviation airports, which would include the Airport. Because the use of SMS at airports can contribute to helping airports detect and correct safety problems before they result in aircraft accidents or incidents, and can contribute to efforts to adopt new measures therefor, LESSEE agrees that LESSEE will timely comply with, and respond to: (i) CITY's requirement that LESSEE conduct regular (and other as-needed) SMS-related inspections of the Premises and that LESSEE will compile and report said information in a form acceptable to the FAA and CITY; (ii) all CITY requests for SMS-related data; (iii) the CITY's right to conduct SMS-related inspections of the Premises; (iv) all other SMS-related requests made by CITY in its effort to implement a system-wide SMS and maintain a SMS Manual for the CITY's airport system or part thereof; and (v) all FAA-mandated information, data, etc.. Information that may need to be compiled includes hazard reporting and tracking, data collection, safety risk assessment processes, and gap analyses. All SMS-related information, reports and documents provided by LESSEE shall be verified by LESSEE to be accurate and shall be provided without cost to CITY.

22. Compliance with Law. LESSEE shall, at its sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Premises, the Airport, and LESSEE's activities under this ROE.

23. No Discrimination. LESSEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, gender expression, gender identity, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE's use of the Premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

24. Waiver. CITY's failure to insist upon the strict performance of any of LESSEE's obligations under this ROE, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's failure to discover a breach of any obligation of this ROE or to take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.

25. Survival. All obligations under the ROE portion of this Agreement shall terminate upon the termination of the ROE Term, with the exception of any obligations which may have accrued and remain from the terms and conditions stated herein.

26. Entire ROE. This ROE portion of this Agreement contains the entire agreement between the parties relating to the ROE rights granted hereby and the obligations assumed herein related to this ROE. No modification of this ROE shall be valid unless in writing and duly signed by the party to be charged.

27. Notices. Any notice, request, payment, demand, or other communication required or permitted to be given under this ROE shall be in writing and deemed received upon personal service, delivery by a reputable overnight courier service with receipt signature required, or delivery by United States mail, return receipt requested, postage prepaid, and addressed to the parties, or any such notice, request, payment, demand or other communication required or permitted may be given electronically via written email communication. Electronic notification is considered received upon electronic delivery and reply confirming receipt thereof from the receiving party, as follows:

CITY:

THE CITY OF SAN DIEGO
Real Estate Assets Department
Attention: Director
1200 Third Avenue, Suite 1700 (MS 51 A)
San Diego, California 92101

-and -

THE CITY OF SAN DIEGO
Airport Administration
Attention: Deputy Director, Airports
3750 John J. Montgomery Drive
San Diego, CA 92123

LESSEE:

METROPOLITAN AIRPARK LLC
2100 Palomar Airport Road, Suite 209
Carlsbad, CA, 92011

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## ARTICLE 2:
## PARCEL GROUND LEASE

### SECTION 1: PREMISES

1.1. Recitals. By this reference, the above Recitals are incorporated into, and made a part of this Lease portion of this Agreement.

1.2. Premises. Pursuant to the terms and conditions of this Lease, and as of the Lease Commencement Date (defined below in Section 3.1), 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 along with the non-exclusive use of all public airport facilities at the Airport including, but not limited to, taxiways, runways, customs facilities, aprons, navigational aids and facilities relating thereto, for the purpose of landings, takeoffs, and taxiing of LESSEE's aircraft and/or LESSEE's customers' aircraft, and all appurtenant easements and rights of access between the Premises and any adjacent public streets, rights-of-way, and utilities that exist as of the Lease Commencement Date and as the same may be modified from time to time during the Lease Term (as defined below in Section 3.1).

1.3. Reservations/Acceptances.

1.3.1. Notwithstanding any provision of this Agreement to the contrary, CITY hereby expressly reserves all rights, title, and interest in and to any and all oil, oil rights, petroleum, minerals, mineral rights, natural gas rights, and other hydrocarbon substances, by whatsoever name known, geothermal resources, and all products derived from any of the foregoing, that may be within or under the land, together with the perpetual right of drilling, mining, exploring, prospecting, and operating therefor and storing in and removing the same from the Premises or any other land, including the right to whipstock or directionally drill and mine from lands other than those leased hereby, oil or gas wells, tunnels, and shafts into, through, or across the subsurface of the Premises, and to bottom such whipstocked or directionally drilled wells, tunnels, and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel, equip, maintain, repair, deepen, and operate any such wells or mines, without, however, the right to enter, drill, mine, store, explore, or operate on or through the surface or the upper 500 feet of the subsurface of the Premises; provided, however, that the exercise of any such rights by CITY shall not result in any damage or injury to the improvements constructed on the Premises by LESSEE, including without limitation any subsidence of all or any part of such improvements.

1.3.2. LESSEE accepts the Premises subject to any and all existing easements and non-monetary encumbrances of record as of the Effective Date of this Agreement. CITY reserves the right to establish, to grant, or to use easements or rights-of-way over, under, along, and across any existing public streets, alleys, or rights-of-way on 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 onto such existing public streets, alleys, or rights-of-way for such purpose; provided, however, that in such event CITY shall (i) at all times maintain reasonable vehicular and pedestrian access to all portions of the Premises, (ii) at all times maintain reasonable access to wet and dry utilities required for the continuous operation of the businesses, activities, and operations on the Premises from time to time, (iii) otherwise not unreasonably interfere with LESSEE's use of the Premises, and (iv) promptly restore the Premises and any damage caused to the improvements on the Premises as nearly as practicable to their condition existing immediately prior to CITY's entry. CITY hereby reserves unto itself, for the benefit and use for aviation purposes by CITY and the public, an easement over all taxiways existing as of the Effective Date of this Agreement, and any taxiways developed by LESSEE, within the Premises; provided however, no right reserved by CITY in this section shall be so exercised as to interfere unreasonably with LESSEE's operations hereunder.

1.4. 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 otherwise at reasonable hours, after reasonable notice to LESSEE, to (i) inspect the Premises, (ii) exhibit the Premises to prospective purchasers or lessees, (iii) determine whether LESSEE is complying with its obligations in this Lease (including its obligations with respect to compliance with hazardous materials/substance laws), (iv) supply cleaning service and any other service that this Lease requires CITY to provide, if applicable, (v) post notices of non-responsibility or similar notices, (vi) make repairs that the Lease portion of this Agreement requires or authorizes CITY to make, if applicable, or make repairs to any adjoining space or utility services, or (vii) exercise its rights pursuant to this Agreement; provided, however, that (a) the identity and positions of all persons authorized by CITY to enter the Premises shall be disclosed to LESSEE in advance, (b) an authorized representative of LESSEE shall be permitted to accompany CITY's representative(s) at all times during any such inspection or entry by or on behalf of CITY, (c) unless required by law, LESSEE shall not be required to provide access to vaults, locked safes, confidential and proprietary records, nor to otherwise secured interior areas of the Premises unless adequate measures are taken to protect LESSEE's and/or sublessees' trade secrets and confidential and proprietary information and rights of privacy, and (d) CITY's inspection and entry shall be done as promptly as reasonably possible and so as to cause as little interference to LESSEE's business operations as reasonably possible.

1.4.1. 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 negligent or willful misconduct of CITY, its elected officials, officers, directors, employees, agents, contractors, and representatives. If necessary, LESSEE shall provide CITY with keys to unlock all of the doors in the Premises (excluding, except as

required by law, LESSEE's vaults, safes, secured interior areas, or similar areas designated in writing by LESSEE in advance). CITY shall 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 shall the entry entitle LESSEE to damages or an abatement of rent or other charges that this Lease requires LESSEE to pay. Notwithstanding any provision of this Lease to the contrary, should CITY's temporary entry on the Premises substantially interfere with LESSEE's use of any or all of the Premises, CITY's Lease Administrator may provide for a reduction to the rent, in an amount which is proportionate to the actual, substantial interference of LESSEE's use of the Premises, as determined by CITY's Lease Administrator in his/her reasonable discretion. Nothing in this section shall apply to any actions in eminent domain which shall be governed solely by the applicable Eminent Domain provisions set forth in this Lease.

1.5. Subordination to Federal Obligations. Without the necessity of any other document being executed and delivered by LESSEE or CITY, this Agreement is and shall be junior, subject, and subordinate to any existing 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 Airport and/or Premises; LESSEE shall be bound by the terms and provisions of such permits, agreements, contracts or approval. CITY shall not seek, cooperate in, or otherwise be a party to any new or amended permit, agreement, contract, or approval issued by any governmental agency, except as required by law or contract with a governmental agency, that further restricts or impairs LESSEE's rights hereunder.

Nothing contained in this section shall prohibit 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 LESSEE elects to commence such a takings claim, LESSEE agrees to indemnify and hold CITY harmless from and against all losses, damages, or injuries suffered or incurred resulting from any proceedings related to such claim(s).

## SECTION 2: USES

2.1. Allowed Uses. LESSEE shall use the Premises solely and exclusively for the purposes of aviation use pursuant to the LDA, such allowed uses are: large aircraft hangars, offices, aircraft aprons and all infrastructure required incident to these uses ("Allowed Uses") and for no other purpose whatsoever without CITY's prior written consent in each instance, which consent may be granted or not in CITY's reasonable discretion. All Allowed Uses shall be consistent with this Lease, the Airport Layout Plan (ALP), the San Diego Airport Land Use Compatibility Plan, and SDP, as the same may be amended from time to time; provided, that nothing in this Lease is intended or shall be deemed to constitute consent by LESSEE to the modification or amendment

of any of such items or a waiver by LESSEE of any vested rights it may have acquired with respect thereto.

2.2. Approval of Temporary or Limited Activities. Notwithstanding any provision of this Lease to the contrary, the Director, or designee, may, at his or her reasonable discretion, and without charging additional consideration (as set forth in Section 14.5, below), give written authorization for the following activities on the Premises ("Limited Uses"): (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 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 Lease, and LESSEE shall be responsible for insuring that any such activity approved by CITY complies with all of the provisions of this Lease. Any such temporary or limited activity shall be subject to immediate termination upon delivery of written notification thereof from CITY. Notwithstanding the foregoing, all Limited Uses shall be subject to City Charter section 225 review.

2.3. Duties and Prohibited Uses/Conduct. LESSEE shall operate and manage the general aviation: areas, services, and facilities which it offers to the public in a competent and efficient manner at least comparable to other Airport operations of similar type, as reasonably determined by the Airports Deputy Director. If LESSEE is reasonably in doubt as to the propriety of any particular use, LESSEE may request the written determination of the Airports Deputy Director that such use is or is not permitted, and LESSEE shall not be in breach or default under this 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 reasonable discretion of the Airports Deputy Director, are inconsistent with the permitted uses of the Premises pursuant to this Lease. LESSEE shall keep the Premises, and every part thereof, in a decent, safe, and sanitary condition, free from any objectionable glare, noises, odors, and other nuisances, except as may be typically present for the Allowed Uses, and shall comply with all valid and applicable local, State, and Federal laws and regulations in all respects, for both the Allowed Uses and any approved Limited Uses. LESSEE shall not allow or permit installation of any off-premises advertising billboards, signs, or aerials or antennas, upon the Premises without first obtaining, in each instance, the prior written consent of the Airports Deputy Director, which consent the Airports Deputy Director may give or withhold in his or her reasonable discretion. Any such off-premises advertising billboards or signs or antenna installed upon the Premises without such written consent shall be subject to immediate removal at LESSEE's expense.

2.4. Compliance with Laws.

2.4.1. 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 any valid and applicable law, ordinance, regulation, or requirement of the State of California, the City of San Diego, or other lawful authorities. LESSEE shall, at LESSEE's expense, comply promptly with all valid and applicable statutes, laws, ordinances, rules, regulations, orders, covenants, and restrictions of record regulating the use of the Premises. The final and non-appealable judgment of any court of competent jurisdiction, or the admission by LESSEE in any action or proceeding against it, whether or not CITY is a party to such action or proceeding, that LESSEE, or any 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 (i.e., the violation of any such ordinance, law, statute, regulation, covenant, restriction, or requirement) as between CITY and LESSEE under this Lease.

2.4.2. Notwithstanding any other provision to the contrary in this Lease, 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 Lease 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).

2.4.3. LESSEE's duty to comply with applicable laws and regulations shall include compliance with any and all valid zoning and land use regulations that are applicable to the Premises and LESSEE's intended use thereof ("Land Use Regulations"); provided, that nothing in this Lease is intended or shall be deemed to constitute consent by LESSEE to the modification or amendment of any existing Land Use Regulation or a waiver by LESSEE of any vested rights it may have acquired with respect to particular Land Use Regulations or LESSEE's right to protest or challenge the validity or applicability of any Land Use Regulation. Notwithstanding anything to the contrary stated herein, CITY shall not alter or update the zoning of the Airport in any way that prejudices the development and operation of the Project, as the term "Project" is defined in the LDA, without the consent of LESSEE.

2.5. 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).

2.6. Business Objective. LESSEE shall diligently conduct its business on the Premises using commercially reasonable best efforts to obtain and maintain full occupancy of all rentable space on the Premises and to collect all rent owing to LESSEE.

2.7. Public Use; No Discrimination. LESSEE shall allow full and continuous public use of the Premises for the benefit of the public. LESSEE shall make all facilities and services on the Premises available to the public without unlawful discrimination, shall furnish its authorized services on a reasonable, and not unjustly discriminatory, basis to 1) all users thereof, and charge reasonable, and not unjustly discriminatory, prices for each unit or 2) service, provided that the LESSEE may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

2.8. Competent Management. LESSEE shall provide competent management of the Allowed Uses (and if approved, any approved Limited Uses) to CITY's reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable within the industry for the management and operation of activities substantially similar to the Allowed Uses (and if approved, any approved Limited Uses) and in compliance with all laws, rules and regulations of competent governmental authority, and in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.

2.9. Nuisance. LESSEE shall not use the Premises for any purpose, nor shall any activity be carried on upon the Premises, which in any manner causes, creates or results in a public or private nuisance.

2.10. Trash and Refuse. LESSEE shall, at its sole cost and expense, provide containers on the Premises to receive trash and refuse generated on the Premises. LESSEE shall not locate refuse containers outside the Premises. LESSEE shall ensure that such containers are covered and emptied regularly enough to prevent them from overflowing or creating unhealthful, unsightly or unsanitary conditions. LESSEE shall ensure that the contents of the containers are disposed of at authorized landfills or other garbage reception areas as provided under applicable law at the time of collection.

2.11. Utilities. LESSEE shall order, obtain, and pay for all initial utility deposits and regular charges/fees for utility services necessary for its use and occupancy of the Premises during the

Lease Term, including but not limited to gas, water, electricity, trash, telephone, and sewer/septic tanks charges; 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 determinations, within thirty (30) days' receipt of each such invoice therefor. All utilities shall be installed underground.

2.12. Parking. LESSEE shall provide and maintain onsite parking on the Premises for all of its employees, visitors, guests, contractors, agents, representatives, sublessees and all others doing business with LESSEE. All onsite parking shall be in accordance with all development plans as approved by the CITY. Notwithstanding the foregoing and subject to the terms and conditions of LESSEE's approved development permits, plans, and applicable laws, rules and regulations, LESSEE shall not, other than temporarily and only then in the ordinary course of business, store or maintain any personal property on or near any parking lot which causes any interference in any way with the ability to park in the parking lots on the Premises.

## SECTION 3: TERM, EXTENSIONS AND HOLDOVER

3.1. Term. As stated above, the terms and conditions of this Lease portion of this Agreement shall be effective upon the earlier of (1) the date that the first Certificate of Occupancy for any improvement constructed on the Premises is issued, (2) thirty (30) months after issuance of the first vertical building permit for construction on the Premises, or (3) if the use of Premises is identified by LESSEE to be burdened, in support of and to provide benefit to another premises on the Property, then upon the Certificate of Occupancy of the benefited premises, which date is _____ [to be filled in by CITY upon receipt of the applicable Certificate of Occupancy or building permit] ("Lease Commencement Date"). Upon the Lease Commencement Date, the term of this Lease shall commence and be effective for, unless earlier terminated pursuant to the terms and conditions of this Lease, fifty (50) years (the "Lease Term"). If the Lease Commencement Date is other than the first day of a calendar month, the partial month after the Lease Commencement Date shall be considered the first month of the Lease Term so that the second month of the Lease Term will start on the first day of a calendar month. Lease year ("Lease Year") shall mean each twelve (12)-month period during the Lease Term, calculated from the Lease Commencement Date.

3.2. Holdover. Any holding over by LESSEE after the expiration of this Lease shall not be considered a renewal or extension of this Lease. LESSEE's occupancy of the Premises after the expiration of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall continue in full force and effect, except that CITY may then demand and receive from LESSEE rent in an amount which is one hundred fifty percent (150%) of the-then market rent for the Premises, as determined by competent CITY staff, which rent shall be effective and due as of the first day of the holdover period.

3.3. Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender the Premises and all improvements thereon to CITY free and clear of all liens and encumbrances caused by LESSEE or arising in whole or in part from this Lease, and in a condition reasonably satisfactory to CITY. Within thirty (30) days after the expiration or earlier termination of this Lease, LESSEE shall execute and deliver to CITY a valid and recordable quitclaim deed covering all of the Premises and the improvements thereon. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE's failure to perform this Lease obligation, and the notice shall be deemed conclusive evidence of the termination of this Lease and all of LESSEE's rights in and to the Premises and improvements thereon.

**SECTION 4: RENT**

4.1. Rent. Subject to this Lease not being terminated early for any reason, and subject to the adjustments as provided herein, LESSEE shall pay as rent ("Rent") for the use and occupancy of the Premises the "Base Monthly Rent", as further defined in this section below:

4.1.1. For the time period between the Effective Date and the Lease Commencement Date (during the ROE Term), LESSEE shall pay Zero Dollars ($0).

4.1.2. For Lease Year 1 through Lease Year 5, inclusive, the Base Monthly Rent shall be the sum of _____ Dollars ($_____)[to be filled in by CITY upon receipt of the applicable Certificate of Occupancy] (the "Initial Base Monthly Rent Amount.") The Initial Base Monthly Rent Amount shall be determined by adjusting upward the appraised value of the Premises by the increase of the CPI between the date the appraised value was determined and the Lease Commencement Date. The aforementioned increase in the CPI shall be capped, on a non-cumulative basis, at three percent (3%) per year and shall be calculated by the CPI Adjustments per Section 4.2 CPI Adjustments below.

4.1.3. For Lease Year 6 through Lease Year 10, inclusive, the Base Monthly Rent shall be the Initial Base Monthly Rent Amount as adjusted by the "CPI Adjustment" per Section 4.2 CPI Adjustments below; which amount shall be the sum of _____ Dollars ($_____)[to be filled in by CITY at the applicable time].

4.1.4. For Lease Year 11 through 15, inclusive, the Base Monthly Rent shall be the Base Monthly Rent Amount in effect during Lease Years 6-10 as adjusted by the "CPI Adjustment" per Section 4.2 CPI Adjustments below; which amount shall be the sum of _____ Dollars ($_____)[to be filled in by CITY at the applicable time].

4.1.5. For Lease Year 16 through 20, inclusive, the Base Monthly Rent shall be the Base Monthly Rent Amount in effect during Lease Years 11-15 as adjusted by the "CPI Adjustment" per Section 4.2 CPI Adjustments below; said amount shall be the sum of _____ Dollars ($_____)[to be filled in by CITY at the applicable time].

4.1.6. Upon the beginning of the 21st year of this Lease, the rent is to be adjusted to market value. Accordingly, for Lease Year 21 through 25, inclusive, the Base Monthly Rent shall be determined by appraisal conducted in accordance with this section; said amount shall be the sum of _____ Dollars ($_____)[to be filled in by CITY at the applicable time].

4.1.6.1. No later than six (6) months prior to the commencement of Lease Year 21, LESSEE agrees to cooperate with CITY in designating an appraiser satisfactory to both CITY and LESSEE to appraise the then market value of the real property that constitutes the Premises; CITY and LESSEE shall equally share the cost of this appraisal. The appraisal shall be performed by a qualified appraiser selected by mutual agreement of the parties from a list of CITY-approved appraisers ("Appraiser List"); LESSEE's selection shall be made within ten (10) business days after LESSEE's receipt of said Appraiser List. If the parties do not mutually select an appraiser within the 10-day period, then CITY and LESSEE, at their individual cost and expense, shall each select a qualified appraiser from the Appraiser List who in turn shall select, within ten (10) business days, a third qualified appraiser from the Appraiser List to perform the appraisal. The third appraiser's determination of the value of the LESSEE's remaining interests in this Lease and the improvements shall be binding on the CITY and LESSEE. The appraiser shall be an MAI appraiser with not less than ten (10) years of experience appraising properties similar to the subject real property. The subject real property shall be appraised based upon the following directions and assumptions: (i) the date of value shall be the first day of Lease Year 21; (ii) the market value of the subject real property shall be based upon the property being "As-Is". "As Is" is defined in the LDA as follows: "*The term "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.*"

4.1.6.2. The Base Monthly Rent for Lease Years 21-25 shall be equal to one twelfth (1/12th) of ten percent (10%) of the appraised real property market value of the subject real property, as determined in accordance with the provisions of the above subsections.

4.1.6.3. In the event that for any reason the appraisal process addressed in this section has not been completed and the amount of the Base Monthly Rent for Lease Years 21-25 has not been established prior to the commencement of Lease Year 21, LESSEE shall continue to make the payments of Base Monthly Rent in the amounts then in effect and, once the new Base Monthly Rent amount has been determined, LESSEE shall pay any difference between the amount determined by the appraisal process and the amount previously paid by LESSEE with LESSEE's next monthly payment of Base Monthly Rent and, during such period, and as long as LESSEE has

reasonably cooperated in an effort to timely complete the appraisal process, LESSEE shall not be deemed to be in default of its obligation to pay Rent and shall not be charged any interest on delinquent rent payments.

4.1.7. For Lease Year 26 through 30, inclusive, the Base Monthly Rent shall be the Base Monthly Rent Amount in effect during Lease Years 21-25 as adjusted by the "CPI Adjustment" per Section 4.2 CPI Adjustments below; said amount shall be the sum of _____ Dollars ($_____)[to be filled in by CITY at the applicable time].

4.1.8. For Lease Year 31 through 35, inclusive, the Base Monthly Rent shall be one hundred twentieth (1/120th) of the market value of the subject real property as of the first day of Lease Year 31, with such value determined by appraisal conducted in accordance with all of the assumptions and procedures set forth in Section 4.1.6, excepting only that the dates and deadlines in Section 4.1.6 shall be modified to reflect that the appraisal and Base Monthly Rent are being established instead for Lease Years 31-35; said amount shall be the sum of _____ Dollars ($_____)[to be filled in by CITY at the applicable time].

4.1.9. For Lease Years 36 through 40, inclusive, the Base Monthly Rent shall be the Base Monthly Rent Amount in effect during Lease Years 31-35 as adjusted by the "CPI Adjustment" per Section 4.2 CPI Adjustments below; said amount shall be the sum of _____ Dollars ($_____)[to be filled in by CITY at the applicable time].

4.1.10. For Lease Year 41 through 45, inclusive, the Base Monthly Rent shall be one hundred twentieth (1/120th) of the market value of the subject real property as of the first day of Lease Year 41, with such value determined by appraisal conducted in accordance with all of the assumptions and procedures set forth in Section 4.1.6, excepting only that the dates and deadlines in Section 4.1.6 shall be modified to reflect that the appraisal and Base Monthly Rent are being established instead for Lease Years 41-45; said amount shall be the sum of _____ Dollars ($_____)[to be filled in by CITY at the applicable time].

4.1.11. For Lease Year 46 through the end of the Lease Term, the Base Monthly Rent shall be the Base Monthly Rent Amount in effect during Lease Years 41-45 as adjusted by the "CPI Adjustment" per Section 4.2 CPI Adjustments below; said amount shall be the sum of _____ Dollars ($_____)[to be filled in by CITY at the applicable time].

4.1.12. Reimbursement. MAP shall receive reimbursement ("Reimbursement") in accordance with the terms and conditions of the Agreement for Offset of Rent, on file with the San Diego City Clerk as Document No. _____. The Reimbursement shall be subject to verification by CITY audit as set forth in Section 4.7, below. This Section 4.1.12 shall not inure to the benefit of any authorized sublessees to this Lease.

4.2. CPI Adjustments. Pursuant to the adjustment schedule set forth above, the rent shall be adjusted, upward only, to reflect any increase in the Consumer Price Index for "All Urban Consumers" for Los Angeles/Riverside/Orange County, California (the "CPI") by first calculating

the average of the twelve (12) months for each year of the lease period immediately preceding the adjustment date, then calculating percent change between each years' average and the last month of the prior year, the result of which shall be capped, on a non-cumulative basis, at three percent (3%) per year for each year; then applying the cumulative percent change for each of those years for each lease period (the "CPI Adjustment Computation"). If the CPI is no longer published, the index for adjustment shall be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the CPI. CITY shall deliver to LESSEE a notice stating the amount of the new Base Monthly Rent. The new Base Monthly Rent shall be effective as of the first day of the applicable Lease Year, regardless of when such notice is delivered, and LESSEE shall pay to CITY and all applicable rent deficiencies within sixty (60) days after CITY's notice of the new Base Monthly Rent. Any rent deficiencies received after sixty (60) days will be considered Delinquent Payments per Section 4.9 Delinquent Payments.

If a rent adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used shall first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, CITY may use another index deemed by CITY to be reasonably comparable to the CPI, which shall then be the "CPI" under this Lease.

CITY's failure to deliver timely notice of any rent adjustment shall not constitute a waiver by CITY of its rights under this Lease.

CPI Adjustment Computation. The rent shall be calculated using the formulas and definitions as follows:

- The "Yearly CPI Adjustment Multiplier" for each year shall be calculated by the formula (("current index" - "base index")/ "base index") to derive a percent change for each year, the result of which shall be capped at three percent (3%). If the percent of change is negative, then a value of zero percent change shall be substituted.
- The "base index" denominator for the calculation is a fixed number representing the first month of the prior thirteen (13) months of the CPI indices immediately preceding the Adjustment Date.
- The "current index" numerator for the calculation is a variable number that shall be the twelve (12) month average of the CPI indices for the twelve (12) months immediately preceding the adjustment date.
- The "base figure" for purposes of calculating the annual adjustment shall be a fixed amount established by the current Rent amount.
- The "Cumulative CPI Adjustment Multiplier" shall be calculated from the additive result of the Yearly CPI Adjustment Multipliers within each lease period.

***Example Calculation of Yearly CPI Adjustment Multiplier:***

[Current Index (12 Mo. Average 2013) **239.2** - Base Index (Dec. 2012) **236]** / Base Index (Dec 2012) **236** = (Yearly CPI Adjustment Multiplier) **1.3%**

***Example Calculation of Cumulative CPI Adjustment Multiplier:***

*Given:*

| | **Current Indices** | | | **Base Indices** | **Yearly** |
|---|---|---|---|---|---|
| | *Month 1* | ..... | *Month 12* | *(12 Mo. Avg)* | **CPI Adj. Multipliers** |
| **2012** | - | | 236.0 | - | |
| **2013** | 238.0 | ..... | 238.7 | 239.2 | 1.3% |
| **2014** | 239.9 | ..... | 240.5 | 242.4 | 1.6% |
| **2015** | 239.7 | ..... | 245.4 | 244.6 | 1.7% |
| **2016** | 247.2 | ..... | 250.2 | 249.2 | 1.6% |
| **2017** | 252.4 | ..... | 259.2 | 256.2 | 2.4% |

**Cumulative CPI Adjustment Multiplier** = 1.3% + 1.6% + 1.7% + 1.6% + 2.4% = **8.6%**

The "Rent Increase" is then calculated from the base figure multiplied by the Cumulative CPI Adjustment Multiplier. Using the foregoing example, the rent adjustment is calculated as follows:

| | |
|---|---|
| $2,500.00 | (Base Figure) |
| X 8.6% | (Adjustment Multiplier) |
| $215.00 | (Rent increase) |

The new "Rent" is calculated by adding the Rent Increase to the base figure to determine the new rent. Using the foregoing example, the adjusted rent is calculated as follows:

| | |
|---|---|
| $2,500.00 | (Base Figure) |
| + $215.00 | (Rent Increase) |
| $2,715.00 | (New Rent Amount & New Base Figure) |

4.3. Time of Payment; Delivery of Rent Payments. Payments of Base Monthly Rent shall be made monthly in advance, no later than the first day of each calendar month during the Lease Term after the Lease Commencement Date. 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.

4.4. Unauthorized-Use Charge. LESSEE shall pay CITY one hundred (100%) of the gross receipts from any use of the Premises that is not authorized by this Lease, regardless of any related penalties charged LESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. No unauthorized use charges shall satisfy or credit against any other rent obligations of LESSEE under this Lease. The unauthorized use charge shall otherwise be considered "Rent" under this Lease, and shall be subject to all costs and penalties for delinquent payments under this Lease. The existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Lease.

4.5. Security Deposit. Promptly after the full execution of this Agreement, LESSEE shall deposit with CITY a security deposit equivalent to one (1) month's rent. Accordingly, LESSEE shall deposit with CITY the sum of $_____ [to be filled in by CITY staff when the Initial Base Monthly Rent Amount has been determined], which amount is equivalent to one (1) times the Initial Base Monthly Rent Amount. Said security deposit amount will be kept in a CITY fund until completion of all the Construction Activities, whereupon any remaining portion of the principal still on deposit shall be returned to LESSEE by CITY. CITY shall not be responsible for paying LESSEE interest on any amounts held as a security deposit.

4.6. Records. LESSEE shall keep or cause to be kept true, accurate and complete books, records and accounts of all financial transactions in the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises. The records shall be supported by source documents such as sales

slips, daily cash register tapes, purchase invoices or other documents (which may be in electronic form).

4.7. CITY's Right to Inspect and Audit. LESSEE shall keep all of its books of account, records and supporting documentation throughout the Lease Term, and for five (5) years thereafter. LESSEE shall make such books, records and documentation available for inspection and audit by CITY in one location within the County of San Diego. LESSEE shall maintain separate books and records related to LESSEE's use of the Premises. Upon reasonable prior notice, but not to exceed one audit in any given Lease Year, CITY may inspect and audit the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises, as CITY may deem necessary, in its sole discretion, to protect CITY's rights under this Lease. Notwithstanding anything herein to the contrary, if the FAA requires additional audits in any given Lease Year, LESSEE shall submit to such additional audits upon CITY providing to LESSEE documentation from the FAA requiring such additional audits. If required by competent governmental authority, LESSEE shall promptly deliver to CITY, at CITY's reasonable request and at LESSEE's sole cost and expense, any and all data reasonably needed to fully comply with such authority's requirements related to the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises.

4.8. Audit Cost. The full cost of each CITY 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:

a) 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

b) 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 under this Lease. 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.

4.9. Delinquent Payments. If LESSEE fails to make any payment under this Lease when due, LESSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains unpaid after fifteen (15) days past due, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than One Hundred Twenty-

Five Dollars ($125). After thirty (30) days past due, unpaid amounts due CITY under this Lease may be referred to the San Diego City Treasurer for collection and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the San Diego City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

## SECTION 5: DEVELOPMENT PLAN

5.1. Development Plan.

Notwithstanding anything to the contrary that may be contained in this Lease, LESSEE shall make certain improvements to the Premises (the "Project") as set forth in the SDP and ALP, as those documents may be amended from time to time. LESSEE agrees to install on all parcel corners of the Premises, as applicable, either: A) a ¾" by 18" Iron Pipe with Disk Stamped "LS 6187", B) a lead and disk stamped "LS 6187" set along an extension of the lot line at an offset of 9.75 feet in the sidewalk, or C) monumentation as otherwise required by applicable law.

5.1.1. CITY and LESSEE understand, acknowledge, and agree that reasonable modifications of the Development Documents may be necessary in connection with the processing of building permits and other approvals from the City of San Diego, acting in its regulatory capacity, as well as that of CITY, and of the FAA. The Development Documents may be modified by (1) proper amendment to the applicable Development Document and, if necessary, by amendment of this Lease and/or this Lease's appropriate exhibit(s); or (2) by any other legal method mutually agreed to by the parties hereto. Unless otherwise required by law, non-substantive amendments to this Lease concerning the Development Plan or otherwise shall be made in writing by, and at the sole discretion of CITY, as authorized by this Lease's subsection titled "CITY's Consent, Approval".

5.2. Construction Bond. LESSEE shall deposit with CITY, prior to commencement of any construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the subject development, or other plans approved by CITY, or, at the option of CITY, that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY. If during the course of construction, LESSEE's

progress and performance reaches either fifty percent (50%) or seventy-five percent (75%) completion, then LESSEE may submit to the City a request for a partial release of the surety which shall be accompanied by (1) a detailed estimate of both the value of work completed as well as the value of work remaining and (2) written confirmation from CITY's Development Services Department of said completion amount. Upon City's approval of such, LESSEE's obligations hereunder shall be reduced by the same and the CITY shall release, or if applicable, cause escrow or the trust to release, the surety in the same proportional amount of the work completed; provided however, the surety amount to be released must exceed $25,000 and in no case shall less than 25% of the original bond amount be retained in force until all work is completed. Upon the completion of construction and final approval is given by a "Notice of Completion and Acceptance," or similar, CITY shall release the full amount remaining on the bond.

5.3. Termination of Agreement and Other Agreements for the Property. LESSEE acknowledges and agrees that if LESSEE rejects possession of a parcel in Phase 1, as identified in attached **EXHIBIT B,** or LESSEE fails to develop all parcels in Phase 1, as identified in attached **EXHIBIT B,** sufficient to meet the requirements of the SDP and the FAA, CITY shall have the right, but not the obligation, to terminate this Agreement with no liability or obligation owed to LESSEE for any improvements to the Project or Premises or costs expended on the Project or Premises. LESSEE further acknowledges and agrees that upon any such early termination of this Agreement, CITY shall have sole ownership of all entitlements over the Project and the Premises, including the Development Documents, and LESSEE shall quitclaim to CITY all interest it may then have in and over the Project and the Premises.]

5.4. Premises Undeveloped. LESSEE acknowledges and agrees that if LESSEE has not commenced construction of any structures on the Premises within 20 years from the effective date of this Agreement, CITY shall extend the time period to develop on the Premises for a one-time additional six (6) months, upon the payment of an additional non-refundable sum in the amount of $50,000.

5.5. Right of Reentry.

5.5.1. LESSEE acknowledges and agrees that CITY shall have the right, at its option, to reenter and take possession of the Premises with all improvements thereon, and to terminate and revest in CITY the estate hereto conveyed to LESSEE, if after conveyance of possession to the Premises, the LESSEE (or its successors in interest) shall: (a) fail to commence construction of the improvements on the Premises for its particular Phase as required by the LDA for a period of six (6) consecutive months after written notice to proceed from CITY, provided that the LESSEE shall not have obtained an extension or postponement to which the LESSEE may be entitled pursuant to this Section 5.5; (b) abandon or substantially suspend construction of the improvements on the Premises for a period of six (6) consecutive months after written notice of such abandonment or suspension from CITY, provided that the LESSEE shall not have obtained an extension or postponement to which the LESSEE may

be entitled pursuant to this Section 5.5; or (c) transfer or suffer an involuntary transfer of the Premises, or any part thereof, in violation of this Agreement, and such violation shall not be cured within thirty (30) days after the date of receipt of written notice thereof by CITY to LESSEE. Such rights to reenter, repossess, terminate, and revest shall be subject to and be limited by and shall not defeat, render invalid, or limit: (i) any mortgage, deed of trust, or other security interests permitted by this Agreement; or (ii) any rights or interests provided in this Agreement for the protection of the holders of such mortgages, deeds of trust, or other security interests. The rights established in this Section 5.5 shall not apply to a portion of the Premises on which the improvements have been completed in accordance with this Agreement and for which a certificate of occupancy has been issued therefor.

5.5.2. Should LESSEE be delayed in the commencement, prosecution, or completion of the Project, including but not limited to any litigation by entities or individuals not parties to this Agreement, and the delay is not attributable to any fault, neglect, act, or omission of CITY or LESSEE, and the delay is reasonable under the circumstances involved and not within the contemplation of the parties at the time that the LDA was entered into, then LESSEE shall be entitled solely and exclusively to an extension of the time only. Such extension of time shall release and discharge CITY, its employees and agents from any and all claims for damages of whatever character, including, but not limited to, disruption, changes in sequence, interference, inefficiency, field or home office costs claimed by LESSEE on account of the aforesaid or any other cause or delay.

5.5.2.1. In the event that LESSEE's performance of the Project is delayed by causes beyond the reasonable control of LESSEE, the Project's timeline may be extended by CITY to reflect the extent of such delay. LESSEE must give CITY written notice within five (5) calendar days of the commencement of such delay.

5.5.2.2. Consideration of a time extension for events beyond the reasonable control of LESSEE shall only be made if the delay directly impacts the time requirement set forth in this Agreement or the SDP.

5.5.2.3. Events considered to be beyond the reasonable control of LESSEE and CITY are limited to acts of God, acts of the public enemy, fires, floods, earthquakes, epidemics, quarantine restrictions, freight embargoes, or weather significantly more severe than the norm, provided that the listed causes were not foreseeable and did not result from the fault or negligence of LESSEE, and provided further that LESSEE has taken reasonable precautions to prevent further delays owing to such cause.

5.5.2.4. No extension of time will be granted under this Section 5.5 for any delay (1) if the delay was caused by the action and/or inaction of LESSEE, including but not limited to the fault or negligence of LESSEE or his subcontractors; or (2) for which any remedies are provided for or excluded by any other provision of this Agreement. CITY's permitting LESSEE to proceed with the Project, or any part

thereof, after such extension shall in no way operate as a waiver of any other rights on the part of CITY.

5.5.2.5. Any claim for extension of time shall be made in writing to CITY not more than five (5) calendar days after the commencement of the delay; otherwise, the claim shall be waived. Any claims for extension of time shall (1) state the cause of the delay; (2) specifically demonstrate the impact of the delay on the critical path of LESSEE's schedule; and (3) state the number of day's extension requested. If the cause of the delay is continuing, only one claim is necessary, but LESSEE shall report, in writing, the termination of the cause for the delay within five (5) days after such termination. Any claim for extension of time that does not comply with this Section 5.5.2.5 shall be denied.

5.5.2.6. If the Project is delayed as a result of LESSEE's refusal or failure to begin the Project on the date of commencement pursuant to this Agreement, or refusal or failure to carry the Project forward expeditiously with adequate forces, equipment, material or other resources, CITY may terminate this Agreement.

5.5.2.7. The permitting of LESSEE, or the surety of the performance bond, to proceed to complete any part of the Project after the date of Notice of Completion (or similar type of document) and Acceptance (or similar type of document), or after the date to which the Notice of Completion and Acceptance may have been extended, shall in no way operate as a waiver on the part of City of any of its rights.

5.6. Issuance of Certificates of Occupancy for the Premises. LESSEE acknowledges and agrees that no certificates of occupancy will be issued for any work on the Premises until all of the certificates of occupancy for Phase 1, as identified in attached **EXHIBIT B**, aviation facilities required by the FAA have been issued.

## SECTION 6: MAINTENANCE, IMPROVEMENTS, ALTERATIONS, AND REPAIRS

6.1. Acceptance of Premises. LESSEE shall take possession of the Premises "as is." By signing this Agreement, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations and observations necessary to satisfy itself as to the condition of the Premises and its suitability for the Allowed Uses. LESSEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Premises or its suitability for the Allowed Uses or any particular use, and that LESSEE is relying solely on its own and independent inspections, tests, investigations and observations of the Premises in entering into this Agreement. CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE's intended use, and assumes no obligation to alter or improve the Premises.

6.2. Maintenance. LESSEE shall, at LESSEE's sole cost and expense, maintain the Premises and all improvements, fixtures, structures, or installations on the Premises at all times during the

Lease Term, in a decent, safe, healthy, and sanitary condition reasonably satisfactory to CITY, ordinary wear and tear excepted. CITY shall have no obligation or responsibility to remove debris, or to construct, maintain, repair or replace improvements, fixtures, structures or installations on the Premises. LESSEE shall maintain the Premises and all improvements thereon, at its sole cost and expense, in a condition reasonably satisfactory to CITY from the Lease Commencement Date until the last day of the Lease Term or any earlier termination date; in regard to the improvements, said "condition" shall be that which is equivalent to that of a merchantable standard.

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 shall be of like size, kind, and quality to the items replaced and shall be subject to prior written approval by the Airports Deputy Director, such approval not to be unreasonably withheld, conditioned or delayed. 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 herein, LESSEE shall pay the cost thereof to CITY, as additional rent, promptly, but in no event later than thirty (30) days from receipt of an invoice therefor. Nothing herein contained shall imply any duty on the part of CITY to do any such work, which under any provision of this 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 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.

6.3. Improvements/Alterations. Other than improvements authorized by the SDP and ALP , if any, LESSEE shall not construct or install any buildings or structures on the Premises or otherwise improve or alter the Premises (including the improvements installed pursuant to the SDP and ALP), in any manner except in accordance with written plans and specifications submitted to and approved, in writing, by CITY prior to commencement of any such work. Once consented to, LESSEE shall not make any structural or major architectural design alterations to approved improvements, structures, or installations on the Premises except in accordance with such written plans and specifications submitted to and approved, in writing, by CITY. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.

6.4. Entry and Inspection during Maintenance, Improvements, Alterations, and Repairs. CITY, as the lessor under this Lease, with no effect on its separate and distinct governmental rights and powers, may enter and inspect the Premises during periods of maintenance, improvement, alteration, or repair. CITY's right to entry and inspection of the Premises, in the absence of any

emergency or other proper authorization, shall require reasonable notice and be limited to reasonable business hours, provided that such entry and inspection shall not substantially unreasonably interfere with LESSEE's use of the Premises, and that LESSEE will not unreasonably delay (as determined by the reason(s) for each inspection) CITY from conducting such inspections.

6.5. Construction Bond. If LESSEE constructs improvements, alternations, repairs on the Premises (other than those contemplated by the Development Documents for which LESSEE's requirement to have bonds are already set forth/agreed upon), CITY may require LESSEE to deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY. If during the course of construction, LESSEE's progress and performance reaches either fifty percent (50%) or seventy-five percent (75%) completion, then LESSEE may submit to the City a request for a partial release of the surety which shall be accompanied by (1) a detailed estimate of both the value of work completed as well as the value of work remaining and (2) written confirmation from CITY's Development Services Department of said completion amount. Upon City's approval of such, LESSEE's obligations hereunder shall be reduced by the same and the CITY shall release, or if applicable, cause escrow or the trust to release, the surety in the same proportional amount of the work completed; provided however, the surety amount to be released must exceed $25,000 and in no case shall less than 25% of the original bond amount be retained in force until all work is completed. Upon the completion of construction and final approval is given by a "Notice of Completion and Acceptance," or similar, CITY shall release the full amount remaining on the bond.

6.6. Liens. LESSEE shall protect, defend, indemnify and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, upgrades, construction or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorney fees. If LESSEE causes improvements, alterations, upgrades, construction or repairs to be made to the Premises, and a lien or notice of lien is filed against the Premises, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien.

6.6.1. 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.

6.6.2. 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 non-appealable judgment establishing the validity or existence of a lien for any amount is entered, Lessee shall immediately pay and satisfy the same.

6.6.3. 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 legal rate, plus ten percent (10%).

6.6.4. 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, as required herein.

6.6.5. Notice of Non-responsibility during Maintenance, Improvements, Alterations, and Repairs. CITY or its representatives shall have the right to go upon and inspect the Premises at all reasonable times during periods of maintenance, improvement, alteration, or repair; provided CITY shall not interfere with the lawful activities and businesses conducted by LESSEE on the Premises. In addition, CITY shall have the right to post and keep posted thereon notices of non-responsibility 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.

6.7. Annual Leasehold Compliance Surveys. In addition to CITY's right to enter the Premises pursuant other rights granted in this Lease, LESSEE acknowledges and accepts CITY's right and intent to conduct periodic, but not more frequently than annual (unless the circumstances call for additional inspections), Leasehold Compliance Surveys ("Surveys"). 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. 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 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 not less than $50 for each hour, for each necessary member of CITY's staff, for such follow-up Survey. Refusal by LESSSEE to provide access to all areas of the Premises shall be considered a material breach of this Lease.

6.8. CITY Not Obligated to Repair/Maintain. To the extent that any remedies specified in this Lease conflict or are inconsistent with any provisions of California Civil Code Section 1942, or any successor statute thereto, the provisions of this Lease shall control. LESSEE specifically waives any right it may have pursuant to Civil Code Section 1942 to effect maintenance or repairs to the Premises and to abate the costs thereof from rent due to CITY under this Lease.

## SECTION 7: WASTE, DAMAGE OR DESTRUCTION

7.1. Insured Casualty. Should LESSEE's improvements or fixtures be damaged by fire, or other perils covered by the insurance LESSEE is required to carry under the terms of this Lease, LESSEE shall undertake to restore such improvements or fixtures to substantially the same condition as they were in immediately preceding such damage or destruction, regardless of actual insurance proceeds available and/or paid to LESSEE. In the event of a total destruction of the Premises so that the Premises are rendered commercially unusable, LESSEE shall have the option (i) to terminate this Lease with CITY 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 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 subsection 4.1.6.1 of this Lease portion of this Agreement), determined to be the fair market value of the CITY's reversionary interests in the improvements to the Premises that were damaged or destroyed.

7.2. 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.

7.2.1. 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 gross 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.

7.3. Release of Liability Due to Damage or Destruction. Upon the termination of this Lease due to the total destruction of the Premises (pursuant to the terms of this 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 Lease without further obligation to the other party coincident with the surrender of possession of the Premises to CITY, excepting therefrom any obligation and liability that had theretofore accrued and/or is then unpaid; and (ii) the Base Monthly Rent shall be apportioned and paid to the time of the occurrence of the damage and destruction.

7.4. Waste. LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash and rubbish in a manner satisfactory to CITY.

## SECTION 8: HAZARDOUS SUBSTANCES

8.1. Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of Hazardous Substances or otherwise regulated substances in, on, under or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Premises without CITY's written consent in each instance or in violation of applicable law. LESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste in violation of applicable law.

8.1.1. Definitions. A "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of Hazardous Substances. "Hazardous Substances" shall mean any hazardous liquid, solid, gaseous material, or waste substances listed by the Environmental Protection Agency or the State of California as a Hazardous Substance, and any type of petroleum-related substances and their chemical constituents.

8.1.2. Remediation. If LESSEE's occupancy, use, development, maintenance or restoration of the Premises results in a release of a Hazardous Substance, LESSEE shall pay

all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises in accordance with all applicable laws, rules and regulations of competent governmental authority.

8.1.3. Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances onto the Premises, LESSEE shall remove, or cause to be removed, all such Hazardous Substances from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the Hazardous Substances from the Premises. LESSEE shall pay any and all costs incurred by CITY to remove or cause the removal of such Hazardous Substances from the Premises.

8.1.4. Indemnity. LESSEE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, development, maintenance or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

8.1.5. Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or within the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.

8.1.6. Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance or restoration of the Premises ("LESSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and

expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by laws, rules and regulations of competent governmental authority, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws, rules and regulations, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its reasonable discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment of Hazardous Materials caused by LESSEE's Operations such that unrestricted re-use of the Premises and compliance with the laws, rules and regulations of competent governmental authority is achieved, and LESSEE shall pay all costs and expenses therefor.

## SECTION 9: WATER QUALITY

9.1. Water Quality – Best Management Practices.

9.1.1. CITY and LESSEE are committed to the implementation of controls (best management practices, or BMPs) contained in the Brown Field Municipal Airport Storm Water Pollution Prevention Plan ("SDM SWPPP") to manage activities on the Premises in a manner which aids in the protection of CITY's precious water resources. It is LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause non-storm water discharges and pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312) or the SDM SWPPP.

9.1.2. Therefore, LESSEE shall, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under San Diego Municipal Code section 43.0307(a) and the SDM SWPPP.

9.1.3. Federal Environmental Protection Agency (EPA) rules for above ground tank systems ("ASTs") and oil pollution prevention require that each facility that owns or operates above ground tank systems (including refueler trucks) that contain an aggregate storage capacity of 1,320 gallons or higher must prepare a Spill Prevention Control and Countermeasures ("SPCC Plan") Program, pursuant to 40 C.F.R. Part 112. The plan includes requirements for secondary containment, loading/unloading of fuel and oil, discharge of accumulated rainwater, inspections, training, updates to the plan, and other miscellaneous items. LESSEE shall prepare a site specific SPCC Plan and provide a copy to CITY.

9.1.4. It is LESSEE's responsibility to prevent non-storm water discharges and pollutant discharges to the storm drain system. LESSEE shall identify and implement any additional

BMPs that may be required to avoid non-storm water discharges and the discharge of pollutants to the storm drain system.

## SECTION 10: SECURITY

10.1. Provision of Security and Compliance with Minimum Standards. LESSEE shall at all times provide, at LESSEE's sole cost and expense, security measures, which shall be in compliance with the FAA's Minimum Airport Standards, City of San Diego Airports Division Minimum Operating Standards and City of San Diego Airports Division Operations Policies and Procedures Manual, and as required, using reasonable care, to protect persons and property on the Premises, including without limitation maintaining a plan for adequate patrol of all areas of the Premises with the goal of preserving order and preventing theft, vandalism and other improper or unlawful use of the Premises or any of the facilities thereon.

LESSEE shall construct and maintain fences, gates, walls, and/or barriers on the Premises in a manner designed, in and upon the Airports Director's reasonable judgment and written consent, to prevent unauthorized access to the taxiways, runways, and LESSEE's ramp and hangar area(s) 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 Airports Deputy Director and designated Airports 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 Lease 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.

## SECTION 11: PREVAILING WAGES

11.1. Prevailing Wage. By signing this Agreement, LESSEE certifies that it is aware of the wage provisions described in this Agreement and shall comply with all wage requirements as set forth in **EXHIBIT G**, attached hereto, before commencing any and all work on the Premises.

11.2. DIR Determination of Coverage. Notwithstanding the foregoing prevailing wage determination and provisions, prior to any design or preconstruction activities or issuance of the first development permit for development activities on the Premises, 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 Agreement, CITY shall agree to amend this Agreement 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 without the need for further City Council resolution.

11.3. 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 Agreement, and all expenses of investigating and defending against same, including without limitation attorney fees and costs.

## SECTION 12: INSURANCE

12.1. Insurance Requirements. LESSEE shall comply with all insurance requirements set forth in **EXHIBIT E**, attached hereto. Said insurance requirements are subject to amendment by CITY in its reasonable discretion.

## SECTION 13: INDEMNITY

13.1. Indemnification & Hold Harmless

13.1.1. 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 and its elected officials, officers, employees, representatives or agents (cumulatively, "CITY Parties") from and against all Claims, as defined below, from any cause, arising out

of or relating (directly or indirectly) to LESSEE's acts or omissions pursuant to this Agreement, the tenancy created under this Agreement, and the Premises, including, without limitation:

13.1.1.1. The use or occupancy, or manner of use or occupancy, of the Premises by LESSEE and LESSEE's officers, members, partners, agents, employees, independent contractors, and sublessees, as well as to all persons and entities claiming though any of these persons or entities (cumulatively, "LESSEE Parties");

13.1.1.2. 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;

13.1.1.3. LESSEE Parties' conducting of its business;

13.1.1.4. Any development, alterations, activities, work, or things done, omitted, permitted, allowed, or suffered by LESSEE Parties in, at, or about the Premises, including construction of alterations, 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 Agreement Effective Date or enacted, promulgated, or issued after the Agreement Effective Date; and

13.1.1.5. Any breach or default in performance of any obligation on LESSEE Parties' part to be performed under this Agreement whether during the Lease Term or after the Agreement's expiration or earlier termination.

13.2. Definition of Claims. For purposes of this Agreement, "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).

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

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

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

13.3.3. All incidental economic or other losses and damage of any kind.

13.4. Comparative Negligence; Liability. The indemnification in subsection 13.1 shall not apply to the extent that a final non-appealable judgment of a court of competent jurisdiction establishes that a Claim against one or more CITY Parties was caused, either solely or proportionally, by the negligence or willful misconduct of one or more of the CITY Parties and, following any such

determination of liability, LESSEE shall only be responsible to pay an amount of such costs equal to the finally determined percent of liability based upon the comparative fault of LESSEE.

13.5. Indemnification Independent of Insurance Obligations. The indemnification provided in this Section 13 shall not be construed or interpreted as in any way restricting, limiting, or modifying LESSEE's insurance or other obligations under this Agreement and is independent of LESSEE's insurance and other obligations. LESSEE's compliance with the insurance requirements and other obligations under this Agreement shall not in any way restrict, limit, or modify LESSEE's indemnification obligations under this Agreement.

13.6. Survival of Indemnification. The clauses of this Section 13 shall survive the expiration or earlier termination of this Agreement 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.

13.7. LESSEE's 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 subsection 13.1.1.

13.7.1. Repayment of Cost of Defense. Although this Agreement requires LESSEE to provide an "up-front" defense on behalf of the CITY Parties for Claims listed under 13.1 of this Agreement, it is the express intent of the Parties to equitably repay any such costs paid by LESSEE upon a final non-appealable judgment of a court of competent jurisdiction that determines that the CITY has a portion of liability. Following any such determination of its liability, CITY shall be responsible to pay to LESSEE an amount of such costs equal to its percent of liability, together with interest thereon from the date such indebtedness arises until paid at the rate equal to 6 percent per annum.

13.8. CITY's Election. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the "up front" costs related thereto, including without limitation reasonable attorney fees and costs, subject to the repayment terms provided in 13.7.1.

## SECTION 14: ASSIGNMENT, SUBLETTING AND ENCUMBRANCES

14.1. CITY's Consent to Assignment 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 Agreement, 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 Agreement. As used herein, the term "Transfer" shall include the transfer of any stock or interest in LESSEE, as it exists on the Effective Date, 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 Agreement, 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 and (i) a fully executed copy of the instrument accomplishing 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 original of the executed sublease, and (iii) in the case of an assignment, CITY has received a written instrument in which the assignee has assumed and agreed to perform all of LESSEE's obligations under the Agreement. In the case of a sublease, CITY agrees to enter into a reasonable nondisturbance and attornment agreement with the sublessees in a form as agreed by the parties and approved by the San Diego City Attorney. 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 Agreement 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 Agreement and the provisions of any Transfer Instrument, the provisions of this Agreement shall control.

14.3.1. Release of liability upon Transfer by Assignment. From and after the effective date of a Transfer approved by CITY involving a complete assignment of LESSEE's interest

in the Premises (excluding subleases and assignments to the Beneficiary of a Mortgage for security purposes) to a subsequent assignee and the Premises has secured all Certificates of Occupancy, the CITY shall release the transferor and its successors and assigns, from all liability and all obligations, monetary and non-monetary, arising under this Agreement. Transferor shall not be held responsible for any act, occurrence or omission of assignee occurring after the effective date of such Transfer.

14.4. Denial of Consent to Assignment or Sublease. If CITY denies its consent to a proposed Transfer, CITY shall provide to LESSEE a written statement of the basis on which CITY denied its consent within thirty (30) days after the receipt of LESSEE's request for consent to a Transfer. Notwithstanding any of the foregoing provisions of this subsection 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.

a) LESSEE or any of its successors, assigns or sublessees are in default as to any term, covenant or condition of this Agreement.

b) 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 Agreement.

c) 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.

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

e) Any construction of improvements required of LESSEE as a condition of this Agreement 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 that CITY has unreasonably withheld its consent or an order of specific performance or mandatory injunction requiring CITY's consent.

14.5. Additional Consideration to CITY. If this Agreement is assigned, LESSEE shall pay to CITY an amount equal to two percent (2%) of the gross amount paid for the leasehold. The amount upon which such two-percent payments shall be based shall be the total consideration resulting from the transaction, including without limitation all cash payments and the market value of non-cash consideration, including without limitation stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Notwithstanding the foregoing, this section does not apply to any "Exempt Assignment" An Exempt Assignment consists of any of the following:

a) Any first-time assignment to a third party entity (that is not an Affiliate of LESSEE, as defined below); or

b) Any assignment to an Affiliate of LESSEE.

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.

Prior to CITY's consent to any assignment, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this Section, together with an acknowledgment from the proposed assignee as to the amount due CITY. The additional consideration payable to CITY for assignments shall be paid concurrently with the closing of the proposed transaction. Any assignment in violation of the terms and conditions of this Section shall be void.

CITY shall also be entitled to two percent (2%) of the gross amount paid, or is payable, to LESSEE (or successor in interest) on the full sale price for, any buildings, hangars or other structures, or any portion thereof built on the Premises, but only after the initial sale of any such buildings, hangars or other structures, or any portion thereof, built on the Premises (a "Resale"). The amount upon which such two-percent payments shall be based shall be the total consideration resulting from the transaction, including without limitation all cash payments and the market value of non-cash consideration, including without limitation stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY's consent to any such sale, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this Section, together with an acknowledgment from the proposed purchaser as to the amount due CITY.

The additional consideration payable to CITY shall be paid concurrently with the closing of the proposed transaction, regardless of actual receipt by LESSEE. Any sales in violation of the terms and conditions of this Section shall be void.

Exception. The applicable two-percent (2%) payment required by this Section shall not apply to:

i. an assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants of the individual who is the owner of a controlling interest in LESSEE; or

ii. an assignment deemed by CITY, in its reasonable discretion, not to materially affect the legal and equitable ownership interests in the leasehold, such as a change in LESSEE's legal or fictitious name without any other change in the equity, beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby.

14.6. Transfers by Encumbrance/Mortgage. Any Transfer by LESSEE to secure the beneficial interest of a lender ("Beneficiary") in LESSEE's interests under this Agreement 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:

a) 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;

b) Immediately following the recordation of any mortgage affecting LESSEE's interest in this Agreement, 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.

14.7. Additional Beneficiary Protection Clauses.

14.7.1. Notice. CITY, upon serving LESSEE with any notice under this Lease shall also serve a copy of that notice upon Beneficiary in the same manner as required by this 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.

14.7.2. Rights of Foreclosing Leasehold Mortgagee. If Beneficiary forecloses the Mortgage or otherwise acquires leasehold title to 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"):

a) CITY will, upon notice of the transfer, recognize the New Owner as the tenant under this Lease, subject to CITY's consent to the transfer, said consent not to be unreasonably withheld. CITY expressly agrees that Foreclosure will not constitute a default under this Lease nor will it result in termination of this Lease;

b) The New Owner and its successors shall have the right to assign this Lease or sublet all or a portion of the Premises in accordance with terms of this Lease and with the consent of CITY, said consent not to be unreasonably withheld; and

14.7.3. New Lease. If this 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 Agreement by the trustee of LESSEE's bankruptcy estate), CITY agrees that Beneficiary or its 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 Lease and

shall be for a period equal to the remainder of the Lease Term of this Lease, at the same rent, and upon each and all of the terms, covenants, agreements and conditions contained in this Lease. It shall be a condition of CITY's obligation to enter into a new lease with Beneficiary that Beneficiary cure LESSEE's monetary defaults.

14.7.4. Insurance Proceeds. Notwithstanding any other provision in this Lease, in the event of any casualty of LESSEE's leasehold interest in the Premises or any portion thereof during such time as 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.

a) Subject to subsection "b" 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.

b) 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 Lease, in which event the insurance proceeds shall be payable as follows: first, to City in such amount to compensate City for the market value, as determined by a qualified appraiser (selected in the same manner as appraisers are selected pursuant to Subsection 3.5.2 of this 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..

14.7.5. Miscellaneous. CITY agrees from time to time, upon no less than thirty (30) days' prior written request of Beneficiary, to execute, acknowledge, and deliver a statement that certifies the following:

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

b) The dates for which the rent has been paid and the amounts of those rental payments.

14.8. Estoppel Certificate. Within thirty (30) calendar days after written request by LESSEE or an Institutional Lender, CITY shall execute and deliver a statement certifying as follows:

(i) The existence and effect of the Lease and all amendments to it, if any;

(ii) The last date CITY received rent under the Lease, the date such rent was due and the amount thereof;

(iii) Whether there are any events of default under the Lease (and, whether there is or has been any event, act, or omission which would constitute an event of default with notice or lapse of time or both) to the best knowledge of CITY as of the date of the certificate;

(iv) Acknowledging Institutional Lender and receipt of Institutional Lender's name and address for purpose of notices to be given and received pursuant to the provisions of the Lease;

(v) That Institutional Lender may exercise against CITY all of Institutional Lender's rights in the Lease and all amendments to it, if any;

(vi) Confirming the commencement and termination dates of the Lease, whether any options to renew or extend the Lease or to purchase the CITY's interests in the Premises have been exercised or have lapsed; and

(vii) That CITY understands the recipient will rely on the certificate.

14.9. Charter Section 225. Pursuant to San Diego Charter section 225, LESSEE and each of its subtenants and assignees shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved or interested in this Agreement, and in any sublease or assignment, and the precise nature of all interests of all such persons. Every person or entity proposed to have an interest in this Agreement must be reviewed and approved by CITY, in its sole discretion.

14.10. Non-subordination. CITY shall not be required to subject its fee estate and interest in the Premises to the lien of any leasehold financing or mortgage sought or obtained by LESSEE.

## SECTION 15: DEFAULT AND REMEDIES

15.1. Default by LESSEE. LESSEE shall be in default of this Lease if any of the following occurs:

a) LESSEE fails or refuses to make any payment required under this Lease when due;

b) LESSEE breaches any of its obligations under this Lease, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;

c) LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;

d) LESSEE is adjudicated a bankrupt; or

e) LESSEE makes a general assignment for the benefit of creditors.

15.2. Notices. Following the occurrence of any of the defaults specified above, and subject to the rights of the Beneficiary of a Mortgage consented to by City, CITY shall give LESSEE a written notice specifying the nature of the default and the provisions of this 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:

a) For nonpayment of any payment required, three (3) business days; and

b) For any non-monetary default, a reasonable period not to exceed thirty (30) 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.

To the extent permitted by applicable State law, the time periods provided in this subsection for cure of LESSEE's defaults under this 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 subsection, or fail to quit the Premises as required thereby, subject to the rights of the Beneficiary of a Mortgage consented to by CITY, and except as may otherwise be required by applicable California law, CITY may exercise any of the following rights without further notice or demand of any kind to LESSEE or any other person:

15.3.1. The right of CITY to terminate this 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 Lease;

15.3.2. The right of CITY without terminating this 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 subsection, to elect thereafter to terminate this Lease and LESSEE's right to possession of the Premises.

Should CITY have acted under the provisions of subsection 15.3.2, CITY shall not be deemed to have (i) terminated this 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 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 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 Lease and LESSEE's right to possession of the Premises pursuant to the provisions of this Section 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 Lease 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 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 re-letting to a new tenant, including repairs or alterations to the Premises for such re-letting, (iv) leasing commissions, and (v) any other direct costs necessary or appropriate to re-let 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 subsection 15.4.3, 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 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.

15.6. Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

## SECTION 16: EMINENT DOMAIN

16.1. 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:

16.1.1. Full Taking. If the entire Premises are taken, this 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.

16.1.2. 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 Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

16.1.3. 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 Lease operation, this 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 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.

16.1.4. _. 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.

16.1.5. 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 subsection 16.1.4.

16.1.6. No Inverse Condemnation. The exercise of any CITY right under this 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.

16.1.7. 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).

## SECTION 17: TERMINATION, SURRENDER, ABANDONMENT, AND BANKRUPTCY

17.1. Ownership of Improvements and Personal Property. CITY shall not own any improvements, fixtures, structures or installations on the Premises during the Lease Term, unless such ownership is evidenced by a separate writing. LESSEE shall not remove any improvements, fixtures, structures or installations during the Lease Term without CITY's written consent in each instance. Upon expiration or termination of this Lease, all improvements, fixtures, structures and installations then on the Premises shall be deemed a part of the Premises and owned by CITY, at no cost to CITY. Notwithstanding the foregoing sentence, CITY may, upon notice to LESSEE at Lease termination or at any time prior to the expiration of the Lease Term, elect to have part or all of such improvements, fixtures, structures and installations or additions removed by LESSEE upon the termination or expiration of this Lease. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Lease. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required in this Section, CITY may, at its option, remove them at LESSEE's sole cost and expense.

17.2. Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures and other items of personal property upon the expiration of the Lease Term, or as soon as practicable after termination of this Lease. Any such items which LESSEE fails to remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.

17.3. Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any reasonable period of time after the expiration or termination of this Lease needed to remove improvements, fixtures, structures or installations or personal property as required above, whether by CITY or by LESSEE. Such rent shall be one hundred twenty five percent (125%) of the rent in effect immediately prior to the expiration or termination of this Lease.

17.4. Abandonment by LESSEE. If LESSEE abandons the Premises, subject to the rights of any Lender, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including without limitation the right to recover rent as it becomes due, plus damages. 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.

17.5. Right of Termination. Subject to the rights of the Beneficiary of a Mortgage consented to by CITY in this Lease, and except as may otherwise be required by applicable federal or California law, should any of the following events occur, CITY may terminate this Lease and any interest of Lessee therein, effective with the last day of the event:

17.5.1. 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;

17.5.2. 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;

17.5.3. 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; or

17.5.4. 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 a provision of this Lease or except in connection with a permitted assignment or subletting under this 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 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.

17.6. Request for Information. Within ten (10) days after CITY's request therefor, LESSEE shall provide CITY and any Beneficiary of a Mortgage or proposed Beneficiary of a Mortgage, as CITY shall specify, such financial, legal, and business information concerning any of the events described in this Section 17 as CITY shall request.

## SECTION 18: CITY POLICY PROVISIONS

18.1. Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and all other laws, rules and regulations of competent governmental authority.

LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, gender expression, gender identity, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all commercial subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each commercial sublessee and contractor. LESSEE shall fully cooperate with any investigation conducted by the City of San Diego, in its governmental capacity, pursuant to its Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time], and upon CITY's request, LESSEE shall submit a current Workforce Report. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

18.2. Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, as amended from time to time, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE certifies that it will maintain such equal benefits throughout the Lease Term of this Lease.

18.3. Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy thereof, comply with California Government Code sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 ("ADA"); and all other applicable laws, rules and regulations of competent governmental authority protecting the rights of people with disabilities. LESSEE's compliance shall include without limitation the following:

a) LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment.

b) No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of LESSEE.

c) LESSEE shall include language in each commercial sublease agreement which indicates the commercial sublessee's agreement to abide by the foregoing provisions of this section. LESSEE and each of its commercial sublessees shall be individually responsible for their own ADA employment programs.

d) LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.

e) Where required by law, all improvements, fixtures, structures or installations on the Premises shall comply with municipal disabled-access requirements by bringing up

to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at LESSEE's sole cost and expense.

f) LESSEE acknowledges and agrees that failure to comply with the above requirements and/or submitting false information in response to these requirements shall be a default of this Lease.

18.4. Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

a) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition; and

b) Establish a drug-free awareness program to inform employees about all of the following:

i. The dangers of drug abuse in the workplace;

ii. LESSEE's policy of maintaining a drug-free workplace;

iii. Any available drug counseling, rehabilitation, and employee assistance programs; and

iv. The penalties that may be imposed upon employees for drug abuse.

c) LESSEE shall include in each of its sublicenses and contracts (but not any residential sublease) related to this Lease language obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.

18.5. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.

18.6. Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. To the extent legally required under applicable law with respect to any work on the Premises, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts

from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.

18.7. Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender expression, gender identity, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use and occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees on the Premises.

18.8. Equal Pay Ordinance. Unless an exception applies, LESSEE shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By signing this Agreement, LESSEE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Lease Term.

18.8.1. LESSEE and Sublessee Requirement. The Equal Pay Ordinance applies to any sublessee of the Premises to the same extent as it would apply to LESSEE. LESSEE shall require sublessees to certify compliance with the Equal Pay Ordinance in their subleases.

18.8.2. Notice Requirement. LESSEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.

## SECTION 19: FAA REQUIREMENTS AND RESERVATIONS OF RIGHTS

19.1. FAA covenants and reservations of rights. LESSEE shall conform to the FAA covenants and reservations of rights set forth in **EXHIBIT D**, attached hereto. Said FAA covenants and reservations of rights are subject to amendment by CITY in its sole discretion.

19.2. Safety Management Systems Compliance. Although the use of Safety Management Systems (SMS) are not required by the FAA as of the commencement of this Agreement, it is anticipated that during the above ROE Term, or this Lease Term, that the FAA will mandate SMS compliance for general aviation airports, which would include the Airport. Because the use of SMS at airports can contribute to helping airports detect and correct safety problems before they result in aircraft accidents or incidents, and can contribute to efforts to adopt new measures therefor, LESSEE agrees that LESSEE will timely comply with, and respond to: (i) CITY's requirement that LESSEE conduct regular (and other as-needed) SMS-related inspections of the Premises and that LESSEE will compile and report said information in a form acceptable to the FAA and CITY; (ii) all CITY requests for SMS-related data; (iii) the CITY's right to conduct SMS-related inspections of the Premises; (iv) all other SMS-related requests made by CITY in its effort to implement a system-wide SMS and maintain a SMS Manual for the CITY's airport system or part thereof; and (v) all FAA-mandated information, data, etc.. Information that may need to be compiled includes hazard reporting and tracking, data collection, safety risk assessment

processes, and gap analyses. All SMS-related information, reports and documents provided by LESSEE shall be verified by LESSEE to be accurate and shall be provided without cost to CITY.

## SECTION 20: GENERAL PROVISIONS

20.1. Definition of "Day". For the purposes of this Lease, "day" means "business day". A business day means any day except for a Saturday, Sunday or holiday. In the event any date, deadline or due date set forth in this Lease falls on a day that is not a business day, then such deadline or due date shall automatically be extended to the next business day.

20.2. Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises has not been inspected by a Certified Access Specialist (CASp).

Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

20.3. Superior Interests. This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Premises, whether or not of record. LESSEE shall obtain all licenses, permits and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises, relative to any such superior interest. If LESSEE's use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, LESSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

20.4. Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, restoration and operation of the Premises comply with all applicable laws, rules and regulations of competent legal authority, at LESSEE's sole cost and expense. Upon request, LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE. However, LESSEE may, after written notice to CITY, by appropriate proceedings conducted promptly at LESSEE's expenses, and in LESSEE's name, and/or wherever necessary in CITY's name contest in good faith the enforcement of any such law or regulation against LESSEE, and LESSEE may defer compliance with the same during such contest, provided LESSEE diligently prosecutes such contest to a final determination by the authority having jurisdiction thereof, and providing LESSEE shall defend, indemnify and save

CITY harmless from any fine, penalty or other civil or criminal liability resulting from such contest or deferral.

20.5. Governmental Approvals.

20.5.1. LESSEE acknowledges that this Lease is subject to approval by CITY's City Council (the "City Council"), which may or may not be granted in the City Council's sole discretion. CITY shall not be liable for, or obligated for, any burden or loss, financial or otherwise, incurred by LESSEE as a result of the City Council's failure to approve this Lease.

20.5.2. By entering into this Lease, neither CITY nor City Council is obligating itself to LESSEE or to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to LESSEE's occupancy, use, development, upgrades, maintenance or restoration of the Premises, the Improvements, or any other improvements on the Premises. Discretionary action includes, without limitation, re-zonings, variances, environmental clearances and all other required governmental approvals.

20.5.3. LESSEE acknowledges and agrees that CITY has not made, nor now makes, any determinations regarding any aspect, sufficiency or legality of any development, rehabilitation, maintenance or restoration of the Premises, the improvements, or any other improvements on the Premises. Furthermore, CITY does not represent, warrant or guarantee any future approval of any development, rehabilitation, maintenance or restoration of the Premises or any improvements on the Premises, by the CITY, in its governmental capacity, or the City Council, nor shall anything in this Lease be interpreted as representing, warranting or guaranteeing any such future approval. CITY shall not be liable or obligated for any burden or loss, financial or otherwise, incurred by LESSEE as a result of CITY's or the City Council's failure to approve any construction, alteration, rehabilitation, or improvement of the Premises, the Improvements, or any other improvements on the Premises.

20.5.4. LESSEE waives any claim against CITY and its elected officials, officers, employees, representatives and agents for any burden, expense or loss which LESSEE incurs as a result of CITY's failure to approve this Lease or its failure to approve any development, rehabilitation, maintenance or restoration of the Premises, the improvements, or any other improvements on the Premises.

20.6. CITY's Consent, Approval. CITY's consent or approval under this Lease shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided in this Lease or as required by law. CITY's discretionary acts pursuant to this Lease shall be made in the Mayor's discretion, unless otherwise expressly provided in this Lease.

20.7. Quiet Enjoyment. If LESSEE is not in breach under the covenants made in this 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, claiming through or under the CITY.

20.8. Attornment. Concurrent with the execution of this Lease, CITY shall provide LESSEE with a Non-disturbance and Attornment Lease ("NDA") from CITY in a form acceptable to CITY and LESSEE. 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 CITY covering the Premises, LESSEE shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as landlord under this Lease.

20.9. California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE is or is not a public record subject to disclosure under the California Public Records Act (CPRA). If LESSEE notifies CITY that it objects to the disclosure of certain information to a third party, LESSEE shall deliver to CITY, with such notice, specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by LESSEE, LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at LESSEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LESSEE as a result of CITY's disclosure or non-disclosure of LESSEE information requested pursuant to the CPRA.

LESSEE's Waiver. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS THAT LESSEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF LESSEE INFORMATION REQUESTED PURSUANT TO THE CPRA.



LESSEE's Initials

20.10. Taxes. LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including without limitation licenses and permits, and including the land and any improvements or fixtures installed or maintained by LESSEE upon the land. LESSEE acknowledges that this Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall not reduce any rent due to CITY. CITY shall not incur or assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use or occupancy of the Premises.

20.11. Force Majeure. Notwithstanding the times for performance set forth in this Lease, a party shall not be deemed to be in default and shall be entitled to an extension of time for performance if and to the extent that such party's performance is prevented or delayed by any cause without the fault and beyond such party's reasonable control, including without limitation abnormal adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials, or equipment, acts of God, any hostile government actions, delays in obtaining governmental permits and approvals, civil commotion, litigation, and fire or other casualty (collectively, "Events of Force Majeure"). Bankruptcy, insolvency, or other financial inability on the part of either party hereto shall not be considered Events of Force Majeure.

20.12. Exhibits. All exhibits referred to herein are incorporated into this Lease by this reference and made a part of this Lease.

20.13. Governing Law. This Lease shall be governed, construed, and enforced in accordance with the internal laws of the State of California, without regard to conflict of laws principles. All code sections (laws) referenced in this Agreement shall include all amendments thereto, and renumbering and/or renaming thereof, whether or not individually stated at the reference(s).

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

20.15. No Third Party Beneficiaries. This Lease is intended to be for the benefit of only the parties hereto and their respective permitted successors and assigns and this Lease is not intended to create any third party beneficiaries. Not by way of limitation of the foregoing, by entering into and administering and enforcing this Lease CITY does not intend to protect any third party against the risk of any particular kind of injury within the meaning of California Government Code Section 815.6 and CITY does not intend to create any rights or liabilities thereunder.

20.16. Waiver. No provision of this 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 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 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 Lease or of any right of either party to a forfeiture of the 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 Lease shall not be construed as in any manner changing or waiving the terms of this 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 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 Lease by LESSEE.

20.17. Cumulative Remedies. CITY's and LESSEE's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's or LESSEE's rights or remedies at law or in equity.

20.18. Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.

20.19. Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.

20.20. No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.

20.21. Entire Lease. This Lease portion of the Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Lease and LESSEE's occupancy, use, development, maintenance and restoration of the Premises. Any modification, alteration or amendment of this Lease shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Lease is binding upon such party in accordance with its terms.

20.22. Partial Invalidity. If any term, covenant, condition or provision of this Lease is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

20.23. Consents. Unless otherwise specified herein, all consents to be given by either party shall be reasonably and timely given.

20.24. LESSEE's Agreement/Lease Administration. LESSEE confirms that LESSEE's Agreement/Lease Administrator has been given full operational responsibility for compliance with the terms of this Agreement/Lease. LESSEE shall provide CITY with a written schedule of its normal hours of business operation on the Premises (both during the ROE Term and during the Lease Term of this Agreement) and, if applicable, post notice of such schedule in an area visible to pilots, and LESSSEE'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 questions pertaining to this Agreement/Lease and LESSEE's operations on the Premises.

20.25. Memorandum of Lease. LESSEE may request that a Memorandum of Lease, substantially in the form of the attached **EXHIBIT F**, be executed, acknowledged and recorded in the Office of the County Recorder of the County of San Diego, State of California immediately after the Commencement Date. LESSEE shall be responsible for all costs associated with such Memorandum of Lease.

20.26. Authority to Contract. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

## ARTICLE 3:
## SIGNATURES

**IN WITNESS WHEREOF,** CITY and LESSEE have duly executed this Agreement with the intent that the parties hereto shall be bound by the terms and conditions of the entirety of this Agreement.

**LESSEE:**

**METROPOLITAN AIRPARK LLC,**

a Delaware limited liability company

By: _____

Name: Richard Lee Sax

Title: President

**CITY:**

**CITY OF SAN DIEGO,**

a California municipal corporation

By: _____

Name: Penny Maus

Title: Director Real Estate Assets

Approved as to form this 16 day of August, 2021.

MARA W. ELLIOTT, City Attorney

By: _____

Name: Melissa Ables

Title: Deputy City Attorney

R-312021

## EXHIBIT A:

## DEPICTIONS AND LEASE DESCRIPTIONS OF THE "PROPERTY" AND THE "PREMISES"

Lot 27 of "Metropolitan Air Park" in the City of San Diego, County of San Diego, State of California, according to sheet no. 10 of the Map thereof.

The above described lot contains approximately 6.23 acres.

# MAP NO. _____

**SHEET 1 OF 18 SHEETS**

# METROPOLITAN AIR PARK

LOTS 1 THROUGH 18 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.

THE "TEMPORARY EASEMENT FOR SEWER, WATER, DRAINAGE AND ACCESS" AND PORTIONS OF THE "IRREVOCABLE OFFER TO DEDICATE PUBLIC STREET" AS DEDICATED PER MAP 15979 AND PORTIONS OF "SIKORSKY STREET" SET ASIDE FOR SEWER, WATER & DRAINAGE PER DOC. NO. 87-101911 RECORDED FEBRUARY 26, 1987 ARE NOT SHOWN WITHIN THIS MAP BECAUSE THEY HAVE BEEN ABANDONED AND VACATED PURSUANT TO SECTION 66434(g) OF THE SUBDIVISION MAP ACT. (SEE SHEETS 3 & 17)

THIS IS A MAP OF A PLANNED DEVELOPMENT PROJECT AS DEFINED IN THE SAN DIEGO LAND DEVELOPMENT CODE.

SUBDIVISION GUARANTEE FURNISHED BY FIRST AMERICAN TITLE COMPANY, ORDER NO. NCS-802318-SD.

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF OR ARE INTERESTED IN THE LAND EMBRACED WITHIN THE SUBDIVISION TO BE KNOWN AS METROPOLITAN AIR PARK, AND WE HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS MAP CONSISTING OF 18 SHEETS AND DESCRIBED IN THE CAPTION THEREOF.

IT IS OUR INTENT TO SUBDIVIDE AND CONVEY OUR ENTIRE INTEREST IN THE REAL PROPERTY SHOWN ON THIS MAP WITHIN THE HEAVY BORDER, INCLUDING ANY REVERSION RIGHTS THAT MAY EXIST WITHIN THE ADJOINING PUBLIC RIGHTS-OF-WAY. IT IS NOT OUR INTENT TO ALTER OR SEVER THE LEGITIMATE RIGHTS OF OTHERS WHO MAY HAVE A CLAIM ON THOSE REVERSION RIGHTS THROUGH PRIOR CONVEYANCES.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES:

WE HEREBY GRANT AN IRREVOCABLE OFFER OF DEDICATION OVER THAT PORTION OF LOT A MARKED "IRREVOCABLE OFFER TO DEDICATE PUBLIC STREET" AS SHOWN ON THIS MAP WITHIN THIS SUBDIVISION.

BY: _____

NAME: MICHAEL CURTIS TUSSEY
TITLE: DEPUTY DIRECTOR, AIRPORTS DIVISION
THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION

THIS MAP SECURES VESTED DEVELOPMENT RIGHTS AND THE RIGHTS THUS VESTED SHALL REMAIN IN EFFECT FOR TWO YEARS FROM DATE OF RECORDATION (REFERENCE CITY OF SAN DIEGO MUNICIPAL CODE)

STATE OF CALIFORNIA) ss.
COUNTY OF SAN DIEGO)

ON _____ BEFORE ME, _____
A NOTARY PUBLIC, PERSONALLY APPEARED _____
WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S) OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL.

SIGNATURE: _____

PRINT NAME: _____

MY COMMISSION EXPIRES ON _____, 20__

MY COMMISSION NUMBER IS: _____

PRINCIPAL PLACE OF BUSINESS IS IN _____ COUNTY

DRAFT

I, CITY CLERK OF THE CITY OF SAN DIEGO, CALIFORNIA, HEREBY CERTIFY THAT THE CITY LAND SURVEYOR HAS APPROVED THIS MAP. I ALSO CERTIFY THAT PROPER PUBLIC NOTICE HAS BEEN GIVEN OF THAT APPROVAL ON _____ 20__, AND THAT THE LEGAL APPEAL PERIOD HAS EXPIRED.

I FURTHER CERTIFY THAT THOSE PUBLIC STREETS AND EASEMENTS LISTED HEREON AS BEING VACATED OR ABANDONED PURSUANT TO SECTION 66434(g) OF THE SUBDIVISION MAP ACT ARE HEREBY VACATED OR ABANDONED BY THE RECORDATION OF THIS MAP ACCORDING TO CITY COUNCIL RESOLUTION NO. 308484 ADOPTED SEPTEMBER 9, 2013.

IN WITNESS WHEREOF THESE PRESENTS, I HEREBY EXECUTE AND ATTEST BY SEAL THIS _____ DAY OF _____, 20__.

ELIZABETH MALAND
CITY CLERK

BY: _____
CITY CLERK

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF THE CITY OF SAN DIEGO IN JUNE OF 2018, AND THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, AND THAT THE MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP. (SEE LEGEND ON SHEET 2).

_____
PATRICK A. McMICHAEL, L.S. 6787

LICENSED LAND SURVEYOR
PATRICK A. McMICHAEL
NO. L 6787
STATE OF CALIFORNIA

I HEREBY STATE THAT THIS MAP WAS EXAMINED BY ME OR UNDER MY DIRECT SUPERVISION; THAT IT SUBSTANTIALLY CONFORMS TO THE TENTATIVE MAP, IF ANY, AND ANY APPROVED ALTERATIONS THEREOF; THAT IT COMPLIES WITH THE SUBDIVISION MAP ACT AND ANY LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP AND THAT IT IS TECHNICALLY CORRECT.

I ALSO CERTIFY THAT THERE ARE NO UNPAID BONDS ISSUED UNDER THE STREET IMPROVEMENT ACTS OF THE STATE OF CALIFORNIA AGAINST THIS SUBDIVISION.

BY THE AUTHORITY GRANTED TO ME BY CITY ORDINANCE, I REJECT ON BEHALF OF THE CITY COUNCIL, THOSE PORTIONS OF LOTS 1 THROUGH 10, 13, 15 AND 18 MARKED "IRREVOCABLE OFFER TO DEDICATE PUBLIC STREET." SAID OFFER WILL REMAIN OPEN AND SUBJECT TO FUTURE ACCCEPTANCE BY THE CITY.

ALSO I ACCEPT THOSE ITEMS LISTED IN THE CERTIFICATE SIGNED BY THE OWNERS UNDER THE CONDITIONS EXPRESSED THEREIN.

GREGORY P. HOPKINS, PLS 7730
CITY LAND SURVEYOR

BY: _____
FREDERICK R. LePAGE, DEPUTY, PLS 7524

DATED: _____

I, CLERK OF THE BOARD OF SUPERVISORS, HEREBY CERTIFY THAT THE PROVISIONS OF THE SUBDIVISION MAP ACT (DIVISION 2 OF TITLE 7 OF THE GOVERNMENT CODE) REGARDING (A) DEPOSITS FOR TAXES, AND (B) CERTIFICATION OF THE ABSENCE OF LIENS FOR UNPAID STATE, COUNTY, MUNICIPAL OR LOCAL TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES EXCEPT THOSE NOT YET PAYABLE, HAVE BEEN COMPLIED WITH.

THOMAS J. PASTUSZKA
CLERK OF THE BOARD
OF SUPERVISORS

BY: _____
DEPUTY

DATE: _____

FILE NO. _____
FILED THIS _____ DAY OF _____, 20__ AT ____M. IN BOOK OF _____, AT PAGE _____, AT THE REQUEST OF PATRICK A. MCMICHAEL.

ERNEST J. DRONENBURG JR.
COUNTY RECORDER
FEES $/LOD

BY: _____
DEPUTY

| | | |
|---|---|---|
| PROJECT NUMBER 15818B | P.T.S. NO. 319302 | I.O. NO. 23431277 |
| T.M. WAIVER NO. XXXXXX | L.C. 146 - 1769 | CCS83 1786 - 6329 |

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# MAP NO.

**SHEET 2 OF 18 SHEETS**

# METROPOLITAN AIR PARK

## SIGNATURE OMISSIONS

THE SIGNATURES OF THE FOLLOWING PARTIES HAVE BEEN OMITTED UNDER THE PROVISIONS OF SECTION 66436, SUBSECTION (a) (3) (A) (i) OF THE SUBDIVISION MAP ACT, THEIR INTEREST IS SUCH THAT IT CANNOT RIPEN INTO A FEE TITLE AND SAID SIGNATURES ARE NOT REQUIRED BY THE GOVERNING BODY.

1. UNITED STATES OF AMERICA, HOLDER OF AN ACCESS RD. (POGO ROW)
   REC. 10-08-1962 AS DOC. NO. 173165, O.R.

2. STATE OF CALIFORNIA, HOLDER OF EASEMENTS:
   SLOPE & DRN. REC. 08-30-2002 AS DOC. NO. 2002-0741526, O.R.

3. COUNTY OF SAN DIEGO, HOLDER OF EASEMENTS AS FOLLOWS:
   HWY. EASEMENT (RS 305) REC. 10-06-1914 IN BK 487, PG 53, O.R.
   HWY. EASEMENT (RS 305) REC. 10-06-1914 IN BK 608, PG 403, 404, O.R.
   HWY. EASEMENT (RS 305) REC. 10-06-1914 IN BK 608, PG 406, 408, O.R
   HWY. EASEMENT (RS 305) REC. 10-06-1914 IN BK 608, PG 411, 413, O.R
   HWY. EASEMENT (RS 305) REC. 10-06-1914 IN BK 487, PG 57, 58, O.R.
   HWY. EASEMENT (RS 305) REC. 08-28-1918 IN BK 758, PG 360, 361, 362, O.R.
   HWY. EASEMENT (RS 305) REC. 01-20-1931 IN BK 1843, PG 425, O.R.

4. CITY OF SAN DIEGO, HOLDER OF EASEMENTS:
   SET ASIDE SEWER ESMT. (ADJ. N. OTAY MESA RD.)
   REC. 07-09-1986 AS DOC. NO. 86-282133, O.R.
   SET ASIDE SEWER, WATER, DRAINAGE ESMTS. (WITHIN SIKORSKY ST.)
   REC. 02-26-1987 AS DOC. NO. 87-101911, O.R.
   SET ASIDE STREET & DRAINAGE ESMTS.
   REC. 08-11-1989 AS DOC. NO. 89-430421, O.R.

5. PACIFIC TELEPHONE, HOLDER OF EASEMENTS:
   REC. 12-15-1910 IN BK 506, PG 330, 331, O.R.
   REC. 03-16-1987 AS DOC. NO. 87-133903, O.R.
   REC. 06-11-1987 AS DOC. NO. 87-325187, O.R.
   (JOINT-USE AGRMT. WITH CITY OF SAN DIEGO
   REC. 06-15-1989 AS F/P 89-315039, O.R.)

6. SAN DIEGO GAS & ELECTRIC, HOLDER OF EASEMENTS:
   REC. 10-27-1949 AS DOC. NO. 107637, O.R.
   REC. 02-06-1979 AS DOC. NO. 79-056844, O.R.
   REC. 12-27-1979 AS DOC. NO. 79-538546, O.R.
   REC. 08-26-1981 AS DOC. NO. 81-272566, O.R.
   REC. 04-21-1982 AS DOC. NO. 82-112708, O.R.
   REC. 02-27-1990 AS DOC. NO. 90-104228, O.R.
   REC. 04-14-1994 AS DOC. NO. 1994-0247499, O.R.
   REC. 04-06-2000 AS DOC. NO. 2000-0175866, O.R.
   REC. 04-06-2000 AS DOC. NO. 2000-0175867, O.R.

## EASEMENT NOTES

THE FOLLOWING EASEMENTS LYING WITHIN THE BOUNDARY OF THIS MAP, ARE NOT SHOWN BECAUSE THEIR EXACT LOCATION CANNOT BE DETERMINED:

1) PACIFIC TELEPHONE EASEMENT REC. 12-15-1910 IN BK 506, PG 330 AND 331, O.R.
2) SAN DIEGO GAS & ELECTRIC EASEMENTS:
   REC. 12-27-1979 DOC. NO. 79-538546
   REC. 08-26-1981 AS DOC. NO. 81-272566; O.R.
   REC. 04-21-1982 AS DOC. NO. 82-112708, O.R.
   REC. 04-14-1994 AS DOC. NO. 1994-0247499, O.R.
   REC. 04-06-2000 AS DOC. NO. 2000-0175866, O.R.
   REC. 04-06-2000 AS DOC. NO. 2000-0175867, O.R.

## NOTES

1. ALL DISTANCES AND OR STREET WIDTHS SHOWN WITHOUT DECIMALS REPRESENT THAT DISTANCE TO ZERO HUNDREDTHS.
2. TOTAL NUMBER OF NUMBERED LOTS = 69 ( 1 THROUGH 69 )
   TOTAL NUMBER OF LETTERED LOTS = 10 ( A THROUGH J )
3. TOTAL AREA OF SUBDIVISION = 856.55 ACRES

## BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE MOST NORTHERLY LINE ACCORDING TO METROPOLITAN AIR PARK MAP NO. 15979, I.E. N 89°16'18"W

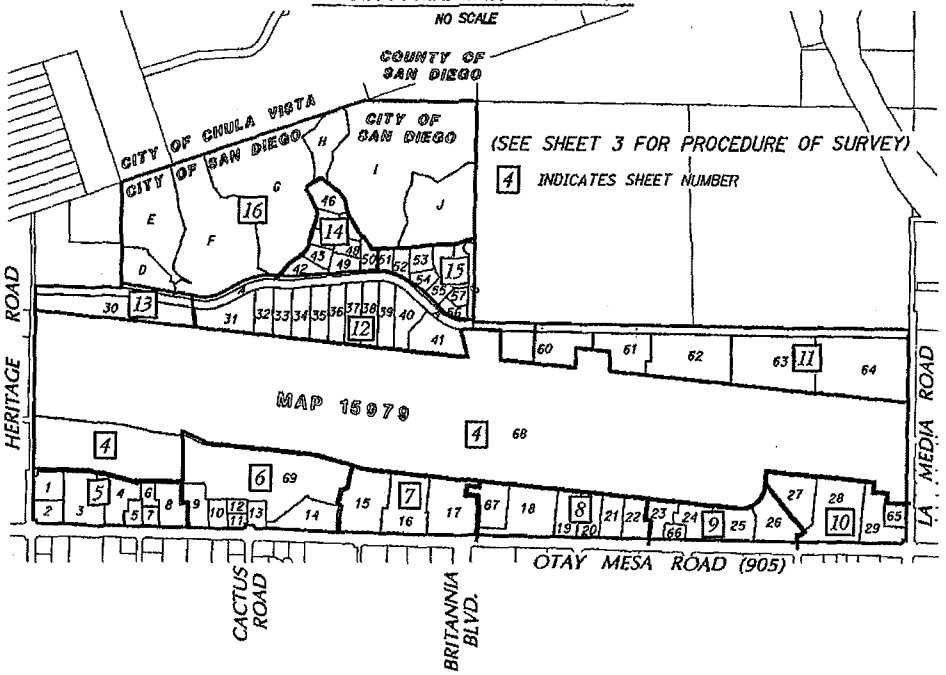
## LEGEND

- ——— INDICATES PROJECT BOUNDARY
- — — — INDICATES EASEMENT
- ( ) INDICATES RECORD DATA PER MAP 15979 (MEASURED AND RECORD DATA IS EQUIVALENT FOR THOSE COURSES SHOWING RECORD DATA ONLY)
- ▲ ● INDICATES FOUND MONUMENT AS NOTED
- ○ INDICATES FOUND 3/4" IRON PIPE WITH DISK STAMPED "LS 6187" PER MAP 15979
- ■ INDICATES FOUND LEAD AND DISK STAMPED "LS 6187" IN CONCRETE PER MAP 15979
- (1)(69) INDICATES FIRST AND LAST LOT NUMBERS, RESPECTIVELY
- (B) INDICATES BUILDING RESTRICTED EASEMENT GRANTED PER MAP NO. 15979 OVER THAT PORTION OF LOT 68 AS SHOWN.
- (D) INDICATES DRAINAGE EASEMENT PER QUITCLAIM DEED RECORDED 8/30/2002 AS FILE NO. 2002-741526, O.R.
- (D2) INDICATES PORTION OF DOC. 87-101911 RECORDED FEBRUARY 26, 1987, O.R. REMAINING FOR DRAINAGE PURPOSES
- (E) INDICATES "PARCEL B: RIGHT-OF-WAY" PER QUITCLAIM DEED TO THE STATE OF CALIFORNIA RECORDED AUGUST 30, 2002 AS FILE NO. 2002-0741526, O.R.
- (IOD) INDICATES "IRREVOCABLE OFFER TO DEDICATE PUBLIC STREET" PER MAP 15979
- (R) INDICATES RETENTION BASINS EASEMENT PER QUITCLAIM DEED RECORDED 8/30/2002 AS FILE NO. 2002-741526, O.R.
- (W) INDICATES PORTION OF DOC. 87-101911 RECORDED FEBRUARY 26, 1987, O.R. REMAINING FOR WATER PURPOSES

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## VICINITY MAP & INDEX SHEET

NO SCALE




## MONUMENTATION NOTES

1. UNLESS OTHERWISE SHOWN ON THIS MAP:
   A. ALL LOT CORNERS OF THIS MAP WILL BE MONUMENTED BY A 3/4"X 18" IRON PIPE WITH DISK STAMPED "LS 6187"
   B. LOT CORNERS ALONG THE SIDELINES OF PUBLIC AND PRIVATE STREET RIGHT-OF-WAY WILL BE MONUMENTED BY A LEAD AND DISK STAMPED "LS 6187" SET ALONG AN EXTENSION OF THE LOT LINE AT AN OFFSET OF 9.75 FEET IN THE SIDEWALK.
   C. ALL POINTS OF CURVE OF THE SIDELINES OF PUBLIC AND PRIVATE STREETS WILL BE MONUMENTED BY A LEAD AND DISK STAMPED "LS 6187", SET AT AN OFFSET OF 9.75 FEET IN THE SIDEWALK MEASURED RADIALLY.

DRAFT

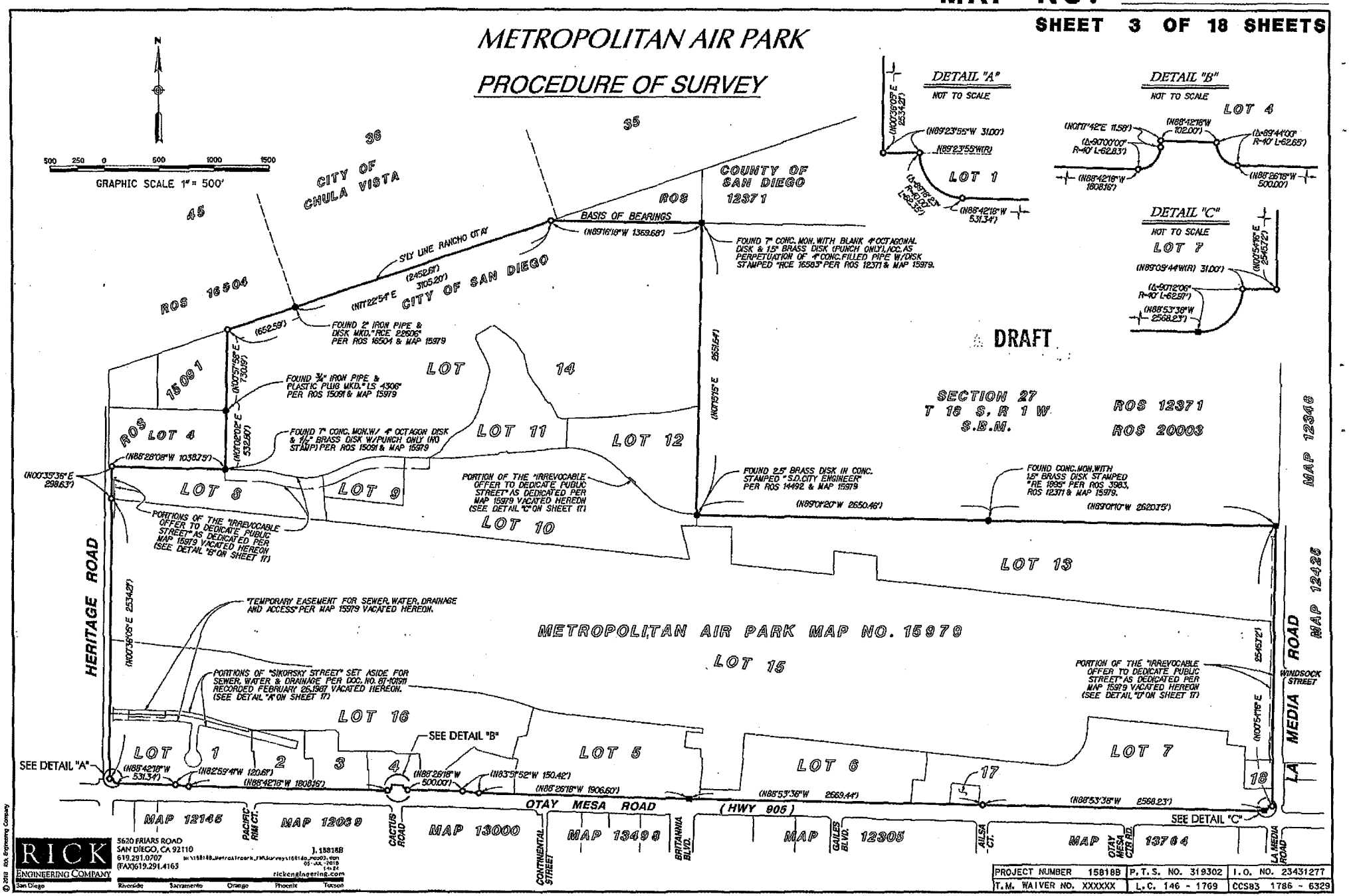

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# MAP NO.

**SHEET 3 OF 18 SHEETS**




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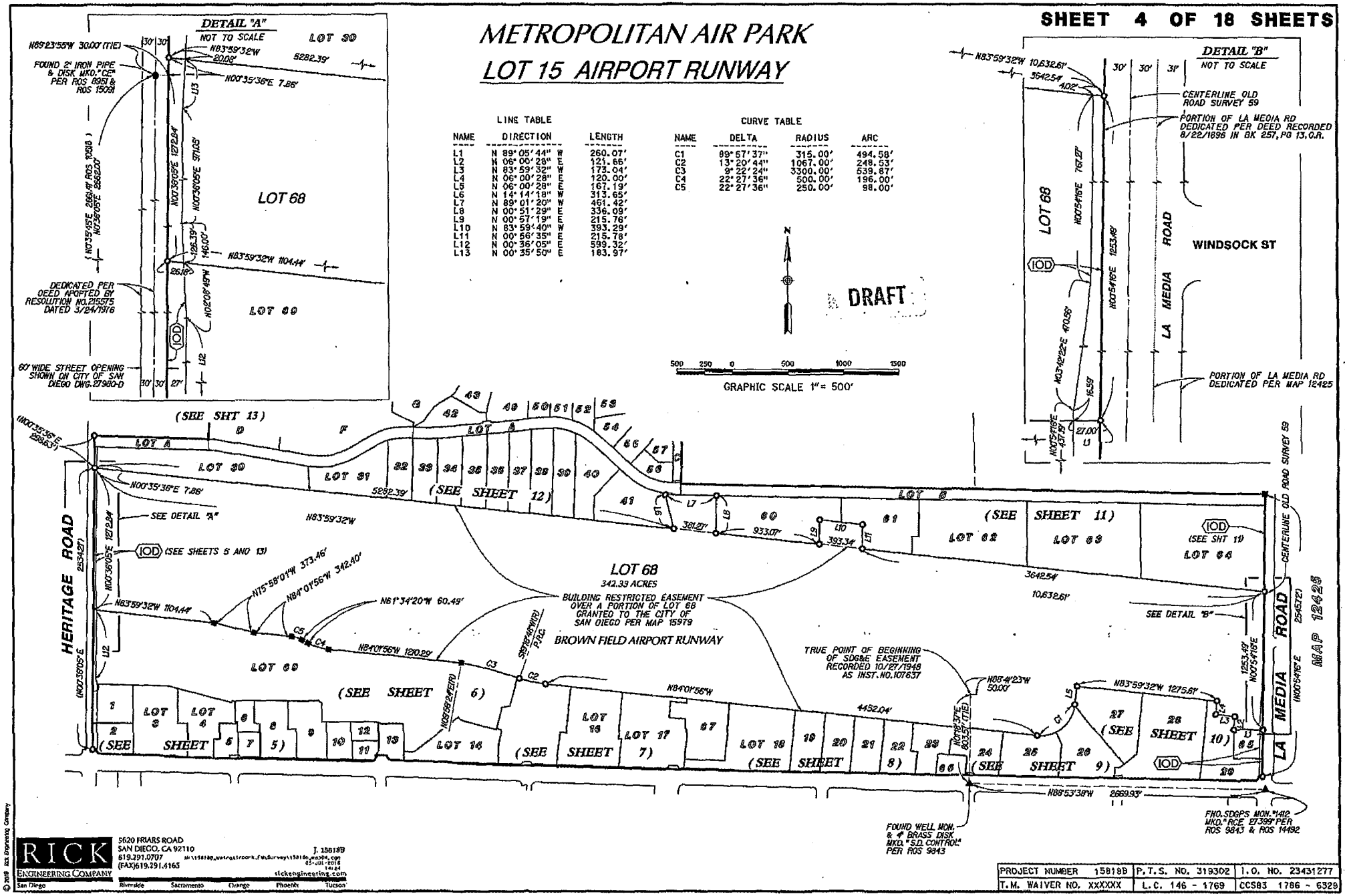
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|---|---|---|---|
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# MAP NO.

SHEET 4 OF 18 SHEETS

# METROPOLITAN AIR PARK
## LOT 15 AIRPORT RUNWAY





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# MAP NO.

**SHEET 5 OF 18 SHEETS**

# METROPOLITAN AIR PARK

(SEE SHEETS 4 & 13)

(SEE SHEET 4)

(SEE SHEET 6)

## CURVE TABLE

| NAME | DELTA | RADIUS | ARC |
|---|---|---|---|
| C1 | 89°18'23" | 40.00' | 62.35' |
| C2 | 78°28'50" | 30.00' | 41.09' |
| C3 | 7°41'59" | 210.00' | 28.22' |
| C4 | 7°41'59" | 190.00' | 25.53' |
| C5 | 89°17'52" | 20.00' | 31.17' |
| C6 | 13°01'25" | 546.00' | 124.11' |
| C7 | 87°28'50" | 20.00' | 30.54' |
| C8 | 13°01'25" | 468.00' | 106.38' |
| C9 | 49°00'17" | 50.00' | 42.76' |
| C10 | 278°00'32" | 75.00' | 363.91' |
| C11 | 13°01'25" | 532.00' | 120.93' |
| C12 | 90°00'00" | 20.00' | 31.42' |
| C13 | 13°01'25" | 454.00' | 103.20' |
| C14 | 90°42'06" | 20.00' | 31.66' |
| C15 | 79°56'04" | 40.00' | 55.80' |

## LINE TABLE

| NAME | DIRECTION | LENGTH |
|---|---|---|
| L1 | N 89°23'55" W | 31.00' |
| L2 | N 89°23'55" W | 5.00' |
| L3 | N 0°36'05" E | 3.85' |
| L4 | N 15°22'30" W | 29.07' |
| L5 | N 81°00'19" W | 62.65' |
| L6 | N 0°36'05" E | 132.01' |
| L7 | N 14°19'37" E | 3.11' |
| L8 | N 14°19'37" E | 3.13' |
| L9 | N 75°40'23" W | 14.24' |
| L10 | N 89°23'55" W | 30.00' |
| L11 | N 89°59'56" W (R) | 85.00' |
| L12 | N 89°59'56" W (R) | 10.00 |
| L13 | N 90°00'00" W | 40.00' |
| L14 | N 45°07'02" E | 14.93' |
| L15 | N 01°17'45" E | 52.15' |
| L16 | N 89°59'56" W | 87.03' |
| L17 | N 89°59'56" W | 56.43' |
| L18 | N 89°59'56" W | 20.50' |
| L19 | N 82°29'05" W | 24.21' |
| L20 | N 00°00'04" E | 88.58' |

## DETAIL 'A'

NO SCALE

LOT 5 — LOT 7

N00°00'04"E 8.68'

Δ=9017'38" R=20' L=31.87'

N08°17'42"E 0.50'

380.37' — 95.49' — N88°42'18"W 603.90'

LOT 69

54.00 ACRES

LOT 1

2.88 ACRES

LOT 2

2.32 ACRES

LOT 3

6.56 ACRES

LOT 4

4.88 ACRES

LOT 5

1.41 ACRES

LOT 6

1.17 ACRES

LOT 7

1.09 ACRES

LOT 8

3.82 ACRES

LOT 9

HERITAGE ROAD

SIKORSKY ST (PRIVATE)

OTAY MESA ROAD (INTERIM ROUTE 905)

PACIFIC RIM CT.

60' WIDE STREET OPENING PER RESOLUTION NO. 216575 DATED 3/24/1976

DEDICATED PER RESOLUTION NO. 216575 DATED 3/24/1976

SDG&E EASEMENT RECORDED 2/27/1990 AS INST. NO. 90-104228, O.R.

PACIFIC BELL EASEMENT RECORDED 3/16/1987 AS INST. NO. 87-133903, O.R.

SDG&E EASEMENT REC'D 2/6/1979 AS INST. NO. 79-056644, O.R.

PAC BELL ESMT. REC'D 6/11/1987 AS INST. NO. 87-325187, O.R.

SDG&E ESMT. REC'D 2/27/1990 AS INST. NO. 90-104228, O.R.

SDG&E EASEMENT REC. 2/27/1990 AS INST. NO. 90-104228, O.R. (TO BE VACATED BY OTHERS)

SLOPE EASEMENT GRANTED TO THE STATE OF CALIFORNIA PER QUITCLAIM DEED RECORDED 8/30/2002 AS FILE NO. 2002-741526 (SEE SHT 17)

SEE DETAIL 'A' ABOVE

FOUND WELL MON. W/ 3.5" BRASS DISK PER ROS 9843 & ROS 14492

PM 17046

DEDICATED PER FILE NO. 1991-159886 RECORDED 4/9/1991

MAP 12145

DEDICATED PER FILE NO. 89-298963 RECORDED 6/6/1989

PM 16553

DEDICATED PER MAP 12145

PM 16040

DEDICATED PER MAP 12069

CENTERLINE OF OTAY MESA ROAD

2649.42' (N88°42'26"W 2649.40' PER ROS 9843)

DRAFT

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GRAPHIC SCALE 1" = 100'


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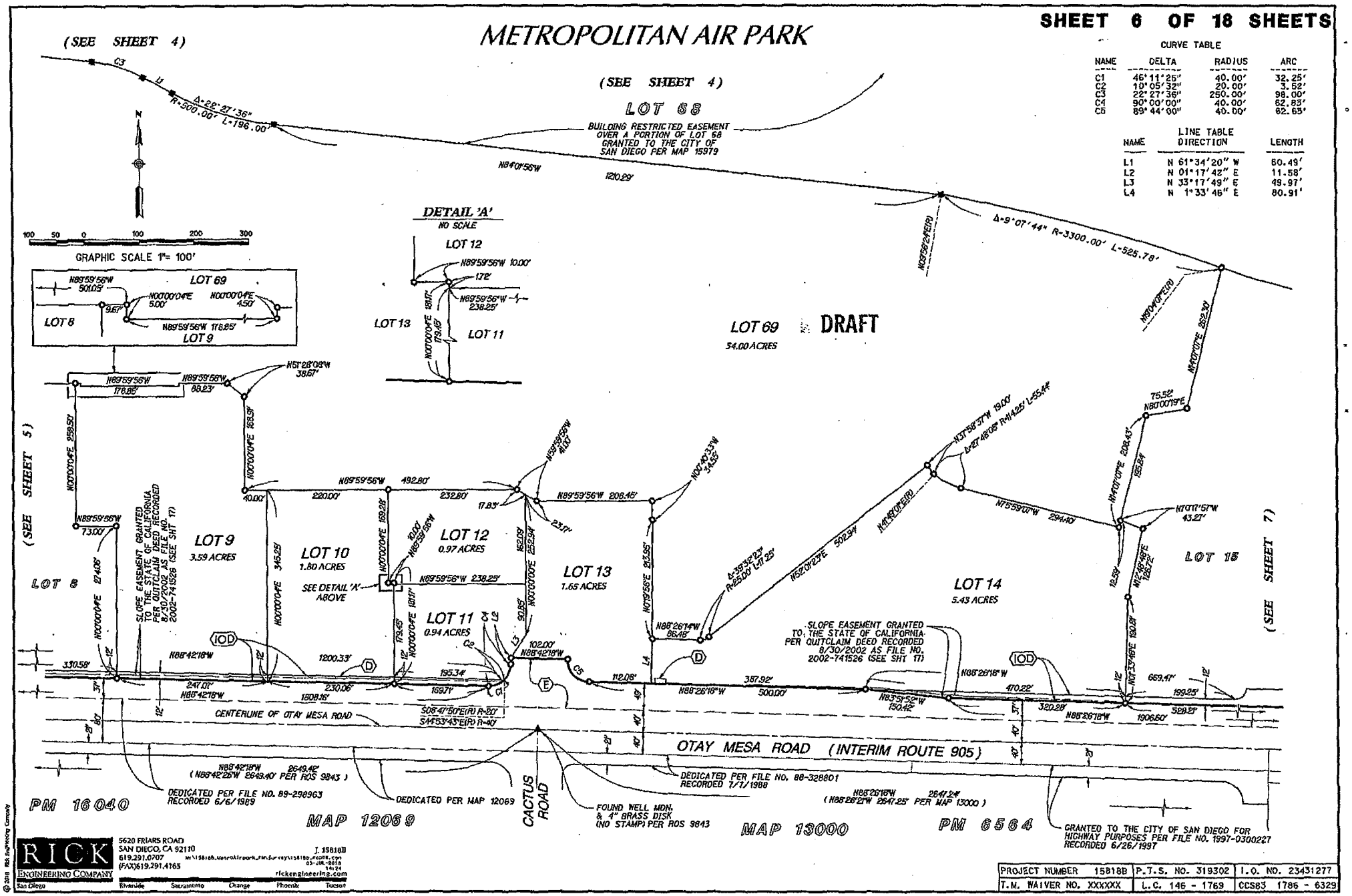
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# MAP NO.

**SHEET 6 OF 18 SHEETS**

# METROPOLITAN AIR PARK




CURVE TABLE

| NAME | DELTA | RADIUS | ARC |
|---|---|---|---|
| C1 | 46°11'25" | 40.00' | 32.25' |
| C2 | 10°05'32" | 20.00' | 3.52' |
| C3 | 22°27'36" | 250.00' | 98.00' |
| C4 | 90°00'00" | 40.00' | 62.83' |
| C5 | 89°44'00" | 40.00' | 62.65' |

LINE TABLE

| NAME | DIRECTION | LENGTH |
|---|---|---|
| L1 | N 61°34'20" W | 80.49' |
| L2 | N 01°17'42" E | 11.58' |
| L3 | N 33°17'49" E | 49.97' |
| L4 | N 1°33'46" E | 80.91' |


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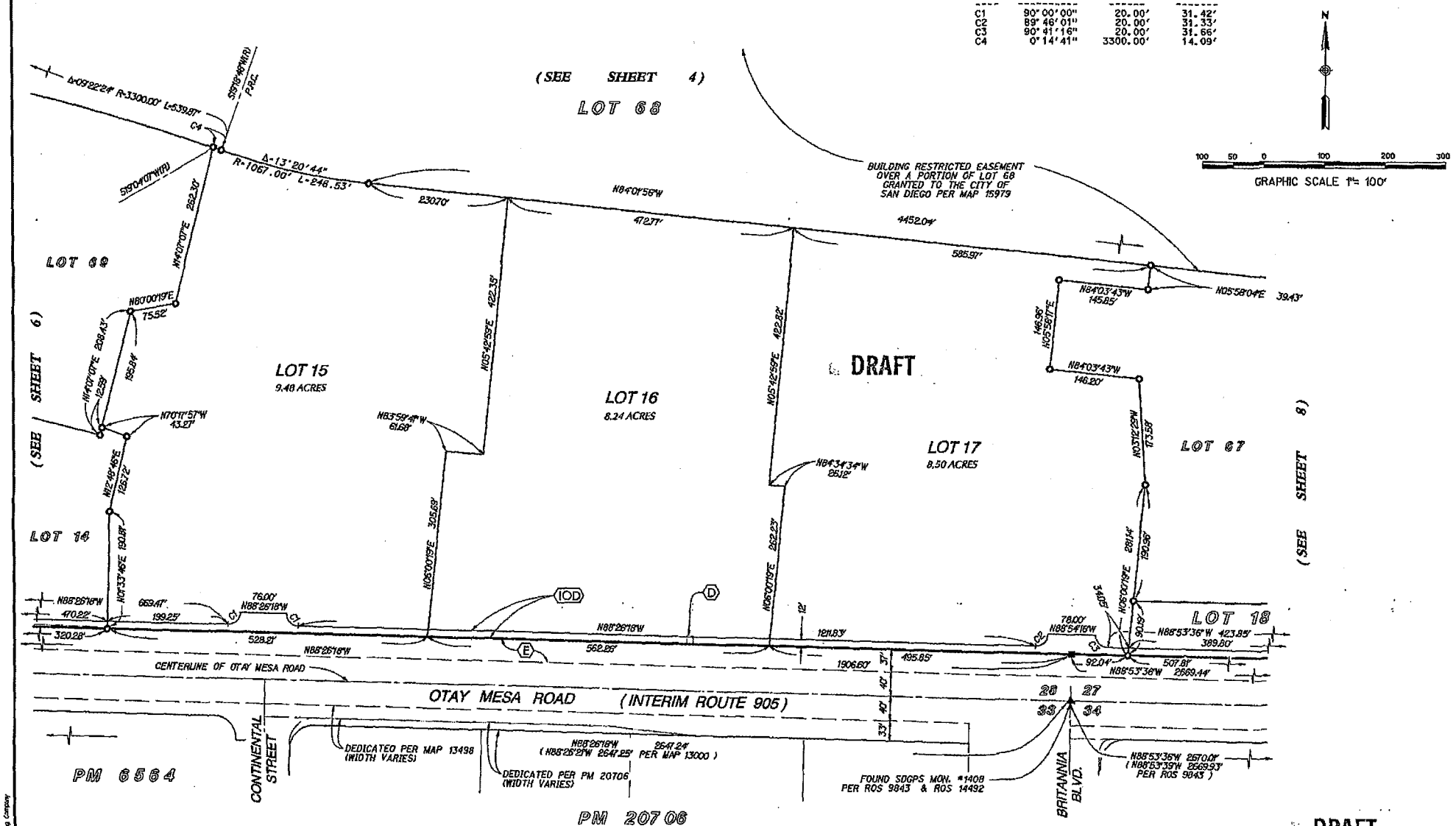
# MAP NO.

**SHEET 7 OF 18 SHEETS**

# METROPOLITAN AIR PARK

CURVE TABLE

| NAME | DELTA | RADIUS | ARC |
|---|---|---|---|
| C1 | 90°00'00" | 20.00' | 31.42' |
| C2 | 89°46'01" | 20.00' | 31.33' |
| C3 | 90°41'16" | 20.00' | 31.66' |
| C4 | 0°14'41" | 3300.00' | 14.09' |




GRAPHIC SCALE 1"= 100'

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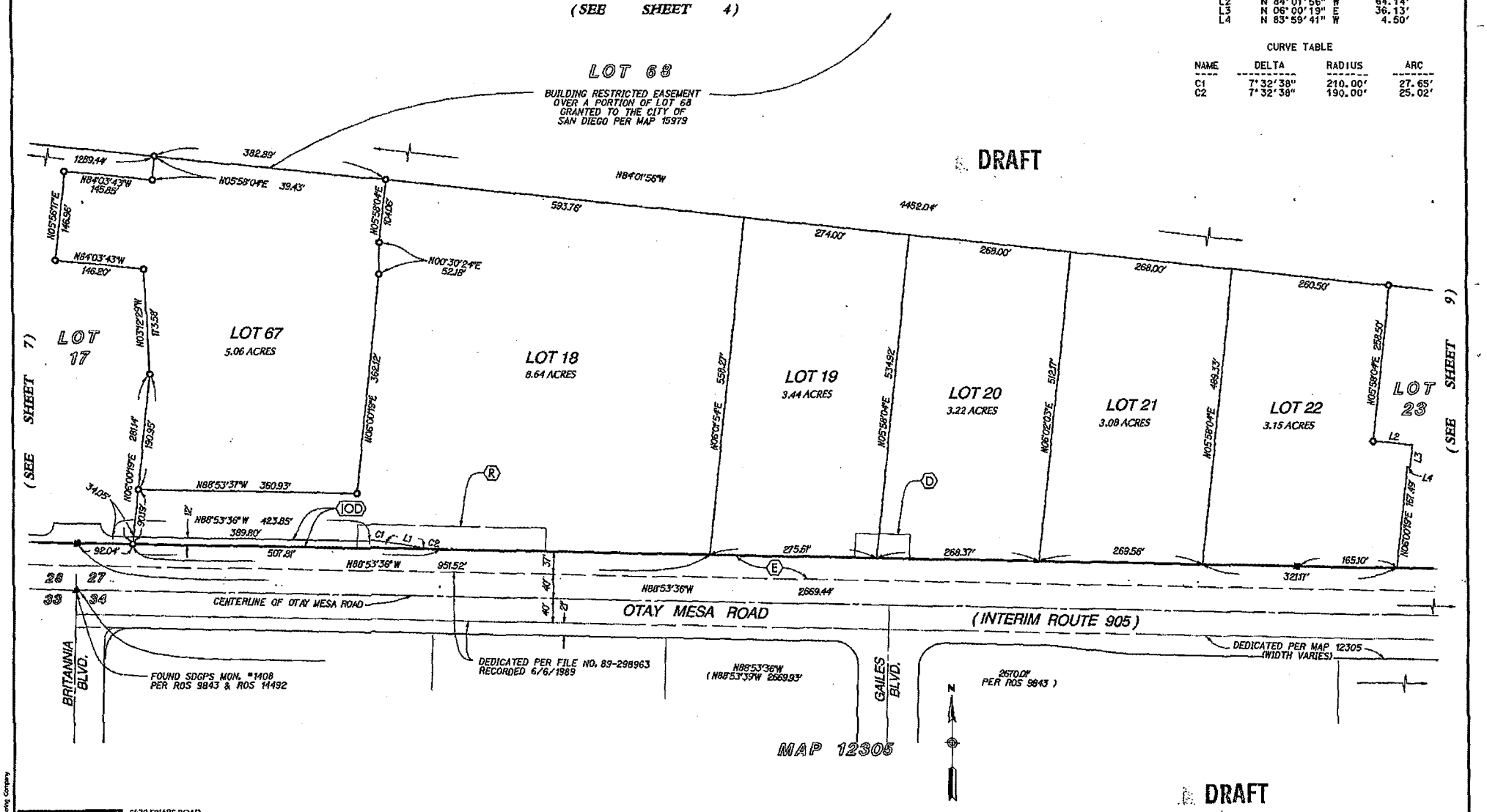
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# MAP NO.

**SHEET 8 OF 18 SHEETS**

# METROPOLITAN AIR PARK




LINE TABLE

| NAME | DIRECTION | LENGTH |
|---|---|---|
| L1 | N 81°20'58" W | 65.03' |
| L2 | N 84°01'56" W | 64.14' |
| L3 | N 06°00'19" E | 36.13' |
| L4 | N 83°59'41" W | 4.50' |

CURVE TABLE

| NAME | DELTA | RADIUS | ARC |
|---|---|---|---|
| C1 | 7°32'38" | 210.00' | 27.65' |
| C2 | 7°32'38" | 190.00' | 25.02' |


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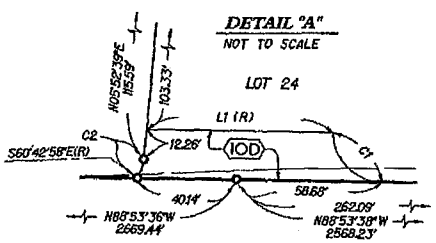

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|---|---|---|
| PROJECT NUMBER 15818B | P.T.S. NO. 319302 | I.O. NO. 23431277 |
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# MAP NO.

**SHEET 9 OF 18 SHEETS**

# METROPOLITAN AIR PARK




CURVE TABLE

| NAME | DELTA | RADIUS | ARC |
|---|---|---|---|
| C1 | 90°00'00" | 20.00' | 31.42' |
| C2 | 23°24'23" | 20.00' | 8.17' |

LINE TABLE

| NAME | DIRECTION | LENGTH |
|---|---|---|
| L1 | N 88°53'38" W | 75.50' |
| L2 | N 84°01'56" W | 64.14' |
| L3 | N 06°00'19" E | 36.13' |
| L4 | N 83°59'41" W | 4.50' |
| L5 | N 51°00'19" E | 20.28' |
| L6 | N 83°59'41" W | 47.00' |
| L7 | N 51°00'15" E | 196.71' |
| L8 | N 88°53'37" W | 46.32' |
| L9 | N 1°04'11" E | 94.01' |

LOT 68

BUILDING RESTRICTED EASEMENT OVER A PORTION OF LOT 68 GRANTED TO THE CITY OF SAN DIEGO PER MAP 15979

(SEE SHEET 4)

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N84°01'56"W 395.31' 1115.45' 4452.04'

N83°59'32"W 1275.61' 597.03'

N06°00'28"E 157.19'

Δ=1°55'25" L=10.58'

LOT 27

Δ=89°57'37" R=315.00' L=494.58'

Δ=56°30'55" L=310.71'

N38°59'41"W 493.22'

N51°00'19"E 5.00'

N38°59'41"W 195.58'

N25°53'21"E(M&R) 120.17'

305.14'

Δ=31°31'18" L=173.30'

N05°52'39"E 258.50'

N06°00'19"E 115.85'

N06°00'19"E 137.00'

N06°00'19"E 167.48'

N06°00'19"E 179.08'

N06°00'19"E 398.28'

N06°00'19"E 296.49'

LOT 22

LOT 23
3.02 ACRES

LOT 24
3.65 ACRES

LOT 25
4.65 ACRES

LOT 26
5.30 ACRES

LOT 66
1.10 ACRES

L2 L3 L4 L5 L6 L7 L8 L9

86.66' N83°59'41"W 243.99' 157.33'

N00°05'09"E 47.69'

SEE DETAIL "A"

C2 N05°52'39"E 115.59' 103.33'

165.10' 188.19' 262.84' 262.09' 203.40' 534.95' 508.51'

SLOPE EASEMENT GRANTED TO THE STATE OF CALIFORNIA PER QUITCLAIM DEED RECORDED 6/30/2002 AS FILE NO. 2002-741526 (SEE SHT 17)

(SEE SHEET 8)

(SEE SHEET 10)

28

N88°53'36"W 2669.44'

N88°53'38"W 2568.23'

DEDICATED PER FILE NO. 89-298963 RECORDED 6/6/1989

OTAY MESA ROAD (INTERIM ROUTE 905)

DEDICATED PER MAP 12305

CENTERLINE OF OTAY MESA ROAD

35' 40' 40' 33'

N88°53'36"W 2670.01' (N88°53'39"W 2669.93' PER ROS 9843)

MAP 12305

AILSA CT.

FOUND WELL MON. & 4" BRASS DISK MKD. "S.D. CONTROL" PER ROS 9843

N88°53'38"W 2669.93' (N88°53'43"W 2670.00' PER ROS 9843)

GRANTED TO THE CITY OF SAN DIEGO PER FILE NO. 1997-0340349 RECORDED 7/17/1997

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100 50 0 100 200 300

GRAPHIC SCALE 1"= 100'


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# MAP NO.

**SHEET 10 OF 18 SHEETS**

# METROPOLITAN AIR PARK

LINE TABLE

| NAME | DIRECTION | LENGTH |
|---|---|---|
| L1 | N 89°05'44" W(R) | 31.00' |
| L2 | N 00°54'16" E | 42.48' |
| L3 | N 88°53'38" W(R) | 78.00' |
| L4 | N 01°06'22" E | 11.50' |
| L5 | N 88°53'37" W | 46.32' |
| L6 | N 1°04'11" E | 94.01' |

CURVE TABLE

| NAME | DELTA | RADIUS | ARC |
|---|---|---|---|
| C1 | 25°09'02" | 20.00' | 8.78' |
| C2 | 90°00'00" | 20.00' | 31.42' |
| C3 | 90°12'06" | 40.00' | 62.97' |
| C4 | 66°25'19" | 40.00' | 46.37' |

(SEE SHEET 4)

LOT 15

BUILDING RESTRICTED EASEMENT OVER A PORTION OF LOT 15 GRANTED TO THE CITY OF SAN DIEGO HEREON

LOT 27
6.23 ACRES

LOT 28
10.78 ACRES

LOT 29
5.18 ACRES

LOT 65
1.55 ACRES

LOT 26

DRAFT

LA MEDIA ROAD

CENTERLINE OLD ROAD SURVEY 59

MAP 12425

DETAIL 'A'
NO SCALE

DRAINAGE EASEMENT SHOWN ON CITY OF SAN DIEGO DWG. NO. 23477-D AND SET ASIDE FOR DRAINAGE PURPOSES PER FILE NO. 89-430421 RECORDED 8/11/1989, O.R.

SLOPE EASEMENT GRANTED TO THE STATE OF CALIFORNIA PER QUITCLAIM DEED RECORDED 8/30/2002 AS FILE NO. 2002-741526, O.R.

SEE DETAIL 'K' ABOVE

DEDICATED PER DEED RECORDED 8/22/1896 IN BK 257, PG 13, O.R.

DEDICATED PER DOC. NO. 2007-0718262 RECORDED 11/14/2007, O.R.

CENTERLINE OF OTAY MESA ROAD

OTAY MESA ROAD (INTERIM ROUTE 905)

DEDICATED PER FILE NO. 89-298963 RECORDED 6/6/1989

DEDICATED PER FILE NO. 1997-0266408 RECORDED 6/6/1997

OTAY MESA CTR RD.

MAP 13764

MAP 12759

DEDICATED PER RESOLUTION NO. 276967 ADOPTED 12/10/1990 & MAP 12759

FOUND WELL MON. W/ 3" BRASS DISK (PUNCH ONLY) PER PM 21010, ACC. AS SE COR. OF SEC. 27

GRAPHIC SCALE 1"= 100'


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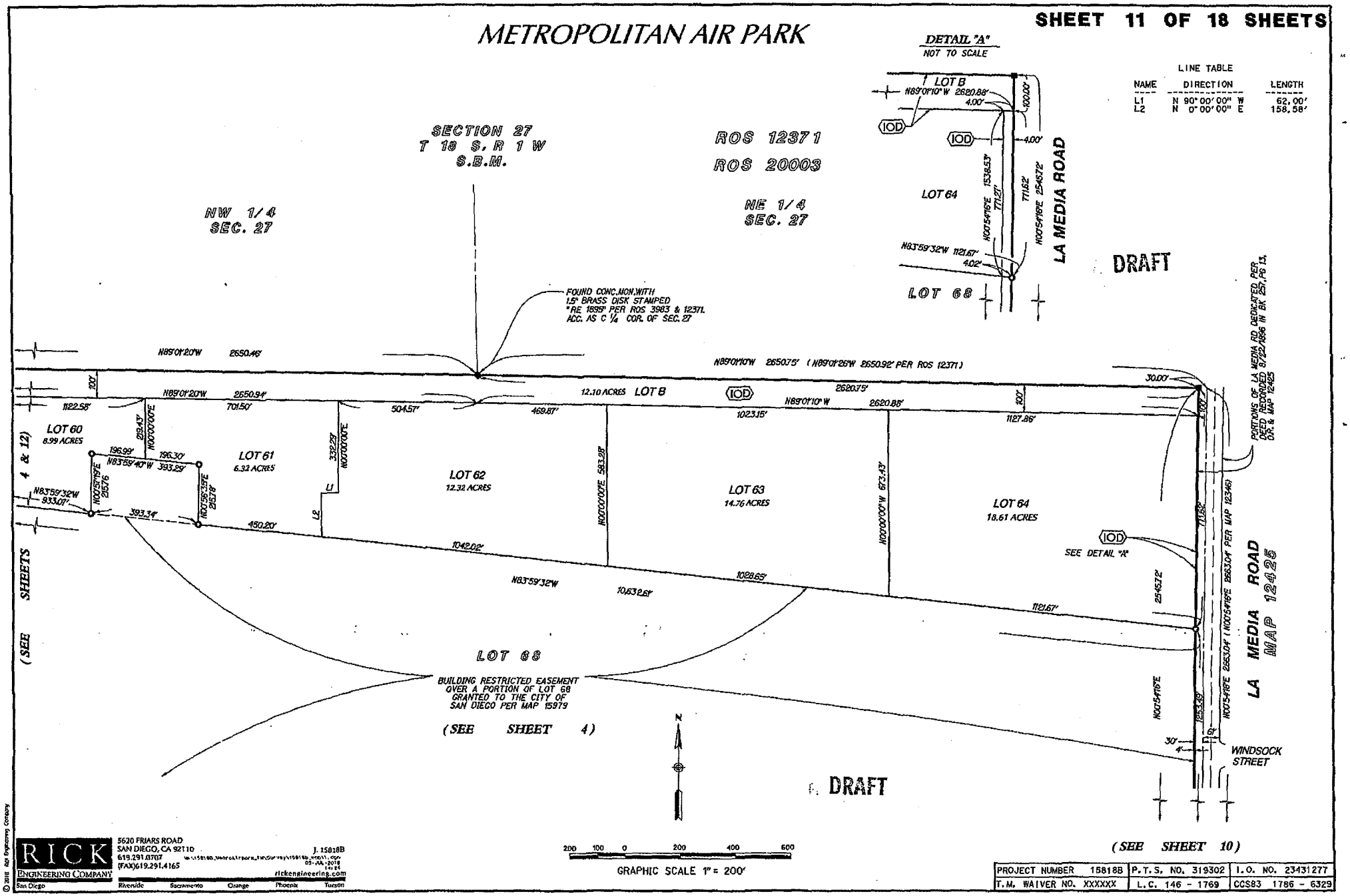

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|---|---|---|
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# MAP NO.

**SHEET 11 OF 18 SHEETS**

# METROPOLITAN AIR PARK





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# MAP NO.

**SHEET 12 OF 18 SHEETS**

# METROPOLITAN AIR PARK

CURVE TABLE

| NAME | DELTA | RADIUS | ARC |
|---|---|---|---|
| C1 | 27°50'36" | 145.00' | 70.46' |
| C2 | 78°36'50" | 125.00' | 171.51' |
| C3 | 55°18'10" | 145.00' | 139.96' |
| C4 | 0°24'16" | 660.00' | 4.66' |
| C5 | 8°00'47" | 560.00' | 78.32' |
| C6 | 20°59'33" | 560.00' | 205.18' |
| C7 | 19°02'32" | 560.00' | 186.12' |
| C8 | 13°28'55" | 560.00' | 131.77' |
| C9 | 18°13'40" | 560.00' | 178.16' |
| C10 | 5°34'40" | 1050.00' | 102.22' |
| C11 | 1°31'26" | 1050.00' | 27.93' |
| C12 | 7°06'06" | 950.00' | 117.75' |
| C13 | 89°03'16" | 15.00' | 23.31' |
| C14 | 91°11'39" | 15.00' | 23.87' |
| C15 | 41°42'38" | 560.00' | 407.67' |
| C16 | 41°42'38" | 660.00' | 480.47' |
| C17 | 7°06'06" | 1050.00' | 130.14' |
| C18 | 39°38'25" | 660.00' | 456.62' |
| C19 | 39°38'25" | 560.00' | 387.44' |
| C20 | 7°42'19" | 660.00' | 88.76' |
| C21 | 48°02'52" | 560.00' | 469.61' |
| C22 | 3°30'58" | 560.00' | 34.36' |

LINE TABLE

| NAME | DIRECTION | LENGTH |
|---|---|---|
| L1 | N 84°10'56" E | 70.02' |
| L2 | N 0°58'40" E | 10.00' |
| L3 | N 89°01'20" W | 55.51' |
| L4 | N 60°03'01" E | 196.46' |
| L5 | N 88°15'28" W | 52.50' |
| L6 | N 88°15'28" W | 122.94' |
| L7 | N 88°15'28" W | 175.44' |
| L8 | N 84°38'26" E | 122.80' |

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(SEE SHEET 16)

(SEE SHEET 14)

(SEE SHEET 15)

(SEE SHEET 13)

(SEE SHEET 11)

(SEE SHEET 4)

LOT F

"IRREVOCABLE OFFER TO DEDICATE PUBLIC STREET" GRANTED HEREON

LOT G

LOT A

LOT 31
5.37 ACRES

LOT A
12.89 ACRES

LOT 41
5.65 ACRES

LOT 68

LOT B
12.10 ACRES

LOT 60
8.99 ACRES

32 2.89 ACRES
33 2.98 ACRES
34 3.16 ACRES
35 3.39 ACRES
36 3.21 ACRES
37 3.39 ACRES
38 3.57 ACRES
39 3.61 ACRES
40 4.14 ACRES

(POCO ROW)

ACCESS ROAD EASEMENT RESERVED BY THE UNITED STATES OF AMERICA IN QUITCLAIM DEED RECORDED 10/8/1962 AS INST. NO. 173165

BUILDING RESTRICTED EASEMENT OVER A PORTION OF LOT 68 GRANTED TO THE CITY OF SAN DIEGO PER MAP 15979

FOUND 2.5" BRASS DISK IN CONC. STAMPED "S.D. CITY ENGINEER" PER ROS 14492

NW 1/4 SEC. 27

SEE DETAIL "A"

DETAIL "A"
NOT TO SCALE

GRAPHIC SCALE 1" = 200'

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# MAP NO.

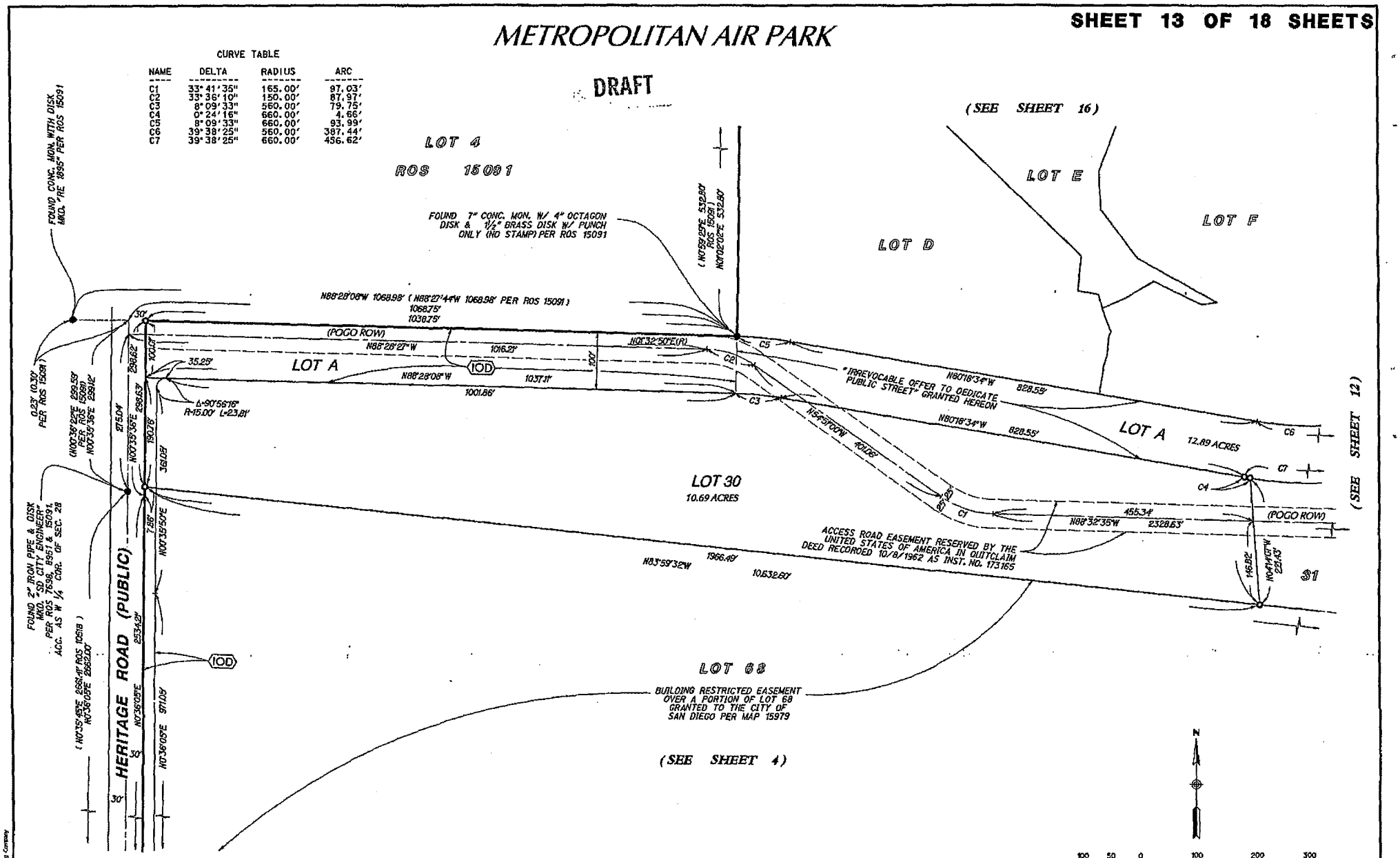
**SHEET 13 OF 18 SHEETS**

# METROPOLITAN AIR PARK

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CURVE TABLE

| NAME | DELTA | RADIUS | ARC |
|---|---|---|---|
| C1 | 33°41'35" | 165.00' | 97.03' |
| C2 | 33°36'10" | 150.00' | 87.97' |
| C3 | 8°09'33" | 560.00' | 79.75' |
| C4 | 0°24'16" | 660.00' | 4.66' |
| C5 | 8°09'33" | 660.00' | 93.99' |
| C6 | 39°38'25" | 560.00' | 387.44' |
| C7 | 39°38'25" | 660.00' | 456.62' |




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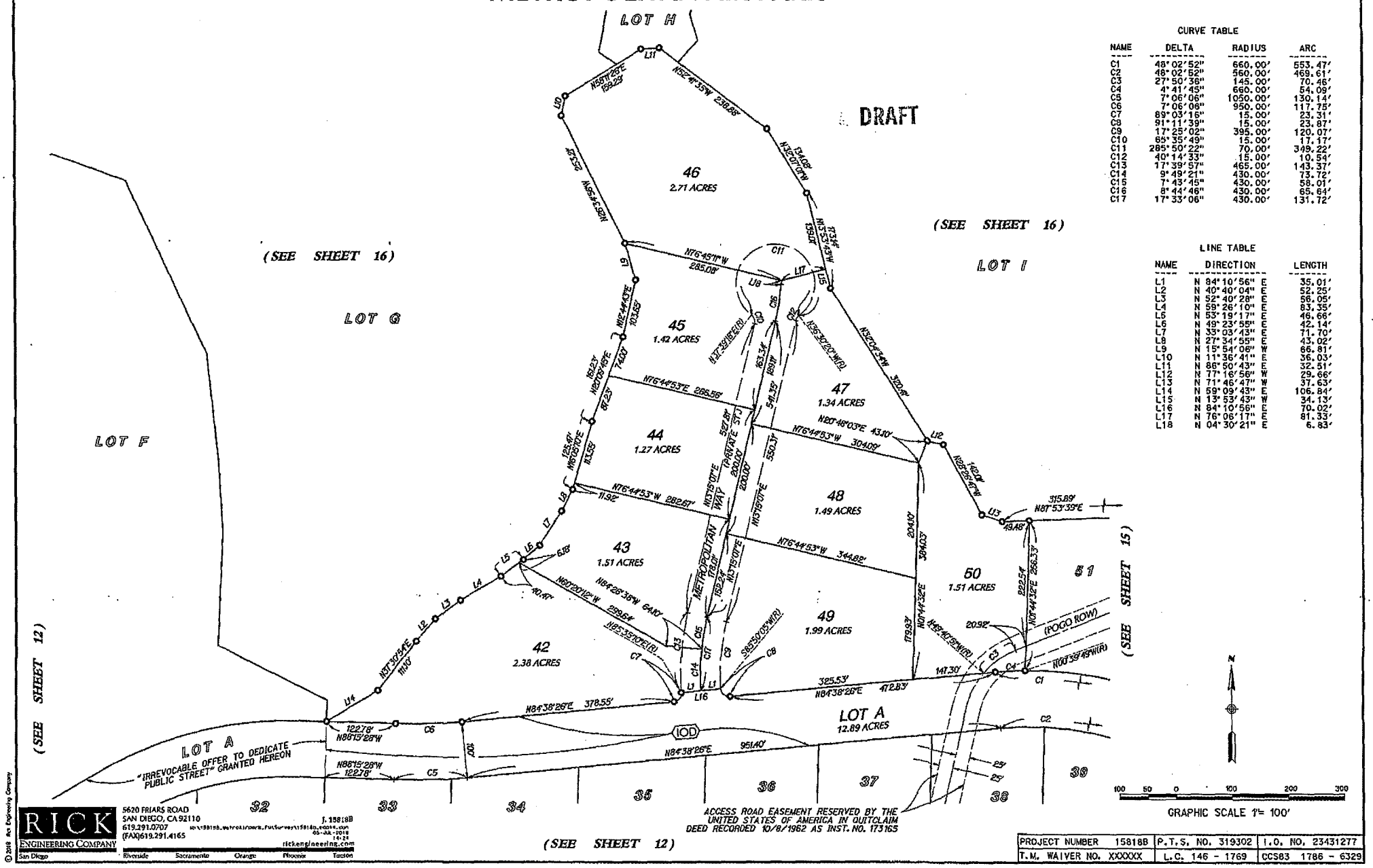
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# MAP NO.

**SHEET 14 OF 18 SHEETS**

# METROPOLITAN AIR PARK




CURVE TABLE

| NAME | DELTA | RADIUS | ARC |
|---|---|---|---|
| C1 | 48°02'52" | 660.00' | 553.47' |
| C2 | 48°02'52" | 560.00' | 469.61' |
| C3 | 27°50'36" | 145.00' | 70.46' |
| C4 | 4°41'45" | 660.00' | 54.09' |
| C5 | 7°06'06" | 1050.00' | 130.14' |
| C6 | 7°06'06" | 950.00' | 117.75' |
| C7 | 89°03'16" | 15.00' | 23.31' |
| C8 | 91°11'39" | 15.00' | 23.87' |
| C9 | 17°25'02" | 395.00' | 120.07' |
| C10 | 65°35'49" | 15.00' | 17.17' |
| C11 | 285°50'22" | 70.00' | 349.22' |
| C12 | 40°14'33" | 15.00' | 10.54' |
| C13 | 17°39'57" | 465.00' | 143.37' |
| C14 | 9°49'21" | 430.00' | 73.72' |
| C15 | 7°43'45" | 430.00' | 58.01' |
| C16 | 8°44'46" | 430.00' | 65.64' |
| C17 | 17°33'06" | 430.00' | 131.72' |

LINE TABLE

| NAME | DIRECTION | LENGTH |
|---|---|---|
| L1 | N 84°10'56" E | 35.01' |
| L2 | N 40°40'04" E | 52.25' |
| L3 | N 52°40'28" E | 56.05' |
| L4 | N 59°26'10" E | 83.35' |
| L5 | N 53°19'17" E | 46.66' |
| L6 | N 49°23'55" E | 42.14' |
| L7 | N 33°03'43" E | 71.70' |
| L8 | N 27°34'55" E | 43.02' |
| L9 | N 15°54'06" W | 66.81' |
| L10 | N 11°36'41" E | 36.03' |
| L11 | N 86°50'43" E | 32.51' |
| L12 | N 77°16'58" W | 29.66' |
| L13 | N 71°46'47" W | 37.63' |
| L14 | N 59°09'43" E | 106.84' |
| L15 | N 13°53'43" W | 34.13' |
| L16 | N 84°10'56" E | 70.02' |
| L17 | N 76°06'17" E | 81.33' |
| L18 | N 04°30'21" E | 6.83' |


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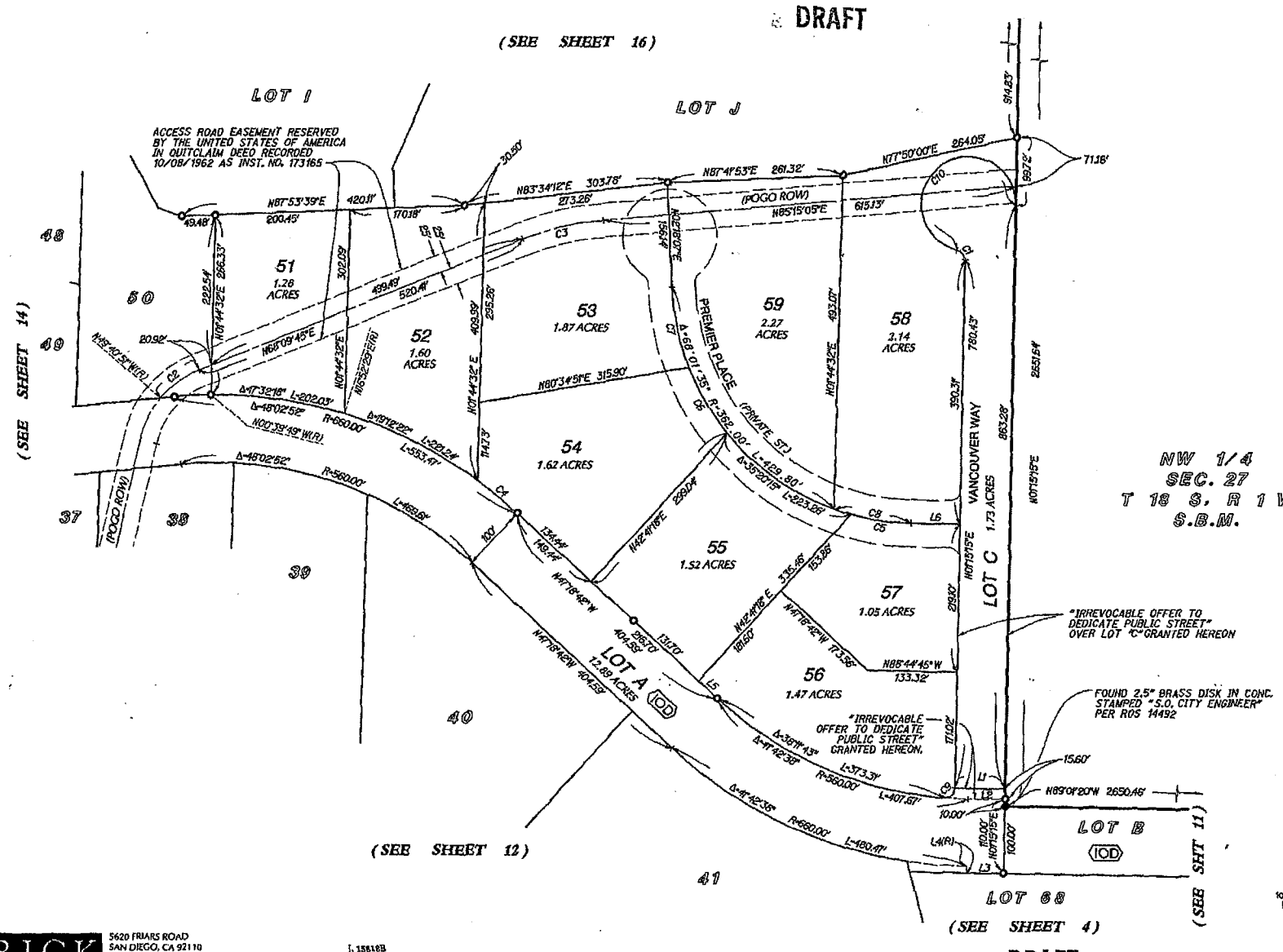

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# MAP NO.

**SHEET 15 OF 18 SHEETS**

# METROPOLITAN AIR PARK

DRAFT




CURVE TABLE

| NAME | DELTA | RADIUS | ARC |
|---|---|---|---|
| C1 | 77°05'01" | 15.00' | 20.18' |
| C2 | 27°50'36" | 145.00' | 70.46' |
| C3 | 17°05'20" | 415.00' | 123.78' |
| C4 | 6°36'27" | 660.00' | 76.11' |
| C5 | 14°13'32" | 362.00' | 89.88' |
| C6 | 17°42'11" | 362.00' | 111.85' |
| C7 | 19°10'40" | 362.00' | 121.17' |
| C8 | 18°25'02" | 362.00' | 116.36' |
| C9 | 93°14'20" | 15.00' | 24.41' |
| C10 | 257°05'01" | 70.00' | 314.09' |

LINE TABLE

| NAME | DIRECTION | LENGTH |
|---|---|---|
| L1 | N 88°44'45" W | 74.00' |
| L2 | N 89°01'20" W | 55.51' |
| L3 | N 89°01'20" W | 54.97' |
| L4 | N 0°58'40" E | 10.00' |
| L5 | N 47°18'42" W | 38.45' |
| L6 | N 88°44'45" W | 72.67' |

GRAPHIC SCALE 1"= 100'


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# MAP NO.

**SHEET 16 OF 18 SHEETS**

## METROPOLITAN AIR PARK

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GRAPHIC SCALE 1" = 200'

| LINE TABLE NAME | DIRECTION | LENGTH |
|---|---|---|
| L1 | N 88°49'05" W | 36.23' |
| L2 | N 88°49'04" W | 86.45' |
| L3 | N 17°48'17" W | 54.55' |
| L4 | N 5°27'28" E | 61.29' |
| L5 | N 79°33'15" W | 36.54' |
| L6 | N 14°30'26" W | 24.50' |
| L7 | N 19°28'46" W | 44.37' |
| L8 | N 24°22'22" E | 7.49' |
| L9 | N 5°21'06" E | 33.19' |
| L10 | N 16°10'38" E | 20.00' |
| L11 | N 9°03'53" E | 51.01' |
| L12 | N 49°00'26" E | 98.05' |
| L13 | N 34°41'47" E | 146.49' |
| L14 | N 37°30'54" E | 111.10' |
| L15 | N 59°09'43" E | 106.84' |
| L16 | N 88°15'28" W | 52.64' |
| L17 | N 60°03'01" E | 196.46' |
| L18 | N 67°09'34" E | 41.96' |
| L19 | N 59°17'45" E | 59.45' |
| L20 | N 64°41'17" W | 94.45' |
| L21 | N 80°47'20" E | 25.97' |
| L22 | N 88°44'45" W | 99.49' |
| L23 | N 53°19'57" W | 85.88' |
| L24 | N 6°32'28" E | 142.53' |
| L25 | N 27°32'45" E | 128.79' |
| L26 | N 22°46'18" E | 51.22' |
| L27 | N 7°25'36" E | 125.80' |
| L28 | N 2°06'21" W | 57.92' |

| CURVE TABLE NAME | DELTA | RADIUS | ARC |
|---|---|---|---|
| C1 | 8°09'33" | 660.00' | 93.99' |
| C2 | 31°42'30" | 660.00' | 365.25' |
| C3 | 39°38'25" | 560.00' | 387.44' |

SOUTH BOUNDARY LINE RANCHO OTAY

CITY OF CHULA VISTA

CITY OF SAN DIEGO

COUNTY OF SAN DIEGO

ROS 12371

ROS 16504

FOUND 2" IRON PIPE & DISK MKD. "LS 2785" PER ROS 14985 & 15091

FOUND 2" IRON PIPE & DISK MKD. "RCE 22606" PER ROS 16504

FOUND 3/4" IRON PIPE & PLASTIC PLUG MKD. "LS 4306" PER ROS 15091

FOUND 1" CONC. MON. W/ 4" OCTAGON DISK & 1-1/2" BRASS DISK W/ PUNCH ONLY (NO STAMP) PER ROS 15091

FOUND 1" CONC. MON. & 1.5" BRASS DISK PER ROS 12371

"IRREVOCABLE OFFER TO DEDICATE PUBLIC STREET" GRANTED HEREON

LOT A

LOT C

LOT D
6.05 ACRES

LOT E
16.29 ACRES

LOT F
29.92 ACRES

LOT G
34.60 ACRES

LOT H
5.96 ACRES

LOT I
47.64 ACRES

LOT J
16.74 ACRES

(SEE SHEET 13)

(SEE SHEET 14)

(SEE SHEET 15)

(SEE SHEET 12)


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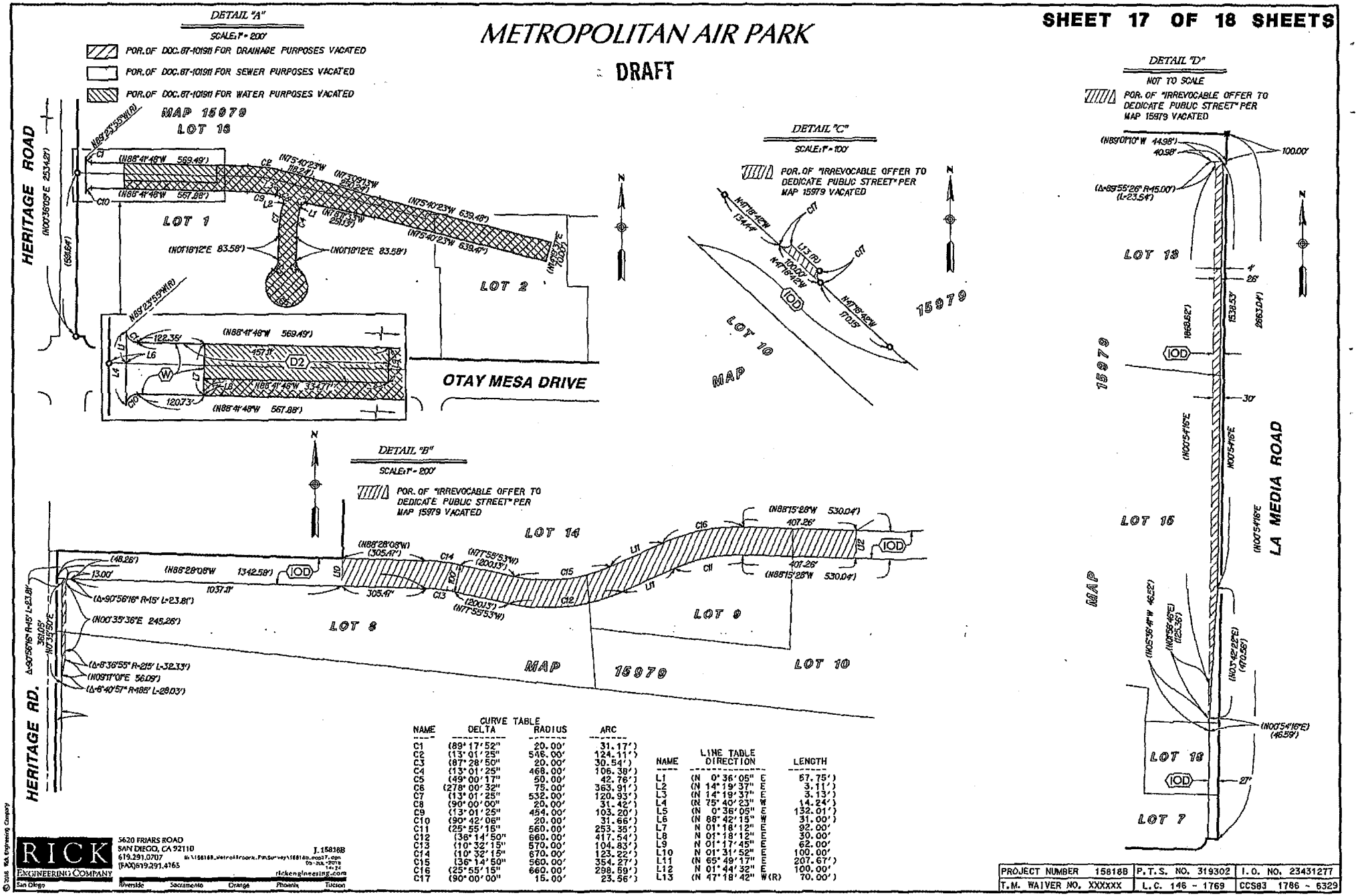
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# MAP NO.

**SHEET 17 OF 18 SHEETS**

# METROPOLITAN AIR PARK

**DRAFT**




CURVE TABLE

| NAME | DELTA | RADIUS | ARC |
|---|---|---|---|
| C1 | (89°17'52" | 20.00' | 31.17') |
| C2 | (13°01'25" | 546.00' | 124.11') |
| C3 | (87°28'50" | 20.00' | 30.54') |
| C4 | (13°01'25" | 468.00' | 106.38') |
| C5 | (49°00'17" | 50.00' | 42.76') |
| C6 | (278°00'32" | 75.00' | 363.91') |
| C7 | (13°01'25" | 532.00' | 120.93') |
| C8 | (90°00'00" | 20.00' | 31.42') |
| C9 | (13°01'25" | 454.00' | 103.20') |
| C10 | (90°42'06" | 20.00' | 31.66') |
| C11 | (25°55'15" | 560.00' | 253.35') |
| C12 | (36°14'50" | 660.00' | 417.54') |
| C13 | (10°32'15" | 570.00' | 104.83') |
| C14 | (10°32'15" | 670.00' | 123.22') |
| C15 | (36°14'50" | 560.00' | 354.27') |
| C16 | (25°55'15" | 660.00' | 298.59') |
| C17 | (90°00'00" | 15.00' | 23.56') |

LINE TABLE

| NAME | DIRECTION | LENGTH |
|---|---|---|
| L1 | (N 0°36'05" E | 67.75') |
| L2 | (N 14°19'37" E | 3.11') |
| L3 | (N 14°19'37" E | 3.13') |
| L4 | (N 75°40'23" W | 14.24') |
| L5 | (N 0°36'05" E | 132.01') |
| L6 | (N 88°42'15" W | 31.00') |
| L7 | N 01°18'12" E | 92.00' |
| L8 | N 01°18'12" E | 30.00' |
| L9 | N 01°17'45" E | 62.00' |
| L10 | N 01°31'52" E | 100.00' |
| L11 | (N 65°49'17" E | 207.67') |
| L12 | N 01°44'32" E | 100.00' |
| L13 | (N 47°18'42" W(R) | 70.00') |


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# MAP NO.

**SHEET 18 OF 18 SHEETS**

# METROPOLITAN AIR PARK

## NON-TITLE INFORMATION SHEET

DIRECTION IS MADE TO THE EFFECT OF RESOLUTION NUMBERS R-00022404, R-00022405 AND R-00022407, WHICH AMONG OTHER THINGS, RECITE "FOR HISTORIC SITE DESIGNATION" COPIES OF WHICH RECORDED APRIL 4, 2000 AS INSTRUMENT NO. 2000-0170485; APRIL 4, 2000 AS INSTRUMENT NO. 2000-0170486 AND APRIL 4, 2000 AS INSTRUMENT NO. 2000-0170487, ALL OF OFFICIAL RECORDS (NON-PLOTTABLE.)

LEGEND

INDICATES FIRE HAZARD ZONE(S) PER SECTION 142.0412 OF THE LAND DEVELOPMENT CODE.

INFORMATION SHOWN ON THIS SHEET IS ADVISORY ONLY AND IS NOT INTENDED TO AFFECT RECORD TITLE INTEREST.

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GRAPHIC SCALE 1"= 500'

SECTION 27
T 18 S, R 1 W
S.B.M.

ROS 12371
ROS 20003

METROLPOLITAN WAY
PREMIER PLACE
VANCOUVER WAY
LOT A
LOT B
AIRPORT RUNWAY

HERITAGE ROAD
LA MEDIA ROAD
WINDSOCK STREET
OTAY MESA ROAD (905)

MAP 12425
MAP 12145
MAP 12069
MAP 13000
MAP 13498
MAP 12305
MAP 13764

PACIFIC RIM CT.
CACTUS ROAD
CONTINENTAL STREET
BRITANNIA BLVD.
GAILES BLVD.
ALEX CT.
OTAY MESA CTR RD.

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**EXHIBIT B:**

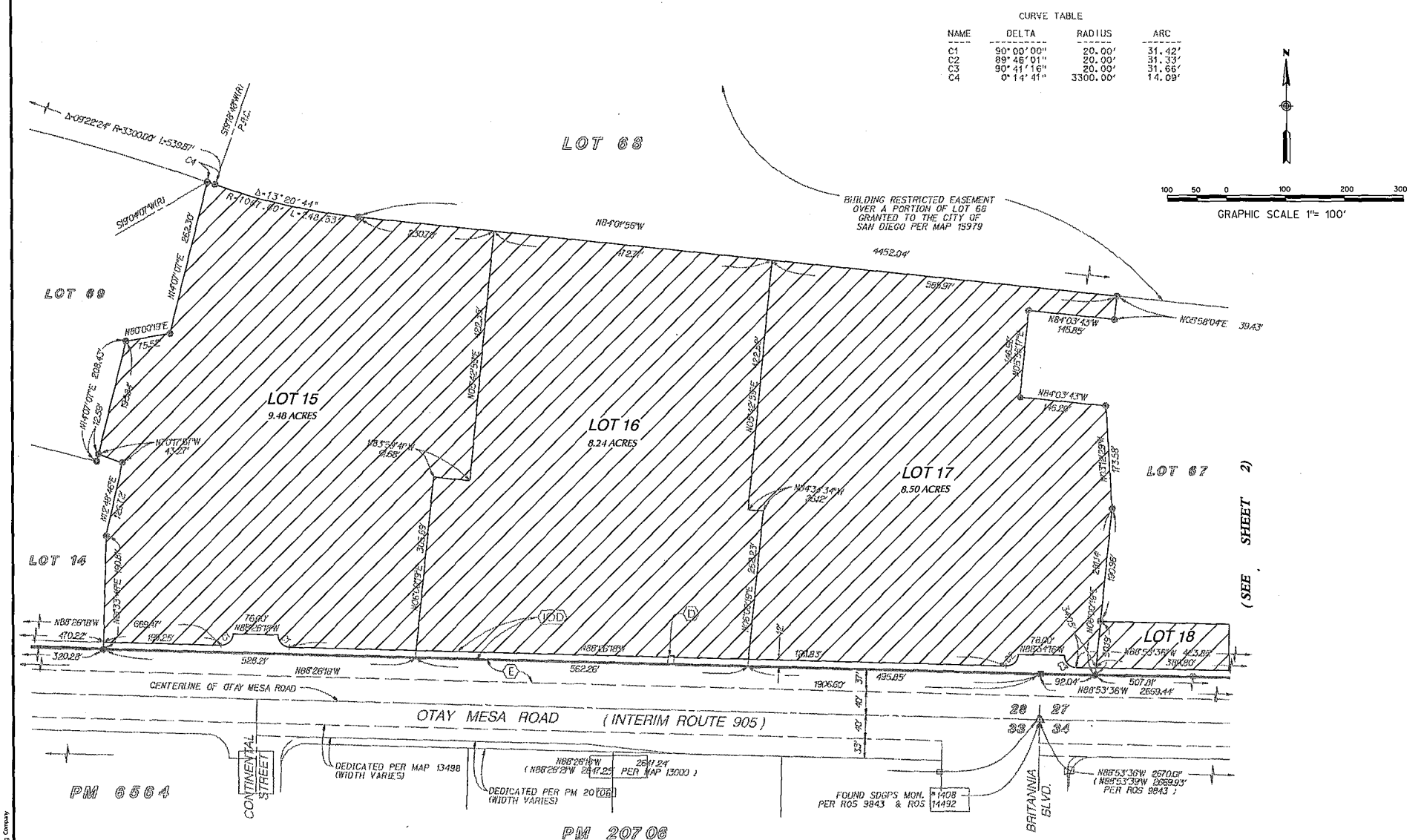
**PHASE 1 PARCELS**

[Located behind this cover page.]

# PHASE 1 PARCELS

**SHEET 1 OF 2 SHEETS**

## METROPOLITAN AIR PARK





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# PHASE 1 PARCELS

**SHEET 2 OF 2 SHEETS**

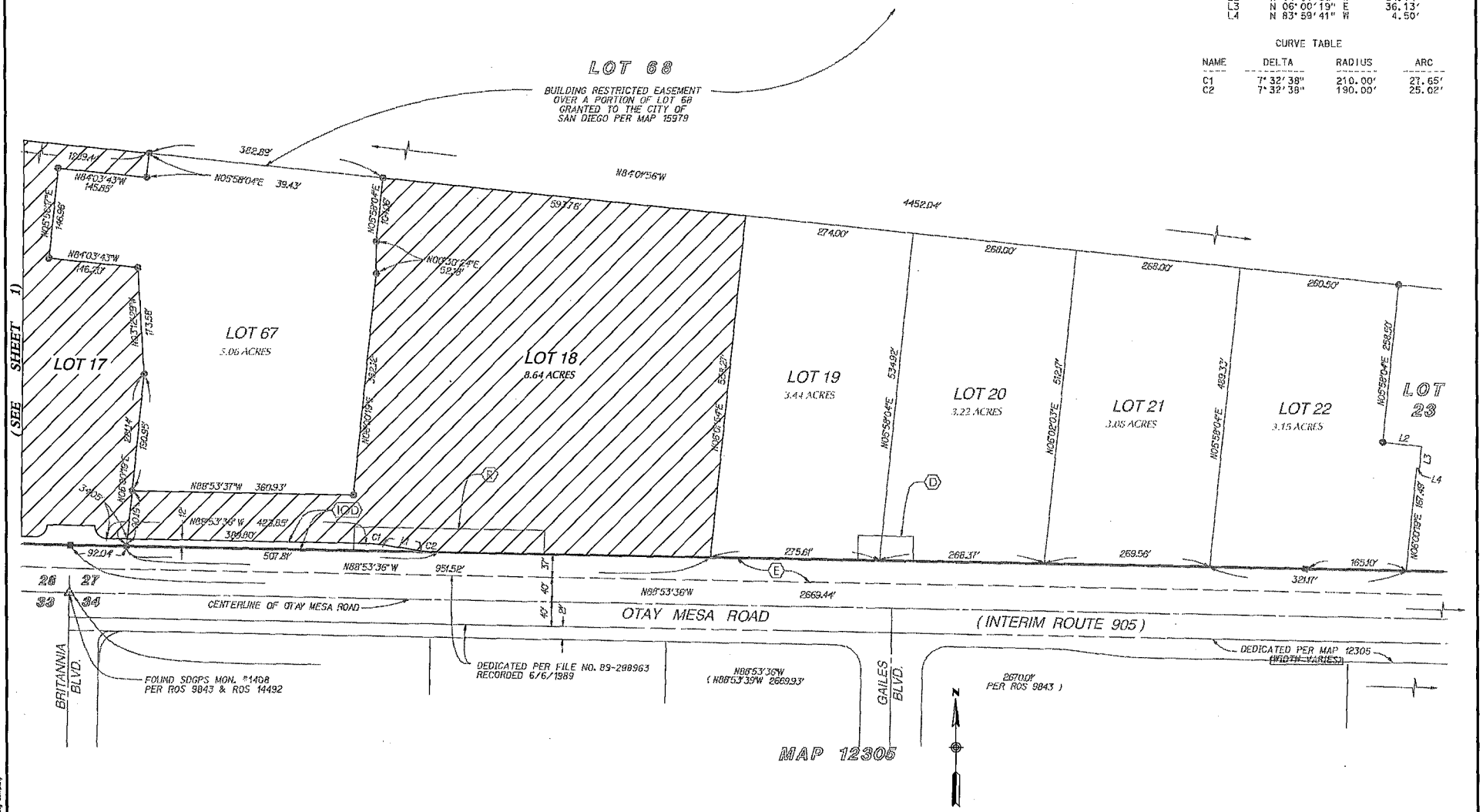
## METROPOLITAN AIR PARK

LINE TABLE

| NAME | DIRECTION | LENGTH |
|---|---|---|
| L1 | N 81°20'58" W | 65.03' |
| L2 | N 84°01'56" W | 64.14' |
| L3 | N 06°00'19" E | 36.13' |
| L4 | N 83°59'41" W | 4.50' |

CURVE TABLE

| NAME | DELTA | RADIUS | ARC |
|---|---|---|---|
| C1 | 7°32'38" | 210.00' | 27.65' |
| C2 | 7°32'38" | 190.00' | 25.02' |




GRAPHIC SCALE 1"= 100'


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**EXHIBIT C:**

**LEASEHOLD DEVELOPMENT AGREEMENT**

[Located behind this cover page.]

DUPLICATE

**Brown Field Airport**

San Diego, California

LEASEHOLD DEVELOPMENT AGREEMENT

by and between

THE CITY OF SAN DIEGO ("CITY")

and

BROWN FIELD INTERNATIONAL BUSINESS PARK, LLC ("DEVELOPER")

DOCUMENT NO. 00-20315
FILED OCT 22 2013
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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| ATTACHMENT NO. 5 | PHASING MAP |
| ATTACHMENT NO. 6 | SPECIFIC LEASE PROVISIONS TO BE INCLUDED WITHIN PARCEL GROUND LEASES |


**NOTE:** Attachments 3, 4, and 5 are subject to separate City Council approval and possible future amendments and revisions, as agreed upon between the parties; future Parcel Ground Leases and Solar Ground Leases are subject to separate City Council approval; and the Project contemplated in this Leasehold Development Agreement, and any changes thereto, are subject to continuing FAA approval. Accordingly, the Attachments to this Leasehold Development Agreement are included for reference purposes only, and only the official documents, as may be amended from time to time, should be relied upon.

# LEASEHOLD DEVELOPMENT AGREEMENT

This Leasehold Development Agreement ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("City") and BROWN FIELD INTERNATIONAL BUSINESS PARK, LLC ("Developer"). All capitalized terms utilized in this Agreement are defined in Article 1 or within the individual provision referring to the term.

## ARTICLE 1
## DEFINITIONS

**1.1 Agreement.** The term "Agreement" refers to the Leasehold Development Agreement ("LDA").

**1.2 Airport.** The term "Airport" refers to Brown Field Municipal Airport.

**1.3 Airports Division.** The term "Airports Division" refers to the Airports Division of the City Real Estate Assets Department.

**1.4 ALTA.** The term "ALTA" refers to the American Land Title Association.

**1.5 As Is.** The term "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.

**1.6 Attachment.** The term "Attachment" or its plural refer to the Attachments provided with this Agreement, which depict the Project or a project alternative as approved by the City Council.

**1.7 Aviation Uses.** The term "Aviation Uses" refers to the uses allowed as Aviation Uses under the Site Development Permit approved for Developer's Project.

**1.8 Aviation Industrial.** The term "Aviation Industrial" refers to the uses allowed as Aviation Industrial under the Site Development Permit approved for Developer's Project.

**1.9 Base Monthly Rent.** The term "Base Monthly Rent" refers to the base rent which will be established for each individual parcel ground lease. Base Monthly Rent shall be equal to one twelfth (1/12) of ten percent (10%) of the appraised real property value for each parcel(s), or portion thereof.

**1.10 Brown Field International Business Park, LLC.** The term "Brown Field International Business Park, LLC" refers to Brown Field International Business Park, LLC dba Metropolitan Air Park. The Developer is Brown Field International Business Park, LLC, a Delaware limited liability company. The principal office of the Developer is located at 2100 Palomar Airport Road, Suite 209, Carlsbad, California 92011.

**1.11 City.** The term "City" refers to the City of San Diego, California. City is a municipal corporation, organized and existing under the laws of the State of California. The principal office of the City is located at 202 C Street, San Diego, California 92101. "City" as used in this Agreement, includes the City of San Diego and any assignee of or successor to its rights, powers and responsibilities.

**1.12 Construction Drawings.** The term "Construction Drawings" refers to construction drawings and related documents for the Project.

**1.13 Contact Representative.** The term "Contact Representative" refers to the single point of contact at the City's Development Service Department (or successor department) designated to assist Developer in processing permits for the Project, and the single point of contact at the City's Real Estate Assets Department (or successor department) for administration of this Agreement

**1.14 Developer.** The term "Developer" refers to Brown Field International Business Park, LLC, a Delaware limited liability company or its assignee, as herein after provided. The principal office of the Developer is located at 2100 Palomar Airport Road, Suite 209, Carlsbad, California 92011. Wherever the term "Developer" is used herein, such term shall also include any permitted nominee, assignee or successor in interest.

**1.15 Development.** The term "Development" refers to the development of the Site as contemplated in the Site Development Permit.

**1.16 Development Services Department.** The term "Development Services Department" ("DSD") refers to the Contact Representative at the City for the purpose of processing permits for the Project.

**1.17 FBO.** The term "FBO" refers to Fixed Base Operator.

**1.18 Final Construction Drawings.** The term "Final Construction Drawings" refers to those drawings in sufficient detail to obtain construction permits.

**1.19 Final Environmental Impact Report.** The term "Final Environmental Impact Report" ("FEIR") refers to the Final Environmental Impact Report certified by the City Council and required under CEQA.

**1.20 Draft Final Map.** The term "Draft Final Map" refers to Attachment 3 of this Agreement.

**1.21 Infrastructure Improvements.** The term "Infrastructure Improvements" refers to the infrastructure improvements contemplated by the Final Environmental Impact Report and the Site Development Permit.

**1.22 Legal Description.** The term "Legal Description" refers to the legal description found in Attachment 2 of the Agreement.

**1.23 Mitigation Land.** The term "Mitigation Land" refers to that certain forty-six (46) acres of land located on Brown Field Airport that Developer is allowed to use solely for required mitigation for development of Aviation Uses at Brown Field Airport, and as further set forth in this Agreement.

**1.24 Mortgage.** The term "Mortgage" refers to any transfer which consists of the grant of a leasehold mortgage, deed of trust, or other security interest authorized by this Agreement.

**1.25 Normal Working Hours.** The term "Normal Working Hours" refers to the hours of 7:00 a.m. through 7:00 p.m., Monday through Saturday, with the exception that equipment mobilization can commence at 6:00 a.m.

**1.26 Outdoor Storage.** The term "Outdoor Storage" refers to the parking of truck trailers, or such other type of storage pre-approved in writing by City, within the footprint of the area leased to Developer under a Solar Ground Lease. Notwithstanding anything to the contrary in this definition or this Agreement, all planned Outdoor Storage must receive prior written approval of the FAA.

**1.27 Parcel Ground Lease.** The term "Parcel Ground Lease" refers to the means by which the City conveys possession to the Developer of the Parcels within a Phase.

**1.28 Parcels.** The term "Parcels" refers to the Site parcels as more fully described in Attachment 3 of this Agreement.

**1.29 Phasing Map.** The term "Phasing Map" refers to the map depicting the Project phasing in Attachment 5.

**1.30 Preliminary Report.** The term "Preliminary Report" refers to a preliminary title report relative to the status of the title to the Site, including best available copies of all exceptions to title, and a plat map showing all easements capable of being plotted.

**1.31 Project.** The term "Project" refers to the proposed Development to be completed in four phases as set forth in this Agreement and approved by the City Council.

**1.32 Site.** The term "Site" refers to portions of Brown Field Airport designated for the Project's Development as further defined in Section 2.2.

**1.33 Site Map.** The term "Site Map" refers to Attachment 1 of this Agreement.

**1.34 Site Development Permit.** The term "Site Development Permit" ("SDP") refers to Attachment 4 of this Agreement.

**1.35 Solar Ground Lease.** The term "Solar Ground Lease" refers to that certain lease(s) between Developer and City wherein Developer leases certain parcels, or portions thereof, at the Site, for use as a solar field.

**1.36 Title Company.** The term "Title Company" refers to the company engaged by Developer at the Developer's cost to issue and deliver to the Developer a Preliminary Report relative to the status of the title to the Site.

**1.37 Transfer.** The term "Transfer" refers to any action by Developer wherein Developer grants a deed of trust or similar encumbrance (a "Mortgage") to a lender, conveying to said lender an interest in Developer's leasehold interest in the Project.

## ARTICLE 2
## SUBJECT OF AGREEMENT

**2.1 Purpose of This Agreement.** The purpose of this Agreement is to provide for Developer's right to enter upon, lease and develop defined portions of Brown Field Airport (the "Site") as further defined in Section 2.2. The proposed Development (the "Project"), to be completed in four phases as set forth in this Agreement, will expand and renovate the existing Airport facilities and add numerous related aviation, commercial, renewable energy and industrial facilities. The Project will satisfy immediate and long term aviation needs of Brown Field Airport ("Airport"), which include a new corporate fixed base operator ("FBO") and jet hangars, jet maintenance, fueling services, general aviation facilities, helicopter FBO, avionics maintenance, a pilot lounge and a restaurant.

**2.2 The Site.** The Site is that certain real property illustrated and designated as such on the Site Map (attached hereto as **Attachment No. 1**) and having the legal description set forth in the Legal Description (attached hereto as **Attachment No. 2**). The Site is comprised of approximately 331 acres in land area, and is located on property bounded by La Media Road on the east, Otay Mesa Road on the south, Heritage Road on the west, and on the north by the Rancho Otay Boundary and the North ½ of Section 27, Township 18 South, Range 1 West, San Bernardino Meridian, within the City of San Diego.

The Site is divided into Parcels. The Parcels are set forth in the Draft Final Map attached hereto as **Attachment No. 3**.

City makes no warranties or representations regarding the Site, including, without limitation, the suitability of the Site for Developer's intended purpose/use, whether or not known to City, or the condition, or the exact square footage of the Site. The Developer has inspected the Site and accepts the Site As Is, as that term is defined in Section 1.5 above, upon entering into this Agreement, and City shall have no liability to the Developer for any damage or injury caused by the condition of the Site.

**2.3 Parties to the Agreement.**

**(a) The City of San Diego**. City is a municipal corporation, organized and existing under the laws of the State of California. The principal office of the City is located at 202 C St., San Diego, California 92101. "City" as used in this Agreement, includes the City of San Diego and any assignee of or successor to its rights, powers, and responsibilities.

**(b) The Developer.** The Developer is Brown Field International Business Park, LLC, a Delaware limited liability company. The principal office of the Developer is located at 2100 Palomar Airport Road, Suite 209, Carlsbad, California 92011. Wherever the term "Developer" is used herein, such term shall also include any permitted assignee, or successor in interest as herein provided.

It is expressly understood and agreed that the Developer shall not be, nor operate as, an agent, representative or employee of City as to any rights or privileges granted herein. The Developer shall have the exclusive right to control the details of its operations and activities on the Site (subject to the terms and conditions of its agreements and permits with City) and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, patrons, licensees and invitees. The Developer acknowledges that the doctrine of *respondeat superior* shall not apply as between City and the Developer, its officers, agents, servants, employees, contractors, subcontractors, patrons, licensees and invitees. The Developer further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between City and the Developer.

**2.4 Change in Ownership, Management and Control of the Developer.** The Developer represents and agrees that the Site (or particular Phase(s) of the Project) will be used solely for the purpose of the proposed Project and not for land holding speculation. The Developer further recognizes that a change in control of the Developer, or any other act or transaction involving or resulting in a change with respect to the identity of the parties in control of the Developer, is for practical purposes a transfer or disposition of the Project (or particular Phase within the Project). The qualifications and identity of the Developer and its principals are of particular concern to the community and City. The Developer further recognizes that it is because of such qualifications and identity that City is entering into this Agreement with the Developer. No voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement, except with respect to an assignee or successor as expressly permitted herein, without the approval of the San Diego City Council. Any change in ownership, transfer of rights, or assignment in this Agreement, the FEIR, Site Development Permit and ground leases by the Developer must be evidenced by a written document singed by all applicable parties. The Developer shall be subject to any City-required fees/charges associated with such changes, transfer and/or assignments.

## ARTICLE 3
## LEASE OF THE PARCELS

**3.1 Leases for Parcels.** In accordance with and subject to all the terms, covenants, and conditions of this Agreement, City agrees to lease to the Developer, and the Developer agrees to lease from City the Parcels, subject to the terms set forth below and in **Attachment No. 6.**

**3.2 Delivery of Possession.** Possession of specific Parcel(s) within a Phase shall be delivered to the Developer concurrent with the signing of the Parcel Ground Lease and/or Solar Ground Lease for the Parcel(s) in question, except that access and entry may be granted for the Parcel(s) in question before commencement of the Parcel Ground Lease term and/or Solar Ground

Lease term upon execution of a standard City right-of-entry permit and receipt of all required regulatory/land use permits required for the activity contemplated under the right-of-entry permit. The Developer shall accept possession of the Parcel(s) no later than the date on which the City, or other relevant agency, has issued all required permits to commence construction on the specified Parcel(s), and, in no event, may accept the parcels later than the Phasing Schedule described herein. Developer shall work with City to ensure that the Parcel Ground Lease and/or Solar Ground Lease for the subject Parcel(s) is ready for execution on or prior to the date upon which all required permits to commence construction have been issued.

**3.2.1** Right-of-entry permits will be granted for the following pre-possession activities: testing, and surveying. Issuance of right-of-entry permits for other pre-possession activities such as grading, or other mutually agreed upon activities, will be considered upon proof of required regulatory/land use permits containing sufficient conditions to safeguard the operation and normal activities of the Airport - - which safeguards shall include strict requirements for hydro-seeding and weed abatement for all time periods after allowed grading activities.

**3.2.2** Notwithstanding the foregoing provisions of this section, or other section of this Agreement which sets forth similar provisions, if Developer rejects possession of a Parcel(s) in Phase 1 of this Project which is designated for Aviation Use, or Developer fails to develop all Parcels in Phase 1 of the Project sufficient to meet the requirements of the Site Development Permit and the FAA, City shall have the right, but not the obligation, to terminate this Agreement and all subsequent Parcel Ground Leases, with no liability or obligation owed to Developer for any improvements to the Site or costs expended on the Site or Project. The Developer specifically agrees and acknowledges that for the purposes of this Paragraph, the use of the Parcels in Phase 1 shall be Aviation Uses, and that the primary purpose for City entering into this Agreement is for the construction and maintenance of the Aviation Uses to be constructed in Phase 1 of the Project. Developer further agrees that upon any such early termination of the Agreement and all subsequent Parcel Ground Leases, that City shall have sole ownership of all entitlements over the Project and Developer shall quitclaim to City all interest it may then have in/over the Site and Project.

**3.3 Form of Lease(s).** City shall convey possession of the Parcels within a Phase to Developer, as provided in Section 3.4 of this Agreement, by means of Parcel Ground Leases or a Solar Ground Lease consistent with this Agreement and the lease provisions set forth in **Attachment No. 6.**

**3.4 Length of Terms (Term) for Leases.**

**(a)** The lease Terms for the Parcel Ground Leases will be fifty (50) years, commencing upon the date of issuance of the first Certificate of Occupancy for any improvements within any parcel, or portion thereof, of the Project. Notwithstanding the foregoing, leases for Outdoor Storage, which are separate and distinct from a Solar Ground Lease, may be granted for Terms of less than fifty (50) years in order to ensure that any Outdoor

Storage lease ~~term~~Term runs commensurate with, or is less than, the initial solar use lease term or the subsequent use of that same property, as discussed in "(b)" immediately below; and

**(b)** The initial lease Term for the Solar Ground Lease will be twenty-five (25) years from the Notice of Completion (or similar-type document) for the solar field. At least 12 months, and no more than 18 months, prior to the expiration of said initial 25-year Term, the Developer shall have the right of first refusal to lease that same property for an additional twenty five (25) years, for any use which is compatible with the then-applicable Airport Layout Plan, SDM Airport Land Use Compatibility Plan (ALUCP) and as allowed by the Site Development Permit. If Developer exercises the right of first refusal and continues to use the subject real property for a solar field, Developer shall pay the City as rent 50% of any revenues received, or the value of any compensation, monetary or non-monetary) received, by Developer from the operation of the solar field. The rent shall commence in year 26. If Developer exercises the right of first refusal and puts the subject real property to a non-solar use, then Developer shall lease said property on the same terms and conditions as the non-solar leases described herein and shall pay the City rent in the same manner and utilizing the same methodology as is described herein for non-solar leases.

**3.5 Undeveloped and Non-Aviation Parcels.**

**(a) Undeveloped Parcels.** The Developer will forfeit all of its rights under this Agreement for any parcels, or portions thereof, on which Developer has not commenced construction of any structures thereon within 20 years from the effective date of this Agreement. The City shall extend the time period to develop the remaining undeveloped parcels, for a one-time additional six (6) months, upon payment of an additional non-refundable sum of $50,000.

**(b) Construction on Non-Aviation Parcels.** Construction on Parcels within Phases 2, 3, and 4 not designated for Aviation Use, as shown on the Site Development Permit, may commence concurrently with construction of Phase 1. However, Certificates of Occupancy will not be issued for any non-aviation facilities until all of the Certificates of Occupancy for Phase 1 aviation facilities required by the FAA have been issued. If required, the Developer shall be responsible for any revisions or amendments to the Site Development Permit, CEQA documents, traffic studies and other required permits, as well as all infrastructure improvements and mitigation, necessary for any non-aviation use.

**3.6 Taxes and Assessments.** Ad valorem taxes and assessments levied, assessed, or imposed on the Parcel Ground Lease and Solar Ground Lease leaseholds commencing after conveyance of possession to the applicable Parcel(s) to the Developer, shall be borne by the Developer when due and payable. Developer shall also be responsible for payment of any Development Impact Fees ("DIFs") or any other exactions, assessments or taxes relating to construction of improvements required for the Development.

**3.7 Construction of Infrastructure and Mitigation Land/Measures.**

(a) **General.** All construction associated with on-site or off-site infrastructure and/or required for mitigation will be designed and constructed by Developer. City will use its best efforts to assist Developer in obtaining the required permits from outside agencies.

(b) **Infrastructure Costs.** All costs for both on-site and off-site infrastructure required by and for the Development of the Site, as more fully described in the Site Development Permit and FEIR, or any other required infrastructure costs through build-out of the Site, as determined by the City DSD, shall be at the sole cost and expense of the Developer.

(c) **Mitigation Land/Measures.** The forty-six (46) acres of Mitigation Land located on the Airport may only be used as required mitigation for the development of Aviation Uses at the Airport. Notwithstanding the foregoing, if the Aviation Uses required for the entirety of Phase 1 require less than forty-six (46) acres of Mitigation Land, the remaining Mitigation Land may be used to mitigate for other Aviation Uses and Aviation Industrial Uses proposed for Phase 2, Phase 3, and Phase 4. The acquisition of other mitigation land required for any Aviation Uses not mitigated by the forty-six (46) acres of Mitigation Land, as well as any mitigation land or other mitigation measures required for the Project (including allowed aviation or non-aviation Commercial or Industrial uses), shall be the sole responsibility of Developer, at its sole cost and expense.

(d) **Mitigation Land for Solar Use.** Developer or any approved assigned solar operator will acquire all necessary acreage (estimated to be approximately thirty (30) acres) to mitigate for the solar use ("solar use mitigation land"). Developer and/or the assigned solar operator shall seek out, negotiate and pay for the necessary solar use mitigation acreage. However, Developer and/or the assigned solar operator shall convey or cause to convey, the fee owner interest in said mitigation land to City through a warranty grant deed. Such conveyance shall be effective upon the commencement date of the Solar Ground Lease. Notwithstanding the City's then ownership of said solar use mitigation land the Developer or any approved assigned solar operator shall be solely responsible for the maintenance of the solar use mitigation land and for any liability arising out of the solar use mitigation land during the period of the solar lease. Notwithstanding the foregoing, if (1) City accepts a Property Assessment Record (PAR) Analysis for the solar use mitigation land, conducted and paid for by Developer, and (2) Developer has deposited with City the PAR Analysis-determined amount of money to fund the future maintenance needs of the solar use mitigation land, then Developer shall be absolved of the maintenance and liability obligations of the solar use mitigation land. If the first right of refusal extending the solar use for an additional twenty-five (25) years is exercised, and Developer has not absolved itself of the maintenance and liability obligations for the solar use mitigation land, Developer or any approved assigned solar operator shall be solely responsible for the maintenance of the solar use mitigation land and for any liability arising out of the solar use mitigation land during the additional period of the solar lease. If the first right of refusal over the land used as the solar field is exercised and that same property is put to a non-solar use by the Developer, and Developer has not absolved itself of the maintenance and liability obligations for the solar use mitigation land, Developer shall still remain solely responsible for the maintenance of the solar use mitigation land and for any liability arising out of the solar use mitigation land during the period of that new non-solar lease over the former solar use site.

(c) **Construction by the Developer.** All construction associated with on-site and off-site infrastructure and/or required for mitigation and/or facilities necessary to implement the Mitigation and Monitoring Plan in the Final Environmental Impact Report certified by the City Council shall be designed and constructed by the Developer. City shall use its best efforts to assist the Developer in obtaining any permits required for the construction of required mitigation.

**3.8 Payment for the Construction of Mitigation Measures.** All costs associated with all mitigation requirements as specified in the FEIR, Site Development Permit and any other governing documents, permits or approvals shall be at the sole cost and expense of the Developer. The Developer shall also be responsible for all management and costs associated with the Mitigation Monitoring and Reporting Program (MMRP) requirements in the FEIR.

**3.9 Occupants of the Site.** City agrees that possession of the Parcels for a Phase shall be leased free of any possessory interests or rights of occupancy except that of City, the State of California, the United States Government and the Developer, unless waived in writing by the Developer. The City must turn over unobstructed possession, subject to the above identified rights, by any means necessary.

**3.10 Zoning and Entitlements of the Site.** Brown Field Airport is unzoned. City shall not alter or update the zoning of Brown Field Airport in any way that prejudices the development or operation of the Project as more fully described in the Site Development Permit attached hereto as **Attachment No. 4**, as approved by the City Council, without the consent of the Developer. Pursuant to Section 2.2 City makes no further representations or warranties.

**3.11 Condition of the Parcels.** The Developer may, at its own expense, and in consultation with City, employ a qualified soils engineer, geologist, and/or consultant for the purpose of investigating the soil, water and environmental conditions of the Parcels. City shall provide the Developer with access to the Parcels via a right-of-entry permit, as discussed in this Agreement, in order to obtain a reasonable number of tests as necessary to make such investigations. A copy of all written reports of the soils engineer, geologist, and/or consultant shall be furnished to City. Developer shall be responsible for all damages to the Site, the Airport, and the Airport's users, caused by such investigations and will indemnify and hold harmless City for all such damages and claims therefor.

**3.12 Preliminary Work by the Developer.** Prior to the effective date of any individual Parcel Ground Lease, representatives of the Developer shall have the right of access to and entry upon the Parcels for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement, pursuant to the rights granted in a right-of-entry permit.

**3.13 Rental Rates Terms.**

(a) **Base Ground Rents for Non-Solar Uses** (this includes Outdoor Storage uses). Within six (6) months prior to the execution of a Parcel Ground Lease for any individual parcel(s), the individual parcel(s) to be developed (and eventually leased) will be appraised and

values determined by an Appraiser, selected by the methodology set forth within this section. Each appraisal will reflect the then fair market value of the Parcel(s), As Is, as that term is defined in Section 1.5 above. The appraised fair market value for each Parcel(s), or portion thereof, shall be used in determining the Base Monthly Rent for the individual leases therefor.

**(b) Selection of Appraisers.** Appraiser(s) shall be reasonably qualified and experienced in appraising property substantially similar to the Site. The Appraiser(s) shall be selected by mutual agreement of the parties. If the parties cannot agree upon an Appraiser, each party shall select an appraiser, and the two appraisers shall select a third appraiser to perform the appraisal. If the parties' appraisers do not designate an appraiser within thirty (30) days of being given the assignment, an appraiser shall be designated upon application by either party to any judge of the Superior Court of San Diego County, downtown branch. City and Developer shall each pay the fees and costs of their own appraiser, and shall each pay one-half of the fees and costs of the final Appraiser selected, as well as any court costs that may be incurred. (Selection of an appraiser(s) for periodic, or otherwise required, rent rate adjustments under individual Parcel Ground Leases shall be conducted pursuant to the terms of the individual Parcel Ground Lease.)

**(c) Ground Rent for Solar Use.** No monthly ground rent will be paid by Developer, or any assigned solar operator, for years 1-25 of the Solar Ground Lease, for the parcel(s), or portion thereof, during the time period said parcel(s), or portion thereof, are used as a solar field. The conveyance of fee owner interest in all the land purchased as mitigation for the solar field to the City has been determined to be adequate consideration for Developer's initial 25 year Solar Ground Lease term for said property. If the Developer exercises the right of first refusal and continues to use the subject real property for a solar field, then Developer shall lease said property and shall pay the City as rent 50% of any revenues received, or the value of any compensation (monitory or non-monitory) received, by Developer from the operation of the solar field. The rent shall commence in year 26 (immediately after the expiration of the initial 25 year Solar Ground Lease). If Developer exercises the right of first refusal and puts the subject real property to a non-solar field use, then Developer shall lease said property on the same terms and conditions as the non-solar leases described in this Agreement (except the length of the Term therefor), and shall pay the City rent in the same manner and utilizing the same methodology as is described in this Agreement for non-solar leases. The rent shall commence in year 26 (immediately after the expiration of the initial 25 year Solar Ground Lease).

**(d) Ground Rent CPI Adjustment.** At each ground lease's commencement, utilizing the appraised real property value for said parcel(s) or, portions thereof, the ground rent shall be established by adjusting upward the appraised value by the increase of the CPI between the date the option was exercised and the date of the issuance of a Certificate of Occupancy. The aforementioned increase in the CPI shall be capped at three percent (3%) per year. Thereafter the ground rent shall be adjusted upward by the CPI every five (5) years with a fifteen percent (15%) cumulative maximum increase during each individual five (5) year period during the term of the lease.

**(e) Ground Rent Market Rate Adjustments.** All ground rents shall be adjusted to market value at the beginning of the twenty first (21st) year of each lease term and

every ten (10) years thereafter. The rent as adjusted to market may increase but never decrease. For the purpose of the rent market rate adjustments, the land will be appraised to reflect the Parcel(s) then fair market value, As Is, as that term is defined in section 1.5 above.

**(f) Possessory Tax.** Possessory Interest tax and all other financial obligations associated with the leases shall be the responsibility of the Developer.

**3.14 Phasing.** The Project's Phasing Map is shown on **Attachment No. 5**. Phase 1 of the Project is defined in the Site Development Permit, as approved by the FAA. The initial aviation square footage constructed in Phase 1 shall be the minimum square footage of aviation facilities necessary to meet aviation demands five years from the projected date of the last Certificate of Occupancy for the initial phase of aviation facilities as defined by an updated FAA approved aviation forecast. In the event of litigation or appeals thereof by third parties or delays in obtaining necessary local, state or federal permits or approvals, all phasing deadlines shall be tolled accordingly.

**Phase 1.** Lessee shall submit construction plans for Phase 1 no later than eighteen months from the effective date of the LDA. Construction (i.e., installing infrastructure, and/or building structures) shall commence no later than forty-two months from the effective date of the LDA or upon receipt of final entitlements for the Project, with all relevant CEQA litigation periods and appeal periods expired, whichever occurs later. The City shall extend the above time periods once, for six (6) months, upon payment of a non-refundable sum of $50,000. Rent under individual leases for Phase 1 development shall commence at the sooner of issuance of the first Certificate of Occupancy for any structure within an individual parcel or thirty months after issuance of building permits for any construction within an individual parcel.

**Phase 2.** Commencement of construction for Phase 2 shall occur no later than five (5) years from the initiation of the construction of any structures in Phase 1of the Project. The City shall extend the above time period once, for six (6) months, upon payment of a non-refundable sum of $50,000. Rent under individual leases for Phase 2 shall commence the sooner of the issuance of the first Certificate of Occupancy for any structure within an individual parcel or thirty months from the issuance of any building permit for any construction within an individual parcel.

**Phase 3.** Commencement of construction for Phase 3 (the north side of the runway) shall occur no later than ten (10) years from the initiation of the construction of any structures in Phase 1 of the Project; provided, however, the commencement date for Aviation Industrial Facilities (with aircraft apron access) will be tolled if the Airport has not yet completed necessary aviation improvements including, but not limited to, the North side Taxiway. The City shall extend the above time period once, for six (6) months, upon payment of a non-refundable sum of $50,000. Rent under individual leases for Phase 3 shall commence the sooner of the issuance of the first Certificate of Occupancy for any structure within an individual parcel or

thirty months from the issuance of any building permit for any construction within an individual parcel.

**Phase 4.** Commencement of construction for all remaining non-leased properties within the Project shall occur no later than fifteen (15) years from the initiation of the construction of any structures in Phase 1 of the Project. The City shall extend the above time period once, for six (6) months, upon payment of a non-refundable sum of $50,000. Rent under individual leases for Phase 4 shall commence the sooner of the issuance of a Certificate of Occupancy for any structure within an individual parcel or thirty months from the issuance of any building permit for any construction within an individual parcel.

**(a) Order of Construction within Phasing.** Subject to conditions established in the FEIR and Site Development Permit, individual Parcels within Phases 2, 3 and 4 may be developed in any order Developer chooses, provided however that no Certificates of Occupancy shall be issued for parcels within Phases 2, 3, or 4 until all (or any reduced level of development pre-approved by the FAA as further defined by an updated FAA approved aviation forecast for construction/development of Aviation facilities in Phase 1) has been completed. The Developer shall be responsible for any revisions or amendments to the Site Development Permit, CEQA documents, traffic studies and other required permits as well as all infrastructure improvements and mitigation necessary for that construction/development.

**(b) Schedule of Development.** Subject to conditions established in the FEIR, the Site Development Permit and this Agreement, individual Parcels within Phase 2, 3 and 4 may be developed in any order the Developer chooses; provided, however, that no Certificates of Occupancy shall be issued for Parcels within Phases 2, 3 or 4 until all (or any reduced level of development pre-approved by the FAA) construction and development of aviation facilities in Phase 1 has been completed. Developer shall be responsible for any revisions or amendments to the Site Development Permit, CEQA documents, traffic studies and other required permits, as well as all infrastructure improvements and mitigation necessary for such construction and development.

## ARTICLE 4

## DEVELOPMENT OF THE SITE

**4.1 Development of the Site.** Consistent with the terms and conditions of this Agreement, and the terms and conditions of all required permits (including but not limited to a Site Development Permit, Attachment No. 4), the Site shall be developed in four phases designated Phases 1 through 4 (individually, a "Phase" and collectively, "Phases") and shall be developed in accordance with the Phasing Map (Attachment No. 5). Development of the Site pursuant to the aforementioned Attachments is contingent upon the City Council's approval of the Project as described in the FEIR. In the event the City Council approves an alternate version of the Project as described in the FEIR, Developer shall be provided with a reasonable period of time to revise the attachments to this LDA to resolve any discrepancies between the Project as described and the

alternative selected by the City Council. Developer shall arrange with City's Development Services Department ("DSD") to have a "single point of contact" (the "Contact Representative") who will assist Developer in processing permits for the Project.

**4.2 Site Development Permit.** Any provision in this Agreement that conflicts with or is inconsistent with the Site Development Permit (Attachment No. 4 hereto), and/or that creates a question as to which agreement would control, the parties hereto agree that the provisions, terms and conditions of the Site Development Permit shall control in all aspects thereto.

**4.3 Grading Plans.** The Developer shall prepare and submit to City for its approval, grading and drainage plans and "as builts" thereof ("Grading and Drainage Plans") for each Phase or Parcel of the Project, provided, however, Developer may, at its own expense, grade all Phases or portions thereof simultaneously, subject to prior written approval by the City and FAA, and the City shall grant any necessary licenses for access (as set forth above in this Agreement) to the entire Site for grading purposes.

The City and the Developer shall communicate and consult informally as frequently as is necessary. The City agrees to use its best efforts to expeditiously review such Grading and Drainage Plans. Any substantive delays in approval of the Grading and Drainage Plans by the City, which delay is not attributable to any fault, neglect, or omission of the Developer, shall entitle Developer to a commensurate extension of time.

**4.4 Construction Drawings and Related Documents.** The Developer shall prepare and submit to City Construction Drawings and related documents for the development of each Phase, for review (including, but not limited to, architectural review) by the City pursuant to the terms and conditions of this Agreement and/or the Site Development Permit. (Developer shall refer to the DSD Project Submittal Manual for guidance with all submittals. Such Construction Drawings for the particular phase of development shall be submitted as "Final Construction Drawings).

During the preparation of all drawings and plans, the City and the Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of construction plans and related documents by the City. Said progress meetings shall include coordination of the Grading and Drainage Plans discussed in Section 4.4. The City and the Developer shall communicate and consult informally as frequently as is necessary. Any substantive delays in approval of the Construction Drawings by the City, which delay is not attributable to any fault, neglect, or omission of the Developer, shall entitle Developer to a commensurate extension of time.

**4.5 Approval of Plans, Drawings, and Related Documents.** The Airports Division and DSD Contact Representatives shall have the right of review (including, without limitation, architectural review) of all plans and submissions, including any proposed changes therein. City shall review the plans, drawings, and related documents referred to in Sections 4.4 and 4.5 of this Agreement within the times established in this Agreement and/or the Site Development Permit. If such plans, drawings, and related documents comply with applicable regulations, laws and the terms of this Agreement and are in conformity with the Site Development Permit, such approvals

shall not to be unreasonably withheld. Any disapproval by City shall state in writing the reasons for disapproval and the changes which City requests to be made. Such reasons and such changes must be consistent with local regulations and/or State law and as required by the Site Development Permit. The Developer, upon receipt of a disapproval based upon powers reserved by City hereunder, shall revise the plans, drawings and related documents, and shall resubmit such revised plans, drawings and related documents to City as soon as possible after receipt of the notice of disapproval. Any substantive delays in approval of the Plans, Drawings and the Related Documents by the City, which delay is not attributable to any fault, neglect, or omission of the Developer, shall entitle Developer to a commensurate extension of time in the Schedule of Performance.

**4.6 Diligent Commencement and Completion.** After the delivery of possession of a Parcel(s) to the Developer, the Developer shall promptly begin and thereafter diligently complete the construction of the improvements on that Parcel(s) and the development thereof, as provided in the Phasing Map.

**4.7 Progress Reports/Meetings.** During periods of construction, the Developer shall submit to the Airports Division written reports of the progress of the construction. The reports shall be in such form and detail as may be reasonably agreed upon by the Airports Division and Developer and shall include a reasonable number of construction photographs (if requested) taken since the last report by the Developer. Developer shall be available for progress meetings with the Airports Division upon reasonable notice.

**4.8 Standards of Performance and Workforce.** The Developer shall perform or cause to be performed, all work required of it under the terms and conditions of this Agreement with that degree of skill, care, and diligence normally exercised by experienced licensed contractors who have performed work on projects of a scope and magnitude comparable to the Project. The Developer shall perform, or cause to be performed, all work in accordance with the terms and conditions of this Agreement and approved permits.

The Developer shall employ only competent and efficient laborers, mechanics, or artisans. The Developer shall not permit any person to enter any part of the Site, or any buildings connected therewith, who is under the influence of intoxicating liquors or controlled substances. The City, and specifically Airports Division, reserves the right to refuse access to, and/or remove from the airport, any Developer's employee if the Airports Division determines it to be in the best interest of City or for the operation and safety of the Airport.

**4.9 Hours of Work.** The Developer shall accomplish the construction of the Project and maintenance of the Site and Project during normal working hours. Normal working hours shall be during the hours of 7:00 a.m. through 7:00 p.m., Monday through Saturday, with the exception that equipment mobilization can commence at 6:00 a.m. Notwithstanding the foregoing, certain construction/Development activities will require Airports Operations staff to be in attendance. Accordingly, the hours of work for such activities will be dependent upon the availability/working hours of Operations staff.

**4.10 Construction Practices at Site.** The Developer shall not cause any disruption to City and/or Airport activities. Planned activities will be coordinated with Airports Division and construction will be accomplished in accordance with the terms and conditions of this Agreement and/or the Site Development Permit, and shall also be pursuant to the FAA standards found in the current edition of AC 150/5370-2F *Operational Safety on Airports During Construction*, or its equivalent. Any and all revisions to planned activities shall be approved by the Airports Division.

**4.11 Protection of Existing Structures and Property.** The Developer shall take all precautions necessary to avoid damaging the personal and real property of the City and its lessees, including trees, plant life, existing sidewalks, curbs, streets, alleys, pavements, utilities; as well as property belonging to adjoining property owners and/or guests, invitees, contractors, agents, of the City or its lessees. The Developer agrees to repair or replace any such equipment, material, or other property so lost or damaged, to the satisfaction of City or appropriate property owner, at no cost to City.

**4.12 Protection of Utilities.** The Developer shall inform itself of locations of all utilities in the vicinity of the Site. This will require notifying Underground Services Alert (USA) or other approved services prior to the start of any excavation. The Developer shall have all utilities in the vicinity marked out no later than two weeks prior to the start date of any excavation, grading, or other work which could conceivably damage any utilities. The Developer shall take suitable care to protect and prevent damage to such utilities from its operations under this Agreement. The Developer shall not use heavy excavation equipment within three (3) feet of utilities. Utilities will be exposed by hand digging or other safe methods. When performing work adjacent to existing sewers, drains, water and gas lines, electric or telephone or telegraph conduits or cables, poles, lines or poles, or other utilities equipment or structures, which are located outside of the neat lines of the excavations to be made or of the structures to be constructed under this Agreement and which are to remain in operation, the Developer may cooperate with the City department, utility company or other party owning or operating such utility equipment or structures in the maintenance thereof. When performing work adjacent to existing sewers, drains, water and gas lines, electric or telephone or telegraph conduits or cables, poles, lines or poles, or other utility equipment or structures, which are located outside of the neat lines of the excavations to be made or of the structures to be constructed under this Agreement and which are to remain in operation, the Developer shall maintain such utility equipment and structures in place at its own expense and shall cooperate with the City department, utility company or other party owning or operating such utility equipment or structures in the maintenance thereof. The Developer shall be responsible for and shall repair all damage to any such utility equipment or structures caused by its acts, whether negligent or otherwise, or its omission to act, whether negligent or otherwise and shall leave such utility equipment or structures in as good condition as they were in prior to the commencement of his operations under this Agreement, however, it is hereby agreed that any such utility equipment or structures damaged as a result of any act, omission to act, of the Development may, at the option of the City department, utility company, or other party owning or operating such utility equipment or structures damaged, be repaired by such City department, utility company, or other party. In such event the cost of such repairs shall be borne by the Developer.

**4.13 Protection of Runways, Taxiways, Streets, Alleys and Public Grounds.** All construction activities must be pre-approved by the Airports Division or a qualified Airport Safety Officer, when working near any runway, taxiway and/or apron. The Developer shall be liable for all damages resulting from construction activities and/or damage to any runway, taxiway, street, alley or public grounds caused by the Developer, his subcontractor's agents, employees, or workmen and shall indemnify, defend and hold harmless the City against all claims asserted and judgments rendered against it by reason thereof. If City is sued for such activities, a judgment rendered against it shall be conclusive evidence (1) of the negligence of the Developer and (2) the amount of such damages recoverable from the Developer by reason thereof. In the defense of such actions, the Developer, upon notice, agrees to provide the defense therefor, or pay for the defense, as well as cooperate with City to the fullest extent in furnishing evidence bearing on the charges therein made.

**4.14 Indemnification.**

(a) Developer agrees to and shall defend, indemnify, and hold City and its officers, employees, contractors and agents, harmless from and against all claims, liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the Site, or otherwise in connection with this Project, and which shall be directly or indirectly caused by any acts done or any errors or omissions of Developer or its agents, servants, employees, or contractors; Developer's duty to defend, indemnify, protect and hold harmless City and its officers, employees, contractors and agents, shall not include any claims or liabilities arising from the sole gross negligence or sole willful misconduct of City, its officers, employees contractors or agents.

(b) City agrees to and shall defend, indemnify, and hold Developer and its officers, employees, contractors and agents, harmless from all reasonable damages, costs or expenses which arise directly from any acts done or any errors or omission caused by City's limited responsibilities to Developer under this Agreement; City's duty to defend, indemnify, protect and hold harmless Developer and its officers, employees, contractors and agents shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of Developer.

**4.15 Required Insurance Coverages.** Developer shall not perform any work allowed under the terms and conditions of this Agreement until Developer has: (a) obtained, and provided to City, insurance certificates reflecting evidence of all insurance coverage required, (b) pursuant to the terms and conditions of all separate licenses, leases and permits which will allow for Developer's use and/or occupancy of the Site, or portions thereof, for such work.

**4.16 City and Other Governmental Permits.** After the Site Development Permit has been granted, and before commencement of construction or development of any building, structure or other work of improvement upon a particular Parcel, the Developer shall secure, or cause to be secured, any and all permits which City or any other governmental agency having

jurisdiction over such construction, development, or work may require. As fee owner of the Site, the City acknowledges it may be obligated to obtain permits and approvals from various state and federal agencies in connection with development of the Project. Developer shall be responsible for all costs associated with obtaining such permits and approvals, and will provide any necessary support required by City in its efforts to obtain such permits and approvals.

**4.17 Rights of Access.** Excluding all inspectors, building, code and other building officials, and fire and safety personnel who shall have all rights to enter the Site given to them by law, City shall have the reasonable right of access to each particular Parcel under construction within the Site, subject to reasonable rules of the Developer, without charges or fees, during normal working hours during the period of construction on that Parcel for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements. Any such entry shall be made only after reasonable notice to Developer (except in the case of an emergency or other health and safety circumstances), and City shall indemnify and hold the Developer harmless from any liens, claims, or liabilities resulting from the sole negligence or willful misconduct of the City or City representatives in connection with such entry. Any damage or injury resulting from such entry shall be promptly repaired at the sole expense of the party responsible for the entry as provided by law.

**4.18 Local, State, and Federal Laws.** The Developer shall carry out the construction of the improvements in conformity with all applicable laws, including all applicable local, federal and state labor standards.

**4.19 Nondiscrimination During Construction.** The Developer, for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment on account of sex, marital status, sexual orientation, disability, race, color, creed, religion, national origin, or ancestry.

**4.20 Responsibilities of City.** The City shall use reasonable efforts to (1) assist the Developer in processing permit applications and/or obtaining permits pursuant to the terms of this Agreement; (2) upon written request of the Developer, assist the Developer in obtaining or qualifying for federal, state or local stimulus or tax incentive/abatement programs/strategies applicable to construction and/or operation of the Site at Developer's cost.

**4.21 FAA Requirements and Reservations of Rights.** City and the Developer shall conform to the following FAA covenants and reservations of rights.

**(a) The Developer's Use and Construction to Conform with Federal Aviation Regulations.** The Developer agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the Site and the Airport. The Developer 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.

**(b) The Developer's Noninterference with Aircraft.** The Developer and the Developer's successors and assigns agree not to in any manner interfere with any aircraft landing or taking off from Brown 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 Developer.

**(c) Agreement Subordinate to City/United States Agreements.** This Agreement 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.

**(d) Height Limitation.** The Developer and the Developer's successors and assigns agree not to erect or permit any structure unless it complies with all FAA and ALUCP height limitations.

**(e) War or National Emergency.** In the event of war or national emergency, this Agreement 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 Brown Field Airport. During any war or national emergency, City shall have the right to lease any part of the Airport, including its landing areas, to the United States Government. In this event, any provisions of this Agreement 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 Developer as a result of this action. However, nothing in this Agreement shall prevent the Developer from pursuing any rights it may have for reimbursement from the United States Government.

**(f) Airport Development.** City reserves the right to further develop, change or improve the Airport and its routes and landing areas as City sees fit, without the Developer interference or hindrance and regardless of the Developer's views and desires.

**(g) Nonexclusive Right.** The Developer understands and agrees that nothing in this Agreement 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).

**(h) 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 the Developer activities affecting the maintenance and repair of the Airport landing area and all other public facilities.

**(i) FAA Nondiscrimination Covenant.** The Developer and the Developer's representatives, successors, sub lessees and assigns agree, as part of the consideration that:

(i) 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.

(ii) No person shall be denied benefits, excluded from participation in or subject to discrimination in the construction of neither any improvements nor the furnishing of any services on the premises, based on race, color, sex or national origin.

(iii) The Developer shall conduct all activities contemplated by this Agreement 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.

**(j) Equal Opportunity.** The Developer, the Developer'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.

**(k) City to Mitigate Impacts of Subordination.** If subordination agreements between City and United States of America result in the Developer's inability to conduct activities contemplated by this Agreement on the Site or if the Developer'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 Developer, City will terminate this Agreement. The Developer agrees that any damages claimed during this subordination period will be limited to this time extension/adjustment relief.

**(l) Employee Conduct.** The Developer shall be responsible for the conduct of all employees, contractors, agents, invitees, and guests on the Site 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 Project.

**(m) Subordination to Brown Field Quitclaim Deed.** The Developer agrees that this Agreement is subordinate to the provisions of the Brown Field Quitclaim Deed to City.

**(n) Minority Business Policy.** Developer 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 Developer and the Developer'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.

**4.22 Prohibition Against Transfer without City's Consent.** Subject to the restrictions of section 2.4, and except as otherwise provided in this Agreement, Developer shall not assign or attempt to assign this Agreement or any right herein, nor make any transfer, conveyance, or assignment of the whole or any part of the Site, or any Parcels or portion thereof, or the improvements thereon, except as allowed herein, without the prior written approval of City. Such approval shall only be given by City if such transfer, conveyance, or assignment is reasonably deemed by the City to be in the best interests of the City to carry out the purposes of this

Agreement and if the proposed transferee, conveyee, or assignee has, in the reasonable opinion of the City, the financial capability and overall competence to develop and operate the transferred, conveyed, or assigned obligations and property. Approval by City of any transfer, conveyance, or assignment shall be conditioned upon such transferee, conveyee, or assignee agreeing in writing to assume the rights and obligations thereby transferred, conveyed, or assigned and to keep and perform all covenants, conditions, and provisions of this Agreement.

This prohibition against transfer shall neither be deemed to prevent the granting of easements or permits to facilitate the development of the Site, or leases or subleases for development or occupancy, nor shall it prohibit granting any security interests expressly authorized by this Agreement for financing the development and occupancy of the Site, or particular Phase within the Project.

In the absence of specific written agreement by City, no such transfer, conveyance, or assignment of this Agreement, or any part of the Site, or any Parcel or portion thereof, or approval by City of any such transfer, conveyance, or assignment, shall be deemed to relieve the Developer or any other party from any obligations under this Agreement.

Notwithstanding anything to the contrary in this Agreement or this provision of this Agreement, Developer shall have the right, upon prior written notice to City, to transfer its entire interest in the Project including, without limitation, its interest in this Agreement, the FEIR, Site Development Permit and ground leases to Metropolitan Airpark, LLC a Delaware limited liability company. Pursuant to Paragraph 2.3(b) above Developer and Metropolitan Airpark LLC represent and warrant that any such transfer will not affect the qualifications and identity of the Developer and its principals.

**4.23 Notice to Remove Third Parties.** Until such time as Developer takes possession of any specific parcel(s), or portions thereto, through right-of-entry permits or leases, the City may utilize the parcels, or portions thereto, within the Project area for its own purposes, and/or may rent the parcels, or portions thereto, within the Project area to third parties; provided, however, (1) upon no less than 90-days prior written notice from Developer and (2) upon 365 days thereafter to deliver possession of said parcels, or portions thereto, to Developer, City agrees to remove such third party(ies) from the parcel(s), or portions thereto, and indemnify Developer for established reasonable damages that Developer has suffered from any such third party(ies)'s unreasonable holdover, or for any established reasonable damages that Developer has suffered from environmental damage caused to the parcel(s), or portions thereto, by said third party(ies).

**4.24 Certificates of Occupancy.** City shall issue Certificates of Occupancy as required by law.

After issuance of all of the Certificates of Occupancy with respect to a particular Parcel, this Agreement, excepting those provisions which provide for continuing liability such as Developer's indemnification responsibilities, shall terminate as to that Parcel and any party then leasing or otherwise acquiring any interest in the property within that Parcel shall not (because of such lease or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by any covenants contained in the individual Parcel Ground Lease(s),

sublease(s) or other instrument of transfer entered into with the Developer consistent with this Agreement.

## ARTICLE 5
## USE OF THE SITE

**5.1 Uses.** The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Project or any part thereof, that during construction and thereafter, the Site and the improvements thereon shall be devoted to the uses specified in the Site Development Permit. Such allowed uses include: solar field (including outdoor storage thereon); jet aviation FBO (including a restaurant); aircraft hangars; helicopter FBO (including a fire fighting aviation facility or other agency aviation hub); aircraft apron; San Diego Air and Space Museum; business hotel; access road; alternative fuels station; transit transfer station (not part of the lease area); light industrial; parking lot; office; commercial; and all infrastructure required incident to these uses.

The Developer further covenants and agrees for itself, its successors, its assigns and every successor in interest to the Project or any part thereof, that its rights to use the Site for the purposes set forth in this Agreement shall be secondary to and subordinate to the operation of the Airport. City specifically reserves for itself, and for the public, a right of flight for the passage of aircraft in the airspace above the surface of the described property together with the right to cause in said airspace such noise as may be inherent in the present or future operations of aircraft.

**5.2 Maintenance of the Site.** The Developer shall maintain those portions of the Site for which a lease has been granted, and those portions of the site which were graded, free from any accumulation of weeds, debris or waste materials, allowing for such debris and waste materials during construction as may occur on a well-kept construction site, and when directed shall immediately, remove same entirely when, in the option of City, such weeds, material, debris or rubbish constitutes a nuisance, a safety hazard or is objectionable in any reasonable way to the public or to the operation of the Airport.

**5.3 Effect and Duration of Covenants.** The covenants of the Developer established in this Agreement shall, without regard to technical classification and designation, be binding on the Developer and any successor in interest to the Site for the benefit of and in favor of City, its successors and assigns.

**5.4 Rights of Access-Public Improvements and Facilities.** After the commencement of a Parcel Ground Lease and prior to the issuance by City of the Certificate of Occupancy for a particular structure within the Project, City for itself as Lessor, and other public agencies in charge of applicable public improvements and public facilities which may be located on the Airport, reserves the right to enter the property within such Parcel or any part thereof, at all reasonable times and with as little interference as possible, for the purposes of construction, reconstruction, maintenance, repair, or service of any public improvements or public facilities located on that Parcel. Except in cases of emergency or other health and safety circumstances, any such entry shall be made after reasonable notice to Developer. City shall indemnify and hold the Developer

harmless from any liens, claims, or liabilities caused by the sole negligence or willful misconduct of City, its agents or officers pertaining to such entry. Any damage or injury resulting from such entry shall be promptly repaired at the sole expense of the party responsible for the entry as provided by law.

**5.5 Security.** The Developer shall comply with Federal Airport Security Regulations. The Developer will reimburse City in full for any fines or penalties levied against City for security violations as a result of any actions on the part of the Developer, its agents, suppliers, contractors, guests, customers or employees or any violation occurring at any field access point under the control of the Developer. Repeated or serious infractions could result in more serious consequences up to and including default and possible termination of this Agreement.

**5.6 Noise Abatement.** City and the Developer recognize the importance and joint responsibility of compatibility between the Airport and the surrounding community. Therefore, the Developer shall actively participate with City in developing and implementing mutually acceptable noise abatement procedures, policies and programs, as necessary.

**5.7 Inconvenience During Construction.** The Developer recognizes that from time to time during the term of this Agreement, it will be necessary for City to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance and repair in order that Brown Field Airport and its faculties may be suitable for the volume and character of air traffic and flight activity which will require accommodation. Such construction, reconstruction, expansion, relocation, maintenance and repair may inconvenience or temporarily interrupt the Developer and its operations at the Site. The Developer agrees that no liability shall attach to City, its officers, agents, employees, contractors, subcontractors and representatives by reason of such inconvenience, interruption, or lost revenue and/or business. The Developer waives all future rights it may have to claim damages or other consideration caused by such construction, reconstruction, expansion, relocation, maintenance and repair.

**5.8 Resales.** City shall be entitled to two percent (2%) of the value of the full sale price/consideration for any resale of any buildings, hangars or other structures, or portions thereof, after the Developer's initial sale or lease of such building, hangar or other structure.

**5.9 Fuel Flowage Fees.** A fuel flowage fee shall be assessed for all aviation fuels sold on the leaseholds and paid to the Airport Enterprise Fund. Rates for City Council-approved fees, including fuel flowage fees, are set forth in the City's Fee Schedule and are subject to change by the City Council in its sole discretion.

## ARTICLE 6
## DEFAULTS, REMEDIES AND TERMINATION

**6.1 Defaults - General.** Subject to the extensions of time set forth in this Agreement, failure or unreasonable delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who fails or delays must immediately, upon receipt of written notice as specified below, commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction, or remedy with reasonable diligence. As long as

either party continues to diligently pursue the necessary steps to cure said default, the other party shall not take further action against the defaulting party.

The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**6.2 Legal Actions.**

**(a) Jurisdiction.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement. The proper forum shall be within San Diego County.

**(b) Acceptance of Service of Process.** In the event any legal action is commenced by the Developer against City, service of process on City shall be made by service upon City as provided by law. In the event that any legal action is commenced by City against the Developer, service of process on the Developer shall be made by personal service upon an officer of the Developer, and shall be valid whether made within or without the State of California, or in such other manner as may be provided by law.

**6.3 Rights and Remedies Are Cumulative.** Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

**6.4 Damages.** If either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within thirty (30) days after receipt of the notice of default if an obligation to pay money, or within thirty (30) days after receipt of the notice of default otherwise, or if such default (other than the payment of money) is of a type which is not capable of being cured within thirty (30) days, then if the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, the defaulting party shall be liable to the non-defaulting party for reasonable direct damages, excluding all consequensal damages, caused by such default, and the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default.

Neither City nor the Developer shall assert any claim whatsoever against the other party for loss of anticipatory profits or any other indirect, special, incidental or consequential damages incurred as a result of the construction, maintenance, operation or use of the Site and Project.

### 6.5 Remedies and Rights of Termination.

**(a) Termination by the Developer.** In addition to the Developer's other rights and remedies at law or in equity (or elsewhere in the Agreement), and subject to the right to cure contained in this Section 6.5, the Developer may, prior to the conveyance to the Developer of a leasehold interest in the Parcels within a particular Phase, terminate this Agreement with respect to any Parcel if:

(i) City fails to tender possession or convey a leasehold interest in a Parcel, or portion thereof, to Developer in the manner and condition and by the date provided in this Agreement; or

(ii) The Developer is unable, despite diligent and good faith efforts, to obtain the required permits from City or other regulatory agencies, or City has not obtained any required State or Federal permits; or

(iii) If any default or failure referred to in subparagraph (a) of this Section shall not be cured (or diligently working towards a cure) within thirty (30) days after the date of written demand by the Developer, then this Agreement shall, at the option of the Developer, be terminated with respect to the Site, or a particular Parcel or Phase within the Site, by written notice thereof to City, and neither City nor the Developer shall have any further rights against or liability to the other under this Agreement with respect to the property that is the subject of the termination, provided that the Developer shall be responsible to return the Site, or particular Parcel or Phase within the Site, back to its condition prior to when any activities by Developer began on the subject property.

**(b) Termination by City.** In addition to City's other rights and remedies at law or in equity (or elsewhere in the Agreement), City may terminate this Agreement as to a particular Phase and/or Parcel, subject to the right to cure contained in this Agreement, if:

(i) The Developer (or any successor in interest) assigns or attempts to assign this Agreement or any right herein with respect to a particular Parcel, or portion thereof, or Phase within the Project, in violation of the terms of this Agreement; or

(ii) The Developer does not deliver to City any submission of plans, drawings, and related documents as required by this Agreement by the date respectively provided in this Agreement therefor; or

(iii) If any default or failure referred to in subparagraph (b) of this Section shall not be cured within thirty (30) days after the date of written demand by City, or (with respect to other than an obligation to pay money) if the Developer has commenced to cure any such default or failure within such thirty (30) days and diligently and continuously pursues the cure thereof within a reasonable time after commencement, then this Agreement and any rights of the Developer, or any assignee or transferee, in this Agreement, or arising therefrom with respect to City, shall at the option of City, be terminated with respect to the a particular Parcel or Phase within the Project, by written notice to the Developer, and neither City nor the Developer shall

have any further rights against or liability to the other under the Agreement with respect to the Site, or the particular Parcel or Phase within the Project, provided that the Developer shall be responsible to return the Site, or particular Parcel or Phase within the Site, back to its condition prior to when any activities by Developer began on the subject property; or

(iv) The Developer fails to fully develop and construct those Phase 1 Aviation uses pursuant to the terms and conditions of this Agreement.

**6.6 Right of Reentry.** City shall have the right, at its option, to reenter and take possession of the Parcel(s) within a particular Phase with all improvements thereon, and to terminate and revest in City the estate theretofore conveyed to the Developer, if after conveyance of possession to the Parcel(s), the Developer (or its successors in interest) shall:

**(a)** Fail to commence construction of the improvements for that particular Phase as required by this Agreement for a period of six (6) consecutive months after written notice to proceed from the City (referring to this Section 6.6), provided that the Developer shall not have obtained an extension or postponement to which the Developer may be entitled pursuant to Section 7.4 hereof; or

**(b)** Abandon or substantially suspend construction of the improvements for that particular Parcel for a period of six (6) consecutive months after written notice of such abandonment or suspension from City (referring to this Section 6.6), provided that the Developer shall not have obtained an extension or postponement to which the Developer may be entitled to pursuant to Section 7.4 hereof; or

**(c)** Assign or attempt to assign this Agreement, or any rights herein, or transfer, or suffer any involuntary transfer of that particular Parcel within the Site, or any part thereof, in violation of this Agreement, and such violation shall not be cured within thirty (30) days after the date of receipt of written notice thereof (referring to this Section 6.6) by City to the Developer.

Such rights to reenter, repossess, terminate, and revest shall be subject to and be limited by and shall not defeat, render invalid, or limit:

(i) Any mortgage, deed of trust, or other security interests permitted by this Agreement with respect to the Site, or a particular Parcel or Phase within the Project; or

(ii) Any rights or interests provided in this Agreement for the protection of the holders of such mortgages, deeds of trust, or other security interests.

The rights established in this Section 6.6 shall not apply to a portion of the Site, or a particular Parcel or Phase within the Project on which the improvements to be constructed thereon have been completed in accordance with this Agreement and for which a Certificate of Occupancy has been issued therefor, as provided in Section 4.23.

The Parcel Ground Lease(s) shall contain appropriate references and provisions to give effect to the City's right, as set forth in this Section 6.6 under specified circumstances prior to the

issuance of the Certificate of Occupancy, to reenter and take possession of the Parcel(s) of a particular Phase with all improvements thereon, and to terminate and revest in City the estate conveyed to the Developer.

## ARTICLE 7
## GENERAL PROVISIONS

**7.1 Notices, Demands, and Communications between the Parties.** Formal notices, demands, and communications between the City and the Developer shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, or by courier or overnight delivery service not affiliated with the sender at the cost of the sender with written evidence of receipt, to the principal offices of City or of the Developer as designated in Section 2.3 hereof. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate, by mail as provided in this Section 7.1

**7.2 Conflict of Interest.** No member, official, or employee of City shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his/her personal interests or the interests of any corporation, partnership, or association in which he/she is directly or indirectly interested.

The Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

**7.3 Non-Liability of City Officials and Employees.** No member, official, or employee of City shall be personally liable to the Developer, or any successor in interest, as a result of any default or breach by City or for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement.

**7.4 Enforced Delay in Performance for Causes Beyond Control of Parties.** Should the Developer be delayed in the commencement, prosecution, or completion of the Project, including but not limited to any litigation by entities or individuals not parties to this agreement, and the delay is not attributable to any fault, neglect, act, or omission of City or the Developer, and the delay is reasonable under the circumstances involved and not within the contemplation of the parties at the time that the Agreement was entered into, then the Developer shall be entitled solely and exclusively to an extension of the time only. Such extension of time shall release and discharge City, its employees and agents from any and all claims for damages of whatever character, including, but not limited to, disruption, changes in sequence, interference, inefficiency, field or home office costs claimed by the Developer on account of the aforesaid or any other cause or delay.

**(a)** In the event that the Developer's performance of the Project is delayed by causes beyond the reasonable control of the Developer, the Project's timeline may be extended by City to reflect the extent of such delay. The Developer must give the City written notice within five (5) calendar days of the commencement of such delay.

**(b)** Consideration of a time extension for events beyond the reasonable control of the Developer shall only be made if the delay directly impacts the time requirement set forth in this Agreement or the Site Development Permit.

(i) Events considered to be beyond the reasonable control of the Developer and City are limited to acts of God, acts of the public enemy, fires, floods, earthquakes, epidemics, quarantine restrictions, freight embargoes, or weather significantly more severe than the norm, provided that the listed causes were not foreseeable and did not result from the fault or negligence of the Developer, and provided further that the Developer has taken reasonable precautions to prevent further delays owing to such causes.

(ii) No extension of time will be granted under this provision for any delay (1) if the delay was caused by the action and/or inaction of the Developer, including but not limited to the fault or negligence of the Developer or his subcontractors; or (2) for which any remedies are provided for or excluded by any other provision of this Agreement. The City's permitting the Developer to proceed with the Project, or any part thereof, after such extension shall in no way operate as a waiver of any other rights on the part of the City.

**(c)** Any claim for extension of time shall be made in writing to City not more than five (5) calendar days after the commencement of the delay; otherwise, the claim shall be waived. Any claims for extension of time shall (1) state the cause of the delay; (2) specifically demonstrate the impact of the delay on the critical path of the Developer's schedule; and (3) state the number of day's extension requested. If the cause of the delay is continuing, only one claim is necessary, but the Developer shall report, in writing, the termination of the cause for the delay within five (5) days after such termination. Any claim for extension of time that does not comply with this provision shall be denied.

(i) If the Project is delayed as a result of the Developer's refusal or failure to begin the Project on the date of commencement pursuant to this Agreement, or refusal or failure to carry the Project forward expeditiously with adequate forces, equipment, material or other resources, City may terminate the Agreement.

(ii) The permitting of the Developer, or the surety of the performance bond, to proceed to complete any part of the Project after the date of Notice of Completion and Acceptance, or after the date to which the Notice of Completion and Acceptance may have been extended, shall in no way operate as a waiver on the part of City of any of its rights.

**7.5 Inspection of Books and Records.** City has the right at all reasonable times to inspect the books and records of the Developer pertaining to the Site and Project as pertinent to the purposes of this Agreement. The Developer also has the right at all reasonable times (during normal business hours) to inspect the books and records of the City, which would be otherwise available pursuant to a public records act request, pertaining to the Site and Project as pertinent to the purposes of this Agreement.

**7.6 Approvals.** Unless otherwise indicated in this Agreement, when approval(s) of the "City" are required under this Agreement, said approval(s) shall be determined by the Mayor, or

his or her designee. When approval(s) of the "Developer" are required under this Agreement, said approval(s) shall be determined by the Developer's legally authorized representative(s). Except where this Agreement expressly provides for the approval by a party of any matter in its discretion, approvals required of City or the Developer shall not be unreasonably withheld.

7.7 **No Third Party Beneficiary.** The parties agree that this Agreement is made solely for the benefit of City and the Developer, and no third person or entity shall be deemed to have any rights or remedies hereunder, except that the beneficiary (including the successful purchaser at a foreclosure sale) of a mortgage or deed of trust permitted by this Agreement shall have the rights and obligations specified herein for such beneficiary.

## ARTICLE 8
## SPECIAL PROVISIONS

8.1 Developer agrees that it shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Developer shall provide equal opportunity in all employment practices. Developer shall ensure that its agents and contractors comply with the law; however, nothing in this section shall be interpreted to hold Developer liable for any discriminatory practices of its agents or contractors.

8.2 Developer shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Developer shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Developer understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, debarment, or other actions.

## ARTICLE 9
## ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement includes _____ (____) pages and six (6) Attachments which constitute the applicable understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with the Parcel Ground Lease(s) for the Parcels, or particular Phase within the Project. This Agreement shall remain in full force and effect with respect to the property within a Phase only until issuance of a Certificate of Occupancy for that particular Parcel as referred to in Section 4.24.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of City or the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of City and the Developer.

## ARTICLE 10

## EFFECTIVE DATE OF AGREEMENT AND AUTHORITY TO SIGN

This Agreement shall be effective upon execution by the Parties and approval of the City Attorney (Effective Date). Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions, ordinances, and/or other authorizing actions necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Developer further represents and warrants that such authority is valid, and such entity is a valid, qualified limited liability company in good standing in its home state and that Developer, is qualified to do business in California.

**THE CITY OF SAN DIEGO, a California municipal corporation** (City)

Date: 11/25/13

By: _____

**BROWN FIELD INTERNATIONAL BUSINESS PARK, a Delaware limited liability company** (Developer)

Date: 8-23-13

By: _____
Richard Lee Sax
President and CEO

Approved as to form and legality
this 22nd day of November, 2013.

JAN I. GOLDSMITH, City Attorney

By: _____
Debra J. Bekier
Deputy City Attorney

0 2053.1

LEASEHOLD DEVELOPMENT AGREEMENT ATTACHMENTS
OMITTED DUE TO VOLUME

## EXHIBIT D:

## FAA REQUIREMENTS

LESSEE shall adhere to the following terms and conditions during the entirety of the time period covered by this Agreement. If any term and or condition contained in this Exhibit conflicts with any provision contained in the main body of the Agreement, the terms and conditions contained in the main body of the Agreement shall prevail.

1.1 LESSEE's Use to Conform with Law and Other Rules

LESSEE is granted the nonexclusive use of all public airport facilities including, but not limited to, taxiways, runways, aprons, navigational aids and other facilities related to the normal function of any aircraft under LESSEE's or its sublessee's control. LESSEE agrees that such use shall be in accord with existing or future laws, rules and regulations of the United States of America, the State of California and CITY in regard to their aviation and air navigation authority.

1.2 LESSEE's Use and Construction to Conform with Federal Aviation Regulations

LESSEE agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the Premises. 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 premises.

1.3 LESSEE's Noninterference with Aircraft

LESSEE and LESSEE's successors, assigns and sublessees agree not to use the Premises in any manner or act in any manner that might interfere with any aircraft landing or taking off from the Airport or otherwise create a hazard. If this covenant is breached in any way, CITY reserves the right to enter the premises and abate or eliminate the interference at the expense of LESSEE.

1.4 Agreement Subordinate to CITY/United States Agreements

This Agreement 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.

1.5 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.

1.6 Right of Flight Easement

CITY and its successors and assigns reserve a right of flight for the passage of aircraft in the air space above the Premises, for the benefit and use of the public. This right includes the right to make noise inherent in the operation of existing or future aircraft that operate in any way on or near the Airport.

1.7 War or National Emergency

In the event of war or national emergency, this Agreement 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 the Airport. During any war or national emergency, CITY shall have the right to lease any part of the Airport, including its landing areas, to the United State Government. In this event, any provisions of this Agreement 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 LESSEE as a result of this action. However, nothing in this Agreement shall prevent LESSEE from pursuing any rights it may have for reimbursement from the United States Government.

1.8 Airport Development

CITY reserves the right to further develop, change or improve the Airport and its routes and landing areas as CITY sees fit, without liability to LESSEE, and without LESSEE interference or hindrance and regardless of the Developer's views and desires.

1.9 Nonexclusive Right

LESSEE understands and agrees that nothing in this Agreement 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).

1.10 Landing Area Maintenance

CITY reserves the right, but not the obligation, to maintain and repair the airport landing and travel areas and all other public facilities, at CITY's sole discretion, without liability to LESSEE. CITY also has the right to direct and control all LESSEE activities affecting the maintenance and repair of these facilities.

1.11 FAA Nondiscrimination Covenant

a. LESSEE and LESSEE's representatives, successors, sublessees and assigns agree, as part of the consideration that:

(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.

(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.

(3) LESSEE shall use the Premises 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.

b. If any of the provisions are breached, CITY may terminate this Agreement and reenter and repossess the Premises as if this Agreement had never been made. This provision is not effective until the procedures of 49 CFR Part 21 are allowed and completed, including expiration of appeal rights.

c. LESSEE agrees to furnish accommodations and services on a fair and equal basis to all users and will charge fair, reasonable and equal prices for each item or service. LESSEE is allowed to make reasonable and nondiscriminatory discounts, rebates or similar price reductions to volume purchasers. If LESSEE does not comply with this provision, CITY has the right to terminate this Agreement, without liability, and either CITY or the United States may judicially enforce this entire covenant.

d. LESSEE agrees to include this entire covenant in any sublease or lease agreement by which LESSEE grants any right or privilege to any firm, corporation or person providing services or accommodations to the public on the premises.

1.12 Equal Opportunity

LESSEE, LESSEE's successors, assigns, sublessees, and any suborganizations 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.

1.13 Hangar Keeper's Insurance

LESSEE agrees to maintain the following insurance at its sole expense, during the entirety of the time period covered by this Agreement: Hangar Keeper's Insurance sufficient to cover any aircraft hangared for others. This insurance is subject to the same requirements, restrictions and penalties in the event of failure to provide or maintain as detailed under the insurance provision of this Agreement.

1.14 Licenses and Certifications

LESSEE agrees that it will not maintain any activities such as a flight school, air charter, air taxi or grounds school, without the required FAA certifications and licenses. Failure to

comply with this provision constitutes a default and CITY then has the right to terminate the Agreement without liability.

1.15 Employee Conduct

LESSEE shall be responsible for the conduct of any employee on the entire Airport, if that employee is on Airport property during any period of employment.

1.16 Subordination to Brown Field Quitclaim Deed

LESSEE agrees that this Agreement is subordinate to the provisions of the Brown Field Quitclaim Deed to CITY.

1.17 Aircraft Parking

LESSEE shall require that all aircraft under its control be parked only on the Premises, except as otherwise provided by the direction of the CITY. At no time shall any aircraft, vehicle or other object, including refuse, under LESSEE's control, be allowed to obstruct any designated taxiways.

1.18 Minority Business Policy

If LESSEE receives any federal funds governed by Title 49, Code of Federal Regulations, Part 23, LESSEE agrees that it and its contractor will ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts and subcontracts. LESSEE and 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.

1.19 Provisions to be Included in All Pertinent Documents

LESSEE agrees that it shall insert all of the foregoing provisions in all subleases, contracts or agreements by which said LESSEE grants a right or privilege to any person, firm or corporation to render accommodations or services to the public on the Premises.

## EXHIBIT E:

## INSURANCE REQUIREMENTS

LESSEE shall adhere to the following terms and conditions during the entirety of the time period covered by this Agreement. If any term and or condition contained in this Exhibit conflicts with any provision contained in the main body of the Agreement, the terms and conditions contained in this Exhibit shall prevail.

A. 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 CITY, LESSEE's insurers, or CITY's insurers. 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.

B. The insurance requirements set forth in this Exhibit are independent of LESSEE's indemnification and other obligations under this Agreement 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 Agreement.

1. LESSEE shall not begin operating under the Agreement until it has: (a) obtained, and upon the CITY's request provided to CITY, insurance certificates reflecting evidence of all insurance required below; however, CITY reserves the right to request, and 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 that all policies contain the specific provisions required below. LESSEE's liabilities, including but not limited to LESSEE's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required in this Agreement. Except as provided for under California law, all required policies of insurance must provide the CITY is entitled to thirty (30) days prior written notice (ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the entirety of the time period covered by this Agreement may be treated as a material breach of contract by CITY.

2. LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the duration of this Agreement.

3. Types of Insurance. At all times during the entirety of the time period covered by this Agreement, LESSEE shall maintain insurance coverage as follows:

Commercial General Liability (CGL), providing coverage for the damages due to bodily injury, including death, personal injury, and property damage with limits of at least Ten Million Dollars ($10,000,000) per occurrence, subject to an annual aggregate of at least Twenty Million Dollars ($20,000,000), products and completed operations and if applicable, use of unlicensed vehicles that in any way arise from the use of the Leased Premises and operations of activities of the entity. Non-licensed vehicles operated on the movement area will require coverage in an amount not less than Five Million Dollars ($5,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. 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.

Commercial Automobile Liability, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars ($1,000,000) per occurrence or Two Million Dollars ($2,000,000) per occurrence for automobiles operated on airside. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated on the Premises. Coverage shall be written on ISO form CA 00 01 12 90, or a substitute form providing equivalent liability coverage.

Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Uses of the Premises under this Agreement or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.

Workers' Compensation. For all of LESSEE's employees who are subject to this Agreement, and to the extent required by the applicable state or federal law, 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 LESSEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives.

Fire, Extended Coverage, and Vandalism Insurance Policy on all City owned insurable property on the Premises, in an amount to cover one hundred percent (100%) of the replacement. Any proceeds from a loss shall be payable jointly to City and Lessee. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. Lessee shall submit to the City recommendations and an accounting of funds used to restore the leasehold improvements. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.5, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to City has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the Premises.

Hangar Keeper's Insurance, sufficient to cover replacement cost and aircraft hangared for others, but no less than Ten Million Dollars ($10,000,000).

Aircraft Liability Insurance, General Aircraft Operation Liability, in an amount of not less than Ten Million Dollars $10,000,000 per occurrence.

Environmental Liability Insurance, providing coverage for gradual, sudden and accidental discharge or spill of pollutants including first party clean up and remediation of the Premises; wrongful delivery or misdelivery of fuel; loading and unloading of fuel to and from the Aboveground Storage Tank (AST) or Mobile Storage Tank (MST).

Deductibles. All deductibles on any policy shall be the responsibility of LESSEE and shall be disclosed to CITY at the time the evidence of insurance is provided.

Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Agreement 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 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.

4. Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY before any operations are initiated under this Agreement.

Commercial General Liability Insurance Endorsements:

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 CITY and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by LESSEE or on LESSEE's behalf, (b) LESSEE's products, (c) LESSEE's work, including but not limited to LESSEE's completed operations performed by LESSEE or on its behalf, or (d) premises owned, leased, controlled or used by LESSEE.

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 CITY and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by CITY and its

elected officials, officers, employees, agents and representatives shall be in excess of LESSEE's insurance and shall not contribute to it.

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.

Automobile Liability Insurance Endorsements. 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, CITY 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 LESSEE.

Worker's Compensation Insurance Endorsements. 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 for CITY.

5. Modification. CITY reserves the right, from time to time, to review LESSEE's insurance coverage, limits, deductibles and self-insured retentions to determine if they are acceptable to CITY. To assure protection from and against the kind and extent of risk existing with the Allowed Uses and Limited Uses, 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 Allowed Uses and Limited Uses.

6. Accident Reports. LESSEE shall promptly report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses and Limited Uses. 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.

7. Additional Insurance. LESSEE may obtain additional insurance not required by the Agreement.

8. Excess Insurance. All policies providing excess coverage to CITY shall follow the form of the primary policy or policies including but not limited to all endorsements.

9. LESSEE Waiver of Subrogation. Notwithstanding any other provision of this Agreement to the contrary, LESSEE, for itself and for its respective insurers, releases from any and all claims,

demands, actions and causes of action that LESSEE may have or claim to have against the CITY (including, but not in limitation of the foregoing, all rights of subrogation accruing to any insurers of the LESSEE) for loss of or damage to the property of the CITY whether real or personal, caused by or resulting from any casualty of the type covered by fire or extended coverage insurance, based on coverage for one hundred percent (100%) replacement cost, without regard for whether such insurance is then in effect, and notwithstanding that any such loss or damage may be due to or result from the negligence of CITY or their respective officers, employees, or agents. All insurance policies required under this Agreement, shall provide that the insurer waives all rights of subrogation an insurer might have against CITY, its officers, directors, employees or agents through the inclusion in, or an endorsement on, all insurance policies.

**EXHIBIT F:**

**FORM OF MEMORANDUM OF LEASE**

**AND RIGHT OF ENTRY LICENSE AGREEMENT**

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Metropolitan Airpark, LLC
2100 Palomar Airport Road, Suite 209
Carlsbad, CA 92011
Attn: Richard Lee Sax, Esq.

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**MEMORANDUM OF FLAT RATE PARCEL GROUND LEASE**

**AND RIGHT OF ENTRY LICENSE AGREEMENT**

**PARCEL E-27**

This Memorandum of Ground Lease and Right of Entry License Agreement ("Memorandum") concerns that certain "Flat Rate Parcel Ground Lease and Right of Entry License Agreement" for Parcel E-27, by and between the **CITY OF SAN DIEGO**, a California municipal corporation ("CITY"), and **METROPOLITAN AIRPARK, LLC,** A Delaware limited liability company ("LESSEE"), which became effective as of _____, 2018 (the "Effective Date").

**RECITALS**

A. CITY and LESSEE entered into that certain Flat Rate Parcel Ground Lease and Right of Entry License Agreement as of the Effective Date, relating to certain real property located in the City of San Diego, County of San Diego, State of California, described more particularly on Attachment No. 1 hereto and by this reference made a part hereof ("Premises"). The Agreement is a public record and is available for inspection and copying in the Office of the City Clerk of the City of San Diego located at 1200 Third Avenue, San Diego, CA 92101. CITY and LESSEE desire to execute this Memorandum for recordation in the real property records of the County of San Diego in order to memorialize the existence of the Agreement and the occurrence of the Agreement Effective Date thereof.

NOW, THEREFORE, with reference to the foregoing recital, CITY and LESSEE agree as follows:

1. Lease of Premises. CITY hereby leases the Premises to LESSEE and LESSEE hereby leases the Premises from CITY on the terms and conditions set forth in the Agreement.

2. Term. The term of the Lease portion of the Agreement shall be for a period of fifty (50) years commencing upon the Lease Commencement Date, as that term is defined in the Agreement, unless sooner terminated pursuant to the provisions of the Agreement.

3. Incorporation of Agreement. This instrument is a memorandum of the Agreement and is subject to all of the terms and conditions of the Agreement. The terms of the Agreement shall prevail if there is any inconsistency between the terms of this Memorandum and the terms of the Agreement.

IN WITNESS WHEREOF, CITY and LESSEE have executed this Memorandum as of the date first set forth above.

CITY:

**CITY OF SAN DIEGO,**
a California municipal corporation

By:_____
Printed Name: _____
Title: _____

**ATTEST:**

_____
_____, City Clerk

LESSEE:

**METROPOLITAN AIRPARK, LLC,**
a Delaware limited liability company

By:_____
Printed Name: _____
Title: _____

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

MARA W. ELLIOTT, City Attorney

By: _____
Name: _____
Title: _____

State of California )
County of San Diego )

On _____, 20__, before me, _____ (insert name and title of the officer), Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
Signature: _____ (Seal)

State of California )
County of San Diego )

On _____, 20__, before me, _____(insert name and title of the officer), Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Signature: _____ (Seal)

**EXHIBIT G:**

**PREVAILING WAGES**

[Located behind this cover page.]

## PREVAILING WAGE REQUIREMENTS

By signing this Lease, LESSEE certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing any work.

Pursuant to San Diego Municipal Code section 22.3019, 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, LESSEE, its contractors and subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

1. **Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, 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.

1.1. Copies of such prevailing rate of per diem wages are on file at the City of San Diego's Equal Opportunity Contracting Department 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, 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.

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.

2. **Penalties for Violations.** LESSEE, 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. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

3. **Payroll Records.** LESSEE, 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, 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. LESSEE, its contractors and subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

4. **Apprentices.** LESSEE, 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 their compliance as well as the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.

5. **Working Hours.** LESSEE, 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.

6. **Required Provisions for Contracts and Subcontracts.** LESSEE shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

7. **Labor Code Section 1861 Certification.** LESSEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its 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 of this Lease."

8. **Labor Compliance Program.** The CITY has its own Labor Compliance Program authorized in August 2011 by the DIR. LESSEE shall withhold contract payments pursuant to the contract between LESSEE and LESSEE's contractors or subcontractors 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.

9. **Contractor and Subcontractor Registration Requirements.** This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1.(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

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.

9.2. A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.

9.3. By signing this Lease, LESSEE certifies that he or she has verified that all contractors and subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and LESSEE shall provide proof of registration for themselves and all listed contractors and subcontractors to the CITY at the time of execution of this Lease or upon request.

10. **Stop Order**. For LESSEE or its contractor(s) or subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor(s) or unregistered subcontractor(s) on ALL public works until the unregistered contractor(s) or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

11. **List of all Subcontractors**. The CITY may ask LESSEE for the most current list of contractors or subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this Lease at any time during performance of this Lease, and LESSEE shall provide the list within ten (10) working days of the CITY's request. LESSEE shall notify CITY of any contractors or subcontractors, including their DIR registration numbers, which have not previously performed work on this Permit prior to said contractors or subcontractors performing work on this

Lease. Additionally, LESSEE shall provide the CITY with a complete list of all contractors or subcontractors utilized on this Lease (regardless of tier), within ten (10) working days of the completion of the work authorized by this Lease, along with their DIR registration numbers. LESSEE shall withhold final payment to contractor(s) until at least 30 days after this information is provided to the CITY.

12. **Exemptions for Small Projects**. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of $25,000 or less. LESSEE shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

12.1. Registration. LESSEE will not be required to register with the DIR for small projects. (Labor Code section 1771.1).

12.2. Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the CITY, but will not be required to be submitted online with the DIR directly. LESSEE will need to keep those records for at least three years following the completion of the contract. (Labor Code section 1771.4).

12.3. List of all Subcontractors. LESSEE shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 11 above. (Labor Code section 1773.3).

Item 333 10-23-18

(R-2019-194)

RESOLUTION NUMBER R- 312021

DATE OF FINAL PASSAGE OCT 26 2018

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING 59 FLAT RATE PARCEL GROUND LEASE AND RIGHT OF ENTRY LICENSE AGREEMENTS AND AGREEMENT FOR OFFSET OF RENT WITH METROPOLITAN AIRPARK, LLC, AND AGREEMENT FOR EXCHANGE OF EASEMENTS WITH THE UNITED STATES OF AMERICA AND METROPOLITAN AIRPARK, LLC, REGARDING APPROXIMATELY 207.56 ACRES OF CITY-OWNED REAL PROPERTY AT THE BROWN FIELD MUNICIPAL AIRPORT.

WHEREAS, in 2013, the Council of the City of San Diego authorized the Mayor to enter into a Leasehold Development Agreement (LDA), on file with the Office of the City Clerk as Document No. RR-308482, between the City of San Diego (City) and Brown Field International Business Park, LLC, which document contemplated the development of certain real property at Brown Field Municipal Airport (Airport). The LDA, and all rights thereto, pursuant to its own terms, has since been assigned to Metropolitan Airpark, LLC (Lessee) for the lease and development of approximately 331 acres (Property) of the 880 acres of the Airport. The LDA establishes the terms and conditions between Lessee and the City for Lessee to enter upon, lease and develop the Property in four phases over 20 years; and

WHEREAS, the LDA contemplates that the City and Lessee will enter into a number of ground leases, including for the master planned, four-phased development of aviation and non-aviation uses on approximately 207.56 acres of the Property (Project). The proposed Project will create new aviation facilities, aviation industrial, industrial, commercial, and other uses satisfying immediate and long-term aviation needs at the Airport; and

WHEREAS, City staff and Lessee have negotiated terms and conditions for 59 Flat Rate Parcel Ground Lease and Right of Entry License Agreements (individually "Agreement" and collectively the "Agreements"). The Agreements have the following terms and conditions: term of the lease portion of each of the Agreements will be 50 years commencing at the sooner of the date of issuance of the first certificate of occupancy for any improvement constructed within any individual parcel or 30 months after the issuance of vertical building permits; the rent for each Agreement for lease year one through lease year five will be determined by adjusting upward the appraised value by the increase in the consumer price index (capped at 3% per year) between February 22, 2018 (the date the appraised value of the Property was determined) and the lease commencement date; and the first phase of construction (the aviation uses) must be constructed before a certificate of occupancy is granted on any other phase of the Project; and

WHEREAS, in the first phase of the Project, Lessee will develop a minimum of 14,500 square feet jet aviation fixed based operator facility; five large aircraft hangars totaling 75,000 square feet; 28 small aircraft T-hangars, each containing a minimum of 1,200 square feet; and the required apron and ramp improvements. The estimated cost for this minimum requirement is Twenty-Six Million Dollars ($26,000,000); and

WHEREAS, the market value of the real estate subject to the Agreements, as appraised by an independent fee appraiser, is approximately $1,350,000; and

WHEREAS, the Project will result in the removal of an existing tenant of the Airport and a loss of rent payments by that tenant in the amount of $250,000 each year. The proposed Agreement for Offset of Rent requires Lessee to pay the City up to $250,000 per year as advanced payment of rent for five years from the date of revenue lost from the existing tenant, offset by any rent paid by Lessee under any of the Agreements during the five years Lessee is to

pay this amount to the City. The City will reimburse Lessee by rent credits under the Agreements as further set forth in the proposed Agreement for Offset of Rent; and

WHEREAS, the LDA does not provide for the advanced payment of rent. However, the proposed Agreement for Offset of Rent was negotiated by City staff to ensure that the Airport enterprise fund would not suffer significant revenue loss during the early years of the Project development; and

WHEREAS, when the United States of America (USA) conveyed the Airport to the City, it reserved an access easement (Original Easement) over portions of the Airport to provide for continued access to its property adjacent to the northeast border of the Airport. This access easement is in the area that is proposed for development for the Project; and

WHEREAS, it is proposed that the City exchange the existing access easement with an access easement that runs across the northeastern boundary of the Airport from La Media Road to the USA's property as set forth in the proposed Agreement to Provide the United States of America, including U.S. Customs and Border Protections, an Access Easement for Ingress and Egress to and from Federally Owned Property, Over Land Used and Operated as Part of the Brown Field Airport (Easement Exchange Agreement); and

WHEREAS, the existing easement is 50 feet by approximately 5,944 feet and contains approximately 295,630 square feet and the proposed new easement to be conveyed by the City to the USA is 48 feet in width by approximately 6,159 feet in length and contains approximately 295,632 square feet (New Easement). The New Easement to be conveyed by the City to the USA is approximately the same size as the existing easement to be quitclaimed by the USA to the City, via a quitclaim deed (Quitclaim Deed); and

WHEREAS, on February 2, 2018, a qualified real estate appraiser conducted an appraisal of the easement interests proposed to be exchanged. Based on the appraisal, the Mayor certifies that the easement interests in the New Easement and the easement interests in the Quitclaim Deed are approximately equal in value; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor, or his designee, is hereby authorized and directed to execute 59 Flat Rate Parcel Ground Lease and Right of Entry License Agreements with Metropolitan Airpark, LLC, as specifically set forth in attached Exhibit A, for the development of a total of 207.56 acres of City owned real property at the Brown Field Municipal Airport.

BE IT FURTHER RESOLVED, that the Mayor, or his designee, is authorized to execute the Agreement for Offset of Rent with Metropolitan Airpark, LLC, which is on file in the Office of the City Clerk as Document No. RR-312021-60 to offset revenue loss from an existing tenant.

BE IT FURTHER RESOLVED, that the exchange of the United States of America's easement interests in the Original Easement for those easement interests in the New Easement are approved.

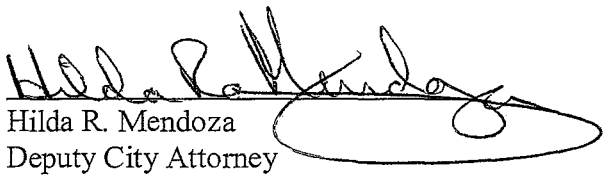
BE IT FURTHER RESOLVED, that the Mayor, or his designee, is authorized to execute the Agreement to Provide the United States of America, including U.S. Customs and Border Protections, an Access Easement for Ingress and Egress to and from Federally Owned Property, Over Land Used and Operated as Part of the Brown Field Airport with Metropolitan Airpark, LLC and the United States of America, which is on file in the Office of the City Clerk as Document No. RR-312021-61, for the exchange of easements with the United States of America to provide the United States of America, and specifically the Customs and

Border Protection, with continued access to their facility adjacent to the Airport and execute and deliver an easement deed in favor of the United States of America conveying a new location for an access easement.

BE IT FURTHER RESOLVED, that the Mayor, or his designee, is authorized to execute and deliver all other instruments to effect and complete the transactions contemplated by this Resolution.

BE IT FURTHER RESOLVED, that this resolution shall take effect and be in force upon (1) the Federal Aviation Administration's approval of the Airport Layout Plan and issues a record of decision for the environmental assessment which approve Parcels D, F, H and a portion of J of the Property for use as authorized in the LDA, and (2) the Federal Aviation Administration has not advised the City that the Agreements fail to comply with the Brown Field Quitclaim Deed, existing agreements between the City and the United States of America, and legal requirements of the United States of America relative to the development, operation, and maintenance of the Airport, but in no event shall this resolution take effect earlier than the day of this resolution's final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Hilda R. Mendoza
Deputy City Attorney

HRM:nja
09/18/18
Attachments
Or. Dept: READ
Doc. No.: 1838571

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of OCT 23 2018.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: 10/26/18
(date)

_____
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

_____
KEVIN L. FAULCONER, Mayor

**EXHIBIT A:**

Fifty-Nine Flat Rate Parcel Ground Lease and Right of Entry License Agreements

1. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel L-1, on file with the San Diego City Clerk as Document No. R- 312021-1
2. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel L-2, on file with the San Diego City Clerk as Document No. R- 312021-2
3. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel L-3, on file with the San Diego City Clerk as Document No. R- 312021-3
4. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel L-4, on file with the San Diego City Clerk as Document No. R- 312021-4
5. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel L-5, on file with the San Diego City Clerk as Document No. R- 312021-5
6. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-6, on file with the San Diego City Clerk as Document No. R- 312021-6
7. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-7, on file with the San Diego City Clerk as Document No. R- 312021-7
8. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-8, on file with the San Diego City Clerk as Document No. R- 312021-8
9. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-9, on file with the San Diego City Clerk as Document No. R- 312021-9
10. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-10, on file with the San Diego City Clerk as Document No. R- 312021-10
11. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-11, on file with the San Diego City Clerk as Document No. R- 312021-11
12. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-12, on file with the San Diego City Clerk as Document No. R- 312021-12
13. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-13, on file with the San Diego City Clerk as Document No. R- 312021-13
14. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel N-14, on file with the San Diego City Clerk as Document No. R- 312021-14
15. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel A-15, on file with the San Diego City Clerk as Document No. R- 312021-15

16. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel A-16, on file with the San Diego City Clerk as Document No. R- 312021-16

17. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel A-17, on file with the San Diego City Clerk as Document No. R- 312021-17

18. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel B-18, on file with the San Diego City Clerk as Document No. R- 312021-18

19. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel B-19, on file with the San Diego City Clerk as Document No. R- 312021-19

20. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel B-20, on file with the San Diego City Clerk as Document No. R- 312021-20

21. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel B-21, on file with the San Diego City Clerk as Document No. R- 312021-21

22. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel B-22, on file with the San Diego City Clerk as Document No. R- 312021-22

23. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel C-23, on file with the San Diego City Clerk as Document No. R- 312021-23

24. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel D-24, on file with the San Diego City Clerk as Document No. R- 312021-24

25. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel D-25, on file with the San Diego City Clerk as Document No. R- 312021-25

26. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel E-26, on file with the San Diego City Clerk as Document No. R- 312021-26

27. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel E-27, on file with the San Diego City Clerk as Document No. R- 312021-27

28. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel E-28, on file with the San Diego City Clerk as Document No. R- 312021-28

29. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel E-29, on file with the San Diego City Clerk as Document No. R- 312021-29

30. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel G-30, on file with the San Diego City Clerk as Document No. R- 312021-30

31. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-31, on file with the San Diego City Clerk as Document No. R- 312021-31

32. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-32, on file with the San Diego City Clerk as Document No. R- 312021-32

33. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-33, on file with the San Diego City Clerk as Document No. R- 312021-33

34. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-34, on file with the San Diego City Clerk as Document No. R- 312021-34

35. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-35, on file with the San Diego City Clerk as Document No. R- 312021-35

36. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-36, on file with the San Diego City Clerk as Document No. R- 312021-36

37. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-37, on file with the San Diego City Clerk as Document No. R- 312021-37

38. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-38, on file with the San Diego City Clerk as Document No. R- 312021-38

39. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-39, on file with the San Diego City Clerk as Document No. R- 312021-39

40. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-40, on file with the San Diego City Clerk as Document No. R- 312021-40

41. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-41, on file with the San Diego City Clerk as Document No. R- 312021-41

42. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-42, on file with the San Diego City Clerk as Document No. R- 312021-42

43. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-43, on file with the San Diego City Clerk as Document No. R- 312021-43

44. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-44, on file with the San Diego City Clerk as Document No. R- 312021-44

45. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-45, on file with the San Diego City Clerk as Document No. R- 312021-45

46. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-46, on file with the San Diego City Clerk as Document No. R- 312021-46

47. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-47, on file with the San Diego City Clerk as Document No. R- 312021-47

48. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-48, on file with the San Diego City Clerk as Document No. R- 312021-48

49. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-49, on file with the San Diego City Clerk as Document No. R- 312021-49

50. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-50, on file with the San Diego City Clerk as Document No. R- 312021-50

51. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-51, on file with the San Diego City Clerk as Document No. R- 312021-51

52. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-52, on file with the San Diego City Clerk as Document No. R- 312021-52

53. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-53, on file with the San Diego City Clerk as Document No. R- 312021-53

54. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-54, on file with the San Diego City Clerk as Document No. R- 312021-54

55. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-55, on file with the San Diego City Clerk as Document No. R- 312021-55

56. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-56, on file with the San Diego City Clerk as Document No. R- 312021-56

57. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-57, on file with the San Diego City Clerk as Document No. R- 312021-57

58. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-58, on file with the San Diego City Clerk as Document No. R- 312021-58

59. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-59, on file with the San Diego City Clerk as Document No. R- 312021-59

Passed by the Council of The City of San Diego on OCT 23 2018, by the following vote:

| Councilmembers | Yeas | Nays | Not Present | Recused |
|---|---|---|---|---|
| Barbara Bry | ☒ | ☐ | ☐ | ☐ |
| Lorie Zapf | ☒ | ☐ | ☐ | ☐ |
| Chris Ward | ☒ | ☐ | ☐ | ☐ |
| Myrtle Cole | ☒ | ☐ | ☐ | ☐ |
| Mark Kersey | ☒ | ☐ | ☐ | ☐ |
| Chris Cate | ☒ | ☐ | ☐ | ☐ |
| Scott Sherman | ☒ | ☐ | ☐ | ☐ |
| David Alvarez | ☒ | ☐ | ☐ | ☐ |
| Georgette Gomez | ☒ | ☐ | ☐ | ☐ |

Date of final passage OCT 26 2018.

**(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)**

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By _____, Deputy

Office of the City Clerk, San Diego, California

312021

Resolution Number R-_____

Passed by the Council of The City of San Diego October 23, 2018, by the following vote:

| | |
|---|---|
| **YEAS:** | **BRY, ZAPF, WARD, COLE, KERSEY, CATE, SHERMAN, ALVAREZ, GÓMEZ.** |
| **NAYS:** | **NONE.** |
| **NOT PRESENT:** | **NONE.** |
| **RECUSED:** | **NONE.** |

AUTHENTICATED BY:

**KEVIN L. FAULCONER**

Mayor of The City of San Diego, California

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(Seal)

By: **Matthew R. Hilario**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. **R-312021**, approved on **October 23, 2018**. The date of final passage is **October 26, 2018**.

**ELIZABETH S. MALAND**

City Clerk of the City of San Diego, California

(Seal)

By: _____, Deputy