ASSIGNMENT AND ASSUMPTION AGREEMENT AND AMENDMENT TO LEASE AGREEMENT WITH CITY OF SAN DIEGO CONSENT AND ESTOPPEL

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT AND AMENDMENT TO LEASE AGREEMENT WITH CITY OF SAN DIEGO CONSENT AND ESTOPPEL ("Agreement") is entered into by and among the City of San Diego, a California municipal corporation ("City"), Otay Terminal-Calle Fortunada, LLC, a California limited liability ("Otay Terminal"), and Hernon Fortunada, LLC, a Delaware limited liability company ("Hernon Fortunada"), to be effective as of the date upon which Otay Terminal transfers fee title to the Otay Terminal's Property (defined below) to Hernon Fortunada (the "Effective Date") when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

A. Otay Terminal owns in fee title that certain real property located at 3860 Calle-Fortunada, San Diego, California 92123, more particularly described in the attached Exhibit "A" ("Otay Terminal's Property").

B. Otay Terminal and City are parties to that certain City of San Diego Lease Agreement, filed in the Office of the San Diego City Clerk as Document No. RR-310835 ("Lease Agreement"), attached hereto as Exhibit "B", under which Otay Terminal leases from the City and the City leases to Otay Terminal that certain real property measuring approximately 63,157 square feet in size, situated in the City of San Diego, County of San Diego, State of California, adjacent to Otay Terminal's Property, and identified in the Lease Agreement as the "premises" or "leased premises" (the "Leased Premises").

C. Otay Terminal and Hernon Fortunada (as successor-in-interest to 1309 Madison LLC) have entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions dated April 18, 2018 (as amended and assigned, the "Purchase Agreement") under which Otay Terminal would transfer fee title to Otay Terminal's Property to Hernon Fortunada or its permitted assignee and Otay Terminal would transfer Otay Terminals' leasehold interest in the Leased Premises to Hernon Fortunada or its permitted assignee.

D. Otay Terminal wishes to assign the Lease Agreement and any and all interest, rights and obligations under the Lease Agreement (the "Rights and Obligations") to Hernon Fortunada and Hernon Fortunada wishes to assume the Rights and Obligations as of the Effective Date.

E. Section 4.2 of the Lease Agreement requires City's prior written consent to assign the Rights and Obligations.

F. Under the terms and conditions of this Agreement, Otay Terminal will assign the Rights and Obligations to Hernon Fortunada, Hernon Fortunada will assume the Rights and Obligations, and the City will consent to Otay Terminal's assignment of the Rights and Obligations to Hernon Fortunada and Hernon Fortunada's assumption of the Rights and Obligations.

G. Pursuant to Section 4.3 of the Lease Agreement, Otay Terminal agrees to pay an "Equity Payment" of $50,000 for the Assignment Approval Request to City within five (5) days of the Effective Date.

NOW, THEREFORE, Otay Terminal hereby assigns the Rights and Obligations to Hernon Fortunada, Hernon Fortunada hereby assumes the Rights and Obligations, and the City hereby consents to Otay Terminal's assignment of the Rights and Obligations to Hernon Fortunada and Hernon Fortunada's assumption of the Rights and Obligations, subject to the following terms and conditions:

1. Assignment. Otay Terminal hereby assigns the Rights and Obligations to Hernon Fortunada.

2. Assumption. Hernon Fortunada hereby assumes the Rights and Obligations, and agrees to be bound by, and to conform and comply with, the terms and conditions of the Lease Agreement that it assumes pursuant to this Agreement.

3. City's Consent. The City hereby consents to Otay Terminal's assignment of the Rights and Obligations to Hernon Fortunada and Hernon Fortunada's assumption of the Rights and Obligations. By giving this consent, City is merely consenting to the requested assignment. The City's consent under this Agreement is and shall be subordinate to the Lease Agreement. The City shall not be bound by any term or condition in this Agreement which in any way conflicts with the City's rights or increases the City's obligations under the Lease Agreement. All terms of the Lease Agreement shall control and supersede any inconsistent or contrary provision in any assignment agreement executed between Otay Terminal and Hernon Fortunada, except as otherwise approved herein.

4. City's Certification's to Hernon Fortunada. The City hereby certifies and agrees as follows, for the benefit of and reliance by Hernon Fortunada:

4.1 Except as set forth in Section 15 of this Agreement, the Lease Agreement is in full force and effect without amendment, modification or supplement, and a true and complete copy of the Lease Agreement is attached hereto as Exhibit B. Other than the Lease Agreement, there are no other oral or written understandings between the City and Otay Terminal regarding the Leased Premises.

4.2 The City has no knowledge of any uncured defaults under the Lease Agreement.

4.3 There are no disputes between the City and Otay Terminal regarding the Lease Agreement, the Lease Premises, or the improvements therein or thereupon.

4.4 The City currently holds a security deposit from Otay Terminal in the amount of Fifteen Thousand Dollars ($15,000.00).

4.5 Monthly rent due under the Lease Agreement is Twelve Thousand One Hundred Fifty-Four Dollars ($12,154.00) and has been paid through August 31, 2018.

4.6 The Lease Agreement commenced February 1, 2017 and is scheduled to expire January 31, 2037.

5. City's Release of Otay Terminal. In accordance with Section 4.3 of the Lease Agreement, Otay Terminal is released from any liability under the Lease Agreement on and after the Effective Date.

6. Subsequent Assignment. The City's consent under this Agreement shall not constitute consent to any subsequent assignment of any interest in and to the Lease Agreement.

7. Default. In the event of any default of Hernon Fortunada under the Lease Agreement, the City will proceed directly against Hernon Fortunada pursuant to the Lease Agreement.

8. Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement among the parties to this Agreement pertaining to the terms of the City's consent to Otay Terminal's assignment of the Rights and Obligations to Hernon Fortunada and Hernon Fortunada's assumptions of the Rights and Obligations, supersedes all prior and contemporaneous understandings or agreements of the parties and is binding on and inures to the benefit of their respective heirs, representatives, successors or assigns. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Agreement. Any agreement made after the Effective Date is ineffective to modify, waive, or terminate this Agreement, in whole or in part, unless that agreement is in writing, is signed by the parties to this Agreement, and specifically states that it modifies this Agreement.

9. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same instrument, it being understood that all parties need not sign the same counterpart.

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

11. Governing Law. This Consent shall be governed, construed, and enforced in accordance with the laws of the State of California.

12. Brokerage Commission. The City shall not be liable for any brokerage commission or finder's fee in connection with the Purchase Agreement or this Agreement. Otay Terminal shall protect, defend, indemnify, and hold the City harmless from and against any claim by any broker purporting to represent Otay Terminal for any brokerage commission or finder's fee related to the Purchase Agreement or this Agreement, and from and against any cost or expense, including without limitation attorney fees, incurred by the City in resisting any claim for any such brokerage commission or finder's fee. Hernon Fortunada shall protect, defend, indemnify, and hold the City harmless from and against any claim by any broker purporting to represent Hernon Fortunada for any brokerage commission or finder's fee related to the Purchase Agreement or this Agreement, and from and against any cost or expense, including without limitation attorney fees, incurred by the City in resisting any claim for any such brokerage commission or finder's

fee. The City may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If the 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, either Otay Terminal or Hernon Fortunada, as applicable, shall pay all of the costs related thereto, including without limitation attorney fees and costs.

13. Authority. 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 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 Agreement is binding upon such person or entity in accordance with its terms.

14. Recitals and Exhibits. The recitals of and exhibits to this Agreement are hereby incorporated into this Agreement.

15. Otay Terminal's Certification. Otay Terminal hereby certifies and agrees as follows, for the benefit of and reliance by Hernon Fortunada:

15.1 Except as set forth in Section 16 of this Agreement, the Lease Agreement is in full force and effect without amendment, modification or supplement, and a true and complete copy of the Lease Agreement is attached hereto as Exhibit B. Other than the Lease Agreement, there are no other oral or written understandings between the City and Otay Terminal regarding the Leased Premises.

15.2 Otay Terminal has no knowledge of any uncured defaults under the Lease Agreement and, to the best of Otay terminal's actual current knowledge, no event has occurred which, with the giving of notice, passing of time, or both, would constitute a default by either Otay Terminal or the City under the Lease Agreement.

15.3 There are no disputes between the City and Otay Terminal regarding the Lease Agreement, the Lease Premises, or the improvements therein or thereupon.

16. City Standard Lease Requirements. In accordance with Section 4.2 of the Lease Agreement, the Lease Agreement is revised and amended to comply with City's current lease requirements as set forth in this Section 16. Except as explicitly stated in this Agreement, nothing contained in this Agreement will be deemed or construed to modify, waive, impair, or affect any of the covenants, agreements, terms, provisions, or conditions contained in the Lease Agreement. In addition, the acceptance of rents by City from Hernon Fortunada or anyone else under the Lease Agreement will not be deemed a waiver by City of any provisions of the Lease Agreement.

16.1 Section 7.4 of the Lease Agreement is deleted in its entirety and replaced as follows:

"7.4 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."

16.2 Section 7.15 of the Lease Agreement is deleted in its entirety and replaced as follows:

"7.15 Disabled Access Compliance. Lessee will, as applicable to the Premises and Lessee's possession, use and occupancy of the Premises, 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 will include without limitation the following:

Lessee will 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.

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.

Lessee will include language in each sublease which indicates the sublessee's agreement to abide by the provisions of this section 7.15. Lessee and each of its sublessees will be individually responsible for their own ADA employment programs.

Lessee will post a statement addressing the requirements of the ADA in a prominent place at the work site.

Where required by law, all improvements, fixtures, structures or installations on the Premises will 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 will be at Lessee's sole expense.

Lessee's failure to comply with the requirements of this section 7.15 or submitting false information in response to these requirements, or both, will be a default of this Lease.

16.3 Section 7.16 of the Lease Agreement is deleted in its entirety and replaced as follows:

"7.16 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.'"

16.4 Section 7.19 of the Lease Agreement is deleted in its entirety and replaced as follows:

"7.19 Water Quality – Best Management Practices.

CITY and LESSEE are committed to the implementation of controls (best management practices, or BMPs) contained in the Montgomery-Gibbs Executive 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 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 MYF SWPPP.

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 MYF SWPPP.

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.

It is LESSEE's responsibility to prevent pollutant discharges to the storm drain system. LESSEE shall identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system."

16.5 Section 7.21 is added to the Lease Agreement as follows:

"7.21 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 Lease, LESSEE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Lease Term.

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 entering into lease agreements after the date of the Agreement to certify compliance with the Equal Pay Ordinance in their subleases.

To the extent LESSEE has employees, LESSEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site."

16.6 Section 7.22 is added to the Lease Agreement as follows:

"7.22 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."

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

THE CITY OF SAN DIEGO

Date 8/15/18

By _____
Cybele Thompson
Director, Real Estate Assets Department

Approved as to form this 15th day
of August, 2018.

Mara Elliott, City Attorney

By _____
Name: Hilda R. Mendoza
Title: Deputy City Attorney

OTAY TERMINAL-CALLE FORTUNADA, LLC
a California limited liability company

By: Carleton Management, Inc.,
a California corporation
Its: Manager

Date 8/9/18

By _____
Jeffrey H. Silberman
President & Chief Executive Officer

Date: _____

Hernon Fortunada, LLC
A Delaware limited liability company

By: 1640 Broadway Associates, LLC
A California limited liability company
Its: Manager

By: _____
Joseph Hernon
Its: Manager

OTAY TERMINAL-CALLE FORTUNADA, LLC
a California limited liability company

By: Carleton Management, Inc.,
a California corporation
Its: Manager

Date _____ By _____
Jeffrey H. Silberman
President & Chief Executive Officer

Date: _____ Hemon Fortunada, LLC
A Delaware limited liability company

By: 1640 Broadway Associates, LLC
A California limited liability company
Its: Manager

By: _____
Joseph Hemon
Its: Manager

EXHIBIT "A"

OTAY TERMINAL'S PROPERTY

Lot 3 of Collins Business Park, in the City of San Diego, County of San Diego, State of California, according to Map No. 9245, filed in the Office of the County Recorder of San Diego County on June 8, 1979.

EXHIBIT "B"

THE LEASE AGREEMENT

DUPLICATE

THE CITY OF SAN DIEGO

Lease Agreement

Between

THE CITY OF SAN DIEGO

And

OTAY TERMINAL-CALLE FORTUNADA, LLC

DOCUMENT NO. RR 310335
FILED DEC 06 2016
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

CITY OF SAN DIEGO
LEASE

THIS LEASE AGREEMENT ("Lease") is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and Otay Terminal-Calle Fortunada, LLC, a California limited liability company, hereinafter called "LESSEE."

SECTION 1: USES

1.1 Premises.

CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property defined as a parcel of land, measuring approximately 63,157 square feet in size, situated in the City of San Diego, County of San Diego, State of California. The land is an asphalt improved parking lot with light standards, landscaping and a perimeter chain link fence, located at the northeast corner of Montgomery Field Airport. The area leased is known as the Otay Terminal Parking Lot, and is depicted in **EXHIBIT A** attached hereto, and by this reference is made part of this Lease. The parking lot is hereinafter called the "premises" or "leased premises."

1.2 Uses.

The premises is leased to LESSEE solely and exclusively for the purpose of automobile parking. The premises shall not be used for overnight stays or any type of temporary lodging, such as for camping or with the parking of motor homes. All vehicles found to be leaking fluid(s) shall immediately (1) be removed from the premises and kept off the premises until they no longer leak fluid(s), and (2) proper cleanup measures shall be taken to remediate the leaked fluids. All vehicles parked on the premises shall have current registration or appropriate transit documentation. The premises shall not be used for any other purpose whatsoever.

The use of the premises for any unauthorized purpose shall constitute a substantial default and subject this Lease to termination at the sole option of CITY.

1.3 Related Council Actions.

By the granting of this Lease, neither CITY nor the City Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes, but is not limited to, re-zonings,

variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the leased premises.

1.4 Quiet Possession.

LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the Term (defined below) peaceably and quietly have, hold, and enjoy the premises. If LESSEE is temporarily or permanently dispossessed of the premises through action or claim of a title superior to CITY'S, then and in either of such events, this Lease shall be voidable and CITY shall not be liable to LESSEE for any loss or damage resulting therefrom.

1.5 CITY's Reservations of Rights.

a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the premises.

b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.

c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

CITY shall not unreasonably or substantially interfere with LESSEE's use of the premises and will reimburse LESSEE for physical damages caused by CITY, if any, to LESSEE's personal property located on the leased premises, resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.6 Competent Management.

Throughout the Term of this Lease, LESSEE shall provide competent management of the leased premises to the satisfaction of the Mayor or his/her designee. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a parking lot that is attached to an office building.

1.7 Political Activities.

The leased premises shall be used exclusively for the purpose specified in Section 1.2, Uses, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.

SECTION 2: TERM

2.1 Commencement.

The term of this Lease shall be twenty (20) years ("Term"), commencing on the first of the month following the execution by the City Attorney ("Commencement Date"). "Lease Year" as used in this Lease shall mean the 12-month period following the Commencement Date and each subsequent 12-month period. Notwithstanding the foregoing, should the Federal Aviation Administration determine the premises may no longer be used for the purposes stated herein, CITY may terminate this Lease upon sixty (60) days advance written notice, with no additional obligation or compensation to LESSEE.

2.2 Holdover.

Any holding over by LESSEE after expiration of the Term shall not be considered a renewal or extension of this Lease. The occupancy of the premises after the expiration of the Term of this Lease shall constitute a month-to-month tenancy, and all other terms and conditions of the Lease shall continue in full force and effect; provided, however, CITY shall have the right to bring the Rent (as defined in Section 3.2 d, below) to the then market value and to terminate the holdover tenancy at will.

2.3 Surrender of Premises.

Upon the termination or expiration of this Lease for any reason, then:

(a) LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered free and clear of all liens and encumbrances and in a decent, safe, and sanitary condition.

(b) If LESSEE fails or refuses to deliver the required deed, CITY may prepare and record a notice reciting LESSEE's failure to execute this lease provision, and

the notice will be conclusive evidence of the termination of this lease and all LESSEE's rights to the premises.

SECTION 3: RENT

3.1 Time and Place of Payment.

Rent is due monthly in advance on or before the first day of each calendar month. All monthly rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each calendar month. Checks should be made payable to the City Treasurer and mailed to:

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

or hand-delivered to:

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

The place and time of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2 Rent.

a. Rent Amount. The total initial monthly rent is eleven thousand, eight hundred dollars ($11,800.00) per month beginning on the Commencement Date. Said rent is subject to annual adjustments based on the Consumer Price Index ("CPI"), or the Market Rent Adjustment, as described below. Rent for any period that is less than one (1) month shall be prorated based on the full number of days during such month.

b. CPI Index Adjustments. Each Lease Year, on the anniversary of the Commencement Date, the monthly rent shall be increased by the percentage increase, if any, in the CPI. In no event shall the adjusted rent as established by the CPI be less than the rent in existence immediately prior to the adjustment date or more than four Percent (4%) above the rent

in existence immediately prior to the adjustment date. CPI adjustments shall occur annually, beginning at the end of the first year following the Commencement Date of the Lease and every year thereafter during the Lease term, rent shall be adjusted to reflect any increases in the Consumer Price Index.

The index used will be the CPI for ("All Urban Consumers") for Los Angeles, Riverside, Orange County (1982-84 = 100) of the U.S. Department of Labor, Bureau of Labor Statistics. If the above index is no longer published, the index for adjustment will be the U.S. Department of the Labor's "Comprehensive Official Index" most comparable to the aforesaid index. In the event that such indices are no longer published, then another comparable index or source of such information generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the Parties cannot agree within sixty (60) days after demand in writing for substitution by either Party, such source of information shall be determined by arbitration pursuant to the provisions of the California Code of Civil Procedure.

Regardless of the index publication dates, the effective dates of rent adjustments shall be as specified in this Section. Until the rent adjustment can be reasonably determined by the index method, Lessee shall continue to make payments of Base Rent at the existing rental rate. When the adjustment is determined, the balance of rent due at the adjusted rate will be paid to CITY within thirty (30) days.

c. Index Adjustment Computation. The rent for each monthly rental period following the adjustment, until the next adjustment or other rental determination as provided herein, shall be determined prior to the date of adjustment by multiplying the rent which is effective immediately prior to said adjustment by the "adjustment figure" established as follows:

The "adjustment figure" shall be established by dividing the "current index" by the "base figure," as defined herein:

The "current index" shall be an average of CPI index figures for the fourth, fifth and sixth months immediately preceding the adjustment date.

The "base figure" for the first such adjustment shall be an average of the CPI index figures for the fourth, fifth and sixth months immediately preceding the Commencement Date.

The "base figure" for each successive adjustment shall be an average of the CPI index figures for the one year period ending on the fourth, fifth

and sixth months immediately preceding the Commencement Date immediately preceding each of the CPI adjustment dates.

d. Market Rent Adjustment. At the end of the 10th Lease Year the CITY shall adjust the rent in accordance with a Market Rent Adjustment", ("**Market Rent**"), in lieu of CPI adjustment as described in section 3.2 above.

At least one hundred and eighty (180) days in advance of the expiration of the tenth (10th) Lease Year, CITY and LESSEE shall (i) attempt to agree on the Market Rent Adjustment within the first 60 days of the 180 day period, or (ii) having failed to agree on the Market Rent Adjustment within such 60 days, the CITY and LESSEE shall each designate their own real estate appraiser to determine the Market Rent for the Premises. Both the CITY and LESSEE shall pay the cost of its own selected appraiser, each of whom has at least five (5) years' full time commercial appraisal experience.

If the market value determined by each party's appraisals differs by ten percent (10%) or less, then the Market Rent shall be deemed to be the average of the two (2) appraisals. If the Market Rent determinations in the two appraisals differ by more than 10%, the CITY and LESSEE shall in good faith promptly meet in an attempt to determine a monthly rental value based on the Market Rent outcomes of the two (2) appraisals. If the CITY and LESSEE are unable to mutually agree on a monthly rental value within sixty (60) days, the two appraisers shall jointly select a third appraiser, with at least five years' of appraisal experience who will conduct a review of the two appraisals. Should the third appraiser find both appraisals to be credible and in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP), then the Market Rent shall be concluded to be the average of the two appraisals. Should the third appraiser conclude that one appraisal is credible and conforms to USPAP and the other does not meet this criteria, then the credible and conforming appraisal Market Rent conclusion shall be deemed to represent Market Rent. The CITY and the LESSEE shall split the expense of the third appraiser.

In determining the Market Rent of the Premises, the appraisers shall be free to use both direct comparison of land leases as well as a return on land value as a means of concluding at an opinion of market rent, depending on the availability of comparable market data with 250 miles of the Premises. Improvements present on the Premises as well as the market data properties shall be considered in arriving at an opinion of Market

Rent for the Premises. This assumes that the improvements are included in the lease and not owned by the tenant.

3.3 Delinquent Rent.

If LESSEE fails to pay the rent within 5 days of when due, LESSEE will pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars ($25).

In the event that a CITY audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit plus ten percent (10%) per year on the amount by which said rent was underpaid, in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss of interest as previously described herein. LESSEE agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

3.4 Security Deposit.

A security deposit shall be paid to the CITY by LESSEE in the sum of fifteen thousand dollars ($15,000.00) before the Commencement Date of this Lease. All or any portion of the principal sum of the security deposit shall be available unconditionally to CITY for correcting any default or breach of this Lease by LESSEE, LESSEE's successors or assigns, or for payment of expenses incurred by CITY as a result of LESSEE's failure to faithfully perform all terms, covenants, and conditions of this Lease.
The security deposit shall take one of the forms set out below:

a. Cash. Cash deposits shall be deposited with CITY, and CITY shall not be liable to LESSEE for any interest thereon. Provided further, any interest earned by CITY from such deposit or redeposit shall be and remain the property of CITY.

b. Instrument(s) of Credit. An instrument(s) of credit from one or more financial institutions, subject to regulation and insurance by the state or federal government, shall pledge that the funds are on deposit and guaranteed for payment and agree that any or all funds shall be paid to CITY upon demand by CITY. The financial institution and the form of any instrument pledging the funds must be approved by CITY.

LESSEE will maintain the required security deposit throughout the Lease Term. Failure to maintain the security deposit shall be considered a default and is grounds for immediate termination of this Lease. The security deposit shall be returned to LESSEE in accordance with California law, provided LESSEE has faithfully complied with all terms, covenants, and conditions of this Lease.

In the event CITY utilizes all or any portion of the security deposit, LESSEE shall reimburse the deposit within ten (10) days of notice from CITY to bring the security deposit up to the full specified amount.

The security deposit may be increased by CITY proportionate to any increased performance or rental liability of LESSEE upon sixty (60) days prior written notice from CITY of such required increase.

SECTION 4: ASSIGNMENT, SUBLETTING, ENCUMBRANCES, EQUITY SHARING, DEFAULTS & EMINENT DOMAIN

4.1 Time is of Essence; Provisions Binding on Successors.

Time is of the essence for all of the terms, covenants, and conditions of this lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

4.2 Assignment and Subletting.

LESSEE shall not assign this Lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the Mayor, or his/her designee, in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the Mayor, or his/her designee.

"Assignment" for the purposes of this clause shall include any transfer of any interest in this Lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals, to any other person or entity.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired. The Mayor, or his designee, may require, as a condition to approval of any sublease of the majority portion of the leasehold, or any assignment, that the LESSEE pay additional consideration to CITY, as set forth in Section 4.3 hereof, payable as of the effective date of such proposed sublease of the majority portion of the leasehold, or assignment. CITY may further require that (1) the rent be increased to the-then fair market value for the premises, as determined by qualified CITY staff, and that (2) this Lease be revised to comply with standard CITY lease requirements that are then current. Pursuant to City Charter Section 225, the Mayor, or his/her designee, must review and approve every person or entity which will have an interest in this lease as a sublessee or assignee.

4.3 Equity Sharing.

In the event LESSEE wishes to assign its interests in this Lease to an "Assignee," LESSEE agrees that as additional consideration for this Lease and in addition to all rent payable to CITY, CITY shall be entitled to participate in any "equity" received by LESSEE during the Term. For purposes of this paragraph, "equity" shall mean the Equity Payment. "Equity Payment" shall be (i) $50,000 for any Assignment Approval Request submitted to the CITY during the first 10 Lease Years, and (ii) $75,000 for any Assignment Approval Request submitted to the CITY after the first 10 Lease Years. An "Assignment Approval Request" shall mean the date on which LESSEE submits all of the following to the City: (i) a check for the Equity Payment due on such date, and (ii) an assumption of the Lease, as required by Lease section 4.2, by the proposed Assignee. The CITY shall deposit the check for the Equity Payment in a third party escrow pending the CITY's approval or denial of Assignee as the new Lessee under the Lease ("City Action"). The CITY shall use its best efforts to take the City Action within 60 days from the Assignment Approval Request. If the City Action is denied, or LESSEE withdraws the Assignment Approval Request before City Action, then the escrow shall be cancelled and the Equity Payment returned to LESSEE. If the City Action is "approval" of the assignment transaction, the Equity Payment shall be payable in full to CITY concurrent with the closing of the assignment transaction, and the LESSEE (as opposed to the Assignee) shall be released from any liability under the Lease on and after the closing date. The City shall not be

liable for any costs of escrow, and LESSEE shall pay the same. Any assignment in violation of the terms and conditions of this section shall be void.

The provisions of this section shall not apply to the following "permitted transactions":

a. An assignment or transfer of a beneficial interest in LESSEE's leasehold estate resulting from a devise, bequest, intestate succession or by operation of law for the benefit of LESSEE's principal owner or chief executive officer (if LESSEE is other than an individual);

b. Such other assignment or transfer due to a reorganization or other activity of LESSEE which the Mayor, or his/her designee, reasonably determines that a substantial change has not occurred with respect to the legal and equitable ownership interests in LESSEE in the legal or fictitious name of the LESSEE as there is no material change in the equity, in beneficial use of or legal title to the leasehold as an asset or the income produced thereby.

4.4 Encumbrance.

LESSEE may not encumber this Lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE.

4.5 Defaults and Remedies.

a. Default. In the event that:

(1) LESSEE fails to make any payment of rent within 5 days of when due;

(2) 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 thereof from City, or if not curable within thirty (30) days; or fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;; or

(3) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or

(4) LESSEE shall be adjudicated a bankrupt; or

(5) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately take all legal actions available to terminate this Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof, and CITY may thereafter enter and take possession of the premises.

b. Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the premises, this Lease shall continue in effect for so long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages, in accordance with law.

c. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the Mayor, or his/her designee, in order to constitute a valid and binding waiver. CITY's delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY's acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by CITY to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the Mayor, or his/her designee, to take action or require the cure of any default.

4.6 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 beneficiary or mortgagee) will be as follows:

a. Complete Taking. In the event 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.

b. Partial Taking Termination. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is 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.

c. Partial Taking Partial Lease. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is 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 rent shall be equitably reduced to reflect the portion of the premises taken.

d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE's then remaining leasehold interest in the premises. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

e. 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 the fair market value of any improvements placed by it on the premises in accordance with this Lease.

f. 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.

SECTION 5: INDEMNIFICATION, INSURANCE & WASTE

5.1 Indemnity.

LESSEE agrees to defend, indemnify, protect, and hold CITY, its agents, officers, 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 employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the use, development or operation of the premises, and all expenses of investigating and defending against same; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of CITY, its agents, officers, or employees.

CITY may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification and hold harmless provision. In the event of such election, LESSEE shall pay all of the reasonable costs, which are documented and related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between CITY and LESSEE regarding litigation issues, CITY shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter.

5.2 Insurance.

LESSEE shall obtain and maintain throughout the Term of this Lease, at its sole cost and expense, all insurance required by this Lease. LESSEE's liabilities under this Lease, including without limitation LESSEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. LESSEE's maintenance of the required insurance coverage is a material consideration for this Lease. Notwithstanding any provision of this Lease to the contrary, if LESSEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, LESSEE shall be in default of this Lease. LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. LESSEE shall obtain and deliver to CITY's Airport Division a current certificate of insurance and all relevant endorsements for (and subject to CITY's written approval of same):

a. Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury, including death, and property damage with limits of at least One Million Dollars ($1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars ($2,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

b. Commercial Automobile Liability Insurance ("Auto"), if and when LESSEE uses vehicles on the premises and/or in connection with LESSEE's use of the premises, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars ($1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Lease.

c. Workers' Compensation Insurance, as required by applicable laws, for all of LESSEE's employees, if any, who work on the premises and/or in connection with LESSEE's use of the premises, with employers' liability coverage with a limit of at least One Million Dollars ($1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.

5.2.1 Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each CGL and Auto policy must be endorsed to include as an insured "The City of San Diego and its elected officials, officers, employees, representatives and agents" 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 without limitation LESSEE's completed operations performed by LESSEE or on LESSEE's behalf; or (d) the premises.

5.2.2 Primary & Non-Contributory. Each CGL and Auto policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of LESSEE's insurance and shall not contribute to it.

5.2.3 Severability of Interest. Each CGL and Auto policy must be endorsed to provide that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is bought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

5.2.4 Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Lease 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 may 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 (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.

5.2.5 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.

5.2.6 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this lease. LESSEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, LESSEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.

5.2.7 Modification. To assure protection from and against the kind and extent of risk existing with the Allowed 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.

5.2.8 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the premises or otherwise related to the allowed 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.

5.2.9 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 Lease Use or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver to CITY a certificate of such insurance.

5.3 Waste, Damage, or Destruction.

LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within forty eight (48) hours of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY's option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days of the occurrence of the damage, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenantable by reason of such damage.

SECTION 6: ACCEPTANCE, INSPECTIONS, MAINTENANCE, IMPROVEMENTS/ALTERATIONS, UTILITIES, LIENS, TAXES, SIGNS, PERSONAL PROPERTY, DELAY, HAZARDOUS MATERIALS & ASBESTOS

6.1 Acceptance of Premises.

By signing this Lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this Lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the premises, including the presence of any hazardous wastes.

6.2 Entry and Inspection.

CITY reserves and shall always have the right, but not the obligation, to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.

6.3 Maintenance.

LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the Term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws. LESSEE shall be solely responsible for providing and maintaining the parking lot, lighting and security to assure safe parking conditions.

6.4 Improvements/Alterations.

No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the Mayor, or his/her designee. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the Mayor, or his/her designee, and that such approval shall be at the sole discretion of CITY. This provision shall not relieve LESSEE of any obligation under this Lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

6.5 Utilities.

Upon prior written approval by CITY in each instance, LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.

6.6 Liens.

LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with the use, operations, improvements, alterations or repairs on or to the premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

a. take all actions necessary to record a valid release of lien, or

b. file with CITY a bond, cash or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

6.7 Taxes.

LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees 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 such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

6.8 Signs.

LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours' notice thereof by CITY or CITY may thereupon remove the item at LESSEE'S

cost. Notwithstanding the foregoing, if CITY, in its sole discretion determines that any such banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices, or advertising, interferes with any Airport activity(ies), upon notice thereof by CITY, LESSEE shall immediately remove said item at its expense, or CITY may thereafter remove the item at LESSEE's cost.

6.9 Ownership of Improvements and Personal Property.

a. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at Lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this Lease.

b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or sixty (60) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE's sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.

c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this Lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE's expense.

d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.

e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.

f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this Lease, then CITY shall have the first right to acquire or purchase said personal property.

6.10 Unavoidable Delay.

If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this Lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

6.11 Hazardous/Toxic Waste.

LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance 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 prior written consent. LESSEE shall, prior to initiating any operations that involve Hazardous Substances, obtain all required 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.

a. Release. For purposes of this lease, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a Hazardous Substance.

b. Hazardous Substance. For purposes of this lease, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.

c. 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, and in accordance with

all applicable laws, rules, regulations and directives of competent governmental authorities.

d. 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 to the premises, LESSEE and/or LESSEE's contractor or agent shall remove all Hazardous Substances in any type of container, equipment or device 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 materials, wastes or other containers, equipment or devices from the premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.

e. 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.

f. Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to 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.

g. 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 shall notify LESSEE of such belief and allow LESSEE up to fifteen (15) days after such notice to commence the performance of an environmental assessment under regulatory oversight of the suspect area by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. If LESSEE fails to cause such an environmental assessment to be commenced with the noticed time period, CITY may cause the assessment to be performed. 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 city, county, state or federal laws, statutes, ordinances or regulations, 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 or statutes, 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 sole discretion, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefore.

6.12 Asbestos Disclosure.

CITY discloses to LESSEE that portions of the structural components of the premises may contain asbestos. LESSEE acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose the existence of asbestos on the leased premises, as required by Health and Safety Code Section 25915. LESSEE agrees to indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the leased premises.

SECTION 7: GENERAL PROVISIONS

7.1 Notices.

a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the address designated in writing by LESSEE below; and to CITY as follows:

CITY:
Airports Deputy Director
Montgomery Field Terminal Building
3750 John J. Montgomery Drive
San Diego, CA 92123

LESSEE:

Otay Terminal-Calle Fortunada, LLC
c/o Carleton Management, Inc.
11440 West Bernardo Ct., Suite 390
San Diego, CA 921027

b. Any party entitled or required to receive notice under this Lease may designate a different address to which notices shall be sent.

7.2 Compliance with Law.

LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE's sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the Mayor or his authorized representative, under the authority of any such law, statute, ordinance, or regulation.

7.3 CITY Approval.

The approval or consent of CITY, wherever required in this Lease, shall mean the written approval or consent of the Mayor, or his/her designee, unless otherwise specified, without need for further resolution by the City Council.

7.4 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, disability, sexual orientation, marital status, medical condition, 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 in the premises.

7.5 Compliance with CITY's Equal Opportunity Contracting Program.

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, 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 CITY, 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.

Any conflict resulting from the requirements as set forth in this Lease section and the requirements as set forth in the applicable San Diego Municipal Code section(s) shall be resolved in favor of the requirements as set forth in the applicable San Diego Municipal Code section(s).

7.6 Local Business and Employment.

LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all City of San Diego contracts. For work associated with this Lease and to the extent legally possible, 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.

7.7 Equal Benefits.

LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require lessees of City of San Diego-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits

throughout the term of this Lease. LESSEE's failure to maintain equal benefits shall be a default of this Lease.

Any conflict resulting from the requirements as set forth in this Lease section and the requirements as set forth in the applicable San Diego Municipal Code section(s) shall be resolved in favor of the requirements as set forth in the applicable San Diego Municipal Code section(s).

7.8 Survival.

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

7.9 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.

7.10 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 will remain in full force and effect.

7.11 Number and Gender.

Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural when the tense requires.

7.12 Captions.

The section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Lease.

7.13 City of San Diego Employee Participation Policy.

Within the first twelve (12) months after the Effective Date, City may unilaterally and immediately terminate this Lease if Lessee employs an individual at the Premises who, within the twelve (12) months immediately preceding such employment did, in their capacity as a City of San Diego officer or employee, participate in negotiations with or otherwise have an influence on a

recommendation made to the San Diego City Council or the Mayor 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.

7.14 Drug-free Workplace.

LESSEE shall be required to 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:

(1) The dangers of drug abuse in the workplace;

(2) The LESSEE'S policy of maintaining a drug-free workplace;

(3) Any available drug counseling rehabilitation, and employees assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations.

c. LESSEE shall include in each subleases and contracts related to this Lease language obligating each sublease and contractor to comply with provisions of this section to maintain a drug-free workplace. LESSEE and each of its sublessees and contractors, shall be individually responsible for their own drug-free workplace programs.

7.15 Disabled Access Compliance.

Lessee shall, as applicable to the Premises and Lessee's possession, use and occupancy thereof, comply with the 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 any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. Lessee's compliance shall include but not necessarily be limited to 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 post a statement addressing the requirements of the ADA in a prominent place at the work site.

d. Where required by law, any improvements made to the premises by LESSEE 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 the sole cost of LESSEE.

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

(2) LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this lease.

7.16 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).

7.17 Standard of Employees.

LESSEE and its employees shall at all times conduct themselves and the operations on the premises in a reputable manner, as determined by CITY in its sole reasonable discretion.

7.18 Relocation Payments.

LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this Lease.

7.19 Water Quality – Best Management Practices.

CITY and LESSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of Section 43.03, Stormwater Ordinance.

Therefore, LESSEE shall, at a minimum, implement and comply, as applicable, with the BMPs for industrial and commercial facilities adopted under the San Diego Municipal Code Section 43.0307 (a).

It is ultimately the LESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system."

Any conflict resulting from the requirements as set forth in this Lease section and the requirements as set forth in the applicable San Diego Municipal Code section(s) shall be resolved in favor of the requirements as set forth in the applicable San Diego Municipal Code section(s).

7.20 Entire Agreement.

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

SECTION 8: FAA REQUIREMENTS

LESSEE (also referred to in this section as "Lessee") and its officers, employees, contractors, agents, sublessees, and all others operating through LESSEE shall conform to the following FAA covenants and reservations of rights.

8.1 The Lessee's Use and Construction to Conform with Federal Aviation Regulations. The Lessee agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the Site and the Airport. The Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (which may be amended or replaced by other regulations from time to time) before constructing any improvements or modifying or altering any structure on the Site and the Airport.

8.2 The Lessee's Noninterference with Aircraft. The Lessee and the Lessee's successors, assigns agree not to in any manner interfere with any aircraft landing or taking off from Montgomery Field Airport or otherwise create a hazard. If this covenant is breached in any way, City reserves the right to abate or eliminate the interference at the expense of the Lessee.

8.3 Agreement Subordinate to City/United States Agreements. This Lease shall be subordinate to the terms of any existing or future agreements between City and the United States, or to any United States legal requirement relative to the development, operation or maintenance of the Airport. Lessee acknowledges and agrees that should any existing or future agreement between City and the United States, or any United States legal requirement, cause this Lease to terminate or otherwise be affected, Lessee shall have no right to seek damages of any type therefor from City.

8.4 Height Limitation. The Lessee and the Lessee's successors and assigns agree not to erect or permit any structure unless it complies with all FAA and ALUCP height limitations. If this covenant is breached in any way, City reserves the right to remove the structure or object at the expense of the Lessee.

8.5 War or National Emergency. In the event of war or national emergency, this Lease and all of its provisions shall be subject to any United States Government right, existing now or in the future, affecting the control, operation, regulation, take over, or exclusive or nonexclusive use of Montgomery Field Airport. During any war or national emergency, City shall have the right to lease, or allow the use of, any part of the Airport, including its landing areas, to the United States Government. In this event, any provisions of this Lease which are inconsistent with the provisions of the lease to the Government shall be suspended. City shall not be liable for any loss or damages alleged by the Lease as a result of this action. However, nothing in this Lease shall prevent the Lessee from pursuing any rights it may have for reimbursement from the United States Government.

8.6 Airport Development. City reserves the right to further develop, change or improve the Airport, including its routes and landing areas, as City sees fit, without the Lessee's interference or hindrance and regardless of the Lessee's views and desires. City shall have the right to perform any and all such actions referred to in this Section 9.6 - - including the right to shut parts or all of the Airport down - - at no liability to City, regardless of any damages or losses Lessee or any of its sublessees may suffer from said actions.

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

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

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

a. 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.

b. 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.

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

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

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

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

that any damages claimed during this subordination period will be limited to this time extension/adjustment relief.

8.12 Employee Conduct. The Lessee shall be responsible for the conduct of all employees, contractors, agents, invitees, and guests on the Premises and Airport, if that employee, contractor, agent, invitee or guest is on Airport property during any period of employment or in connection with the construction and development of the Improvements.

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

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

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

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

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

8.18 Entire Understanding. This Lease contains the entire understanding of the parties. LESSEE, by signing this Lease, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys,

and the warranties, representations, and covenants of the lease itself. Each of the parties in this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation or warranty whatsoever which is not contained in this Lease.

The failure or refusal of any party to read the Lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its Mayor, and by LESSEE.

THE CITY OF SAN DIEGO

Date 12/22/16

By _____
Cybele Thompson
Director, Real Estate Assets Department

OTAY TERMINAL-CALLE FORTUNADA, LLC
a California limited liability company

By: Carleton Management, Inc.,
a California corporation
Its: Manager

Date 9-8-16

By _____
Jeffrey H. Silberman
President & Chief Executive Officer

Environmental Analysis Section Environmental Clearance:
This activity is not a Project as defined in CEQA Guidelines Section 15378. Based on 15378 the activity does not meet the definition of a project and would therefore not be subject to CEQA pursuant to Section 15060(c)(3) of the State CEQA Guidelines

Date: 1/3/17

By: _____
Name: Alyssa Muto
Title: Dep. Dir. Environment & Policy Analysis

Approved as to form this 4th day of January, 2017.
MARA W. ELLIOTT
~~JAN I. GOLDSMITH~~, City Attorney

By _____
Name: Debra J. Bevier
Title: Deputy City Attorney

EXHIBIT A

Leased Premises (page 1 of 2)

OTAY TERMINAL CALLE FORTUNADA LEASEHOLD

APN: 421-030-60

That portion of Blocks 15 and 25 lying in Rosedale, in the City of San Diego, County of San Diego, State of California, according to the Map thereof No. 826, filed in the office of the County Recorder of said San Diego County on January 21, 1897; Together with those portions of Seventh Street and Olive Street as closed by City Resolution No. 127509 adopted on July 19, 1955, being more particularly described as follows:

Beginning at a the southeasterly corner of Lot 3 of the Collins Business Park, according to Map thereof No. 9245, filed in the said office of the County Recorder on June 8, 1979; Thence along a portion of the southerly subdivision boundary of said Map 9245 South 73°03'23" East 22.45 feet; Thence leaving the said southerly subdivision boundary of Map 9245 South 33°58'18" West 68.09 feet; Thence South 30°06'52" West 127.08 feet; Thence North 72°57'38" West 255.80 feet; Thence North 47°03'18" West 14.26 feet; Thence North 17°39'39" West 99.01 feet; Thence North 26°49'54" East 93.27 feet; Thence North 18°31'39" West 34.49 feet to a point on the said southerly subdivision boundary of Map 9245; Thence along the said southerly subdivision boundary of Map 9245 South 64°29'21" East 129.64 feet; Thence South 73°03'23" East 227.08 feet to the **Point of Beginning**.

Above described parcel of land contains 63156.86 Square Feet (1.4499 Acres)

Richard T. McCormick 10-08-2015

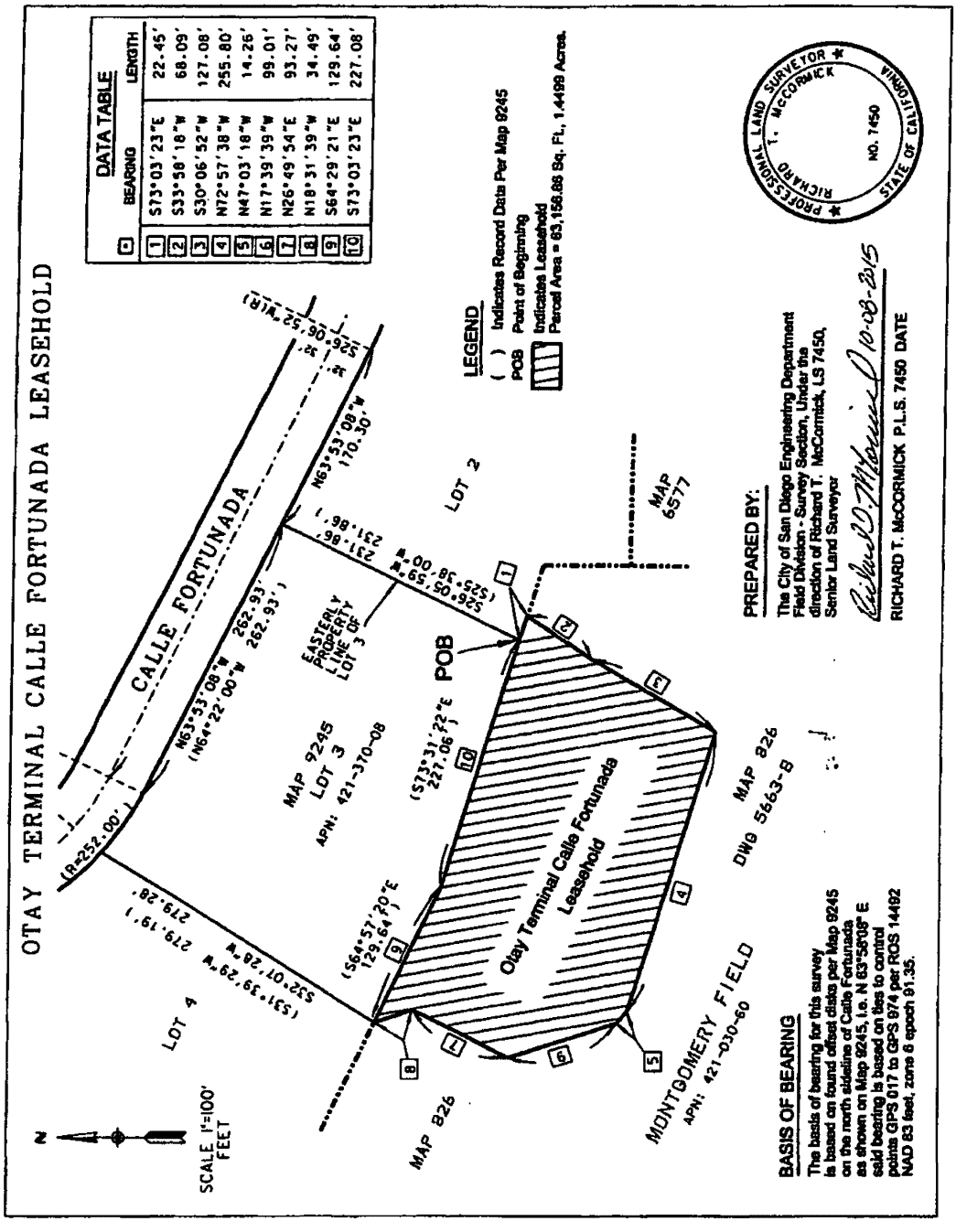
Richard T. McCormick LS 7450 Date
Senior Land Surveyor, Field Engineering
My Registration Expires 12-31-2016

PROFESSIONAL LAND SURVEYOR
RICHARD T. McCORMICK
NO. 7450
STATE OF CALIFORNIA

File: OtayTerminalCalleFortunada.docx
IO21003181–October 2015

EXHIBIT A

Leased Premises (page 2 of 2)



#113
12/6/16

(R-2017-221)
Cor. Copy

RESOLUTION NUMBER R- 310835

DATE OF FINAL PASSAGE DEC 16 2016

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE A 20-YEAR FLAT RATE LEASE AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND OTAY TERMINAL-CALLE FORTUNADA, LLC, FOR THE OCCUPANCY AND OPERATION OF A VEHICLE PARKING LOT LOCATED AT THE SOUTHEAST END OF THE MONTGOMERY-GIBBS EXECUTIVE AIRPORT IN SAN DIEGO.

WHEREAS, since 1994, Otay Terminal-Calle Fortunada, LLC and its predecessors (Calle Fortunada) have leased and maintained a vehicle parking lot located on property situated at the southeast end of the Montgomery-Gibbs Executive Airport (Airport), comprised of 63,157 square feet (the Property), from the City of San Diego (City); and

WHEREAS, the current lease between City and Calle Fortunada has been on legal holdover status since June 2014; and

WHEREAS, Calle Fortunada has requested a new 20-year lease (New Lease); and

WHEREAS, Airport staff believes that it is mutually beneficial for City to enter into the New Lease with Calle Fortunada because (i) said use is the highest and only real economically-feasible use of the Property due to its location on the Airport because the Property is essentially landlocked due to its location between mitigation land located on the Airport and adjacent private property owned by Calle Fortunada, and (ii) because a New Lease will provide sustained revenue to the Airport Enterprise Fund which will contribute to the Airport's requirement to remain self-sustaining; and

WHEREAS, due to the landlocked nature of the Property, Airport staff affirms that a Request For Proposal for the Property would not benefit City, so, in accordance with City

Council Policy 700-41, staff moved forward with exclusive negotiations with Calle Fortunada; and

WHEREAS, the market value of the Property, as appraised by an independent fee appraiser, is $1,830,000; NOW, THEREFORE,

BE IT RESOLVED, that the Mayor, or his designee, is authorized and directed to execute the new 20-Year Flat Rate Lease Agreement between the City of San Diego and Otay Terminal-Calle Fortunada, LLC, the terms and conditions of which are more fully set forth in Document No. RR-310835, which is on file with the City Clerk.

APPROVED: JAN I. GOLDSMITH, City Attorney

By _____ for
Debra J. Bevier
Deputy City Attorney

DJB:mcm
October 28, 2016
December 2, 2016 Cor. Copy
Or.Dept: Real Estate Assets Dept.
Doc. No.: 1381789_2

(R-2017-221)
Cor. Copy

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of DEC 06 2016.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: 12/14/16
(date)

_____
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

_____
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on DEC 06 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
District 3 - (Vacant)	☐	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☐	☐	☒	☐
Marti Emerald	☒	☐	☐	☐

Date of final passage DEC 16 2016.

(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 Linda Irwin, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 310835

Passed by the Council of The City of San Diego on December 6, 2016, by the following vote:

YEAS:	**LIGHTNER, ZAPF, COLE, KERSEY, CATE, SHERMAN, EMERALD.**
NAYS:	**NONE.**
NOT PRESENT:	**ALVAREZ.**
RECUSED:	**NONE.**
VACANT:	**DISTRICT 3**

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: **Jeannette I. Santos**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. **R-310835**, approved on **December 14, 2016**. The date of final passage is **December 16, 2016**.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: _____, Deputy