

STAFF REPORT*CITY OF OCEANSIDE*

DATE: October 8, 2008

TO: Honorable Mayor and City Councilmembers

FROM: Public Works Department

SUBJECT: **APPROVAL OF LEASE AND OPERATING AGREEMENTS WITH AIRPORT PROPERTY VENTURES FOR THE DEVELOPMENT, DESIGN, CONSTRUCTION AND OPERATION OF FACILITIES AT OCEANSIDE MUNICIPAL AIRPORT**

SYNOPSIS

Staff recommends that the City Council approve a 50-year lease agreement and a 50-year operating agreement with Airport Property Ventures of Los Angeles for the development, design, construction and operation of facilities at Oceanside Municipal Airport; and authorize the City Manager to execute the agreements upon completion of a maximum 90-day due diligence period and receipt of all supporting documents.

BACKGROUND

The City Council directed staff to develop an alternate development strategy for the Oceanside Municipal Airport by soliciting proposals from qualified firms, individuals, partnerships, etc., who would be interested in developing the airport and taking on the responsibility for the design, construction and operation of facility improvements at the airport through a Request for Proposals (RFP) process. At the completion of the RFP process City Council authorized staff to negotiate the terms and conditions of the lease and operating agreements with Airport Property Ventures (APV) for the development, design, construction and operation of facilities at Oceanside Municipal Airport.

ANALYSIS

Staff and APV have completed negotiations on the terms and conditions of the lease and operating agreements to ensure that both agreements meet the conditions of the RFP and the APV proposal previously approved by Council. Concurrently with these negotiations APV completed their preliminary document and airport site review as requested in their June 3, 2008, letter. While there are no unresolved issues, both parties agree an additional due diligence period of a maximum of 90 days is warranted to review, establish and agree to the following prior to executing the agreement:

- Produce and approve a Property Survey, including meets and bounds, to establish the leasehold and operating areas.
- Title report and all underlying documents.
- Physical inspection of the operating area to establish current condition.
- Physical inspection of all transferring items within the leasehold.
- Phase 1 Environmental Report on the entire airport.
- Phase 2 Environmental Report on the area around the fuel tanks.
- Review and approval of the Property Disclosure Report.
- Review Federal Aviation Administration (FAA) and Caltrans safety inspections for status of compliance.
- Review all airport grants (FAA, State, etc.) for status of compliance.
- Review any Fire Department inspection reports for status of compliance.
- Last two years of the airport's detailed Profit and Loss and General Ledger statements.
- Rent roll.

The primary gist of the additional due diligence period is to provide a surveyed leasehold with sufficient documentation that the City is delivering the leasehold free and clear of any claims and other encumbrances and that both parties agree to the current condition of the airport and what work is necessary to bring the operational area of the airport into FAA and prior City settlement agreement compliance. The actual completion of any necessary operational area work will not delay execution of the agreement.

Lease Agreement

The key points of the lease agreement are:

Term: 50 years plus two 10-year options. This is greater than the RFP requested but consistent with the approved proposal.

Revenue: A minimum guaranteed yearly base rent plus 40 percent of all net income generated above the base rent. The base rent will cover the State and General Fund loans as required by the RFP and the percentage of rent is greater than required by the RFP.

Project Development Plan: APV will build out the airport according to the Master Plan adjusted for market demand. They will undertake a community-based planning process to ensure that the architectural design is in keeping with the community's expectations. APV will tailor their development architectural style to what the City wants. The south side of the airport will be completed first and will take approximately three years. South side development and the lease and operating agreement are not dependant upon the availability of the north side of the airport for development. Development of the north side

is subject to the City's ability to provide the north side free and clear of any claims and other encumbrances. When developed, the north side will go through the same community developmental process as the south side. The Project Development Plans meet the development conditions set forth in the RFP.

Financial: APV will be responsible for all leasehold development and maintenance cost with no City financial participation. This is consistent with the RFP.

Miscellaneous: All conditions contained in the settlement agreement between the Citizens for a Better Oceanside and the City plus City operational restrictions and the "Good Neighbor Policy" will be enforced. APV will manage the leasehold and all contracts with third parties including tenants, vendors, suppliers and contractors plus provide all accounting and financial services connected with airport revenue collection and expense payments and keep all records and accounts in accordance with general accepted accounting principles. They will provide customary general aviation airport services and will include the City in the complaint resolution process. Generally the complaint process will be modeled on the current system which uses the Airport Sub-Committee, Transportation Commission and finally the Council as the appeal process.

Operating Agreement

FAA grant assurances require that the City maintain responsibility for the maintenance of the airside assets (runways, ramps, taxiways, lighting, etc). APV will act as the City's "Contractor" for the day-to-day maintenance of the airside assets through an operating agreement that will run concurrently with the lease agreement.

Airside maintenance will be treated as an expense under the lease agreement. The City will be required to fund the replacement cost of the airside assets. APV will provide the administrative support necessary to request FAA and State grants to fund replacement or required improvements and for the City to participate in the FAA asphalt management grant program.

FISCAL IMPACT

The State loan requires a yearly payment for the next 11 years. The General Fund loan of \$450,000 payback would be at the discretion of the City. The minimum base rent, 40 percent of net rent and the State loan payments and General Fund loan repayments will produce a net financial benefit to the City of approximately \$11,300,000 for the first 25 years of the agreement.

INSURANCE REQUIREMENTS

The City's standard insurance requirements for the leasehold will be provided. The City will provide the necessary insurance for the operating area.

COMMISSION OR COMMITTEE REPORT

The Transportation Committee did not review the final agreements..

CITY ATTORNEY ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council approve a 50-year lease agreement and a 50-year operating agreement with Airport Property Ventures of Los Angeles for the development, design, construction and operation of facilities at Oceanside Municipal Airport; and authorize the City Manager to execute the agreements upon completion of a maximum 90-day due diligence period and receipt of all supporting documents.

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LEASE AGREEMENT

By and Between

The City of Oceanside, California

and

Airport Property Ventures, L.L.C.

October 1, 2008

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LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is entered into this ____ day of _____, 2008, by and between the City of Oceanside, California, a municipal corporation ("Landlord") and Airport Property Ventures, LLC, a California limited liability company ("Tenant").

WHEREAS, Landlord is the owner and operator of the Oceanside Municipal Airport ("Airport"), which is located in the City of Oceanside, County of San Diego, State of California, and also described on Exhibit "A" (Legal Description of Airport), which is attached and incorporated by this reference;

WHEREAS, Landlord wishes to enter into a separate agreement ("Operating Agreement," which is attached to this Lease as Exhibit "B" (Oceanside Airport Operating Agreement) and incorporated by this reference with Tenant for the long-term operation, management and maintenance of the movement areas at the Airport ("Airport Movement Areas"), as depicted on Exhibit "A-1" (Airport Movement Areas), which is attached and incorporated by this reference; and

WHEREAS, Landlord wishes to enter into this Lease to enable Tenant to: (1) manage and maintain existing Airport facilities ("Existing Improvements"), as depicted on Exhibit "A-2" (Existing Improvements), which is attached and incorporated by this reference; and (2) develop and construct new aviation, aviation-related and non-aviation facilities ("New Improvements"), as described in Exhibit "A-3" (Development Program and Timeline), which is attached and incorporated by this reference, on areas of the Airport other than the Airport Movement Areas, to be known as the "Premises," as depicted on Exhibit "A-4" (Premises), which is attached and incorporated by this reference.

NOW, THEREFORE, for and in consideration of the agreements, covenants and conditions herein, receipt of which is hereby acknowledged, Landlord and Tenant agree as follows:

1.0 DEFINITIONS

The following words, terms and phrases, whenever used in this Lease, shall have the meaning and significance attached to them in this section, unless expressly provided otherwise.

- 1.1 "Airport" shall mean the Oceanside Municipal Airport, located in the City of Oceanside, County of San Diego, State of California.
- 1.2 "Airport Layout Plan" shall mean the plan approved by the Federal Aviation Administration ("FAA") showing the layout of the physical areas of the Airport.
- 1.3 "Caltrans" shall mean the California Department of Transportation, Division of Aeronautics.
- 1.4 "City" shall mean the City of Oceanside, California, a municipal corporation.

- 1.5 "CC&Rs" shall mean the Covenants, Conditions and Restrictions developed by Tenant and approved by the Landlord for Sublessees, which will include, but not be limited to, specific guidelines for use of the Premises.
- 1.6 "Debt Service" shall mean the Tenant's payment of principal and interest, on a monthly basis or otherwise, to any individual or entity for construction and/or permanent financing for alterations and/or maintenance to Existing Improvements and/or construction of New Improvements.
- 1.7 "Existing Improvements" shall mean all of the improvements existing on the Premises as of the Commencement Date of this Lease (see Paragraph 2.1, *infra*) and as shown on Exhibit "A-2" (Existing Improvements).
- 1.8 "FAA" shall mean the Federal Aviation Administration created by the Federal Aviation Act of 1958, as amended and recodified, or any successor agency thereto.
- 1.9 "Fuel Income" shall mean the amount collected by Tenant from the sale of fuel on the Airport, less the cost of fuel purchases incurred by the Tenant in connection therewith.
- 1.10 "Hazardous Materials" shall mean "Hazardous Materials" as defined in Paragraph 21.1 of this Lease.
- 1.11 "Improvements" shall mean the Existing Improvements and New Improvements together, as defined herein.
- 1.12 "Invested Capital" shall mean the expenses of a capital nature associated with the improvements made by the Tenant to either Existing Airfield Improvements or New Airfield Improvements.
- 1.13 "Lease Commencement Date" shall mean the date set forth in Paragraph 2.1, *infra*.
- 1.14 "Lease Year" shall be determined as follows: Lease Year 1 shall be the period beginning with the Lease Commencement Date and ending twelve (12) consecutive months thereafter. The second and each subsequent Lease Year shall be the consecutive twelve (12) month period following the end of the prior Lease Year.
- 1.15 "New Improvements" shall mean any improvements of any type and use constructed by, subleased by, and/or owned by Tenant in accordance with the terms and conditions of this Lease.
- 1.16 "North Side" shall mean the portion of the Airport depicted as Parcel 2 and shown on Exhibit "A" (Legal Description of Airport).
- 1.17 "Participating Parties" or "Parties" shall mean Landlord as lessor and Tenant as lessee to a participating leasing arrangement for the sharing of Net Revenues as consideration for the management of and upgrades to the Existing

Improvements and the development and management of New Improvements on the Premises.

- 1.18 "Premises" shall mean that area depicted on Exhibit "A-4" (Premises). Final legal descriptions of the Premises are attached as Exhibit "C" (Memorandum of Lease), and incorporated by this reference.
- 1.19 "Project Cost" shall mean all costs incurred by Tenant in constructing, owning, leasing, maintaining, upgrading and/or managing the Airport, including the Existing and New Improvements.
- 1.20 "South Side" shall mean the portion of the Airport depicted as Parcel 1 and shown on Exhibit "A" (Legal Description of Airport).
- 1.21 "Sublease" shall mean the documents signed by a Sublessee for the leasing of leasehold land or space in the Existing Improvements and/or New Improvements. Landlord retains the right to approve the standard form of such documents.
- 1.22 "Sublessee" shall mean any business, organization or individual who leases land, hangars, office, retail and/or warehouse space for a valid, legal commercial activity at the Airport.
- 1.23 "Tenant" shall mean Airport Property Ventures, LLC, a limited liability company authorized to do business in the State of California, entering into this Lease as the operator and developer of the Airport.
- 1.24 "Unavoidable Delays" shall mean delays due to strikes, lockouts, litigation stay orders acts of God, inability to obtain labor or materials, governmental acts or restrictions, enemy action, civil commotion, fire, terrorism, acts of war, unavoidable casualties or any other causes beyond the reasonable control of Tenant and/or Landlord.

2.0 PREMISES AND TERM

- 2.1 Lease of Premises. Landlord hereby leases unto Tenant the Premises, which are more particularly described in Exhibit "A-4" attached hereto and by this reference made a part of this Agreement and any Existing Improvements thereon.
- 2.2 Contingent Agreement to Lease North Side. Subject to prior approval of the FAA (as described in Section 25.0 of this Lease Agreement), and at such time, if any, as Landlord clears all claims and encumbrances from title to the North Side of the Airport and to the extent permitted under that certain "Settlement Agreement and Limited Mutual Release," effective June 2, 1999, (the "Deutsch Settlement Agreement") entered into by and between the City and the Deutsch Company and Deutsch Engineered Connecting Devices (collectively referred to as "Deutsch"), Landlord agrees to amend this Lease Agreement to add the North Side of the Airport to the Premises. Tenant understands and agrees that Landlord shall have no obligation to add the North Side to the leased Premises in the event that Deutsch or its successors in interest successfully exercise their

repurchase rights to the North Side under the Deutsch Settlement Agreement. Tenant further understands and agrees that Landlord's agreement to add the North Side to the leased Premises is contingent upon prior approval of the FAA, as described in Section 25.0 of this Lease Agreement.

- 2.3 Lease Term. The term of this Lease ("Term") shall be for a period of fifty (50) years and may include two (2) separate options to extend for an additional period of ten (10) years each in accordance with Paragraph 2.7.

The Term shall commence upon the date the Tenant is granted full possession of and accepts the Premises (the "Lease Commencement Date"). The Term shall expire at the end of the time period provided herein, including any permitted time extension ("Lease Expiration Date"), unless sooner terminated pursuant to the terms of this Lease.

- 2.4 Inspection and Feasibility Period.

2.4.1 Right of Entry. Landlord hereby consents to entry upon the Premises by Tenant or its officers, employees, contractors and agents for the purpose of conducting physical inspections and tests. Tenant shall have ninety (90) calendar days, measured from the date on which the City Council takes action approving the Lease ("Feasibility Period"), during which time Tenant shall complete its inspections, testing and feasibility studies of the Premises, including but not limited to, inspection and examination of soils, environmental factors, Hazardous Materials, if any, and archeological information relating to the Premises. During this same time (*i.e.*, the Feasibility Period), Tenant also shall complete its review and investigation of any zoning, map, permits, reports, engineering data, regulations, ordinances, and laws effecting the Premises. If Tenant alters the physical conditions of the Premises during the Feasibility Period, Tenant shall restore the Premises to the condition existing before Tenant's inspections or tests.

2.4.2 Physical Condition of the Premises. During the Feasibility Period, Tenant shall review and approve or disapprove the physical condition of the Premises. Landlord shall not cause the physical condition of the Premises to deteriorate or change after the date of the inspection, normal wear and tear excepted, without the prior written consent of Tenant. Tenant agrees that the Premises are being leased in its "as-is" and "where-is" condition, except as expressly provided for elsewhere herein.

2.4.3 Reports. Within ten (10) working days following the date that the City Council takes action approving this Lease, Landlord shall deliver to Tenant copies of the last two (2) years of the Airport's detailed profit and loss and general ledger statements, rent rolls, FAA and Caltrans safety inspection reports, and FAA and State grant documents. Landlord shall be responsible for procuring: (i) a title report and all underlying documents produced by Stewart Title Insurance Company; (ii) a Property Disclosure Report; (iii) a Phase 1 Environmental Report on the entire Premises; (iv) a Phase 2 Environmental Report on the area around the fuel tanks and any other area noted in the Phase 1 Environmental Report that requires further assessment; (v) other documents pertaining to the Premises that are

owned by or in the possession of Landlord; and (vi) a Phase 2 Environmental Report on those areas identified on the Phase 1 Environmental Report as areas of concern.

2.4.4 Tenant's Right to Terminate. If Tenant disapproves of the results of the inspection and review, Tenant may elect, prior to the last day of the Feasibility Period, to terminate this Lease by giving Landlord written notification prior to the last day of the Feasibility Period. If Tenant fails to properly notify Landlord of its intent to terminate this Lease, Tenant shall be deemed to be satisfied with the results of the inspection and shall be deemed to have waived the right to terminate this Lease pursuant to this provision.

2.4.5 Indemnification. Tenant agrees to defend, indemnify and hold Landlord harmless from all liabilities, costs and expenses resulting directly from Tenant's or its officers', employees', contractors' or agents' inspections and tests. Tenant agrees that its independent inspection of the Premises is its sole basis to determine the suitability of the Premises for its purposes and Tenant acknowledges that it is not relying on any representations by Landlord regarding suitability of the Premises, other than those representations made in Section 17, and by executing this Lease, Tenant acknowledges that it has made or will make its own independent inspection of the Premises.

2.4.6 Other Assurances. Whenever requested by the other Party, each Party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, releases, instruments of further assurance, approvals, consents and any other instrument or document as may be necessary, expedient or proper to complete the transaction contemplated by this Lease, and to do any other acts and to execute, acknowledge, and deliver any requested document to carry out the intent and purpose of this Lease.

2.5 Lease Memorandum. On or within one hundred twenty (120) days following the Lease Commencement Date, Landlord and Tenant agree to execute a memorandum of this Lease: (i) evidencing the existence of this Lease; (ii) identifying the owner of the Existing Improvements; (iii) identifying the New Improvements to be constructed by Tenant; (iv) memorializing the rights of Tenant to enjoy full operating and management control of the Premises consistent with applicable laws; and (v) specifying the Lease Commencement Date and Lease Expiration Date.

2.6 Title Insurance. On or within thirty (30) days following the Lease Commencement Date, Tenant will be entitled to receive at Landlord's cost, a CLTA leasehold and policy of title insurance issued by a title company selected by Tenant, with liability in an amount reasonably determined by Tenant and insuring Tenant's interests hereunder. Such leasehold policy will be subject only to exceptions permitted by Tenant. Tenant shall have the option of obtaining an ALTA policy at Tenant's sole cost and expense.

- 2.7 Tenant's Extension Rights. Pursuant to this paragraph, Tenant shall have two (2) separate options to extend the Term of this Lease. If exercised, each option would extend the Term of this Lease for an additional period of ten (10) years ("Renewal Term"). If Tenant elects to exercise such option, then Tenant shall provide written notice thereof to Landlord at least ninety (90) days prior to the expiration of the current Term. If Tenant does not deliver such notice to Landlord, as provided herein, the Tenant shall be deemed to have elected to not exercise the option with respect to such Renewal Term and the Lease shall expire on the then-scheduled Lease Expiration Date. Upon the giving of such notice the Term of the Lease and the Lease Expiration Date shall be automatically extended for ten (10) years, provided that there is no Event of Default by Tenant, as described in Paragraph 15.1, at the time such notice is given. During any Renewal Term . Tenant shall be subject to all of the provisions of this Lease, which shall continue in full force and effect.
- 2.8. Maximum Length of Term. Notwithstanding anything in this Lease to the contrary, in no event shall the Term of this Lease (including any extensions thereof) exceed seventy (70) years in the aggregate.
- 2.9 Holdover. Upon expiration or sooner termination of this Lease, Tenant shall surrender the Premises and Improvements to Landlord in as good, safe, and clean condition as practicable, reasonable wear and tear and acts of God excepted. The Lease shall terminate without further notice at the expiration of the Term. Any holding over by Tenant after expiration shall not constitute a renewal or extension, or give Tenant any rights in or to the Premises, except as expressly provided in the Lease.

3.0 TITLE TO IMPROVEMENTS

All Existing Improvements and New Improvements shall at all times, from the Lease Commencement Date until the Lease Expiration Date, including any Renewal Term, be and remain the property of, with title thereto being in the name of, Tenant for all purposes. Upon the expiration of the Term, title to any such Improvements shall vest in the name of the Landlord.

4.0. LEASE CONSIDERATION, MINIMUM ANNUAL RENT AND PERCENTAGE RENT

- 4.1 Minimum Annual Rent – Years 1-25. From and after the Lease Commencement Date, during each Lease Year 1 through 25 of the Term, Tenant shall pay to Landlord a Minimum Annual Rent ("Minimum Annual Rent"), in the amount set forth in Exhibit "D" (25-Year Minimum Rent Schedule), which is attached and incorporated by this reference. The Minimum Annual Rent for the first year of this Lease shall be paid in eleven (11) monthly installments of Nine Thousand and No/100 Dollars (\$9,000.00), commencing on the second full month of the Term of the Lease. For every Lease Year of the Term thereafter, the Minimum Annual Rent shall be paid in twelve (12) equal monthly installments. .
- 4.2 Minimum Annual Rent – Years 26-50. The Minimum Annual Rent in Years 26 through 50, and any Renewal Term thereafter, shall be adjusted ("CPI Adjustment") pursuant to this Paragraph 4.2.

4.2.1 As used in Paragraph 4.2, the following terms shall have the meanings set forth below:

4.2.1.1 Adjustment Date. The thirtieth (30th) anniversary of the Lease Commencement Date and each five (5) year anniversary thereafter during the Term, and any Renewal Term, shall be referred to as an "Adjustment Date."

4.2.1.2 Base Date. With respect to the first Adjustment Date, the Base Date shall mean and refer to the commencement of the twenty-sixth (26th) year of the Term. With respect to each Adjustment Date thereafter, the Base Date shall mean and refer to the immediately preceding Adjustment Date.

4.2.1.3 Rent Index. The Minimum Annual Rent amount payable by Tenant shall be adjusted in accordance with the change, if any, in the Consumer Price Index for all "All Urban Consumers" for San Diego California ("Rent Index"). If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of Landlord and Tenant. If the Parties cannot agree within sixty (60) days after demand in writing by either Party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor. Any reference in this Lease to "CPI" or "index" shall mean the index used in accordance with this Subparagraph.

4.2.2 Minimum Annual Rent Adjustment Calculation. The adjustment in Minimum Annual Rent effective on each Adjustment Date shall be calculated as follows: On each Adjustment Date, the Rent Index published for the semi-annual period prior to the Adjustment Date in question (the "Comparison Rent Index") shall be compared with the Index published for the semi-annual period prior to the applicable Base Date (the "Base Rent Index"), and the annual Minimum Annual Rent payable by Tenant from and after the Adjustment Date in question until the next Adjustment Date shall be equal to the Minimum Annual Rent payable for the Lease Year immediately preceding such Adjustment Date, multiplied by a fraction, the numerator of which is the Comparison Rent Index and the denominator of which is the Base Rent Index; provided, however, in no event shall the increase in the Minimum Annual Rent on any Adjustment Date be more than fifteen percent (15%) nor less than the Minimum Annual Rent payable for the Lease Year immediately preceding such Adjustment Date.

In the event the Rent Index is no longer published at any time during the Term, Landlord and Tenant shall reasonably select another index of

similar nature showing changes in the cost of living to be used to calculate the increase in the Minimum Annual Rent.

4.2.3 Tenant shall determine any adjustments to be made to the Minimum Annual Rent pursuant to Subparagraph 4.2.2 and shall provide Landlord with a written copy of such determination no less than thirty (30) days prior to the applicable Adjustment Date. Tenant shall be responsible for payment to Landlord of any increase in Base Rent retroactive to the applicable Adjustment Date, regardless of when the final CPI Adjustment is determined.

4.3 Percentage Rent. In addition to the Minimum Annual Rent and all other sums due hereunder, and as part of the total rent to be paid, Tenant shall pay to Landlord, annually, as percentage rent ("Percentage Rent") for each Lease Year or fractional period thereof, a sum of Net Revenues (based on the calculation and distribution priority set forth in Lease Paragraph 4.5) generated and received from the operation of the Premises by Tenant for each Lease Year. Each Lease Year shall be considered as an independent accounting period for the purpose of computing the amount of Percentage Rent, if any. The amount of Net Revenue of any preceding Lease Year shall not be carried over into any other Lease Year. The Percentage Rent shall be determined and paid annually within ninety (90) days after the last day of each Lease Year during the Term of this Lease with respect to Net Revenue received during the preceding Lease Year. During the Term of this Lease, Tenant shall also submit annually, and within ninety (90) days after the last day of each Lease Year, a statement of its annual Net Revenue from the operation of the Premises. This statement shall be certified by an independent certified public accountant.

4.4 Certain Definitions. The following words, terms and phrases, whenever used in this Lease shall have the meaning and significance attached to them in this paragraph, unless expressly provided otherwise:

4.4.1 Rent. Minimum Annual Rent, together with such Percentage Rent, shall be collectively referred to in this Lease as "Rent".

4.4.2 Lease Gross Revenues. As used in this Lease, the term "Lease Gross Revenues" shall mean all revenues and income of any nature derived from Tenant's ownership, use or operation of the Premises, as well as all revenues derived from the operation of the Airport Movement Areas ("Operating Agreement Gross Revenues"), including rentals and sub-rentals of portions of the Premises and the Airport Movement Areas, and any increases thereto pursuant to the terms of the applicable lease or sub-lease agreement. However, in no event shall any of the following be included in "Lease Gross Revenues": (i) Fuel Income; (ii) Refinancing Proceeds; or (iii) any sales taxes, excise taxes, gross receipt taxes or similar charges.

4.4.3 Operating Expenses. As used in this Lease, the term "Operating Expenses" shall mean all reasonable and necessary operating and other costs incurred or expended by Tenant in connection with or in any manner relating to the Premises, as well as all reasonable and necessary

expenses incurred in connection with the operation, management and maintenance of the Airport Movement Areas, including (without limitation) the use, operation, repair and maintenance thereof.

Without limiting the foregoing, "Operating Expenses" shall be reasonable and as required and customary for airports in the metropolitan San Diego area of similar size and usage, and shall be deemed to generally include the following expenses, which shall be calculated in accordance with Generally Accepted Accounting Principles ("GAAP"): (i) the Minimum Annual Rent payable by Tenant under this Lease; (ii) an annual management fee equal to five percent (5%) of Lease Gross Revenues payable to Tenant; (iii) an accrued but unpaid annual five percent (5%) management fee payable to the Tenant; (iv) the cost of all operating equipment, operating supplies, inventories, wages, salaries and employee fringe benefits, advertising and promotional expenses, the cost of personnel training programs, utility and energy costs, operating licenses and permits, security costs, and grounds and landscaping maintenance costs; (v) all expenditures made for maintenance and repairs to keep the Premises and the Airport Movement Areas in good condition and repair; (vi) premiums and charges on all insurance coverages specified in Section 9 of this Lease and in Section 9 of the Operating Agreement; (vii) all impositions and other property taxes and assessments levied on or attributable to the Premises and the Airport Movement Areas; (viii) audit, legal and other professional or special fees reasonably and necessarily incurred in the management and operation of the Premises and the Airport Movement Areas; (ix) rentals payable under equipment leases of any fixtures, furnishings and equipment; (x) maintenance and repair reserves of two percent (2%) of the Lease Gross Revenues. Operating Expenses shall not include payments for services made to affiliates of Tenant that are not commercially reasonable, or Debt Service or Capital Expenditures as such terms are defined in GAAP.

4.4.4 Net Revenue. As used in this Lease, the term "Net Revenue" shall mean, for any Lease Year during the Term, the amount of Lease Gross Revenues collected during such Lease Year minus the amount of Operating Expenses paid during such Lease Year.

4.5 Distribution of Net Revenue. The distribution of Net Revenue, if any, for each Lease Year, or part thereof, shall be determined by Tenant (subject to Landlord's right to conduct an audit at Landlord's sole cost and expense) and distributed by Tenant no later than ninety (90) days after the end of the Lease Year in the following order of priority:

- (a) First, to pay regularly scheduled Debt Service (interest and principal) on any Leasehold Mortgage;
- (b) Second, to Tenant until it has received a ten percent (10%) annual return on any outstanding amount of Tenant's Invested Capital;
- (c) Third, to Tenant in an amount equal to such amount as is necessary to repay all of Tenant's outstanding Invested Capital based on a 20-year amortization schedule;
- (d) Fourth, to fund any interest, maintenance and/or operating reserves required to be maintained under any Leasehold Mortgage. Expenditures from such reserves shall not be considered an operating expense or a capital loss; and
- (e) Thereafter, the remainder of net revenue, including those in this Paragraph 4.5, shall be paid: (i) forty (40%) to Landlord, and (ii) sixty percent (60%) to Tenant.

4.6 Fueling Requirements. The Parties agree that Tenant, and/or its designees, if any, shall be permitted to provide fueling services on the Premises. However, the Parties further agree that Tenant shall have no obligation to purchase any specific quantity of fuel during the Term of the Lease.

4.6.1 Fuel Flowage Fee. Landlord's share of the fuel flowage fee for the first 47,000 annual gallons of delivered fuel is included in the Minimum Annual Rent for each Lease Year of the Term and any Renewal Term thereafter. In the event that the number of delivered gallons of fuel in any given Lease Year exceeds 47,000 annual gallons, Tenant shall pay to Landlord, on an annual basis, a Fuel Flowage Fee per delivered gallon of fuel over the base of 47,000 annual delivered gallons for that Lease Year. Each such annual payment shall be due and payable within ninety (90) days of the end of each Lease Year. Tenant also shall submit annually, and within ninety (90) days at the end of each Lease Year and during the Term of this Lease, a statement of its fuel purchase invoices. Tenant agrees to keep accurate records of its fuel purchases. In addition, Landlord or its agent shall have the right, at Landlord's expense and at reasonable times upon prior notice to Tenant, to examine the books and records of Tenant with respect thereto.

4.6.2 Fuel Flowage Fee Adjustment. During each Lease Year of the Term and any Renewal Term thereafter, Tenant shall be required to pay to Landlord on an annual basis a fuel flowage fee per delivered gallon of fuel for all gallons in excess of 47,000 annual gallons. The Fuel Flowage Fee for Year 1 of the Term shall be seven cents (\$0.07) per delivered gallon of fuel over the base of 47,000 annual delivered gallons. The Fuel Flowage Fee for every subsequent Lease Year of the Term and any Renewal Term thereafter shall be adjusted pursuant to this Subparagraph 4.6.2 "CPI Adjustment"). As used in Subparagraph 4.6.2, the following terms shall have the meanings set forth below:

- 4.6.2.1 Adjustment Date. The sixth (6th) anniversary of the Lease Commencement Date and each five (5) year anniversary thereafter during the Term, and any Renewal Term, shall be referred to herein as an "Adjustment Date."
- 4.6.2.2 Base Date. With respect to the first Adjustment Date, the Base Date shall mean and refer to Year 1 of the Lease Term. With respect to each Adjustment Date thereafter, the Base Date shall mean and refer to the immediately preceding Adjustment Date.
- 4.6.2.3 Fuel Index. The Fuel Flowage Fee payable by Tenant shall be adjusted in accordance with the change, if any, in the Consumer Price Index for "All Urban Consumers" for San Diego California ("Fuel Index"). If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of Landlord and Tenant. If the Parties cannot agree with sixty (60) days after demand in writing by either Party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor. Any reference in this Lease to "CPI" or "index" shall mean the index used in accordance with this Subparagraph.

- 4.6.3 The Fuel Flowage Fee Adjustment Calculation. The adjustment in Fuel Flowage Fee effective on each Adjustment Date shall be calculated as follows: On each Adjustment Date, the Fuel Index calculated for the semi-annual period prior to the Adjustment Date in question (the "Comparison Fuel Index") shall be compared with the Fuel Index for the semi-annual period prior to the applicable Base Date (the "Base Fuel Index"), and the annual Fuel Flowage Fee payable by Tenant from and after the Adjustment Date in question until the next Adjustment Date shall be equal to the Fuel Flowage Fee payable for the Lease Year immediately preceding such Adjustment Date, multiplied by a fraction, the numerator of which is the Comparison Fuel Index and the denominator of which is the Base Fuel Index.

- 4.7 Existing Agreements. Landlord hereby represents and warrants that Exhibit "E" (Existing Agreements), which is attached and incorporated by this reference, sets forth certain licenses, contracts and other agreements affecting the Premises as of the Lease Commencement Date (collectively, the "Existing Agreements"). Exhibit "E" and includes information relating to: (i) the identity of the parties to each Existing Agreement; (ii) any and all amendments and modifications to each Existing Agreement; (iii) a description of the portion of the Premises affected thereby; (iv) the date, commencement date, and expiration date (including option periods) of each Existing Agreement; (v) the current monthly rental and other charges payable under each such Existing Agreement; and (vi) the amount of all security deposits and prepaid amounts paid by each party thereto.

- 4.8 Notification Letter. Concurrently upon the Lease Commencement Date, Landlord shall assign all of its right, title and interest under each such Existing Agreement, including without limitation any security deposits, advance rents or other similar deposits held by Landlord thereunder to Tenant. In addition, Landlord shall deliver a letter to each of the parties under the Existing Agreement ("Notification Letter") duly executed by Landlord and dated as of the Lease Commencement Date, notifying each such party that: (i) the Premises has been leased to Tenant; (ii) all of Landlord's right, title and interest in and to the Existing Agreement has been assigned to Tenant; and (iii) commencing immediately, all rent and other payments and any notices under the Existing Agreement are to be paid and sent directly to Tenant.
- 4.9 Estoppel Certificate. Landlord hereby covenants and agrees to use commercially reasonable efforts to provide to Tenant on or before the Lease Commencement Date an executed estoppel certificate ("Estoppel Certificate") from each party to the Existing Agreements, which Estoppel Certificates shall be dated not more than thirty (30) days prior to the Lease Commencement Date and shall be substantially in the form of and upon the terms contained in Exhibit "F" (Form of Estoppel Certificate), which is attached and incorporated by this reference.
- 4.10 New Agreements. Landlord is expressly prohibited from entering into any new agreements, leases, contracts or other arrangements with third parties with respect to the Premises during the Term of this Lease, including any Renewal Term. This prohibition excludes any agreements required by the FAA, or agreements relating to the North Side of the Airport. As to the North Side of the Airport, Landlord hereby represents that the North Side is subject to the "Settlement Agreement and Limited Mutual Release," effective June 2, 1999, entered into by and between the City and the Deutsch Company and Deutsch Engineered Connecting Devices. By virtue of this provision, Tenant acknowledges receipt of this agreement, and its awareness of the agreement's terms and conditions.
- 4.11 Currency. All sums payable to Landlord by Tenant under this Lease shall be paid to Landlord in legal tender of the United States, at the address to which notices to Landlord are to be given or to such other party or such other address as Landlord may designate in writing. Rent shall be payable without demand. Landlord's acceptance of rent after it shall have become due and payable shall not excuse a delay upon any subsequent occasion or constitute a waiver of any rights. In the event Tenant in good faith claims that Landlord owes it any obligation, then Tenant may withhold from the payment of Rent the amount of such obligation or the amount necessary to fulfill such obligation ("Offset Amount").
- 4.12 Claims. Tenant shall have the right to contest the amount or validity of any imposition, lien, attachment, levy, encumbrance, charge or claim (collectively "Claims") as to the Premises or any leased property by appropriate legal proceedings, conducted in good faith and with due diligence, provided that: (i) the foregoing shall in no way be construed as relieving, modifying or extending Tenant's obligation to pay any Claims as finally determined; (ii) such contest shall not cause Landlord or Tenant to be in default under any mortgage or deed

of trust encumbering the Premises or any interest therein or result in or reasonably be expected to result in a lien attaching to the Premises; and (iii) no part of the Premises nor any rent therefrom shall be in any immediate danger of sale, forfeiture, attachment or loss.

- 4.13 Recordkeeping. Tenant shall be required to maintain separate financial accounting records to properly record and categorize revenues and expenses incurred in connection with this Lease in a manner that: (i) is consistent with generally accepted accounting principles; (ii) provides sufficient detail, so as to assure the Landlord of the safeguarding of the assets being managed; and, (iii) is in accordance with the standards required by the FAA. Landlord or its agent shall have the right, at Landlord's expense and at reasonable times upon prior notice to Tenant, to examine the books and records of Tenant with respect thereto.

5.0 IMPROVEMENTS/ALTERATIONS/PERSONAL PROPERTY/ SURRENDER

- 5.1 New Improvements. It is the intent of the Tenant to development New Improvements on the Premises in phases. The portions of the Premises that comprise the South Side and North Side are shown on Exhibit "A-4" (Premises).

5.1.1 South Side New Improvements. Tenant shall, subject to any limitations imposed by the FAA, City, Caltrans and/or any other applicable governmental agency, undertake those South Side Improvements, upgrades and other activities with respect to the Premises, as described on Exhibit "A-3" (Development Program and Timeline).

5.1.2 North Side New Improvements. If and when the North Side of the Airport is added to the Premises, pursuant to Section 2.2 of this Lease, and subject to any limitations imposed by the FAA, Caltrans, City, any other applicable governmental agency, or a court of competent jurisdiction, Tenant shall also undertake North Side Improvements, upgrades and other activities with respect to the Premises, as described on Exhibit "A-3" (Development Program and Timeline).

5.1.2.1 The Parties hereby understand and agree that Tenant's right to develop and operate the North Side of the Airport under this Lease is contingent upon and subject to the addition of the North Side to the Premises pursuant to Section 2.2 of this Lease. The Parties further agree that, in the event the North Side of the Airport is not added to the Premises and Landlord does not deliver said portion of the Airport to Tenant, the Lease shall remain valid and enforceable as to the remaining portions of the Premises.

5.1.3 Airport Movement Areas. Notwithstanding anything contained herein to the contrary, in no event shall Tenant be deemed to have any obligation in this Lease with respect to the runways, tarmacs, taxiways, towers, lights and other movement-related areas at the Airport, the responsibility for which has been delegated from City to Tenant pursuant to a separate

Operating Agreement (see Exhibit "B" (Oceanside Airport Operating Agreement)).

- 5.2 Community Planning Process. Tenant shall undertake a community-based planning process to ensure that the architectural design of new and/or renovated buildings is in keeping with the community's expectations. Tenant will use its best efforts to formulate a design plan for Airport buildings that is generally consistent with the community's desires, provided these are reasonable, financially feasible, constructible and functional; and provided further that such plans are in accordance with the City's development approvals process.
- 5.3 Construction. The terms and provisions of Paragraph 5.3 shall apply with respect only to any of the work to be undertaken by Tenant pursuant to Paragraph 5.1.
- 5.3.1 Generally. Landlord hereby grants to Tenant the right and power to undertake the renovation and/or construction relating to the aviation and non-aviation uses on the Premises. Tenant agrees to construct Improvements in accordance with the terms of Paragraph 5.3 and, once commenced, to use reasonable efforts to cause the completion of Improvements.
- 5.3.2 Plans and Specifications. If required by any governmental agency, Tenant shall prepare working drawings and specifications ("Plans"), submit them to the appropriate governmental agencies for approval, and deliver to Landlord one complete set of the drawings and specifications as approved by such governmental agencies.
- 5.3.3 Notice of Intent to Construct. Tenant shall notify Landlord of Tenant's intention to commence work on Improvements at least thirty (30) days before the commencement of any such work or delivery of any materials.
- 5.3.4 Completion of Construction. Once any work on the Premises is begun, Tenant shall with reasonable diligence complete all construction. All work shall substantially comply with all legal requirements, Permitted Uses and Insurance Requirements. Any work performed by Tenant shall be deemed to have satisfied the foregoing if: (i) such work, exclusive of interior tenant improvements, has been approved in writing by the applicable governmental agencies with jurisdiction over same; and (ii) as to the interior tenant improvements, a final Certificate of Occupancy entitling Tenant and/or Sublessees to occupy and use the Improvements has been duly issued by applicable governmental agencies.
- 5.3.5 Notice of Completion. On completion of Improvements, Tenant shall timely file, or cause to be filed, a notice of completion with Landlord.
- 5.3.6 Development Management Fee. Tenant shall be entitled to be paid a project management fee in the amount of five percent (5%) of the total development and/or improvement costs of any alteration to or construction of Improvements. Such fee shall be paid on a current basis

as an expense of such construction or alteration and shall be included as a Capital Expenditure of the Improvement.

5.3.7 Ownership of Improvements. All Improvements shall remain the sole and separate property of Tenant until the expiration or earlier termination of this Lease pursuant to the provisions hereof, at which time the same shall become the property of Landlord. Additionally, Landlord shall be entitled to any maintenance and repair reserves as provided in Subparagraph 4.4.3 that remain unspent as to expiration or earlier termination of this Lease.

5.4 Alterations. Tenant shall have the right, before or after any damage to or destruction of the Premises, at any time and from time to time during the Term of this Lease, to make such changes and alterations, structural or otherwise, to Improvements as Tenant shall deem necessary or desirable ("Alteration(s)"). Any such Alteration(s) shall be subject to the same terms and conditions as set forth in Paragraph 5.3, in addition to the terms and conditions of this Paragraph 5.4. Notwithstanding that Landlord holds a reversionary fee title to Improvements, all salvage in the event of any such demolition, removal or relocation shall belong to Tenant. Notwithstanding anything contained in this Lease to the contrary, Landlord acknowledges that Tenant shall have the right, at any time, to construct, demolish, alter or reconstruct tenant improvements in the interior of Improvements without regard to Subparagraph 5.3.3 of this Lease.

5.5 Personal Property. All Personal Property shall be and remain the property of Tenant, provided that Tenant shall be solely liable for and shall pay (when due) all costs, charges, payments or other sums due with regard to such Personal Property.

5.6 Mechanics Liens. Tenant shall not suffer or permit any mechanic's liens to be filed against the Premises or Improvements, nor against Tenant's leasehold interest in the Premises by reason of work, labor, services or materials supplied or claimed to have been supplied to Tenant.

5.7 Good Faith Development Processing. Landlord agrees that it will in good faith accept for processing, review and action all completed applications for rezoning, special permits, development permits, subdivision maps or other entitlements for use of the Premises in accordance with the Airport Layout Plan, all applicable laws and this Lease.

6.0 MAINTENANCE AND REPAIRS

The Parties hereto acknowledge that it is their intent that this Lease be fully "triple net," and all taxes, insurance and maintenance costs and expenses of any kind or nature in connection with the Premises or Improvements are entirely Tenant's obligation. Tenant shall keep or cause others to keep the Premises and Improvements in good, clean order and first-class condition, and will promptly make or cause others to make all necessary or appropriate repairs, replacements and renewals thereof, whether interior or exterior, or structural or non-structural, necessary to maintain the Premises and Improvements in good, clean order and condition, and in a manner that is reasonable, required and

customary for airports in the metropolitan San Diego area of similar size and usage, reasonable wear and tear excepted.

7.0 USE OF PREMISES

Prior to the Lease Commencement Date, the Premises have been operated by City as a portion of the Oceanside Municipal Airport. The Premises, together with the Airport Movement Areas and those portions of the Airport that are not being leased by Landlord to Tenant pursuant to this Lease, are operated on an integrated basis. Landlord and Tenant intend that the Premises shall continue to be operated as a municipal airport during the Term of this Lease in substantially the same manner as the Premises has been operated prior to the Lease Commencement Date, subject to the terms and provisions hereof. The Tenant has the right to develop the Premises for non-aviation purposes, including, but not limited to, possible commercial sponsorship and commercial advertising, subject to the approval of the Landlord. In addition, the use of the Airport for non-aviation purposes must at all times be in accordance with federal, state, and local law, and, in particular, FAA guidelines, advisory circulars, regulations and orders. Upon performance of the provisions and conditions contained in this Lease, Tenant will have the use of the Premises for the construction and operation of the Improvements and for other business activities directly related thereto.

8.0 LANDLORD AND TENANT RESPONSIBILITIES

8.1 Landlord Responsibilities. Notwithstanding anything contained in this Lease to the contrary, Landlord and Tenant acknowledge and agree that Landlord shall maintain sole responsibility for the provision of certain services ("Landlord Responsibilities") related to the operation of the Premises, the Airport Movement Areas, and those portions of the Airport that are not leased to Tenant pursuant to this Lease. Landlord shall be responsible for providing the following to and for the benefit of the Premises during the Term of this Lease:

8.1.1 Reporting. Landlord representatives shall report to the City Council and staff of the City of Oceanside from time to time as may be required with respect to all matters relating to the use and operation of the Airport.

8.1.2 FAA Grants, and Bonds and Government Financing. Landlord agrees to consider funding from the FAA during the entire Term of this Lease, as such funding is necessary and appropriate to improve and upgrade the Airport. Moreover, Landlord agrees to cooperate, to the extent required, to assist Tenant in securing bond financing and other types of applicable government financing for the Improvements. Tenant also agrees to assist the Landlord in the application for and administration of such funding. However, nothing contained in Subparagraph 8.1.2 shall require the Landlord to accept any FAA grants, bonds or other government financing; such acceptance shall be at the sole discretion of Landlord.

8.1.2.1 Sponsor Share. In the event Landlord agrees to accept FAA funding and such funding is provided for the benefit of the Airport as a whole, then Landlord shall be solely responsible for serving

as the sponsor of such funding and for the payment of the sponsor's share. In the event the funding received is for the sole benefit of the Premises, Tenant may elect, at its sole option, to pay the FAA sponsor's share on behalf of the Landlord. In the event either Landlord or Tenant funds the sponsor's share, such investment shall be considered Invested Capital and shall be repaid in accordance with Section 4 of the Lease.

- 8.1.3 Noise Procedures. Landlord shall support Tenant in the interface with the public or any public entity regarding all noise issues and shall be responsible for conducting public hearings on issues between the Tenant and the public and any public entity regarding noise abatement procedures.
- 8.1.4 Responsibility for Airport Movement Areas. Landlord shall be responsible for ensuring that the Airport Movement Areas is operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal, state and local agencies for maintenance and operation. Nothing in this section shall be construed to prohibit Landlord from contracting with Tenant or another third party for such operation and maintenance.
- 8.2 Tenant Responsibilities. Tenant shall be solely responsible for providing the following services to and for the benefit of the Premises during the Term of this Lease:
 - 8.2.1 Property Management. Tenant shall be responsible for all tenant-related services including leasing, management and retention of tenants at the Premises, including the collection of rent from such tenants;
 - 8.2.2 Marketing. Tenant shall market the Premises to prospective tenants and prospective Sublessees;
 - 8.2.3 Development. Tenant shall, subject to the availability of utilities and any limitations imposed by the FAA, Caltrans, City, and any other applicable governmental agency, undertake the development of Improvements, upgrades and other activities with respect to the Premises described as Exhibit "A-3" (Development Program and Timeline).
 - 8.2.4 Citizens for a Better Oceanside. Tenant shall comply with the requirements of the September 2003 Settlement Agreement with the Oceanside Citizens Against the Airport, as applicable.
- 8.3 Personnel. Tenant shall be responsible for the hiring, discharge, management, training and all other matters relating to personnel required to manage, maintain, develop and construct the Premises and the Improvements thereon pursuant to this Lease.
- 8.4 Tenant Obligation to Comply with Laws. Tenant shall at all times comply, and shall use commercially reasonable efforts to cause all Sublessees and users of the Premises to comply with all applicable laws, all deed restrictions affecting the

Premises, all regulations imposed by and all other matters relating to the FAA that affect the Premises, FAA grant assurances, and other rules or regulations imposed by governmental agencies with jurisdiction over the Airport.

- 8.5 Temporary Closure of Oceanside Airport. Landlord and Tenant acknowledge and agree that Landlord shall have the right to temporarily suspend operations at the Airport in the case of emergencies for so long as reasonably required to meet the emergency conditions, or as otherwise permitted or required by the FAA for up to five (5) calendar days each Lease Year. However, Landlord shall, except in the case of emergencies, give Tenant written notice of any such suspension of operations not less than thirty (30) days prior to the date of such suspension. Except in the case of emergencies, Landlord shall have no right to suspend operations or close the Oceanside Airport: (i) for more than two (2) times during any 30-day period; or (ii) for more than five (5) days in any Lease Year, without the prior written consent of Tenant, which consent shall not be unreasonably withheld.

9.0 INSURANCE/INDEMNIFICATION

- 9.1 Tenant Insurance Requirements. At all times during the Term, Tenant shall provide and maintain insurance, as an Operating Expense, on the Premises and any Improvements for the mutual benefit of Landlord and Tenant, under policies naming Landlord as an additional insured, in such amounts and kind as are reasonably satisfactory to Landlord. The Parties agree to execute an insurance addendum to this Lease prior to delivery to Tenant of the Premises, which addendum shall describe the specific types and amounts of insurance coverage to be provided for the first five (5) years of the Term of this Lease. The Parties agree that said coverage will include, at a minimum the following:
- 9.1.1 Casualty Insurance. Loss or damage by fire, and such other risks as may be included in the standard form of extended coverage insurance from time to time available, in an amount not less than one hundred percent (100%) of the then full insurable value of the Improvements ("Casualty Insurance").
- 9.1.1.1 Full Insurable Value. The term "Full Insurable Value" shall mean the actual replacement cost of the Improvements (excluding footings, foundation and excavation costs). Said "Full Insurable Value" shall be determined by Tenant's insurer. The amount of the Liability Insurance which is to be maintained pursuant to this Paragraph 9.2 shall be reviewed by Landlord and Tenant every five (5) years to consider whether the amount of the coverage shall be increased or decreased.
- 9.1.2 Airport Liability Insurance. A policy of airport liability insurance providing coverage for, among other things, blanket contractual liability, premises, products/completed operations, hangar keepers' liability coverage and personal injury coverage. However, in no event shall Tenant be required to maintain Liability Insurance under this Lease with respect to operations of the Airport.

- 9.1.3 Comprehensive Auto Liability Insurance. A policy of auto liability insurance endorsed for all owned, non-owned and hired vehicles with a combined single limit of at least One Million Dollars (\$1,000,000).
- 9.1.4 Workers' Compensation Insurance. A program of workers' compensation insurance in a n amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employers Liability covering all persons providing services on behalf of Tenant and all risks to such persons under this Operating Agreement.
- 9.1.5 Builder's Risk Insurance. Before commencement of any demolition or construction work, Tenant shall procure a policy of builder's "all risk" insurance including vandalism and malicious mischief coverage, in a form and with a company reasonably acceptable to Landlord, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees ("Builder's Risk Insurance"), said insurance to be maintained in force until completion and acceptance of the work.
- 9.2 Review of Insurance Requirements. The amount and type of insurance which is to be maintained pursuant to this Lease shall be reviewed by Landlord and Tenant every five (5) years to consider whether, in Landlord's reasonable discretion, the amount of the coverage shall be increased or decreased and whether the type of coverage should be modified.
- 9.3 Policy Provisions. All insurance required under this Lease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and licensed to do business in the State of California. Such insurance shall be provided by a company (or companies) having a general policyholder's rating in Best's Rating Guide of A- or better. Certificates evidencing all such policies shall be delivered to Landlord. All such policies shall contain a non-cancellation clause except upon thirty (30) days' prior written notice to each named insured and loss payee. All such policies shall contain language to the effect that: (i) the insurer waives the right of subrogation against Tenant or Landlord, respectively; and (ii) the policies are primary and noncontributing with any insurance that may be carried by Tenant or Landlord, respectively.
- 9.3.1 All policies of insurance required herein shall name Landlord and Tenant as the insureds as their respective interests may appear. Subject to the provisions and limitations herein set forth, all Casualty Insurance and Builder's Risk Insurance policies shall also provide, if required by either Party hereto, for any loss thereunder to be payable to any Leasehold Mortgagee as their respective interests may appear, pursuant to a standard mortgagee clause or endorsement. The loss, if any, under said Casualty Insurance and Builder's Risk Insurance policies shall be adjusted by Tenant with the insurance companies.
- 9.3.2 Subject to any contrary provision contained in a Leasehold Mortgage permitted under the terms of this Lease, the loss, if any, under all

Casualty Insurance and Builder's Risk Insurance policies shall be payable: (i) to Tenant; or (ii) to a bank, trust company, or insurance trustee ("Depository"), to be designated by Tenant in a notice given to the insurance companies.

9.3.3 Any loss paid under Casualty Insurance or Builder's Risk Insurance to Tenant shall be held by Tenant in trust for application first to the Restoration of the Premises to the extent required under Section 10 below (with any balance remaining thereafter to become Tenant's sole property, subject, however, to the rights of any Leasehold Mortgagees). Any loss so paid to the Depository shall be disbursed by it in accordance with the provisions of Paragraph 10.3 below.

9.3.4 Tenant shall be entitled to maintain any of the insurance, required pursuant this Section 9, under a blanket policy or policies of insurance that covers other properties owned, leased and/or operated by Tenant or its affiliates, provided that no insurance required hereunder is limited, decreased or modified as a result thereof (whether as the result of any co-insurance, excess coverage or other term or provisions of such blanket policy).

9.4 Waiver of Subrogation. Tenant hereby waives its right of recovery against Landlord for any loss covered by insurance policies required by this Lease, to the extent such insurance coverage is actually provided thereby.

9.5 Indemnification. Tenant agrees to indemnify, defend, and save harmless, Landlord, and Landlord's agents, officers, employees, and contractors from and against any and all claims, liabilities, expenses, damages, costs (including, but not limited to, litigation costs and attorney fees) arising from or connected to Tenant's acts or omissions regarding the operations, services, maintenance, use, conduct, or occupancy of the Premises, except to the extent those claims arise from the conduct, acts or omissions of Landlord, its officers, agents, or employees. This provision shall survive and continue after the termination of this Lease subject to applicable statute of limitations; provided, however, if Landlord consents to Tenant's assignment of the Tenant's interest in the Lease, Tenant has no obligation to indemnify, defend, or save harmless, Landlord, or Landlord's agents, officers, employees, and contractors from or against any and all claims, liabilities, expenses, damages, costs (including, but not limited to, litigation costs and attorney fees) arising from or related to the Lease following such assignment date.

10.0 DAMAGE TO OR DESTRUCTION OF PROPERTY

10.1 Notice. In case of any material damage to or destruction of the Premises or any part thereof, Tenant shall promptly give written notice thereof to Landlord generally describing the nature, extent and cause of such damage or destruction.

10.2 Restoration. In case of any damage to or destruction of the Premises or any part thereof, subject to the provisions of Section 5 above and Paragraph 10.4 below, Tenant shall, subject to the availability of insurance funds and/or

governmental grants, promptly commence and continue through to completion (subject to Unavoidable Delays) the restoration, replacement or rebuilding of the Premises. These efforts will restore, replace, or rebuild the Premises so that they are equivalent, to the greatest extent possible, to their value, condition and character immediately prior to such damage or destruction, with such Alterations as may be made at Tenant's election pursuant to and subject to the terms of Paragraph 5.3.

10.3 Application of Insurance Proceeds.

10.3.1 Subject to the rights of any permitted Leasehold Mortgagee, insurance proceeds received by a Depository pursuant to 9.3.2 above shall be paid to Tenant according to Depository's standard procedures for disbursing construction loan proceeds, from time to time, as Restoration progresses, to pay (or reimburse Tenant for) the cost of Restoration. Subject to the rights of any Leasehold Mortgagee, any excess (*i.e.*, beyond all sums necessary for such Restoration) shall be paid to Tenant as its sole and separate property with respect to Alterations and Improvements.

10.3.2 Any such Casualty Insurance proceeds paid to Tenant shall be applied by Tenant first directly toward such Restoration.

10.4 Termination Due to Damage. In the event the Premises shall be damaged as a result of: (i) any casualty during the last seven (7) years of the Term to the extent the Premises cannot be reasonably repaired or restored, or (ii) as a result of any earthquake or other casualty not covered by any insurance that is required to be carried on the Premises, Tenant may, subject to the satisfaction of those conditions set forth below, elect to terminate this Lease and all of its obligations hereunder effective as of the date which is the last calendar day of the third (3rd) month following such event of destruction, provided that such notice of termination must be delivered to Landlord within ninety (90) days after the occurrence of such damage or destruction. Tenant's right to terminate this Lease as provided in this Paragraph 10.4 shall be subject to each of the following conditions:

10.4.1 Tenant shall give Landlord notice of the damage or destruction promptly but not later than thirty (30) days after such event of destruction, detailing facts that qualify the casualty under this provision;

10.4.2 Tenant pays in full, or has paid in full, any outstanding debt secured by an approved Leasehold Mortgage;

10.4.3 Tenant delivers possession of the Premises and Improvements to Landlord and quitclaims all right, title, and interest in the Premises and Improvements, if any, and promptly thereafter ceases to do business on the Premises;

10.4.4 Tenant causes to be discharged all liens and encumbrances resulting from any act or omission of Tenant that are not consented to by Landlord in writing;

10.4.5 Tenant complies with the provisions of this Lease relating to the application of insurance proceeds; and

10.4.6 Tenant uses all available insurance proceeds to pay the costs of removing all debris and remains of the damaged Improvements from the Premises.

10.5 Salvage. Notwithstanding that Landlord holds a reversionary fee title to Improvements, all salvage of the Improvements in the event of any damage or destruction to the Premises, or any portion thereof, including any demolition, removal or relocation shall belong to Tenant.

11.0 CONDEMNATION

11.1 Definitions. The following words, terms and phrases, whenever used in this Lease, shall have the meaning and significance attached to them in this paragraph, unless expressly provided otherwise:

11.1.1 "Award" shall mean compensation paid for a Taking whether pursuant to a judgment or by agreement or otherwise.

11.1.2 "Condemnation" or "Condemnation Proceedings" shall mean any action or proceeding brought by a competent governmental authority for the purpose of any taking of the title of the Premises or any part thereof as a result of the exercise of the power of eminent domain, including a voluntary sale to such authority either under threat of or in lieu of condemnation or while such action or proceeding is pending.

11.1.3 "Notice of Intent of Taking" shall mean any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of a Taking as distinguished from a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a Condemnation summons and complaint (or other legal process relating to Condemnation of the Premises) by any Party to this Lease. Such notice is considered to have been received when a Party to this Lease receives from the condemning agency or entity a notice of intent to take, in writing, containing a description or map of the Taking reasonably defining the extent thereof.

11.1.4 "Partial Taking" shall mean any Taking affecting title to the Premises, or a portion thereof, which is not either a Total or a Substantial Taking.

11.1.5 "Substantial Taking" shall mean a Taking of so much of Premises, or the Improvements thereon, or both, such that the remaining portion not so Taken cannot be so repaired or reconstructed, taking into consideration the amount of the Award available for repair or restoration, as to constitute complete, rentable structures, capable of producing a proportionately fair and reasonable net annual income after payment of all operating expenses, the monthly Rent (as such may be reduced as the result of such Taking) and all other charges payable under this

Lease, and after performance of all covenants required of Tenant by law and under this Lease.

11.1.6 "Taking" shall mean an event of vesting of title to the fee or any leasehold or other interest therein or right accruing thereto of the Premises or any part thereof in a competent authority pursuant to, or as a result, in lieu or in anticipation, of the exercise of the right of Condemnation or eminent domain.

11.1.7 "Total Taking" shall mean a Taking of the title to the entire Premises and the Improvements thereon.

11.1.8 "Vesting Date" shall mean the date of a Taking, which date shall be considered to take place as the earlier of the date (i) actual physical possession is taken by the condemnor; or (ii) title actually passes to the condemnor.

11.2 Notice to Other Party. A Party receiving any notice of the kind specified below shall promptly give the other Party notice of the receipt, contents, and date of the notice received: (i) Notice of Intent of Taking; (ii) Service of any legal process relating to Condemnation of the Premises; (iii) Notice in connection with any proceedings or negotiations with respect to such a Condemnation; and/or (iv) notice of intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of Condemnation.

11.3 Total Taking. In case of a Total Taking, this Lease and Tenant's obligations hereunder shall terminate as of the Vesting Date; provided, however, that such termination shall not relieve or absolve Tenant of any obligations that shall have accrued or been in existence prior to the Vesting Date.

11.4 Substantial Taking. If the Taking is a Substantial Taking as defined above, Tenant may, by notice to Landlord given within sixty (60) days after Tenant receives a Notice of Intent of Taking, elect to treat the Taking as a Substantial Taking. If Tenant does not so notify Landlord, the Taking shall be deemed a Partial Taking. Tenant shall, thereafter, deliver up possession of the Premises to Landlord by the later of (i) twenty (20) days after determination that the Taking was a Substantial Taking; or (ii) the Vesting Date, otherwise the Taking shall, notwithstanding the foregoing, be treated as a Partial Taking. In case of a Substantial Taking, the Lease shall be deemed terminated as of the Vesting Date. Notwithstanding any of the foregoing, the terms and conditions of this Section 11 shall be subject to the terms of any Leasehold Mortgage permitted hereunder.

11.5 Partial Taking. Upon any Partial Taking, this Lease shall remain in full force and effect, covering the portion of the Premises not subject to the Condemnation action, except that (a) the Rent shall be reduced in the same ratio as the rentable area in the Improvements taken bears to the total rentable area of the Improvements on the Premises (as existed prior to the Condemnation); and (b) the Tenant may, upon sixty (60) days notice to the Landlord, elect to terminate the Lease if the Tenant determines that such Partial Taking prevents the full and

complete operation of the Airport or adjoining or complementary facilities of the Tenant.

- 11.6 Allocation of Award; Total or Substantial Taking. If this Lease shall terminate pursuant to the provisions of Paragraphs 11.3 or 11.4 by reason of a Total or Substantial Taking, the total Award in the Condemnation Proceedings shall be apportioned and paid, to the extent available, in the following order of priority:
- 11.6.1 The Leasehold Mortgagee on the Premises, if any, shall first be entitled to have its mortgage loan satisfied;
 - 11.6.2 Landlord, Tenant and Leasehold Mortgagee shall next be entitled to their expenses and charges, including, without limitation, attorneys' fees reasonably incurred in connection with the Taking;
 - 11.6.3 To Tenant and Landlord in proportion to their respective interests in the Premises;
 - 11.6.4 The balance, if any, shall be treated as "Rent" and divided between Landlord and Tenant pursuant to the terms of Section 4.
- 11.7 Allocation of Award; Partial Taking. In the event of a Partial Taking, Tenant shall commence and proceed with reasonable diligence to repair or reconstruct the remaining Improvements to complete architectural unit(s), including without limitation, temporary repairs, changes and installations required to accommodate Sublessees and all other work incidental to and in connection with all of the foregoing, provided it has received its share of the Award adequate to do so at no additional expense to Tenant. All such repair, reconstruction and work hereinafter in this Paragraph 11.7 shall be called "Rebuilding." The total Award in the Condemnation Proceedings, in the event of such Partial Taking, shall be apportioned and paid, to the extent available, in the following order of priority:
- 11.7.1 Tenant shall first be entitled to an amount equal to the cost of Rebuilding;
 - 11.7.2 Landlord, Tenant and any Leasehold Mortgagee shall next be entitled to their expenses and charges, including, without limitation, reasonable attorneys' fees incurred in connection with the Taking;
 - 11.7.3 To Tenant and Landlord in proportion to their respective interests in the Premises;
 - 11.7.4 The balance, if any, shall be treated as "Rent" and divided between Landlord and Tenant pursuant to the terms of Section 4.
- 11.8 Temporary Taking. In the event of a Taking of all or any portion of the Premises for a temporary use, the foregoing provisions of this Section 11 shall be inapplicable thereto, and this Lease shall continue in full force and effect. If any portion of the Award for such temporary use is intended to cover the cost of Rebuilding of the Improvements to their condition prior to such temporary use or

to make repairs occasioned by or resulting from such temporary use, such portion shall be used by Tenant to cover the cost of such Rebuilding.

- 11.9 Settlement. Neither Landlord nor Tenant shall, without the consent of the other Party (unless Tenant is in default of this Lease), or Leasehold Mortgagee, (i) make any settlement with the condemning authority; (ii) convey any portion of the Premises to such authority in lieu of Condemnation; or (iii) consent to any Taking.

12.0 FINANCING/HYPOTHECATION

- 12.1 Financing. Landlord agrees and acknowledges that Tenant shall have the right and power, but not the obligation, to:

12.1.1 At any time hereafter finance the construction, alteration or removal of Improvements and all soft and hard costs and expenses related to such construction, start-up and operation of Improvements and other improvements comprising the Premises (the "Interim and/or Construction Financing");

12.1.2 At any time hereafter, obtain interim, take-out or permanent financing for the purposes of repaying any Interim and/or Construction Financing, holding and operating Improvements (and other improvements comprising the Premises) and other purposes related to the Premises (the "Permanent Financing"); and

12.1.3 Obtain refinancing for the Premises ("Refinancing"). Such Interim and/or Construction Financing, Permanent Financing and Refinancing are sometimes hereinafter collectively referred to as "Financing" or "Leasehold Financing". Any such Financing may be evidenced by one or more promissory notes and secured by one or more Leasehold Mortgages, subject to all of the terms and conditions set forth in this Section 12.

- 12.2 Leasehold Mortgages. Tenant may, with notice to Landlord, mortgage the leasehold estate hereby created and Tenant's interest, if any, in Improvements. As used herein the term "Leasehold Mortgage" shall mean any mortgage, deed of trust or other security instrument which constitutes a lien on Tenant's leasehold interest in this Lease and the leasehold estate created hereby and "Leasehold Mortgagee" shall mean the holder of a Leasehold Mortgage. The execution and delivery of any Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease nor shall the holder of any Leasehold Mortgage, as such, be deemed an assignee or transferee of this Lease so as to require such holder to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder. Landlord and Tenant agree to the following:

12.2.1 Notice. If Tenant or any Leasehold Mortgagee shall have delivered to Landlord prior written notice of the address of any Leasehold Mortgagee, Landlord shall, within fifteen (15) days of receipt of such notice, mail to such Leasehold Mortgagee and all other interested parties known to the

Tenant and the Landlord a copy of any such notice or other communication from Landlord to Tenant under this Lease at the time of giving such notice or communication to Tenant, and shall give to such Leasehold Mortgagee notice of any rejection of this Lease by Tenant's trustee in bankruptcy or by Tenant as debtor in possession. No termination of this Lease or termination of Tenant's right of possession of the Premises or reletting of the Premises by Landlord predicated on the giving of any notice shall be effective unless Landlord gives to such Leasehold Mortgagee written notice or a copy of its notice to Tenant of such default or termination, as the case may be.

12.2.2 Right to Cure. In the event of any default by Tenant under the provisions of this Lease, any Leasehold Mortgagee shall have, after receipt of written notice from Landlord, the same periods as are given Tenant for remedying such default or causing it to be remedied. In addition, in those instances which reasonably require any Leasehold Mortgagee to be in possession of the Premises to cure any default by Tenant, the time therein allowed any Tenant's Leasehold Mortgagee to cure any default by Tenant shall be deemed extended to include the reasonable period of time required by any Leasehold Mortgagee to obtain such possession with due diligence, and in those instances in which any Leasehold Mortgagee is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the time herein allowed any Leasehold Mortgagee to prosecute such foreclosure or other proceeding shall be extended for the period of such prohibition, provided such Leasehold Mortgagee makes payments of Rent and any other monetary payments to Landlord in accordance with the terms and within the time frames set forth in this Lease. In such event any Leasehold Mortgagee, without prejudice to its rights against Tenant, shall have the right, but not the obligation, to cure such default within the applicable grace periods provided for herein whether such default consists of the failure to pay Rent or any other monetary obligations of Tenant to Landlord or the failure to perform any other matter or thing which Tenant is hereby required to do or perform, and Landlord shall accept such performance on the part of such Leasehold Mortgagee as though the same had been done or performed by Tenant, and for such purpose Landlord and Tenant hereby authorize such Leasehold Mortgagee to enter upon the Premises and to exercise any of its rights and powers under this Lease and, subject to the provisions of this Lease, under the Leasehold Mortgage.

12.2.3 No Termination During Foreclosure or Cure. In the event of any default by Tenant, and if prior to the expiration of the applicable grace period specified in Subparagraph 12.2.2 above, a Leasehold Mortgagee shall give Landlord written notice that it intends to undertake the curing of such default, or to cause the same to be cured, or to exercise its rights to acquire the leasehold interest of Tenant by foreclosure or otherwise, and shall immediately commence and then proceed with all due diligence to do so, whether by performance on behalf of Tenant of its obligations

under this Lease, or by entry on the Premises by foreclosure or otherwise, then Landlord shall not terminate or take any action to effect a termination of this Lease or reenter, take possession of or relet the Premises or similarly enforce performance of this Lease in a mode provided by law so long as such Leasehold Mortgagee: (i) is with all due diligence and in good faith engaged in the curing of such default; and (ii) makes payment of Rent and other monetary payments required of Tenant in accordance with the terms and provisions of this Lease. Provided further, however, that if the default is not susceptible to being cured by Leasehold Mortgagee, such default shall be deemed cured if Leasehold Mortgagee shall: (i) proceed in a timely and diligent manner to accomplish the foreclosure of Tenant's interest; and (ii) makes payment of Rent and other monetary payments required of Tenant in accordance with the terms and provisions of this Lease.

- 12.2.4 Lease to Mortgagee. In the event Tenant's interest under this Lease is terminated by Landlord for any reason including, without limitation, Tenant's default or rejection of the Lease by a trustee in bankruptcy or a debtor in possession (and provided an unsatisfied Leasehold Mortgage stands of record), or in the event Tenant's interest under this Lease shall be sold, assigned or transferred pursuant to the exercise of any remedy of any Leasehold Mortgagee, or pursuant to judicial or other proceedings, Landlord shall immediately execute and deliver a new lease of the Premises to such Leasehold Mortgagee or its nominee, purchaser, assignee or transferee, upon written request by such Leasehold Mortgagee or such nominee, purchaser, assignee or transferee given within sixty (60) days after such sale, assignment or transfer for the remainder of the term of the Lease with the same agreements, covenants and conditions (except for any requirements which have been fulfilled by Tenant prior to termination) as were contained herein and with priority equal to that hereof; provided, however, that such Leasehold Mortgagee shall promptly cure any default of Tenant susceptible to cure by such Leasehold Mortgagee (including, without limitation, any monetary default), and provided further that if more than one Leasehold Mortgagee requests such new lease, the Leasehold Mortgagee holding the most senior Leasehold Mortgage shall prevail. Upon execution and delivery of such new lease, Landlord shall cooperate with the new leaseholder, at the expense of the said new leaseholder, in taking such action as shall be necessary to cancel and discharge this Lease and to remove Tenant named herein from the Premises. In such event the ownership of Improvements to the extent owned by Tenant shall be deemed to have been transferred directly to such transferee of Tenant's interest in this Lease. Any costs incurred by Landlord in connection with such new lease (including reasonable attorneys' fees) shall be paid by Leasehold Mortgagee.
- 12.2.5 No Conflict. In the event of a default under a Leasehold Mortgage, such Leasehold Mortgagee may exercise with respect to the Premises any right, power or remedy under the Leasehold Mortgage that is not in conflict with the provisions of this Lease.

- 12.2.6 Transfer After Foreclosure. This Lease may be assigned, without the consent of Landlord, to any Leasehold Mortgagee, pursuant to foreclosure or similar proceedings, or pursuant to an assignment or other transfer of this Lease to such Leasehold Mortgagee in lieu thereof, and may be thereafter assigned by such Leasehold Mortgagee, subject to the provisions of Section 13 hereof, and any Leasehold Mortgagee shall be liable to perform the obligations herein imposed on Tenant only for and during the period it is in possession or ownership of the leasehold estate created hereby. Leasehold Mortgagee shall deliver written notice to Landlord of any such assignment, provided such notice shall be for informational purposes only.
- 12.2.7 No Surrender or Modification Binding. No surrender (except a surrender upon the expiration of the Term of this Lease or upon termination by Landlord pursuant and subject to the provisions of this Lease) by Tenant to Landlord of this Lease, or of the Premises, or any part thereof, or of any interest therein, and no termination of this Lease by Tenant shall be valid or effective, and neither this Lease nor any of the terms hereof may be amended, modified, changed or canceled and no consent of Tenant hereunder shall be valid or effective without the prior written consent of any Leasehold Mortgagee, which consent shall not be unreasonably withheld or delayed.
- 12.2.8 Assignment of Sublease. Provided that Leasehold Mortgagee continues to perform all of Tenant's monetary obligations hereunder, Landlord consents to a provision in any Leasehold Mortgage or otherwise for an assignment of rents from subleases of the Premises to the holder thereof, effective upon any default under such Leasehold Mortgage.
- 12.2.9 Multiple Leasehold Mortgages. If at any time there shall be more than one Leasehold Mortgage, the holder of the Leasehold Mortgage prior in lien shall be vested with the rights under Subparagraph 12.2.2 hereof (other than the provisions for receipt of notices as provided herein) to the exclusion of the holder of any junior Leasehold Mortgage; provided, however, that if the holder of a first lien Leasehold Mortgage shall fail or refuse to exercise the rights set forth in said Subparagraph 12.2.2, each holder of a Leasehold Mortgage in the order of the priority of their respective liens shall have the right to exercise such rights and provided further, however, that with respect to the right of the holder of Leasehold Mortgage under Subparagraph 12.2.4 hereof to request a new lease, such right may, notwithstanding the limitation of time set forth in said Subparagraph, be exercised by the holder of any junior Leasehold Mortgage, in the event the holder of a prior Leasehold Mortgage shall not have exercised such right within such sixty (60) day period after the receipt of Landlord's termination notice, provided that such junior Leasehold Mortgagee must exercise such right by no later than seventy-five (75) days after the giving of notice by Landlord of termination of this Lease as provided in said Subparagraph.
- 12.2.10 Consent. The foreclosure of a Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power

contained in any Leasehold Mortgage, or any conveyance of the leasehold estate created hereby from Tenant to any Leasehold Mortgagee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not breach any provision of or constitute a default under this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize any Leasehold Mortgagee, or any purchaser at such foreclosure sale, as Tenant hereunder, provided, however, that said purchaser shall agree to perform and be bound by any and all terms, conditions and covenants contained in this Lease.

- 12.3 Fee Mortgage. Landlord shall have the right, from time to time and at anytime, to enter into a mortgage, deed of trust or other security instrument on the interests of Landlord in the Premises and/or Landlord's reversionary interest in the balance of the Premises (a "Fee Mortgage"); provided, however, this Lease, as the same may be modified, amended or supplemented, and all rights of Tenant hereunder, and any Leasehold Mortgage by Tenant which satisfies the terms and conditions of this Lease and all rights of any Leasehold Mortgagee of Tenant hereunder are and shall have priority over, and shall be senior and superior to, the lien of any Fee Mortgage, security agreement or other lien or encumbrance now or hereafter made by Landlord and affecting the Premises, whether or not such Fee Mortgage, security agreement or other lien or encumbrance shall also cover other lands and/or buildings.

13.0 ASSIGNMENT/SUBLETTING

13.1 Assignment.

13.1.1 Permitted Assignments. Tenant shall not have the right to assign its interest in the Lease without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Landlord and Tenant acknowledge and agree that it shall be considered unreasonable for Landlord to withhold such consent if the proposed assignee: (i) can reasonably demonstrate that it has the financial and professional ability to perform the obligations of Tenant under this Lease; (ii) has the level of experience in airport management and development similar to the level of experience of Tenant as of the Lease Commencement Date; and (iii) provides a written assumption of all of Tenant's obligations and liabilities under the Lease. In the event of an assignment of the Lease, Tenant shall not be responsible for and shall be deemed to be released from all obligations and liabilities arising under this Lease after the date of such assignment provided assignee assumes all of the responsibilities and obligations of Tenant under the Lease.

13.1.2 Permitted Assignments to Tenant Affiliates. Notwithstanding anything to the contrary contained in this Lease, including without limitation Subparagraph 13.1.1 above, the prior written consent of Landlord shall not be required in the event of a proposed assignment: (i) to an entity that is controlled by or is under the common control with Tenant (an "Affiliate"); (ii) to an entity resulting from a consolidation or restructuring, or to the surviving entity in the case of a merger, to which Tenant or Affiliate shall be a party; (iii) to any trustee named in a deed of trust,

(iv) any Leasehold Mortgagee named in a Leasehold Mortgage; (v) any person named in any other type of security instrument for the purpose of incurring an encumbrance on such interest and such leasehold estate pursuant to Section 12 of this Lease; or (vi) any purchaser in connection with its acquisition of Tenant's rights by foreclosure or deed in lieu of foreclosure so long as such purchaser satisfies the requirements of Subparagraph 12.2.10 above

13.1.3 Conditions to Assignment. The following are conditions precedent to Tenant's right of assignment pursuant to Subparagraph 13.1.1: (i) Tenant shall give Landlord thirty (30) days notice of the proposed assignment with appropriate documentation as evidence that the proposed transferee qualifies under the terms hereof; (ii) except in the event of an assignment to a Leasehold Mortgagee in a Leasehold Mortgage, the proposed transferee shall expressly assume all of the covenants and conditions of this Lease by execution and recordation of an instrument in form and substance reasonably satisfactory to Landlord; (iii) upon any assignment by Tenant of less than its entire interest hereunder, Tenant and such transferee shall apportion and allocate all sums due as are payable to Landlord by Tenant under the Lease prior to such assignment.

13.2 Subletting.

13.2.1 Permitted Subleases/Conditions. Tenant shall not be required to obtain Landlord's prior consent with respect to any sublease (each, a "Sublease") at the Premises. Tenant further acknowledges that any proposed Sublease, including a Sublease that provides for a use that is not related to aviation, aviation services or other amenities that serve aviation uses and/or the Airport, shall be in accordance with FAA guidelines. Tenant will sublease property designated for aeronautical use on a current FAA-approved Airport Layout Plan only for aeronautical uses and will comply with Grant Assurance No 22, in Exhibit "G" (FAA Grant Assurances), which is attached and incorporated by this reference, in its Subleases for aeronautical use. Additionally, should Tenant desire to sublease property for non-aeronautical uses as permitted by the FAA, Tenant shall first be required to secure prior written consent from Landlord, which consent shall not be unreasonably withheld. Tenant agrees for the benefit of Landlord that each Sublease (i) shall state that it is subject to the terms and provisions of this Lease; (ii) shall require that the Sublessee thereunder attorn to and accept Landlord as the lessor thereunder in the event this Lease is terminated and Landlord requests such attornment; and (iii) shall provide that in the event Landlord delivers a notice to Sublessee stating that Tenant is in default under this Lease, then from and after receipt of such notice Sublessee shall pay the rental payments payable by Sublessee under its Sublease directly to Landlord until such time as Sublessee is notified by Landlord that Tenant has cured such default. Tenant shall, promptly after execution of each Sublease, notify Landlord of the name and mailing address of the Sublessee and shall, on demand, provide Landlord with a copy of the Sublease. .

13.2.2 Non-Disturbance Agreement. Subject to the provisions of Subparagraph 13.2.1 above, Landlord hereby agrees for the benefit of any Sublessee that, if Landlord, for the purposes of this Subparagraph 13.2.2, has approved such Sublease (which approval shall not be unreasonably withheld or delayed), then upon the termination of this Lease, Landlord shall recognize the Sublessee under such Sublease as the direct tenant of Landlord under all terms and conditions contained in such Sublease and for a term expiring on the earlier of the expiration of (i) this Lease; or (ii) such Sublease; provided, however, that at the time of the termination of this Lease (i) no default shall exist under the Sublessee's Sublease which at such time would then permit the Landlord thereunder to terminate the same or to exercise any dispossession remedy provided for therein; and (ii) the Sublessee shall deliver to Landlord an instrument confirming the agreement of such Sublessee to attorn to Landlord and to recognize Landlord as the Sublessee's landlord under the Sublease. If requested by Tenant, Landlord agrees to execute a Non-Disturbance and Attornment Agreement with respect to any such Sublease satisfying the terms of Subparagraph 13.2.1 above and this Subparagraph 13.2.2 and containing the pertinent provisions hereof and any other customary terms and provisions not inconsistent herewith.

14.0 ESTOPPEL CERTIFICATE

At any time, each Party agrees, upon not less than ten (10) business days' prior notice by the other Party, to execute, acknowledge and deliver to the requesting Party a statement in writing certifying that: (i) this Lease is unmodified and in full force and effect, or, if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications; (ii) the dates to which the Rent has been paid; and (iii) whether or not, to the best knowledge of the signer of such statement, that the other Party is then in default or may be in default with notice or the passage of time, or both, in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease, and, if in default, specifying each such default. The Parties intend that any such statement delivered pursuant to this section may be relied upon by either Party, its respective lender, or any prospective purchaser of either Party's interest hereunder. The requesting Party will pay the other Party's reasonable third party costs of preparing the Estoppel Certificate.

15.0 DEFAULT/BANKRUPTCY

15.1 Tenant's Default. The occurrence of any one or more of the following events shall be deemed an "Event of Default" by Tenant hereunder:

15.1.1 Default in the payment of any Rent or other monetary obligation owed by Tenant to Landlord hereunder, if such default continues for a period of thirty (30) days after written notice thereof, specifying such default, is given to Tenant; or

15.1.2 Default in the performance of any other covenant or agreement on the part of Tenant to be performed hereunder, within the time periods

specified herein, but subject to Unavoidable Delays, if such default continues for a period of sixty (60) days after written notice, specifying such default, is given to Tenant. However, in the case of a default which cannot with due diligence be remedied by Tenant within such period of sixty (60) days, if Tenant proceeds as promptly as may reasonably be possible after the service of such notice and with all due diligence to remedy such default and thereafter prosecutes the remedying of such default with all due diligence, the period of time after the giving of such notice within which Tenant may remedy such default shall be extended for such period as may be necessary to remedy the same with all due diligence (including any period of Unavoidable Delays); or

15.1.3 The making by Tenant of any assignment for the benefit of creditors, the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy or insolvency (unless in the case of a petition filed against Tenant, the same is dismissed within ninety (90) days), the appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets or of Tenant's interest under this Lease where possession is not restored to Tenant within ninety (90) days, or the attachment, execution or other judicial seizure of all or substantially all of Tenant's assets or of Tenant's interest under this Lease, where such seizure is not discharged within ninety (90) days; or

15.1.4 Tenant's abandonment or surrender of the Premises or any portion thereof.

15.2 Landlord's Remedies. Upon the occurrence of any Event of Default by Tenant, Landlord may exercise any one or more of the following remedies, or any other remedy provided in this Lease or by law or equity, to which the Landlord may resort cumulatively or in the alternative:

15.2.1 Termination/Recovery by Landlord. The Landlord may, at its option, terminate this Lease. Upon such termination, any and all right, title and interest of the Tenant hereunder in and to the Premises will expire and the Tenant will then quit and surrender the Premises to the Landlord. Upon any such termination of this Lease, and in addition to all other rights or remedies it may have, the Landlord may recover from the Tenant: (i) the Rent due, owing and unpaid by the Tenant to the Landlord at the time of termination; and (ii) the amounts necessary to compensate the Landlord for all the damages proximately caused by the Event of Default.

15.2.2 Re-entry. If and to the extent permitted by law, the Landlord may re-enter the Premises and terminate the Tenant's right to possession of the Premises and may remove all persons and property therefrom.

15.2.3 Assignment of Rents Under Sublease. The Tenant will assign to the Landlord all rents payable under any existing Sublease (collectively, "Subrents") and other sums falling due from Sublessees during any period in which Landlord shall have the right under this Lease, whether

exercised or not, to reenter the Premises as a result of an Event of Default by the Tenant. This assignment is subject and subordinate to any and all assignments of the same Subrents and other sums made, before such Event of Default, to a Leasehold Mortgagee under a Leasehold Mortgage. After the Tenant's assignment under this Subparagraph 15.2.3, the Landlord shall receive and collect all Subrents from reletting, applying them first to the fulfillment of the Tenant's covenants under the Lease.

15.2.4 No Personal Liability. In the event of any action or other dispute arising in connection with this Lease, Landlord hereby agrees that no action shall be taken against any individual director, officer, employee, member, shareholder, or partner of the Tenant or any affiliate of the Tenant, except in cases involving fraud on the part of such individual, or any of them, or where there is evidence that the corporate form of Tenant has been disregarded such that said individual, or any of them, are considered to be the "alter ego" of the Tenant. Subject to the foregoing, Landlord hereby expressly covenants and agrees that no such person has any personal liability under or in connection with this Lease or any matter connected therewith, and each Party hereto hereby forever waives any right to bring any action against any such person.

15.3 Landlord Default. Landlord shall be in default in the performance of any covenant or agreement on the part of Landlord to be performed hereunder (within the time periods specified, subject to Unavoidable Delays), including without limitation the Landlord Responsibilities at all times throughout the Term of this Lease, if such default continues for a period of ninety (90) days after written notice thereof, specifying such default, is given to Landlord; provided, however, in the case of a default which cannot with due diligence be remedied by Landlord within such period of ninety (90) days, if Landlord proceeds as promptly as may reasonably be possible after the service of such notice and with all due diligence to remedy such default and thereafter prosecutes the remedying of such default with all due diligence, the period of time after the giving of such notice within which Tenant may remedy such default shall be extended for such period as may be necessary to remedy the same with all due diligence (including any period of Unavoidable Delays).

15.3.1 Tenant's Remedies. In the event of a default by the Landlord under this Lease, the Tenant has any and all rights and remedies available to the Tenant, whether at law or in equity, including the right to terminate this Lease and the right to recover damages, and/or the right seek to specific performance of the Landlord's obligations hereunder.

15.4 Force Majeure. If either Party is delayed, hindered, or prevented from performing any act required hereunder, by reason of any Unavoidable Delay or for reasons beyond the Party's control, the performance of any such act is hereby extended for the period necessary to complete performance after the end of such delay, hindrance, or prevention.

16.0 NO WAIVER

No failure by Landlord or Tenant to insist upon the strict performance of any provision hereof or to exercise any right, power or remedy consequent upon a default hereunder shall constitute a waiver of any such default or of any other existing or subsequent default of the same type or any other type. Nor shall such failure preclude either Party's right to at any time thereafter insist upon the other Party's strict performance under any term or provision of this Lease. No waiver of any default shall affect or alter this Lease, which shall continue in full force and effect.

17.0 WARRANTIES

17.1 Landlord's Covenants, Representations and Warranties. Landlord hereby represents, warrants, and covenants to Tenant as follows:

17.1.1 Landlord has full power and authority to execute this Lease, and neither this Lease nor anything provided to be done under this Lease violates or shall violate any agreement to which Landlord is a party or by which it may be bound, or any agreement affecting the Premises of which Landlord has actual knowledge.

17.1.2 Subject to the terms of this Lease, upon paying the Rent and performing the other terms, covenants and conditions of this Lease on Tenant's part to be performed, Tenant shall and may (subject, however, to the exceptions, reservations, terms and conditions of this Lease and applicable FAA regulations and requirements) peaceably and quietly have, hold and enjoy the Premises for the Term hereby granted without disturbance by or from Landlord or any person claiming through Landlord and free of any encumbrance created or suffered by Landlord, except only those encumbrances, liens or defects of title, created or suffered by Tenant.

17.1 Tenant's Warranties. Tenant hereby represents and warrants to Landlord that Tenant is a limited liability company, validly in existence and in good standing pursuant to the laws of the State of California. Tenant has the right and power to enter into this Lease and to perform its obligations hereunder.

18.0 NOTICES

18.1 Written Notice. All written notices or demands of any kind which either Party may be required or may desire to serve on the other in connection with this Lease must be served (as an alternative to personal service) by registered or certified mail, and shall be deposited in the United States mail with postage thereon fully prepaid and addressed to the party to be served as follows:

18.1.1 If the party so to be served be Landlord, address Landlord at:

The City of Oceanside
Property Management Department
300 N. Coast Highway
City of Oceanside, California 92054

18.1.2 If the party so to be served be Tenant, address Tenant at:

Airport Property Ventures
11755 Wilshire Boulevard, Suite 1800
Los Angeles, CA 90025
Attention: Lydia Kennard

With a copy to:

Neil Papiano, Esq.
Iverson, Yoakum, Papiano & Hatch
515 South Flower St., Suite 2900
Los Angeles, CA 90071

18.2 Service. Each service of any such notice or demand so made by mail shall be deemed complete on the day of actual delivery as shown by the addressee's registry or certification receipt or at the expiration of the fourth day after the date of mailing, whichever is earlier in time.

If requested in writing (in the manner hereinabove provided as between the Parties, along with the address to which notices or demands shall be given or made, any such notice or demand shall also be given or made in the manner herein specified and contemporaneously to any Leasehold Mortgagee.

Either Party and any Leasehold Mortgagee, who shall have made the request hereinabove referred to, may designate by notice in writing, given in the manner hereinabove specified, a new or other address to which such notice or demand shall thereafter be so given or made.

19.0 INVALIDITY OF PARTICULAR PROVISIONS

If any term or provision of this Lease or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

20.0 NO MERGER OF TITLE

There shall be no merger of the leasehold estate created by this Lease with the fee estate in the Premises by reason of the fact that the same person may own or hold (i) the leasehold estate created by this Lease or any interest in such

leasehold estate; and (ii) any interest in such fee estate. No such merger shall occur unless and until all persons having any interest in (i) the leasehold estate created by this Lease, and (ii) the fee estate in the Premises, shall join in a written instrument effecting such merger and shall duly record the same.

21.0 HAZARDOUS MATERIALS

21.1 Hazardous Materials. As used herein the term "Hazardous Materials" shall mean any material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," "pollutant" or other words of similar import within the meaning of any Environmental Statute, or any other hazardous or toxic wastes or substances or other substances or materials which are now or in the future included under or regulated by any Environmental Statute or adopted by the United States Environmental Protection Agency, including petroleum and petroleum products and all hazardous or toxic substances or wastes, any substances which because of their quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including any asbestos (whether or not friable) and any ACM, waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, etchants and plating wastes, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical, biological and radioactive wastes; provided, however, except as provided otherwise in immediately following sentence, the term "Hazardous Materials" shall not include reasonable quantities of the foregoing substances used or stored at the Premises in compliance with all Environmental Statutes and in the ordinary course of operating and maintaining a general aviation airport (including common cleaning supplies located at the Premises).

21.2 Environmental Statutes. As used herein the term "Environmental Statutes" shall mean and include any federal, state, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct (in each case having the force of law), concerning any (a) Hazardous Materials, (b) environmental regulations, (c) contamination or pollution by Hazardous Materials or other substances, (d) clean-up of Hazardous Materials or other substances or disclosures relating to Hazardous Materials or other substances, (e) wetlands or other protected land or wildlife species, (f) solid, gaseous or liquid waste generation, handling, discharge, release, threatened release, treatment, storage, disposal or transportation, including underground storage tanks, (g) the implementation of spill prevention and/or disaster plans relating to Hazardous Materials or other substances, (h) community right-to-know and other disclosure laws, together with any judicial or administrative interpretation of the items described in the foregoing clauses (a) through (h), inclusive, including any judicial or administrative orders, judgments, advisories or guidance documents now or hereafter in effect of any federal, state or local court or executive, legislative, judicial, regulatory or administrative agency, board or authority (or any judicial or administrative decision with regard thereto). "Environmental Statutes" shall include, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of

1980, 42 U.S.C. § 9601 et seq. ("CERCLA"); (ii) Solid Waste Disposal Act, 42 U.S.C. §6901 et seq. as amended by and including the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. ("RCRA"); (iii) Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99-499 ("SARA"); (iv) Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. ("TSCA"); (v) the Clean Water Act, 33 U.S.C. § 1251 et seq., as amended; (vi) the Safe Drinking Water Act, 42 U.S.C. § 300f-300j; (vii) the Clean Air Act, 42 U.S.C. § 7401 et seq.; (viii) the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., as amended; (ix) the Federal Water Pollution Control Act, the Rivers and Harbors Act of 1899, 33 U.S.C. § 401 et seq.; (x) the National Environmental Policy Act, 42 U.S.C. §4321 et seq.; (xi) the Refuse Act, 33 U.S.C. §407 et seq.; (xi) The Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §1101 et seq.; (xii) the Occupational Safety and Health Act, 29 U.S.C. §651 et seq.; (xiii) the California Hazardous Waste Control Law, Cal. Health & Safety Code Section 25100 et seq., (xiv) the Safe Drinking Water and Toxic Enforcement Act of 1986, Cal. Health & Safety Code Section 25249.5 et seq., (xv) the Porter-Cologne Water Quality Control Act, Cal. Wat. Code Section 13020, et seq., and (xvi) the Hazardous Substances Account Act, California Health and Safety Code § 25100 et seq.

21.3 Removal and Indemnity by Landlord

21.3.1 Within thirty (30) days from the Lease Commencement Date, Landlord shall provide, at its sole cost and expense, Tenant with a Phase 1 Environmental Report identifying and describing the existing environmental conditions on the entirety of the Premises, a Phase 2 Environmental Report for the area of influence surrounding the underground tanks which exist at the Premises as well as any other area noted in the Phase 1 Environmental Report that requires further assessment. Together these Phase 1 and Phase 2 Reports shall be used to describe the "Baseline Environmental Conditions" at the Premises. A qualified firm acceptable to Tenant shall perform such Phase 1 and 2 Environmental Reports. If the Phase 1 and/or 2 Environmental Reports indicate that Hazardous Materials are present at, on or under the Premises, and the presence of such Hazardous Materials is substantially likely to give rise to a demand by relevant federal, state or local governmental authorities for the remediation, treatment, containment or removal of such Hazardous Materials, then Landlord shall be required to remove such Hazardous Materials in accordance with Subparagraph 21.3.2 below.

21.3.2 To the extent required by any Environmental Statute or other applicable law, Landlord shall, as soon as reasonably practical following the Commencement Date of this Lease, remove any Hazardous Materials that are existing on the Premises as of the Lease Commencement Date and/or that were brought onto or released at the Premises prior to the Lease Commencement Date. In addition to Landlord's obligation to remove any Hazardous Materials as set forth in the preceding sentence, Landlord hereby covenants and agrees to remove any Hazardous Materials which migrate onto or are otherwise discovered on, under or about the Premises by Tenant in connection with Tenant's use and

operation of the Premises (including Tenant's development of any Improvements on the Premises) regardless of the original source of such Hazardous Material (unless caused by Tenant or Tenant Affiliates). If and to the extent that any Hazardous Materials are discovered on, under or about the Premises and the presence thereof is attributable to the actions or omissions of any third-party, then Landlord shall diligently pursue and use its best efforts to cause such third-party to remove such Hazardous Materials in accordance with all applicable laws (including all applicable Environmental Statutes).

21.3.3 At any time during the Term of this Lease if (i) Landlord does not remove any Hazardous Materials from the Premises that are required to be removed by Landlord in accordance with this Lease; or (ii) Landlord does not diligently pursue and use its best efforts to cause any responsible third-party to remove any Hazardous Materials located on the Premises that are attributable to such third party in accordance with this Lease, then notwithstanding anything contained herein to the contrary, Tenant's sole and exclusive remedy shall be to exercise either or both of the remedies set forth in Subparagraphs 21.3.3 (a) or 21.3.3 (b) below:

a) Tenant shall have the right and authority (acting on behalf of Landlord), but not the obligation, to undertake Landlord's obligations pursuant to Subparagraph 21.3.2 above on behalf of Landlord ("Self-Help"), including to remove any such Hazardous Materials from the Premises and/or to pursue any potentially responsible third party with respect to any Hazardous Materials located on, under or about the Premises, in which case Landlord shall assign to Tenant any and all claims and rights Landlord may have against any such third party. All costs and expenses incurred by Tenant in connection with the performance of such actions (including, without limitation, attorneys' fees, costs and other litigation expenses) shall be collectively referred to herein as "Self-Help Costs". Tenant shall be entitled to full reimbursement from Landlord of all Self-Help Costs. One Hundred Percent (100%) of such Self-Help Costs incurred by Tenant shall be credited toward and applied against the next installments of Rent payable by Tenant to Landlord pursuant to this Lease;

b) If, in Tenant's reasonable judgment, Tenant is unable to use any portion of the Premises as a result of the presence or suspected presence of Hazardous Materials (regardless of the original source thereof (unless caused by Tenant or Tenant Affiliates), then Rent payable by Tenant hereunder shall be abated in proportion to the portion of the Premises rendered unusable as a result of the presence or suspected presence of Hazardous Materials thereon. In the event Rent is abated for more than six (6) months as a result of the presence of such Hazardous Materials, then Tenant shall have the right, but not the obligation, to terminate this Lease in its entirety or terminate the applicable portions of the Premises for which Rent has been abated.

21.3.4 Landlord shall and hereby does agree to defend, indemnify and hold Tenant, its officers, directors, shareholders, partners and employees

harmless from and against any and all causes of actions, suits, demands or judgments of any nature whatsoever, losses, damages, penalties, expenses, fees, claims, costs (including response and remedial costs), and liabilities (including liabilities arising under a claim of strict liability), including, but not limited to, attorneys' fees and costs of litigation, arising out of or in any matter connected with (i) the Landlord's violation of any Environmental Statute or other applicable federal, state or local environmental Law with respect to any Hazardous Materials other than Tenant-Caused Hazardous Materials (as defined in Paragraph 21.4 below); or (ii) the presence, "release" or "threatened release" of or failure to remove by Landlord of Hazardous Materials (other than Tenant-Caused Hazardous Materials) on, under or about the Premises.

21.4 Removal and Indemnity by Tenant. To the extent required by any Environmental Statute or other applicable law, Tenant shall remove any Hazardous Materials that are brought onto or released at the Premises during the Term of this Lease by Tenant, Tenant's employees, Sublessees, contractors, licensees or invitees (collectively, "Tenant Affiliates") during the Term of this Lease (collectively, "Tenant-Caused Hazardous Materials"). Tenant shall and hereby does agree to defend, indemnify and hold Landlord harmless from and against any and all causes of actions, suits, demands or judgments of any nature whatsoever, losses, damages, penalties, expenses, fees, claims, costs (including response and remedial costs), and liabilities, including, but not limited to, attorneys' fees and costs of litigation, arising out of or in any matter connected with: (i) the violation by Tenant or any Tenant Affiliates of any Environmental Statute or other applicable federal, state or local environmental Law with respect to any Tenant-Caused Hazardous Materials brought onto or released at the Premises during the Term of this Lease; or (ii) the presence, "release" or "threatened release" of or failure to remove, if required by this Section 21, by Tenant or any Tenant Affiliates during the Term of this Lease, any Tenant-Caused Hazardous Materials.

22.0 MISCELLANEOUS

- 22.1 Interpretation. In all cases, the language in all parts of this Lease shall be construed simply, according to its fair meaning and not strictly for or against the drafter of this Lease or for or against Landlord or Tenant. The terms "Landlord" and "Tenant" as used herein shall include the plural as well as the singular, and the neuter shall include the masculine and the feminine genders.
- 22.2 Headings. The Section, Paragraph and Subparagraph designations or headings contained herein are inserted solely for convenience of reference and do not in any way govern the intent or construction of this Lease. Any reference to a Paragraph shall be deemed to include a reference to all subparagraphs therein.
- 22.3 Successors and Assigns. Subject to the provisions of Section 13 of this Lease, this Lease shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, and wherever a reference in this Lease is made to either of the Parties hereto, such reference shall be deemed to include, wherever applicable, also a reference to the successors and assigns of such Party, as if in every case so expressed.

- 22.4 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of California; however, this Lease shall also be subject to any federal law that may be applicable due to matters associated with the FAA's regulation of airports and the City's federal grant assurances.
- 22.5 Entire Agreement. This Lease, together with any written modifications or amendments hereafter entered into, shall constitute the entire agreement between the Parties relative to the subject matter hereof, and shall supersede any prior agreement or understanding, if any, whether written or oral, which Tenant may have had relating to the subject matter hereof with Landlord.
- 22.6 No Oral Modification. This Lease may be changed, waived or discharged only by an instrument in writing signed by both Parties to this Lease.
- 22.7 Counterparts. This instrument may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute and be construed as one and the same instrument.
- 22.8 Consent. Unless otherwise specifically provided in this Lease, whenever in this Lease the consent or approval of Landlord or Tenant is required, it is agreed by Landlord and Tenant that such consent or approval will not be unreasonably withheld and will be promptly considered.
- 22.9 Attorneys' Fees. In any action or proceeding brought by either Party against the other to enforce its rights hereunder, the unsuccessful Party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees, which amounts shall be a part of the judgment in said action or proceeding.
- 22.10 Time of Essence. Time is of the essence with respect to each and every provision of this Lease.
- 22.11 No Partnership. Nothing contained in this Lease shall be deemed or construed to create the relationship of principal or agent, partnership, joint venture, or any other association between Landlord and Tenant. Further, neither the method of computation of Rent nor any other provisions contained in this Lease nor any acts of the Parties hereto shall be deemed to create any relationship between Landlord and Tenant, other than the relationship of landlord/tenant.
- Nonetheless, this Lease is intended for the sole benefit of the Parties hereto and their successors. Moreover, unless otherwise provided herein or by law, no rights are created or intended to be created for the benefit or enforcement of any third parties.
- 22.12 General Cooperation. Landlord and Tenant each agree to reasonably cooperate with one another in order to carry out the intent of any term or provision of this Lease.
- 22.13 Public Records. Tenant understands that written information submitted to and/or obtained by Landlord from Tenant, relating to the conduct of the public's business, this Lease or the Premises and which is prepared, owned, used or retained by Landlord may be open to inspection by the public pursuant to the

California Public Records Act (Gov. Code, §6250 et seq.), as now in force or hereafter amended.

23.0 REFINANCING PROCEEDS

23.1 Refinancing Proceeds. As used herein, the term "Refinancing Proceeds" shall mean: (a) all cash proceeds actually received by Tenant from a Refinancing of all or a portion of the Premises less the sum of (i) any debts and liabilities then encumbering the Premises (or a portion thereof in the case of a partial refinance), which are paid from the proceeds of such Refinancing, including accrued interest on debt and equity if any; (ii) any unrecovered Tenant Invested Capital; and (iii) any fees and costs incurred by Tenant in connection with such Refinancing, including without limitation attorneys' fees, appraisal costs, lender fees and other similar out-of-pocket costs and expenses.

23.2 Distribution of Refinancing Proceeds. Following any Refinancing, the proceeds of any Refinancing shall be distributed between Landlord and Tenant in the same manner and order as provided for Net Revenue and as described in Paragraph 4.4 herein.

24.0 RIGHT OF FIRST REFUSAL

24.1 Right of First Refusal. In the event it shall be allowed by the appropriate governing entity, including but not limited to the FAA, and Landlord elects to sell the Premises (excluding the North Side) or any interest therein to a third party, Landlord hereby grants, for and in consideration of the mutual covenants and benefits contained herein, and for good and valuable consideration, Tenant, subject to the terms and conditions hereinafter set forth, the exclusive right of first refusal to purchase the hereinabove described Premises (excluding the North Side). This right of first refusal shall remain in full force and effect during the Term of the Lease.

24.2 Right of Second Refusal on the North Side. Tenant acknowledges that pursuant to the Deutsch Settlement Agreement, Deutsch holds a right of first refusal as to the North Side of the Airport for a twenty (20) year period expiring on March 20, 2023. Accordingly, Tenant's right of refusal under this section as to the North Side is (i) contingent upon the North Side being added to the leased Premises and (ii) subject and subordinate to Deutsch's right of first refusal under the Deutsch Settlement Agreement should Deutsch's right of first refusal be upheld by the FAA and a competent court having jurisdiction over the matter.

24.3 First Offer. Landlord expressly agrees that it shall not sell the Premises or any interest therein to any other person unless it has first offered to sell the property to the Tenant on the same terms, price and conditions submitted by any other person to Landlord or by Landlord to any other person during the Term of this Lease.

24.3.1 Notice. In the event that Landlord desires to sell the Premises or any interest therein, it shall give Tenant written notice of its desire to sell the Property and the terms, price and conditions for the sale of the Premises along with a copy of any proposed agreement in connection therewith.

Tenant shall have sixty (60) days after receipt of said written notice to exercise its right of first refusal to purchase the Premises or any interest therein by giving written notice thereof to Landlord, which will be considered timely if received by Landlord prior to the expiration of the said sixty (60) day period.

24.3.2 Modification. In the event Tenant declines to exercise its Right of First Refusal, after receiving the notice required in Subparagraph 24.2.1, and thereafter Landlord and the prospective purchaser modify by more than five percent (5%) the price, the amount of down payment or make any other material change in the offer, or in the event that the sale is not consummated within one hundred eighty (180) days of the date of the notice, then Tenant's Right of First Refusal shall be reinstated with respect to that transaction.

25.0 FEDERAL OBLIGATIONS/FAA MATTERS

25.1 The Parties hereby understand and agree that the grant assurances set forth in Exhibit "G" (FAA Grant Assurances) were provided by Landlord as a condition of Landlord's acceptance and use of federal grant funds from the FAA. Within the areas of its control and responsibility, Tenant agrees to comply with those assurances to the same extent required of Landlord.

With respect to any portion of the Premises purchased with federal grant funds and with respect to Landlord's conditional agreement to add the North Side of the Airport to the Premises, preapproval of this Lease by the FAA is required, pursuant to the FAA Grant Assurances, which provide in pertinent part:

"(Landlord)...agrees not to dispose of the land by sale or lease without prior consent and approval of the Federal Aviation Administration..."

"(Landlord) will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application...for the duration of the term, conditions and assurances in the grant agreement without approval by the Secretary."

The Parties additionally agree that this Lease is subject to the terms of approvals required in connection with other governmental financing or any deed restrictions as such may have existed and which have been disclosed to Tenant as of the Lease Commencement Date, including those listed on Exhibit "E" (Existing Agreements), which is attached and incorporated by this reference.

25.2 Lease Subordinate to Agreement with United States. This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between Landlord and the United States, or any lawful requirements of the United States relative to the development, operation or maintenance of the Airport.

25.3 Use to Conform with Federal Aviation Regulations. Tenant agrees that Tenant's use of the Premises, including any construction thereon, shall conform to applicable Federal Aviation Regulations.

Tenant specifically agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (as may be amended from time to time, or such other regulation replacing Part 77 as may be adopted pursuant to federal authority) prior to the construction of the Improvements described herein, or any other on-site construction, which includes the modification or alteration of existing structures.

25.4 Nonexclusive Right. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of section 308a of the Federal Aviation Act of 1958. (49 U.S.C. §1349.)

26.0 MEMORANDUM OF LEASE

Following completion by Tenant of a metes and bounds legal description of the Premises, a Memorandum of Lease, in the form attached to this Lease as Exhibit "C" (Memorandum of Lease), shall be executed by the Landlord and Tenant and shall be recorded in the Official Records of the County of San Diego.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

"LANDLORD":

APPROVED AS TO FORM
OCEANSIDE CITY ATTORNEY
Barbara L. Hamilton
BARBARA L. HAMILTON
Assistant City Attorney

THE CITY OF OCEANSIDE,
a municipal corporation

By: _____

Name: _____
Title: _____

"TENANT":

AIRPORT PROPERTY VENTURES,
a California limited liability company

By: *John J. Driscoll*

Name: John J. Driscoll
Title: President

By: *Lydia H. Kennard*

Name: Lydia H. Kennard
Title: Secretary

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On Oct 01, 2008 before me, Michael Ohannesian, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared John J. Driscoll and Lydia H. Kennard
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Place Notary Seal Above

Signature [Handwritten Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Lease Agreement

Document Date: Oct 01, 2008 Number of Pages: 10 + Exhibits

Signer(s) Other Than Named Above: CITY OF OCEANSIDE

Capacity(ies) Claimed by Signer(s)

Signer's Name: John J. Driscoll

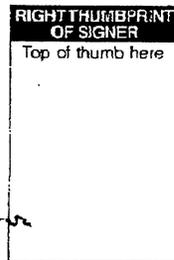
- Individual
- Corporate Officer — Title(s): President
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: Airport Property Ventures, a California Limited Liability Company

Signer's Name: Lydia H. Kennard

- Individual
- Corporate Officer — Title(s): Secretary
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: Airport Property Ventures, a California Limited Liability Company

EXHIBIT "A"
LEGAL DESCRIPTION

VESTING: THE CITY OF OCEANSIDE

APNS: 145-020-24 & 146-030-06

PARCEL 1

THAT PORTION OF SECTION 13 AND THE WEST HALF OF SECTION 18, TOWNSHIP 11 SOUTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO OFFICIAL PLAT THEREOF, ALL IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SECTION 13 AS SHOWN ON RECORD OF SURVEY NO. 16861 RECORDED FEBRUARY 2, 2001 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AS DOCUMENT NO. 2001-0063233;

THENCE ALONG THE WESTERLY LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 13 AS SHOWN ON SAID RECORD OF SURVEY NO. 16861 SOUTH 00°23'25" WEST, 794.57 FEET TO THE NORTHWEST CORNER OF PARCEL 2 AS SHOWN ON SAID RECORD OF SURVEY NO. 16861;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 2 NORTH 80°33'25" EAST 42.23 FEET TO THE EASTERLY RIGHT-OF-WAY OF BENET ROAD AS SHOWN ON SAID RECORD OF SURVEY NO. 16861 AND THE **TRUE POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID NORTHERLY LINE OF PARCEL 2 AND ITS EASTERLY PROLONGATION NORTH 80°33'25" EAST 3303.71 FEET;

THENCE LEAVING SAID EASTERLY PROLONGATION SOUTH 09°26'35" EAST 377.33 FEET TO THE NORTHERLY RIGHT-OF-WAY OF STATE ROUTE 76 (11-SD-76) AS SHOWN ON RECORD OF SURVEY NO. 14995 RECORDED NOVEMBER 2, 1995 AS FILE NO. 1995-0498513;

THENCE ALONG SAID RIGHT-OF-WAY SOUTH 72°36'48" WEST 1488.18 FEET TO AN ANGLE POINT THEREIN;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY NORTH 71°41'26" WEST 58.29 FEET TO THE NORTHERLY RIGHT-OF-WAY OF AIRPORT ROAD AS SHOWN ON SAID RECORD OF SURVEY NO. 14995, AND A POINT ON A NON-TANGENT 180.01 FOOT RADIUS CURVE, CONCAVE SOUTHERLY, A RADIAL FROM SAID POINT BEARS SOUTH 45°47'41" WEST;

THENCE WESTERLY ALONG SAID CURVE AND SAID RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 63°12'12" A DISTANCE OF 198.57 FEET;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY SOUTH 72°35'29" WEST 252.93 FEET TO THE NORTHERLY BOUNDARY OF OCEANSIDE INDUSTRIAL SUBDIVISION ACCORDING TO MAP THEREOF NO. 3748 RECORDED NOVEMBER 18, 1957;

THENCE ALONG SAID NORTHERLY BOUNDARY NORTH 64°26'08" WEST 143.64 FEET TO THE NORTHWEST CORNER OF SAID NORTHERLY BOUNDARY, BEING A POINT IN THE EASTERLY LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 13 AS SHOWN ON SAID RECORD OF SURVEY NO. 14995;

THENCE ALONG SAID EASTERLY LINE NORTH 00°13'39" EAST 86.92 FEET TO AN ANGLE POINT IN THE SOUTHERLY BOUNDARY OF PARCEL 1 DESCRIBED IN GIFT DEED TO THE CITY OF OCEANSIDE RECORDED JUNE 4, 1962 AS FILE/PAGE NO. 94349;

THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID PARCEL 1 SOUTH 80°33'25" WEST 1293.38 FEET TO THE EASTERLY RIGHT-OF-WAY OF BENET ROAD AS SHOWN ON SAID RECORD OF SURVEY NO. 16861;

THENCE ALONG SAID RIGHT-OF-WAY NORTH 00°23'25" EAST 76.60 FEET TO THE BEGINNING OF A 2030.00 FOOT RADIUS CURVE, CONCAVE WESTERLY;

THENCE NORTHERLY ALONG SAID CURVE AND SAID RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 3°09'28" A DISTANCE OF 111.88 FEET;

THENCE LEAVING SAID RIGHT-OF-WAY NORTH 80°33'25" EAST 3116.70 FEET;

THENCE NORTH 09°26'35" WEST 72.00 FEET;

THENCE SOUTH 80°33'25" WEST 3109.57 FEET TO THE EASTERLY RIGHT-OF-WAY OF BENET ROAD AS SHOWN ON SAID RECORD OF SURVEY NO. 16861, AND A POINT ON A NON-TANGENT 2030.00 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL FROM SAID POINT BEARS SOUTH 85°11'25" WEST;

THENCE NORTHERLY ALONG SAID RIGHT-OF-WAY AND SAID CURVE THROUGH A CENTRAL ANGLE OF 2°30'59" A DISTANCE OF 89.16 FEET TO THE **TRUE POINT OF BEGINNING.**

CONTAINING 27.872 ACRES MORE OR LESS.

PARCEL 2

THAT PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER AND THE NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 11 SOUTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO OFFICIAL PLAT THEREOF, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, LYING WITHIN THE LAND DESCRIBED AS PARCEL 1 ON THAT CERTAIN CERTIFICATE OF COMPLIANCE NO. PLA-07-99 RECORDED DECEMBER 7, 1999 AS DOCUMENT NO. 1999-0796388 OF OFFICIAL RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SECTION 13 AS SHOWN ON RECORD OF SURVEY NO. 16861 RECORDED FEBRUARY 2, 2001 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AS DOCUMENT NO. 2001-0063233;

THENCE ALONG THE WESTERLY LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 13 AS SHOWN ON SAID RECORD OF SURVEY NO. 16861 SOUTH 00°23'25" WEST, 794.57 FEET TO THE NORTHWEST CORNER OF PARCEL 2 AS SHOWN ON SAID RECORD OF SURVEY NO. 16861;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 2 NORTH 80°33'25" EAST 1557.78 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE CONTINUING NORTH 80°33'25" EAST 826.62 FEET TO THE WESTERLY LINE OF PARCEL 1 DESCRIBED IN FINAL ORDER OF CONDEMNATION RECORDED OCTOBER 14, 1994 AS DOC. NO. 1994-0604672 OF OFFICIAL RECORDS OF SAID COUNTY;

THENCE ALONG THE WESTERLY BOUNDARY OF SAID PARCEL 1 THE FOLLOWING COURSES:

NORTH 2°37'51" EAST 220.17 FEET TO THE BEGINNING OF A 4781.63 FOOT RADIUS CURVE, CONCAVE WESTERLY;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0°32'14" A DISTANCE OF 44.83 FEET;

THENCE NORTH 2°05'37" EAST 96.75 FEET TO THE BEGINNING OF A 408.12 FOOT RADIUS CURVE, CONCAVE EASTERLY;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 14°22'23" A DISTANCE OF 102.38 FEET;

THENCE NON-TANGENT TO SAID CURVE NORTH 0°06'55" EAST 47.86 FEET TO A POINT ON A NON-TANGENT 1645.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY, A RADIAL FROM SAID POINT BEARS NORTH 05°00'56" WEST;

THENCE LEAVING THE WESTERLY BOUNDARY OF SAID PARCEL 1 DESCRIBED IN FINAL ORDER OF CONDEMNATION RECORDED OCTOBER 14, 1994 AS DOC. NO. 1994-0604672, WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 18°45'56" A DISTANCE OF 538.77 FEET;

THENCE NORTH 76°15'00" WEST 398.24 FEET TO THE BEGINNING OF AN 83.00 FOOT RADIUS CURVE, CONCAVE SOUTHERLY;

THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 30°45'00" A DISTANCE OF 44.55 FEET;

THENCE SOUTH 73°00'00" WEST 11.50 FEET TO THE WESTERLY BOUNDARY OF PARCEL 1 AS SHOWN ON SAID RECORD OF SURVEY NO. 16861;

THENCE ALONG SAID WESTERLY LINE OF PARCEL 1 SOUTH 09°26'35" EAST 787.23 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 12.757 ACRES MORE OR LESS.

ATTACHED HERETO AND MADE A PART HEREOF IS AN EXHIBIT PLAT

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.


MICHAEL SCHLUMPBERGER, PLS 7790

September 24, 2008
DATE



SEC 18

SEC 13

POINT OF COMMENCEMENT
PARCEL 1 & PARCEL 2:
CENTER OF SECTION 13

R 5 W

ROS 16816

T.P.O.B.
PARCEL 2

T.P.O.B.
PARCEL 1

N 80°33'25" E 1515.55'

(MOVEMENT AREA)

PARCEL 1
SEE SHEET 2

PARCEL 2
SEE SHEET 3

SBM

N.W. COR.
PCL 2 PER
ROS 16861

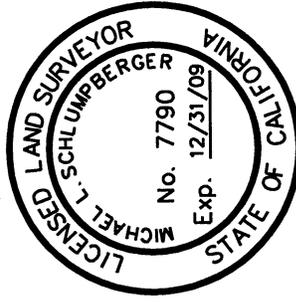
N 80°33'25" E
42.23'

BENET ROAD

AIRPORT ROAD

HWY 76 (11-SD-76)
ROS 14995

SEC 13
SEC 18



THIS PLAT WAS PREPARED BY ME OR
UNDER MY DIRECTION IN CONFORMANCE WITH
THE PROFESSIONAL LAND SURVEYOR'S ACT.

Michael L. Schlumberger
MICHAEL L. SCHLUMBERGER, PLS 7790

PARCEL AREAS
PARCEL 1: 27.872 ACRES MORE OR LESS
PARCEL 2: 12.757 ACRES MORE OR LESS

1"=400'

NOTE: ALL DIMENSIONS SHOWN
HEREON ARE COMPILED FROM
RECORD DATA.

Right-Of-Way Engineering Services, Inc.
Land Surveying

4167 Avenida de la Plata Ste. 114 • Oceanside, CA 92056
(760) 732-1366 FAX (760) 732-1367
Drawing file name: Airport Lease Exhibit A.dwg
Job No. 0808-0076-01

CITY OF OCEANSIDE - AIRPORT

LEASE PARCEL 1 AND PARCEL 2

SEPTEMBER 24, 2008

SHEET 1 OF 3

I.P.O.B. PARCEL 1
N 80°33'25" E
42.23'

I.P.O.B. PARCEL 2
1557.78'

ROS 16816

S 85°11'25" W (R)
1515.55'

N 80°33'25" E 3303.71'

PARCEL 1

N 80°33'25" E 3109.57'

(MOVEMENT AREA)

S 80°33'25" W 3116.70'

S 87°13'57" W (R)

S'LY BDY PCL 1
PER F/P 62-94349

PARCEL 1

S 80°33'25" W 1293.38'

CURVE DATA

C1 Δ=3°09'28" R=2030.00' L=111.88'
C2 Δ=2°31'00" R=2030.00' L=89.16'

E'LY LINE NW 1/4,
SE 1/4, SEC 13

N 00°13'39" E
86.92'

N 64°26'08" W
143.64'

N'LY BDY
MAP 3748

Δ=63°12'12"
R=180.01'
L=198.57'

S 72°35'29" W
252.93'

AIRPORT ROAD

SEE BELOW LEFT

I.P.O.B. PARCEL 1
S 82°40'26" W (R)

1515.55'

N 80°33'25" E 3303.71'

N 80°33'25" E 3109.57'

(MOVEMENT AREA)

S 80°33'25" W 3116.70'

S 87°13'57" W (R)

S'LY BDY PCL 1
PER F/P 62-94349

PARCEL 1

S 80°33'25" W 1293.38'

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C1 Δ=3°09'28" R=2030.00' L=111.88'
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E'LY LINE NW 1/4,
SE 1/4, SEC 13

N 00°13'39" E
86.92'

N 64°26'08" W
143.64'

N'LY BDY
MAP 3748

Δ=63°12'12"
R=180.01'
L=198.57'

S 72°35'29" W
252.93'

AIRPORT ROAD

SEE ABOVE RIGHT

PARCEL 2

PARCEL 1

(MOVEMENT AREA)

N 80°33'25" E 3303.71'

N 80°33'25" E 3109.57'

S 80°33'25" W 3116.70'

SEC 13
SEC 18

PARCEL 1

S 45°47'41" W (R)
58.29'

N 71°41'26" W

Δ=63°12'12"
R=180.01'
L=198.57'

AIRPORT RD.

S 09°26'35" E
377.33'

S 09°26'35" E
72.00'

HWY 76 (11-SD-76)

1"=200'

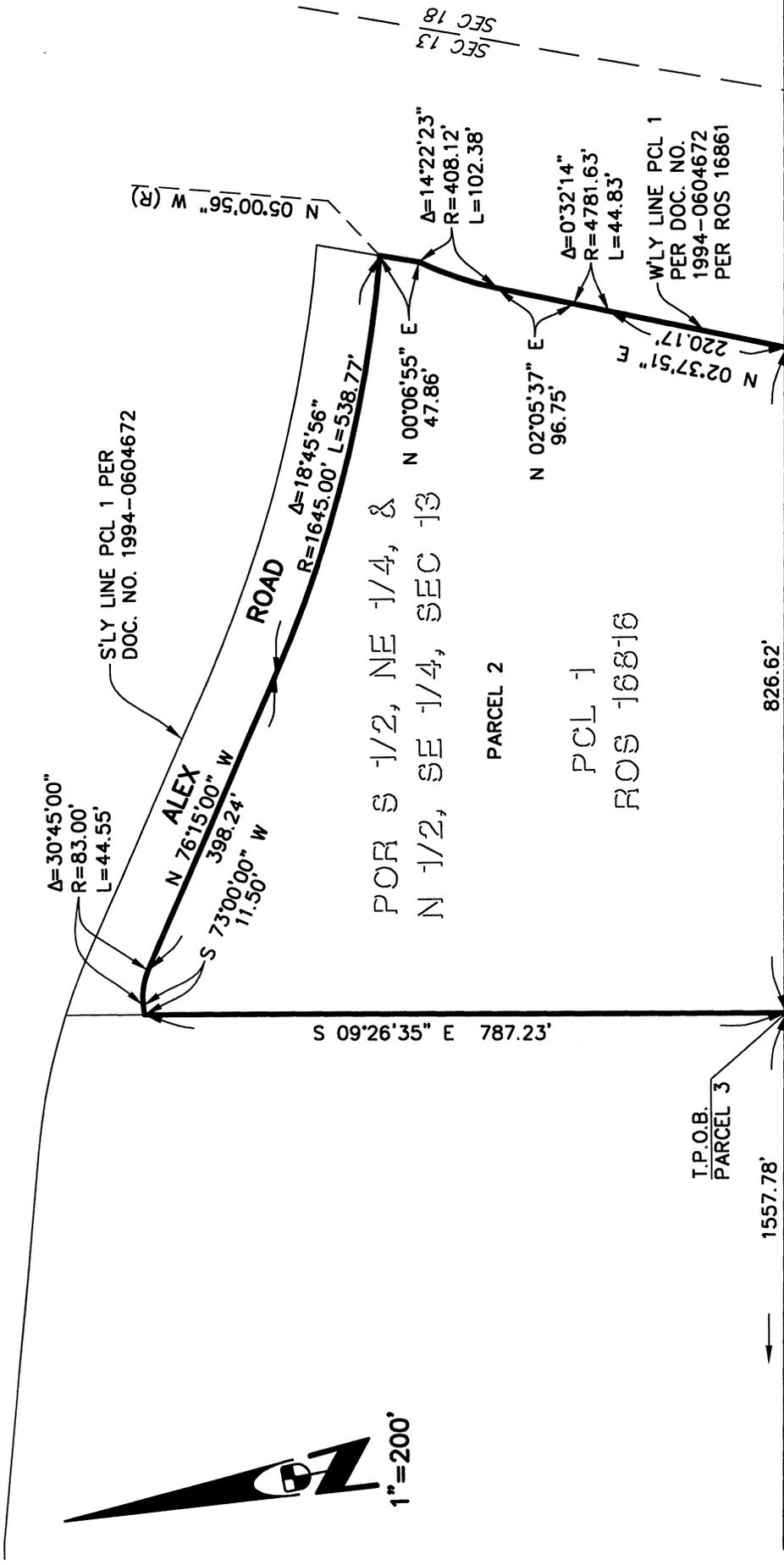
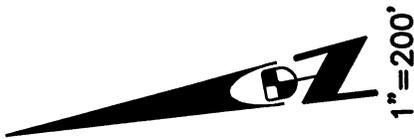
CITY OF OCEANSIDE - AIRPORT

LEASE PARCEL 1 AND PARCEL 2

SEPTEMBER 24, 2008

SHEET 2 OF 3

ROS 14995



S'LY LINE PCL 1 PER
DOC. NO. 1994-0604672

T.P.O.B.
PARCEL 3

POR S 1/2, NE 1/4, &
N 1/2, SE 1/4, SEC 13

PARCEL 2

PCL 1
ROS 16816

SEE SHEET 2

PARCEL 1

CITY OF OCEANSIDE - AIRPORT

LEASE PARCEL 1 AND PARCEL 2

SEPTEMBER 24, 2008

SHEET 3 OF 3

EXHIBIT "A-1"
LEGAL DESCRIPTION

VESTING: THE CITY OF OCEANSIDE

APN: 146-030-06

PARCEL 3 (MOVEMENT AREA)

THAT PORTION OF SECTION 13 AND THE WEST HALF OF SECTION 18, TOWNSHIP 11 SOUTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO OFFICIAL PLAT THEREOF, ALL IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SECTION 13 AS SHOWN ON RECORD OF SURVEY NO. 16861 RECORDED FEBRUARY 2, 2001 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AS DOCUMENT NO. 2001-0063233;

THENCE ALONG THE WESTERLY LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 13 AS SHOWN ON SAID RECORD OF SURVEY NO. 16861 SOUTH 00°23'25" WEST, 794.57 FEET TO THE NORTHWEST CORNER OF PARCEL 2 AS SHOWN ON SAID RECORD OF SURVEY NO. 16861;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 2 NORTH 80°33'25" EAST 42.23 FEET TO THE EASTERLY RIGHT-OF-WAY OF BENET ROAD AS SHOWN ON SAID RECORD OF SURVEY NO. 16861, AND A POINT ON A NON-TANGENT 2030.00 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL FROM SAID POINT BEARS SOUTH 82°40'26" WEST;

THENCE SOUTHERLY ALONG SAID CURVE AND SAID RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 2°31'00" A DISTANCE OF 89.16 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE LEAVING SAID RIGHT-OF-WAY NORTH 80°33'25" EAST 3109.57 FEET;

THENCE SOUTH 09°26'35" EAST 72.00 FEET;

THENCE SOUTH 80°33'25" WEST 3116.70 FEET TO SAID EASTERLY RIGHT-OF-WAY AND A POINT ON A NON-TANGENT 2030.00 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL FROM SAID POINT BEARS SOUTH 87°13'57" WEST;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 2°02'32" A DISTANCE OF 72.36 FEET TO THE **TRUE POINT OF BEGINNING**;

CONTAINING 5.145 ACRES MORE OR LESS.

ATTACHED HERETO AND MADE A PART HEREOF IS AN EXHIBIT PLAT.

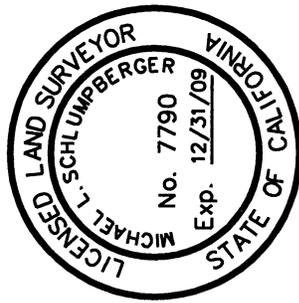
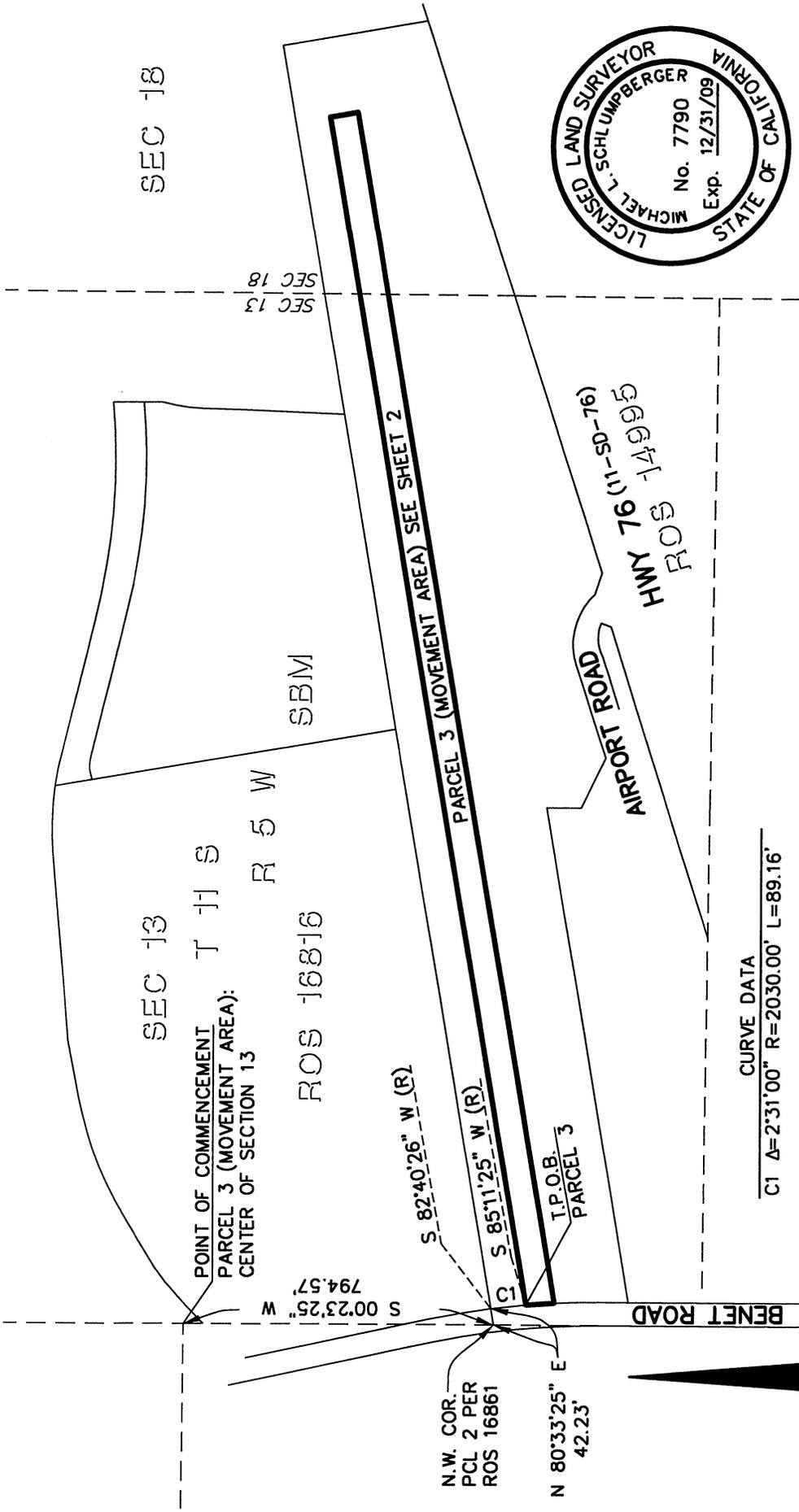
THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

Michael Schlumpberger

MICHAEL SCHLUMPBERGER, PLS 7790

September 24, 2008
DATE





THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYOR'S ACT.

Michael L. Schlumpberger
MICHAEL L. SCHLUMPBERGER, PLS 7790

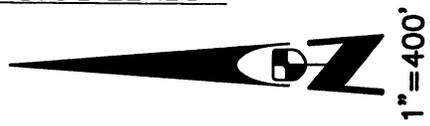
PARCEL AREA
PARCEL 3: 5.145 ACRES MORE OR LESS

CURVE DATA
C1 Δ=2'31"00" R=2030.00' L=89.16'

CITY OF OCEANSIDE - AIRPORT
LEASE PARCEL 3 (MOVEMENT AREA)
SEPTEMBER 24, 2008 SHEET 1 OF 2

Right-of-Way Engineering Services, Inc.
Land Surveying
4167 Avenida de la Plata Ste. 114 · Oceanside, CA 92056
(760) 732-1366 FAX (760) 732-1367
Drawing file name: Airport Lease Exhibit A-1.dwg
Job No. 0808-0076-01

NOTE: ALL DIMENSIONS SHOWN HEREON ARE COMPILED FROM RECORD DATA.



SEC 18

SEC 13

POINT OF COMMENCEMENT
PARCEL 3 (MOVEMENT AREA):
CENTER OF SECTION 13

SEC 13
SEC 18

R 5 W

SBM

ROS 16816

PARCEL 3 (MOVEMENT AREA) SEE SHEET 2

HWY 76 (11--SD-76)
ROS 14995

AIRPORT ROAD

BENET ROAD

N.W. COR.
PCL 2 PER
ROS 16861

N 80°33'25" E
42.23'

S 00°23'25" W
794.57'

S 82°40'26" W (R)

S 85°11'25" W (R)

T.P.O.B.
PARCEL 3

ROS 16816

SEE BELOW LEFT

N 80°33'25" E
42.23'

S 85°11'25" W (R)

N 80°33'25" E 3109.57'

PARCEL 3 (MOVEMENT AREA)

S 80°33'25" W 3116.70'

I.P.O.B.
PARCEL 3
S 87°13'57" W (R)

S 82°40'26" W (R)

BENET ROAD

CURVE DATA

C1 Δ=2°31'00" R=2030.00' L=89.16'

C2 Δ=2°02'32" R=2030.00' L=72.36'

AIRPORT ROAD

SEE ABOVE RIGHT

S 09°26'35" E
72.00'

N 80°33'25" E 3109.57'

PARCEL 3 (MOVEMENT AREA)

S 80°33'25" W 3116.70'

SEC 13
SEC 18

AIRPORT RD.

HWY 76 (11-SD-76)

1"=200'

ROS 14995

CITY OF OCEANSIDE - AIRPORT

LEASE PARCEL 3 (MOVEMENT AREA)

SEPTEMBER 24, 2008

SHEET 2 OF 2



EXHIBIT "A-2"

PREMISES

[To be provided by the City of Oceanside and verified by Airport Property Ventures prior to expiration of the Feasibility Period]

EXHIBIT "B"

OCEANSIDE MUNICIPAL AIRPORT LEASE AGREEMENT

[To be attached after execution.]

EXHIBIT "C"

MEMORANDUM OF OPERATING AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

The City of Oceanside

Attention: City Manager and City Attorney

MEMORANDUM OF OPERATING AGREEMENT

THIS MEMORANDUM OF OPERATING AGREEMENT ("Memorandum") is made as of _____, 2008, by and between THE CITY OF OCEANSIDE, a municipal corporation ("City"), and AIRPORT PROPRETY VENTURES, LLC, a California limited liability company ("Operator").

City and Operator have entered into that certain Operating Agreement dated as of _____ 2008 ("Operating Agreement"), pursuant to which City has contracted with Operator to operate, manage and maintain the movement areas of the Airport located in the City of Oceanside, County of San Diego, State of California and more particularly described on Exhibit "A-1" (Airport Movement Areas and Existing Airfield Improvements), which is attached and incorporated by this reference, all subject to the terms and covenants set forth in the Operating Agreement. The purpose of this Memorandum is to give notice of the existence of the Operating Agreement and the provisions thereof, including without limitation provisions providing for the entry into a new agreement following a foreclosure upon the circumstances described therein. To the extent that any provision of this Memorandum conflicts with any provision of the Operating Agreement, the Operating Agreement shall control.

This Memorandum may be executed in counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first written above.

"CITY"

THE CITY OF OCEANSIDE,
a municipal corporation

By: _____
Name: _____
Title: _____

"OPERATOR"

AIRPORT PROPERTY VENTURES, LLC
a California limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT "D"

EXISTING AGREEMENTS

[To be provided by the City of Oceanside and verified by Airport Property Ventures prior to expiration of the Feasibility Period]

EXHIBIT "E"

EXISTING EQUIPMENT AND ROLLING STOCK

[To be provided by the City of Oceanside and verified by Airport Property Ventures prior to expiration of the Feasibility Period]

EXHIBIT "F"

MAINTENANCE OBLIGATIONS

AIRFIELD MAINTENANCE – MAINTAINING AIRFIELD

1. Runway, taxiway, intersection and threshold, sign repair, bulb replacement.
2. Weed control, documents and reports to department of agriculture.
3. Mow and edge all grass areas.
4. Maintain all landscaping.
5. Maintain all irrigation systems.
6. Fence repairs.
7. Maintenance and repair of automatic gate and card-key system for vehicle entrances.
8. Maintenance and repair of push-button, walk-in gates.
9. Maintain all signage.
10. Keep all areas clean of debris and litter.
11. Enforce all airport rules and regulations.
12. Maintain all concrete and asphalt surfaces.
13. Take care of all aspects of storm water monitoring.
14. File reports and documents for spraying weeds and applying pesticides.
15. Keep daily records of aircraft on field for filing, billing, and security reasons.
16. Runway Inspection - Daily Reporting.
17. Maintenance for runway and taxi system regulators, relays, transmitters for pilot-controlled lighting.

EXHIBIT "F"

MAINTENANCE OBLIGATIONS (CONTINUED)

AIRPORT TERMINAL BUILDING AREA MAINTENANCE

A. EXTERIOR MAINTENANCE OF ADMINISTRATION BUILDING

1. Clean driveway, sidewalks and parking lot.
2. Clean patios.
3. Mow and edge grass area.
4. Clean, weed, fertilize and maintain plants and flowers in all planters.
5. Maintain all sprinkler systems.
6. Maintain signage in driveway and parking lot.
7. Trim trees.

B. AIRPORT TERMINAL BUILDING MAINTENANCE

1. General maintenance of all common areas.
2. Painting interior and exterior.
3. All interior and exterior lighting, including bulb replacement.
4. Minor plumbing and electrical.
5. Clean airport office, lobby, hallway, kitchen and locker room.
6. Clean restrooms and supply with soap, toilet paper, seat covers and paper towels.
7. Window cleaning:
 - a. All exterior windows.
 - b. Interior windows in lobby and airport office.

EXHIBIT "G"

FAA GRANT ASSURANCES

1. FAA grant # 3-06-0173-01 50' Clear Zone North side of runway.
2. FAA grant # 3-06-0173-02 4.5 acres, South side of runway.
3. FAA grant # 3-06-0173-04 Airport Improvement Program.
4. FAA grant # 3-06-0173-05 Airport Improvement Program.
5. FAA grant # 3-06-01739-03 14.7 acres, North side of airfield.

OPERATING AGREEMENT

By and Between

The City of Oceanside, California

and

Airport Property Ventures, L.L.C.

October 1, 2008

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OPERATING AGREEMENT

THIS OPERATING AGREEMENT ("Operating Agreement") is entered into this ____ day of _____, 2008, by and between the City of Oceanside, California, a municipal corporation ("City") and Airport Property Ventures, LLC, a California limited liability company ("Operator").

WHEREAS, City is the owner and operator of the Oceanside Municipal Airport ("Airport"), which is located in the City of Oceanside, County of San Diego, State of California, as described in Exhibit "A" (Legal Description of Airport), which is attached and incorporated by this reference;

WHEREAS, the City wishes to enter into a long-term management agreement (*i.e.*, this Operating Agreement) with Operator for the operation, management and maintenance of the movement areas of the Airport ("Airport Movement Areas and Existing Airfield Improvements"), as depicted on Exhibit "A-1" (Airport Movement Areas and Existing Airfield Improvements), which is attached and incorporated by this reference;

WHEREAS, concurrently with the execution of this Operating Agreement, the City also desires to enter into a long-term lease ("Lease") with Operator, which is attached as Exhibit "B" (Oceanside Airport Lease Agreement) and incorporated by this reference, to enable Operator to manage and maintain the Airport's existing facilities and to develop

and construct new aviation, aviation-related and non-aviation facilities, on areas of the Airport other than the Airport Movement Areas to be known as the "Premises" (as depicted on Exhibit "A-2" (Premises), which is attached and incorporated by this reference).

NOW, THEREFORE, in consideration of the respective promises and mutual agreements, covenants and conditions herein, receipt of which is hereby acknowledged, City and Operator agree as follows:

1.0 DEFINITIONS

The following words, terms and phrases, whenever used in this Operating Agreement, shall have the meaning and significance attached to them in Section 1.0, Definitions, unless expressly provided otherwise.

- 1.1 "Airport" shall mean the Oceanside Municipal Airport, located in the City of Oceanside, County of San Diego, State of California.
- 1.1 "Airport Layout Plan" shall mean the plan approved by the Federal Aviation Administration ("FAA") showing the layout of the physical areas of the Airport.
- 1.2 "Airport Movement Areas" shall mean that area depicted on Exhibit "A-1" (Airport Movement Areas and Existing Airfield Improvements). Final legal descriptions of the Airport Movement Areas will be attached to this Operating Agreement as Exhibit "C" (Memorandum of Operating Agreement).

- 1.3 "Agreement Commencement Date" shall mean the date set forth in Paragraph 2.1 of this Operating Agreement.
- 1.4 "Caltrans" shall mean the California Department of Transportation, Division of Aeronautics.
- 1.5 "City" shall mean the City of Oceanside, California, a municipal corporation.
- 1.6 "Existing Airfield Improvements" shall mean all of the improvements that exist on the Airport Movement Areas as of the Commencement Date of this Operating Agreement, as shown on Exhibit "A-1" (Airport Movement Areas and Existing Airfield Improvements).
- 1.7 "FAA" shall mean the Federal Aviation Administration created by the Federal Aviation Act of 1958, as amended and recodified, or any successor agency thereto.
- 1.8 "Hazardous Materials" shall mean "Hazardous Materials" as defined in Paragraph 20.1 of this Operating Agreement.
- 1.9 "Invested Capital" shall mean the expenses of a capital nature associated with the Improvements made by the Operator to the Airport Movement Areas.
- 1.10 "Improvements" shall mean the Existing Airfield Improvements and New Airfield Improvements together, as defined herein.
- 1.11 "New Airfield Improvements" shall mean any improvements of any type and use constructed by Operator, for the benefit of City and the Airport, within the Airport Movement Areas and in accordance with the terms and conditions of this Operating Agreement.
- 1.12 "North Side" shall mean the portion of the Airport depicted as Parcel 2 and shown on Exhibit "A" (Legal Description of Airport).
- 1.13 "Operator" shall mean Airport Property Ventures, LLC, a limited liability company authorized to do business in the State of California, entering into this Operating Agreement as the Operator of the Airport.
- 1.14 "Parties" shall mean the City and Operator.
- 1.15 "South Side" shall mean the portion of the Airport depicted as Parcel 1 as shown on Exhibit "A" (Legal Description of Airport).
- 1.16 "Unavoidable Delays" shall mean delays due to strikes, lockouts, litigation stay orders, acts of God, inability to obtain labor or materials, governmental acts or restrictions, enemy action, civil commotion, fire, terrorism, acts of war, unavoidable casualties or any other causes beyond the reasonable control of Operator and/or City.

2.0 TERM

- 2.1 Term. The term of this Operating Agreement ("Term") shall be for a period of fifty (50) years and may include two (2) separate options to extend for an additional period of ten (10) years each in accordance with Paragraph 2.2. The Term shall commence upon the date the Operator is granted full possession of the Airport Movement Areas ("Agreement Commencement Date"). The Lease shall expire at the end of the time period provided herein, including any permitted time extension ("Agreement Expiration Date"), unless sooner terminated pursuant to the terms of this Operating Agreement
- 2.2 Operator's Extension Rights. Pursuant to this paragraph, Operator shall have two (2) separate options to extend the Term of this Operating Agreement; if exercised, each option would extend the Term of this Operating Agreement for an additional ten (10) years ("Renewal Term"). If Operator elects to exercise this option with respect to any Renewal Term, then Operator shall provide written notice thereof to City at least one hundred eighty (180) days prior to the expiration of the then current Term. If Operator does not deliver such notice to City, as provided herein, the Operator shall be deemed to have elected to not exercise the option with respect to such Renewal Term and the Operating Agreement shall expire on the then-scheduled Agreement Expiration Date. However, if Operator does deliver to City such written notice, in the timely fashion specified above, the Term of the Operating Agreement and the Agreement Expiration Date shall be automatically extended for ten (10) years. During any Renewal Term(s), Operator shall be subject to all provisions of this Operating Agreement, which shall continue in full force and effect.
- 2.3 Maximum Length of Term. Notwithstanding anything in this Operating Agreement to the contrary, in no event shall the Term of this Operating Agreement (including any extensions thereof) exceed seventy (70) years in the aggregate.
- 2.4 Holdover. Upon expiration or sooner termination of this Operating Agreement, Operator shall surrender the Airport Movement Areas and Improvements to City in as good, safe, and clean condition as practicable, reasonable wear and tear and acts of God excepted. The Operating Agreement shall terminate without further notice at the expiration of the Term. Any holding over by Operator after expiration shall not constitute a renewal or extension, or give Operator any rights in or to the Airport Movement Areas, except as expressly provided in this Operating Agreement.

3.0 TITLE TO IMPROVEMENTS

All Existing Airfield Improvements and New Airfield Improvements shall at all times during the Term of this Operating Agreement, including any Renewal Term, be and remain the property of, with title thereto being in the name of City for all purposes.

4.0. CONTRACT SUM

- 4.1 Management Fee. For so long as the Operator and City maintain the Lease in full effect, the Contract Sum payable to Operator pursuant to the obligations and work to be performed under this Operating Agreement shall be One Dollar (\$1.00) per year, payable to Operator and treated as an Operating Expense as such term is defined in Subparagraph 4.4.3 of the Lease and shall be paid in accordance with Section 4.0 of the Lease.
- 4.2 Airport Operating Expenses. The Parties hereto acknowledge that it is their intent that all costs associated with the operation, management and/or maintenance of the Airport Movement Areas or Improvements, including but not limited to taxes, insurance, and maintenance costs, and expenses of any kind or nature, are entirely City's obligation, whether directly or as delegated to a third party. Such costs and expenses shall be reasonable and as required and customary for airports in the metropolitan San Diego area of similar size and usage. All such expenses shall be considered to be part of the "Operating Expenses," as such term is defined in Subparagraph 4.4.3 of the Lease, and shall be paid in accordance with Section 4 of the Lease.
- 4.3 Operating Agreement Gross Revenues. As used in this Operating Agreement, the term "Operating Agreement Gross Revenues" shall mean all revenues and income of any nature derived from the use or operation of the Airport Movement Areas. However, in no event shall any of the following be included in "Operating Agreement Gross Revenues": (i) Fuel Income; (ii) Refinancing Proceeds; or (iii) any sales taxes, excise taxes, gross receipt taxes or similar charges. All Operating Agreement Gross Revenues generated by Operator pursuant to this Operating Agreement shall be collected and paid to the Tenant through the Lease, and shall be utilized to determine "Lease Gross Revenues," as such term is defined in Subparagraph 4.4.2 of the Lease, and shall constitute a portion of "Lease Gross Revenues."
- 4.4 Existing Agreements. City hereby represents and warrants that attached as Exhibit "D" (Existing Agreements), which is incorporated by this reference, is a list that sets forth each of the licenses, contracts and other agreements affecting the Airfield Movement Areas as of the Agreement Commencement Date (collectively, the "Existing Agreements"). Exhibit "D" includes information relating to: (i) the identity of the parties to each Existing Agreement; (ii) any and all amendments and modifications to each Existing Agreement; (iii) a description of the services and/or products provided via each Existing Agreement; (iv) the date, commencement date, and expiration date of each Existing Agreement; (v) the current monthly charges payable under each Existing Agreement; and (vi) the amount of all security deposits and/or prepaid amounts paid by City thereto.
- 4.4.1 Notification Letter. Prior to the execution of this Operating Agreement, Operator shall provide City with a written list of the Existing Agreements, as identified in Exhibit "D," it intends to continue after the Agreement Commencement Date and a list of Existing Agreements it intends to terminate as of the Agreement Commencement Date.

4.4.1.1 Continuation. In the event Operator desires to continue any Existing Agreement, City shall, upon the execution of this Operating Agreement, assign all of its rights and interests under each such Existing Agreement to Operator. In that regard, City shall deliver a letter to the holder of each of the parties under the Existing Agreement ("Continuation Notification Letter"), duly executed by City and dated as of the Agreement Commencement Date, notifying each such party that: (a) the Operator is now responsible for the maintenance and operation of the Airfield Movement Areas, (b) all of City's rights and interest in and to the Existing Agreement have been assigned to Operator, and (c) commencing immediately, all invoices and any notices under the Existing Agreement are to be paid by and sent directly to Operator. Any charges and other liabilities incurred by City prior to the Agreement Commencement Date shall remain the sole responsibility of City. Operator shall be required to remit to City any security deposits or advance payments made to parties under any such Existing Agreement.

4.4.1.2 Termination. In the event Operator chooses not to continue any Existing Agreement, City shall, upon the execution of this Operating Agreement, deliver a letter to each of the parties under such Existing Agreement ("Termination Notification Letter"), duly executed by City and dated as of the Agreement Commencement Date, notifying each such party that the Existing Agreement shall be terminated as of the Agreement Commencement Date or as soon as allowable pursuant to the terms of the Existing Agreement thereafter. Any charges and other liabilities incurred by City prior to the Agreement Commencement Date shall remain the sole responsibility of City. Operator shall be required to remit to City any security deposits or advance payments made to parties under any such Existing Agreement.

4.5 New Agreements. City is expressly prohibited from entering into any new agreements, leases, contracts or other arrangements with third parties with respect to the Airport Movement Areas during the Term of this Operating Agreement, including any Renewal Term. This prohibition excludes any agreements required by the FAA, or agreements relating to the North Side portion of the Airport. As to the North Side of the Airport, City hereby represents that the North Side is subject to the "Settlement Agreement and Limited Mutual Release," effective June 2, 1999, entered into by and between the City and the Deutsch Company and Deutsch Engineered Connecting Devices. By virtue of this provision, Operator acknowledges receipt of this agreement, and its awareness of the agreement's terms and conditions.

5.0 IMPROVEMENTS/ALTERATIONS

5.1 Capital Improvement Plan. Operator shall prepare and file with the FAA, as and when required by the FAA, a Capital Improvement Plan ("CIP"), which shall seek to improve, modernize and renovate Existing Airfield Improvements and/or

develop and construct New Airfield Improvements, so as to provide for the efficient, safe and orderly operation of the Airport Movement Areas. Upon FAA approval of a CIP, Operator shall promptly thereafter deliver to City a copy of each such CIP.

5.1.1 Implementation. As the Parties may agree, Operator shall diligently, and subject to the receipt of the airport aid referenced in Subparagraph 5.1.2 below, use reasonable efforts to implement the existing CIP and continue such implementation until such time as the FAA shall approve the subsequent CIP for the Airport prepared by Operator. Notwithstanding the foregoing, and subject to FAA approval, if required, Operator may alter the existing CIP by making changes to the nature and phasing of individual projects within the CIP.

5.1.2 FAA Grants, and Bonds and Government Financing. City agrees to consider securing further funding from the FAA during the entire Term of this Operating Agreement, as such funding is necessary and appropriate to improve and upgrade the Airport Movement Areas. Moreover, City agrees to cooperate, to the extent required, and assist Operator in securing bond financing and other types of applicable government financing for the Improvements during the entire Term of the Operating Agreement. Operator agrees to assist the City in the application for and administration of such funding. City shall be solely responsible for serving as the sponsor of such funding and for the payment of the sponsor's share.

5.1.3 FAA Funding. Notwithstanding anything contained herein to the contrary, in no event shall Operator be deemed to have any obligation in this Operating Agreement to undertake any project or portion thereof, in an approved CIP, unless and until FAA funding is available to finance such improvements and City has deposited with the FAA the sponsor's share of the funding such that the entire project is fully funded. In no event shall Operator be obligated to finance any portion of the renovation of Existing Airfield Improvements or the construction of New Airfield Improvements.

5.1.4 Operator Investment. In the event City is unable to fulfill the FAA funding requirements contained in Subparagraph 5.1.2, Operator may elect, at its sole option, to pay the FAA's required sponsor's share on behalf of the City. In the event Operator makes such an investment, any such amounts shall be considered to be Invested Capital and shall be repaid in accordance with Section 4.0 of the Lease.

5.2 Construction. The terms and provisions of this Paragraph 5.2 shall apply with respect only to any of the work to be undertaken by Operator pursuant to Paragraph 5.1.

5.2.1 Generally. City hereby grants to Operator the right and power to renovate and/or construct Improvements within the Airfield Movement Areas in accordance with an approved CIP. Operator agrees to construct Improvements in accordance with the terms of this Paragraph 5.2 and,

once commenced, to use reasonable efforts to cause the completion of Improvements.

5.2.2 Plans and Specifications. If required by any governmental agency, Operator shall prepare working drawings and specifications ("Plans"), submit them to the appropriate governmental agencies for approval, and shall deliver to City one complete set as approved by such governmental agencies.

5.2.3 Notice of Intent to Construct. Operator shall notify City of Operator's intention to commence work on Improvements at least thirty (30) days before the commencement of any such work or delivery of any materials.

5.2.4 Completion of Construction. Once any work on the Improvements is begun, Operator shall, with reasonable diligence, secure completion of all construction of Improvements. All work shall substantially comply with all legal requirements, Permitted Uses and Insurance Requirements. Any work performed by Operator shall be deemed to have satisfied the foregoing if such new work has been approved in writing by the applicable governmental agencies with jurisdiction over same.

5.2.5 Notice of Completion. On completion of Improvements, Operator shall timely file, or cause to be filed, a notice of completion with City.

5.2.6 Ownership of Improvements. All Existing Airfield Improvements and any New Airfield Improvements shall remain the sole and separate property of City

5.3 Alterations. At any time during the Term of this Operating Agreement, Operator shall have the right, before or after any damage to or destruction of the Airport Movement Areas, to make such changes and alterations, structural or otherwise, to Improvements as Operator, subject to FAA approval, shall deem necessary or desirable, ("Alteration(s)"). Any such Alteration(s) shall be subject to the same terms and conditions as set forth in this Section 5.0, in addition to the terms and conditions of this Paragraph.

5.4 Mechanics Liens. Operator shall not suffer or permit any mechanic's liens to be filed against the Airfield Movement Areas or Improvements by reason of work, labor, services or materials supplied or claimed to have been supplied to Operator.

5.5. Project Management Fee. Operator shall be entitled to be paid a project management fee in the amount of five percent (5%) of the total construction and/or improvement costs of any alteration to or construction of Improvements. Such fee shall be paid on a current basis as an expense of such construction or alteration.

6.0 DUTY TO INSPECT

6.1 Baseline Agreement. Operator agrees that it has examined the location, and physical condition of the Airport Movement Areas and accepts them in their

present condition, with material exceptions to be noted in a baseline agreement ("Baseline Agreement") to be entered into by Operator and City within one hundred twenty (120) days following the Agreement Commencement Date. Material defects that are discovered at the time of the inspection shall be agreed upon by Operator and City, and listed on the Baseline Agreement. City shall remain liable for material defects, for which it will likewise indemnify and hold Operator harmless.

- 6.2 Duty to Disclosure. City has the responsibility to disclose the location and condition of all known Hazardous Materials as well as underground and otherwise concealed structures, tanks, pipes, valves, drains, sumps, or other like items.
- 6.3 Hazardous Materials. City shall remain solely responsible for Hazardous Materials, as defined in Paragraph 20.1, on the Airport Movement Areas or caused by any condition on the Airport Movement Areas, and for any condition or defect constituting a violation of law or regulation or for any condition constituting a public or private nuisance existing at the time of the Agreement Commencement Date. City agrees to, and hereby does, indemnify and hold Operator harmless from the effects of these and other defects existing at the time of the Agreement Commencement Date.

7.0 USE

Prior to the Agreement Commencement Date, the Airport Movement Areas have been operated by City as a portion of the Oceanside Municipal Airport. The Airport Movement Areas, together with that portion of the Airport that is not covered under this Operating Agreement have been operated on an integrated basis. City and Operator intend that the Airport Movement Areas shall continue to be operated as a municipal airport during the Term of this Operating Agreement in substantially the same manner as the Airport Movement Areas have been operated prior to the Agreement Commencement Date, subject to the terms and provisions hereof. Upon performance of the agreements, provisions and conditions contained in this Operating Agreement, Operator will have the use of the Airport Movement Areas for the purposes of the operation and maintenance of the Existing Airfield Improvement, for the construction and operation of the New Airfield Improvements, and for other business activities directly related thereto.

8.0 CITY AND OPERATOR RESPONSIBILITIES

- 8.1 City Responsibilities. Notwithstanding anything contained in this Operating Agreement to the contrary, City and Operator acknowledge and agree that City shall maintain sole responsibility for the provision of certain services to and/or related to the operation of the Airport Movement Areas and those portions of the Airport which are not leased to Operator pursuant to the Lease ("City Responsibilities"). City shall be responsible for the providing the following to and for the benefit of the Airport Movement Areas during the Term of this Operating Agreement:

- 8.1.1 Reporting. City representatives shall report to the City Council and staff of the City of Oceanside, from time to time and as may be required, with respect to all matters relating to the use and operation of the Airport.
- 8.1.2 FAA Grants, and Bonds and Government Financing. In accordance with all of the terms and conditions provided in Paragraph 5.1 of this Operating Agreement, City agrees to consider funding from the FAA during the entire Term of this Operating Agreement, as such funding is necessary and appropriate to improve and upgrade the Airport Movement Areas. Moreover, City agrees to cooperate to extent required to assist Operator in securing bond financing and other types of applicable government financing for the Improvements during the entire Term hereof.
- 8.1.3 Noise Procedures. City shall support Operator in the interface with the public or any public entity regarding all noise issues and shall be responsible for conducting public hearings on issues between the Operator and the public, and any public entity, regarding noise abatement procedures.
- 8.1.4 Existing Equipment and Rolling Stock. City shall provide Operator with the equipment and rolling stock to be furnished by City as of the Agreement Commencement Date as described in Exhibit "E" (Existing Equipment and Rolling Stock), which is attached and incorporated by this reference.
- 8.2 Operator Responsibilities. Operator hereby agrees that it shall operate the Airport as a public airport, and perform all work and furnish all services required for such operation, in an orderly and proper manner and in accordance with all applicable federal, state and laws, rules and regulations, FAA agreements, FAA and state assurances, and the terms of conditions of this Operating Agreement. Operator shall be solely responsible for providing the following to and for the benefit of the Airport Movement Areas during the Term of this Operating Agreement.
- 8.2.1 Airfield Maintenance. Operator shall maintain, repair and keep in good working order all runways, tarmacs, taxiways, and other areas of the Airport Movement Area that are not leased to Operator or others pursuant to a separate lease agreement. More specifically, Operator shall be required to undertake the maintenance obligations set forth in Exhibit "F" (Maintenance Obligations), which is attached and incorporated by this reference. However, Operator must provide this service only if there are sufficient funds from the "Lease Gross Revenues," as such term is defined in Paragraph 4.4.2 of the Lease, to provide such services and maintenance and to purchase, lease and/or make available all equipment, furnishings, materials, tools, supplies, radios, and all other items and devices of any kind necessary or appropriate to undertake such maintenance and services.
- 8.2.2 Airfield Improvements. Operator shall seek funding from the FAA to maintain, improve and modernize the Existing Airfield Improvements and to construct New Airfield Improvements, as necessary and appropriate,

and shall develop, construct and manage such Airfield Improvements in accordance with Section 8.0 and Section 5.0 of this Operating Agreement.

- 8.2.3 FAA Certification. Operator shall maintain FAA certification to the extent FAA airport certification rules apply to the Airport at any time.
- 8.2.4 Recordkeeping. Operator shall be required to maintain separate financial accounting records to properly record and categorize expenses incurred in connection with this Operating Agreement on a basis that is consistent with generally accepted accounting principles and of sufficient detail to assure the City of the safeguarding of the assets being managed, and in accordance with the standards required by the FAA. City or its agent shall have the right, at City's expense and at reasonable times upon prior notice to Operator, to examine the books and records of Operator with respect thereto
- 8.2.5 Airport Personnel. Operator shall be responsible for the hiring, discharge, management, training and all other matters relating to personnel required to operate and maintain the Airport Movement Areas pursuant to this Operating Agreement.
- 8.2.6 Emergency Plans. Operator shall develop emergency plans that shall include the coordination of City Police and Fire as well as other off-airport resources that may be required in the event of an emergency on the Airport.
- 8.2.7 Community Relations. Operator shall develop a community relations program, including the designation of a member of Operator's on-airport staff responsible for community liaison activities
- 8.2.8 Noise Abatement Procedures. Operator shall maintain published procedures for noise abatement and provide enforcement mechanisms, as required by law or otherwise and as appropriate. Additionally, Operator will designate a noise abatement officer; this officer shall be responsible for the development, management and oversight of the noise abatement program and shall serve as the primary liaison with the community. The purpose of this program is to provide for the most compatible operation practical within the surrounding environs of the Airport and to establish good relationships with Airport neighbors.
- 8.2.9 Citizens for a Better Oceanside. Operator shall comply with the requirements of the September 2003 Settlement Agreement with the Oceanside Citizens Against the Airport, as applicable.
- 8.3 Operator Subcontracting. It is specifically agreed that nothing contained herein shall preclude Operator from subcontracting the performance for any such work or services to others or purchasing utilities, supplies or services from others in a prudent manner, provided that the overall administration and control of the Airport Movement Areas is exercised by Operator.

- 8.4 Operator Obligation to Comply with Laws. Operator shall at all times comply, and shall use reasonable efforts to cause all users of the Airport Movement Areas to comply with all applicable laws, all regulations imposed by and all other matters relating to the FAA that affect the Airport Movement Areas, Airport Improvement Program grant assurances, and any other rules or regulations imposed by governmental agencies with jurisdiction over the Airport, including the City.
- 8.5 Temporary Closure of Oceanside Airport. City and Operator acknowledge and agree that City shall have the right to temporarily suspend operations at the Airport, in the case of emergencies, for so long as reasonably required to meet the emergency conditions, or as otherwise permitted or required by the FAA for up to five (5) calendar days each "Lease Year," as such term is defined in the Lease. City shall, except in the case of emergencies, give Operator written notice of any such suspension of operations not less than thirty (30) days prior to the date of such suspension. Except in the case of emergencies, City shall have no right to suspend operations or close the Oceanside Airport: (i) for more than two (2) times during any 30-day period; or, (ii) for more than five (5) days in any Lease Year, without the prior written consent of Operator, which consent shall not be unreasonably withheld.
- 8.6 Operation of Oceanside Airport; FAA Requirements. City and Operator hereby acknowledge and agree that the Airport shall at all times be operated in accordance with the terms and conditions set forth in any applicable FAA grant assurances and as set forth on Exhibit "G" (FAA Grant Assurances), which is attached and incorporated by this reference. The Parties also understand and agree that the grant assurances set forth in Exhibit "G" were provided by City as a condition of City's acceptance and use of federal grant funds from the FAA. Within the areas of its control and responsibility, Operator agrees to comply with those assurances to the same extent required of City.

9.0 INSURANCE/INDEMNIFICATION

- 9.1 Operator Insurance Requirements. Operator shall, during the entire Term of this Operating Agreement, including all Renewal Terms, if any, maintain the following insurance, as an Airport Operating Expense to this Operating Agreement, for the mutual benefit of City and Operator, under policies naming City as an additional insured, in such amounts and kind as are reasonably satisfactory to City. The Parties agree to execute an insurance addendum to this Operating Agreement prior to Agreement Commencement Date, which addendum shall describe the specific types and amounts of insurance coverage to be provided for the first five (5) years of the Term of this Operating Agreement. The parties agree that said coverage will include, at a minimum :
- 9.1.1 Airport Liability Insurance. A policy of airport liability insurance, providing coverage for, among other things, airport operations, blanket contractual liability, premises, products/completed operations, and personal injury coverage.

- 9.1.2 Comprehensive Auto Liability Insurance. A policy of auto liability insurance endorsed for all owned, non-owned and hired vehicles with a combined single limit of at least One Million Dollars (\$1,000,000).
- 9.1.3 Workers' Compensation Insurance. A program of workers' compensation insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including employers liability covering all persons providing services on behalf of Operator and all risks to such persons under this Operating Agreement.
- 9.1.4 Builder's Risk Insurance. Before commencement of any demolition or construction work, Operator shall procure a policy of builder's "all risk" insurance including vandalism and malicious mischief coverage, in a form and with a company reasonably acceptable to City, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees ("Builder's Risk Insurance"), said insurance to be maintained in force until completion and acceptance of the work.
- 9.2 Review of Insurance requirements. The amount and types of insurance to be maintained pursuant to this Operating Agreement shall be reviewed by City and Operator every five (5) years to consider whether, in City's reasonable discretion, the amount of coverage shall be increased or decreased and whether the type of coverage should be modified.
- 9.3 Policy Provisions. All insurance required under this Operating Agreement shall be effected under valid enforceable policies issued by insurers of recognized responsibility and licensed to do business in the State of California. Such insurance shall be provided by a company (or companies) having a general policyholder's rating in Best's Rating Guide of A- or better. Certificates evidencing all such policies shall be delivered to City. All such policies shall contain a non-cancellation clause, except upon thirty (30) days' prior written notice to each named insured and loss payee. All such policies shall contain language to the effect that: (i) the insurer waives the right of subrogation against City; and (ii) the policies are primary and noncontributing with any insurance that may be carried by Operator.
- 9.3.1 All policies of insurance required herein shall name City and Operator as the insureds as their respective interests may appear. Subject to the provisions and limitations herein set forth, all Casualty Insurance and Builder's Risk Insurance policies shall also provide, if required by either Party hereto, for any loss thereunder to be payable to any mortgagee as their respective interests may appear, pursuant to a standard mortgagee clause or endorsement. The loss, if any, under said Casualty Insurance and Builder's Risk Insurance policies shall be adjusted by Operator with the insurance companies.
- 9.3.2 Any loss paid under Casualty Insurance or Builder's Risk Insurance to Operator shall be held by Operator in trust for application first to the

Restoration of the Airport Movement Areas to the extent required under Section 10 below (with any balance remaining thereafter to become City's sole property, subject, however, to the rights of any mortgagee). Any loss so paid to the Depository shall be disbursed by it in accordance with the provisions of Paragraph 10.3 below.

9.3.3 Operator shall be entitled to maintain any of the insurance, required pursuant this Section 9, under a blanket policy or policies of insurance that covers other properties owned, leased and/or operated by Operator or its affiliates, provided that no insurance required hereunder is limited, decreased or modified as a result thereof (whether as the result of any co-insurance, excess coverage or other term or provisions of such blanket policy).

9.4 Waiver of Subrogation. Operator hereby waives its right of recovery against City for any loss covered by insurance policies required by this Operating Agreement, to the extent of the insurance coverage is actually provided thereby.

9.5 Indemnification. Operator agrees to indemnify, defend, and save harmless, City, and City's agents, officers, employees, and contractors from and against any and all claims, liabilities, expenses, damages, costs (including, but not limited to, litigation costs and attorney fees) arising from or connected to the Operator's conduct, acts or omissions under this Operating Agreement except to the extent those claims arise from the conduct, acts or omissions of City, its officers, agents, or employees.

However, if the City consents to the Operator's assignment of the Operator's interest in the Operating Agreement, Operator has no obligation to indemnify, defend, or save harmless, City, or City's agents, officers, employees, and contractors from or against any and all claims, liabilities, expenses, damages, costs (including, but not limited to, litigation costs and attorney fees) arising from or related to the Operating Agreement following such assignment date.

10.0 DAMAGE TO OR DESTRUCTION OF PROPERTY

10.1 Notice. In case of any material damage to or destruction of the Airport Movement Areas or any part thereof, Operator shall promptly give written notice thereof to City generally describing the nature, extent and cause of such damage or destruction.

10.2 Restoration. In case of any damage to or destruction of the Airport Movement Areas or any part thereof, subject to the provisions of Section 5.0 above and Paragraph 10.4 below, Operator shall, subject to the availability of FAA and/or insurance funds, promptly commence and complete (subject to Unavoidable Delays) the restoration, replacement or rebuilding of the Airport Movement Areas. These efforts will restore, replace, or rebuild the Airport Movement Areas so that they are equivalent, to the greatest extent possible, to their value, condition and character immediately prior to such damage or destruction, with such Alterations as may be made at Operator's election pursuant to and subject to the terms of Paragraph 5.3.

10.3 Application of Insurance Proceeds.

10.3.1 Subject to the rights of any permitted Mortgagee, insurance proceeds received by a Depository pursuant to 9.3.2 above shall be paid to Operator according to Depository's standard procedures for disbursing construction loan proceeds, from time to time, as Restoration progresses, to pay (or reimburse Operator for) the cost of Restoration. Subject to the rights of any Mortgagee, any excess (*i.e.*, beyond all sums necessary for such Restoration) shall be paid to City as its sole and separate property with respect to Alterations and Improvements.

10.3.2 Any such Casualty Insurance proceeds paid to Operator shall be applied by Operator first directly toward such Restoration.

10.4 Termination Due to Damage. In the event the Airport Movement Areas shall be damaged as a result of:(i) any casualty during the last seven (7) years of the Term, to the extent the Airport Movement Areas cannot be reasonably repaired or restored, or (ii) as a result of any earthquake or other casualty not covered by any insurance that is required to be carried on the Airport Movement Areas, Operator may, subject to the satisfaction of those conditions set forth below, elect to terminate this Operating Agreement and all of its obligations hereunder effective as of the date that is the last calendar day of the third (3rd) month following such event of destruction, provided that such notice of termination must be delivered to City within ninety (90) days after the occurrence of such damage or destruction. Operator's right to terminate this Operating Agreement as provided in this Paragraph 10.4 shall be subject to each of the following conditions:

10.4.1 Operator shall give City notice of the damage or destruction promptly but not later than fifteen (15) days after such event of destruction, detailing facts that qualify the casualty under this provision;

10.4.2 Operator delivers possession of the Airport Movement Areas and Improvements to City, and promptly thereafter ceases to operate or do business on the Airport Movement Areas;

10.4.3 Operator causes to be discharged all liens and encumbrances resulting from any act or omission of Operator that are not consented to by City in writing;

10.4.4 Operator complies with the provisions of this Operating Agreement relating to the application of insurance proceeds; and

10.4.5 Operator uses all available insurance proceeds to pay the costs of removing all debris and remains of the damaged Improvements from the Airport Movement Areas.

11.0 TERMINATION

- 11.1 Termination for Cause. Either City or Operator may terminate this Operating Agreement if the other Party shall cause a material breach to the terms of this Operating Agreement. Should either Party elect to do so, the rights of the Parties shall be adjusted pursuant to Section 11.0.
- 11.2 Termination by City. City reserves the right to terminate this Operating Agreement for cause in the event of a material breach to the terms of this Operating Agreement by Operator by giving Operator one hundred eighty (180) days' prior written notice of City's intent to terminate. Such Operating Agreement shall then be terminated provided Operator has not cured such breach within said one hundred eighty (180) day period, or, if such breach is not capable of being cured within said period, Operator has not have diligently commenced such cure within such period or has not continued prosecuting the same with due diligence.
- 11.2.1 Operator Obligations. Following receipt of a notice to terminate, and except as otherwise directed by City, Operator shall: (i) cease operations under this Operating Agreement as of the termination date; and, (ii) to the extent specific obligations of Operator are not terminated by such notice, Operator shall continue and/or complete performance of such obligations.
- 11.2.2 City Obligations. In the event City terminates this Operating Agreement for any reason, City agrees to pay Operator all monies due and owing to the Operator under this Operating Agreement as of the date of said termination.
- 11.3 Termination by Operator. Operator reserves the right to terminate this Operating Agreement for cause in the event of a material breach to the terms of this Operating Agreement by City by giving City one hundred eighty (180) days' prior written notice of Operator's intent to terminate. Such Operating Agreement shall then be terminated provided City has not cured such breach within said one hundred eighty (180) day period, or, if such breach is not capable of being cured within said period, City has not have diligently commenced such cure within said period or has not continued prosecuting the same with due diligence. Additionally, City agrees to pay Operator all monies due and owing to the Operator under this Operating Agreement as of the date of said termination.
- 11.4 Lease Termination. In the event the Lease shall terminate for any reason, this Operating Agreement shall also terminate. In the event the Operating Agreement terminates for any reason, the Lease shall continue in full force and effect unless otherwise terminated pursuant to the terms of the Lease. In this latter event, City shall immediately provide the services to be performed pursuant to this Operating Agreement, whether directly or as delegated to a third party.
- 11.5 Eminent Domain. If at any time during the Term hereof, Operator is deprived of the Airport Movement Areas, any part thereof, or any interest therein, by condemnation or like proceedings or by conveyance in lieu thereof, this Operating Agreement and each and all of the obligations shall terminate proportionately with the portion of the Airport Movements Areas so taken, but

shall remain in full force and effect as to the remainder of the Airport Movement Areas, subject to Operator's termination rights herein. However, nothing herein shall be construed to deprive Operator of any right it may have under law to just compensation or damages for the value of the unexpired Term of this Operating Agreement or for Operator's trade fixtures, personal property, reasonable expenses or remaining rights of use of the Improvements.

12.0 FINANCING

- 12.1 Fee Mortgage. At any time, City shall have the right to enter into a mortgage, deed of trust or other security instrument on the interests of City in the Airport Movement Areas (a "Fee Mortgage"). However, this Operating Agreement (as currently written, or as modified, amendment, supplemented, *etc.*) and all rights of Operator hereunder shall have priority over, and shall be senior and superior to, the lien of any Fee Mortgage, security agreement or other lien or encumbrance now or hereafter made by City and affecting the Airport Movement Areas, whether or not such Fee Mortgage, security agreement or other lien or encumbrance shall also cover other lands and/or buildings.
- 12.2 No Liens. Notwithstanding anything to the contrary contained in this Operating Agreement, Operator shall not be permitted to give, assign, transfer, mortgage, hypothecate, grant control of, or otherwise encumber City's fee interest in the Airport Movement Areas.

13.0 ASSIGNMENT

13.1 Assignment

- 13.1.1 Permitted Assignments. Operator shall not have the right to assign its interest in the Operating Agreement without the prior written consent of City, which shall not be unreasonably withheld, conditioned or delayed. City and Operator acknowledge and agree that it shall be considered unreasonable for City to withhold such consent if the proposed assignee: (i) can reasonably demonstrate that it has the financial and professional ability to perform the obligations of Operator under this Operating Agreement; (ii) has a level of experience in airport operations similar to the level of experience of Operator as of the Operating Agreement Commencement Date; and (iii) provides a written assumption of all of Operator's obligations and liabilities under this Operating Agreement. In the event of an assignment of the Operating Agreement, Operator shall not be responsible for and shall be deemed to be released from all obligations and liabilities arising under this Operating Agreement from and after the date of such assignment, provided assignee assumes all of the responsibilities and obligations of Tenant under the Lease.
- 13.1.2 Permitted Assignments. Notwithstanding anything to the contrary contained in this Agreement, including without limitation Subparagraph 13.1.1 above, the prior written consent of City shall not be required in the event of a proposed assignment: (i) to an entity that is controlled by or is under the common control with Operator (an

"Affiliate"); or (ii) to an entity resulting from a consolidation or restructuring, or to the surviving entity in the case of a merger, to which Operator or Affiliate shall be a party.

- 13.1.3 Conditions to Assignment. The following are conditions precedent to Operator's right of assignment pursuant to Subparagraph 13.1.1:
- (i) Operator shall give City thirty (30) days notice of the proposed assignment with appropriate documentation as evidence that the proposed transferee qualifies under the terms hereof;
 - (ii) except in the event of an assignment to a Contract Mortgagee in a Contract Mortgage, the proposed transferee shall expressly assume all of the covenants and conditions of this Operating Agreement by execution and recordation of an instrument in form and substance reasonably satisfactory to City;
 - (iii) upon any assignment by Operator of less than its entire interest hereunder, Operator and such transferee shall apportion and allocate all sums due as are payable to City by Operator under the Operating Agreement prior to such assignment.

14.0 ESTOPPEL CERTIFICATE

At any time, each Party agrees that, upon not less than ten (10) business days' prior notice by the other Party, to execute, acknowledge and deliver to the requesting Party a statement in writing certifying that: (i) this Operating Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Operating Agreement is in full force and effect as modified and stating the modifications); (ii) the dates to which the Contract Sum has been paid; and (iii) whether or not, to the best knowledge of the signer of such statement, that the other Party is then in default or may be in default with notice or the passage of time, or both, in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Operating Agreement, and, if in default, specifying each such default. The Parties intend that any such statement delivered pursuant to Section 14.0 may be relied upon by either Party, its respective lender, or any prospective purchaser of either Party's interest hereunder. The requesting Party will pay the other Party's reasonable third party costs of preparing the estoppel(s).

15.0 DEFAULT/BANKRUPTCY

- 15.1 Operator's Default. The occurrence of any one or more of the following events shall be deemed an "Event of Default" by Operator hereunder:

- 15.1.1 Default in the performance of any other covenant or agreement on the part of Operator to be performed hereunder, within the time periods specified herein, but subject to Unavoidable Delays, if such default continues for a period of sixty (60) days after written notice, specifying such default, is given to Operator. However, in the case of a default which cannot with due diligence be remedied by Operator within such period of sixty (60) days, if Operator proceeds as promptly as may reasonably be possible after the service of such notice and with all due diligence to remedy such default, and thereafter prosecutes the remedying of such default with all due diligence, the period of time after

the giving of such notice within which Operator may remedy such default shall be extended for such period as may be necessary to remedy the same with all due diligence (including any period of Unavoidable Delays); or

15.1.2 The making by Operator of any assignment for the benefit of creditors, the filing by or against Operator of a petition to have Operator adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy or insolvency (unless in the case of a petition filed against Operator, the same is dismissed within ninety (90) days), the appointment of a trustee or receiver to take possession of all or substantially all of Operator's assets or of Operator's interest under this Operating Agreement where possession is not restored to Operator within ninety (90) days, or the attachment, execution or other judicial seizure of all or substantially all of Operator's assets or of Operator's interest under this Operating Agreement, where such seizure is not discharged within ninety (90) days; or

15.1.3 Operator's abandonment or surrender of the Airport Movement Areas or any portion thereof.

15.2 City's Remedies. Upon the occurrence of any Event of Default by Operator, City may exercise any one or more of the following remedies, or any other remedy provided in this Operating Agreement or by law or equity, to which the City may resort cumulatively or in the alternative:

15.2.1 Termination. The City may, at its option, terminate this Operating Agreement. Upon such termination, any and all right, title and interest of the Operator hereunder in and to the Airport Movement Areas will expire and the Operator will then quit and surrender the Airport Movement Areas to the City. Operator will pay and reimburse City for its reasonable transition costs to replace Operator's contractual obligations. Additionally, City agrees to pay Operator all monies due and owing to the Operator under this Operating Agreement as of the date of said termination.

15.2.2 No Personal Liability. In the event of any action or other dispute arising in connection with this Operating Agreement, City hereby agrees that no action shall be taken against any individual director, officer, employee, member, shareholder, or partner of the Operator or any affiliate of the Operator, except in cases involving fraud on the part of such individual, or any of them, or where there is evidence that the corporate form of Operator has been disregarded such that said individual, or any of them, are considered to be the "alter ego" of the Operator. Subject to the foregoing, City hereby expressly covenants and agrees that no such person has any personal liability under or in connection with this Operating Agreement or any matter connected therewith, and each Party hereto hereby forever waives any right to bring any action against any such person.

15.3 City Default. City shall be in default in the performance of any covenant or agreement on the part of City to be performed hereunder (within the time periods

specified, subject to Unavoidable Delays), including without limitation the City's Responsibilities at all times throughout the Term of this Operating Agreement, if such default continues for a period of ninety (90) days after written notice thereof, specifying such default, is given to City. However, in the case of a default which cannot with due diligence be remedied by City within such period of ninety (90) days, if City proceeds as promptly as may reasonably be possible after the service of such notice and with all due diligence to remedy such default and thereafter prosecutes the remedying of such default with all due diligence, the period of time after the giving of such notice within which Operator may remedy such default shall be extended for such period as may be necessary to remedy the same with all due diligence (including any period of Unavoidable Delays).

15.3.1 Operator's Remedies. In the event of a default by the City under this Operating Agreement, the Operator has any and all rights and remedies available to the Operator, whether at law or in equity, including the right to terminate this Operating Agreement and the right to recover damages, and/or the right seek to specific performance of the City's obligations hereunder.

15.4 Force Majeure. If the either Party is delayed, hindered, or prevented from performing any act required hereunder, by reason of any Unavoidable Delay or for reasons beyond the Party's control, the performance of any such act is hereby extended for the period necessary to complete performance after the end of such delay, hindrance, or prevention.

16.0 NO WAIVER

No failure by City or Operator to insist upon the strict performance of any provision hereof or to exercise any right, power or remedy consequent upon a default hereunder shall constitute a waiver of any such default or of any other existing or subsequent default of the same type or any other type, nor shall such failure preclude either Party's right to at any time thereafter insist upon the other Party's strict performance under any term or provision of this Operating Agreement and no waiver of any default shall affect or alter this Operating Agreement, which shall continue in full force and effect.

17.0 WARRANTIES

17.1 City's Covenants, Representations and Warranties. City hereby represents, warrants, and covenants to Operator as follows:

17.1.1 City has full power and authority to execute this Operating Agreement and neither this Operating Agreement nor anything provided to be done under this Operating Agreement violates or shall violate any agreement to which City is a party or by which it may be bound or any agreement affecting the Airport Movement Areas of which City has actual knowledge.

17.1.2 Subject to the terms of this Operating Agreement, upon performing all the terms, covenants and conditions of this Operating Agreement on

Operator's part to be performed, Operator shall and may peaceably and quietly have, hold, occupy, possess and enjoy the Airport Movement Areas during the Term (subject, however, only to the exceptions, reservations, terms and conditions of this Operating Agreement and applicable FAA regulations and requirements).

17.2 Operator's Warranties. Operator hereby represents and warrants to City that Operator is a limited liability company, validly in existence and in good standing pursuant to the laws of the State of California. Operator has the right and power to enter into this Operating Agreement and to perform its obligations hereunder.

18.0 NOTICES

18.1 Written Notices. All written notices or demands of any kind which either Party may be required or may desire to serve on the other in connection with this Operating Agreement must be served (as an alternative to personal service) by registered or certified mail, shall be deposited in the United States mail with postage thereon fully prepaid, and addressed to the party to be served as follows:

18.1.1 If the party so to be served be City, address City at:

The City of Oceanside
Property Management Department
300 N. Coast Highway
City of Oceanside, California 92054

18.1.2 If the party so to be served be Operator, address Operator at:

Airport Property Ventures
11755 Wilshire Boulevard, Suite 1800
Los Angeles, CA 90025
Attention: Lydia Kennard

With a copy to:

Neil Papiano, Esq.
Iverson, Yoakum, Papiano & Hatch
515 South Flower St., Suite 2900
Los Angeles, CA 90071

18.2 Service. Each service of any such notice or demand so made by mail shall be deemed complete on the day of actual delivery as shown by the addressee's registry or certification receipt, or at the expiration of the fourth day after the date of mailing, whichever is earlier in time.

If requested in writing, any Contract Mortgagee may request (which request shall be made in the manner provided above, as between the Parties, and shall specify an address to which notices or demands shall be given or made) any such notice or demand also be given or made in the manner herein specified and contemporaneously to such holder.

Either Party may designate by notice, in writing and in the manner specified above, a new or other address to which such notice or demand shall thereafter be so given or made.

19.0 INVALIDITY OF PARTICULAR PROVISIONS

If any term or provision of this Operating Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Operating Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Operating Agreement shall be valid and be enforced to the fullest extent permitted by law.

20.0 HAZARDOUS MATERIALS

- 20.1 Hazardous Materials. As used herein the term "Hazardous Materials" shall mean any material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," "pollutant" or other words of similar import within the meaning of any Environmental Statute, or any other hazardous or toxic wastes or substances or other substances or materials which are now or in the future included under or regulated by any Environmental Statute or adopted by the United States Environmental Protection Agency, including petroleum and petroleum products and all hazardous or toxic substances or wastes, any substances which because of their quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including any asbestos (whether or not friable) and any ACM, waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, etchants and plating wastes, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical, biological and radioactive wastes; provided, however, except as provided otherwise in immediately following sentence, the term "Hazardous Materials" shall not include reasonable quantities of the foregoing substances used or stored at the Airport Movement Areas in compliance with all Environmental Statutes and in the ordinary course of operating and maintaining a general aviation airport (including common cleaning supplies located at the Airport Movement Areas).
- 20.2 Environmental Statutes. As used herein the term "Environmental Statutes" shall mean and include any federal, state, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct (in each case having the force of law), concerning any: (a) Hazardous Materials, (b) environmental regulations, (c) contamination or pollution by Hazardous Materials or other substances, (d) clean-up of Hazardous Materials or other substances or disclosures relating to Hazardous Materials or other substances, (e) wetlands or other protected land or wildlife species, (f) solid, gaseous or liquid waste generation, handling, discharge, release, threatened release, treatment, storage, disposal or transportation, including underground storage tanks, (g) the implementation of spill prevention and/or

disaster plans relating to Hazardous Materials or other substances, (h) community right-to-know and other disclosure laws, together with any judicial or administrative interpretation of the items described in the foregoing clauses (a) through (h), inclusive, including any judicial or administrative orders, judgments, advisories or guidance documents now or hereafter in effect of any federal, state or local court or executive, legislative, judicial, regulatory or administrative agency, board or authority (or any judicial or administrative decision with regard thereto). "Environmental Statutes" shall include, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. ("CERCLA"); (ii) Solid Waste Disposal Act, 42 U.S.C. §6901 et seq. as amended by and including the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. ("RCRA"); (iii) Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99-499 ("SARA"); (iv) Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. ("TSCA"); (v) the Clean Water Act, 33 U.S.C. § 1251 et seq., as amended; (vi) the Safe Drinking Water Act, 42 U.S.C. § 300f-300j; (vii) the Clean Air Act, 42 U.S.C. § 7401 et seq.; (viii) the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., as amended; (ix) the Federal Water Pollution Control Act, the Rivers and Harbors Act of 1899, 33 U.S.C. § 401 et seq.; (x) the National Environmental Policy Act, 42 U.S.C. §4321 et seq.; (xi) the Refuse Act, 33 U.S.C. §407 et seq.; (xi) The Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §1101 et seq.; (xii) the Occupational Safety and Health Act, 29 U.S.C. §651 et seq.; (xiii) the California Hazardous Waste Control Law, Cal. Health & Safety Code Section 25100 et seq., (xiv) the Safe Drinking Water and Toxic Enforcement Act of 1986, Cal. Health & Safety Code Section 25249.5 et seq., (xv) the Porter-Cologne Water Quality Control Act, Cal. Wat. Code Section 13020, et seq., and (xvi) the Hazardous Substances Account Act, California Health and Safety Code § 25100 et seq.

20.3 Removal and Indemnity by City

20.3.1 Within thirty (30) days from the Agreement Commencement Date, City shall provide, at its sole cost and expense, Operator with an environmental site assessment report a Phase 1 Environmental Report, on the entirety of the Airport Movement Areas and a Phase 2 Environmental Report for those areas noted in the Phase 1 Environmental Report that requires further assessment. Together these Phase 1 and Phase 2 Reports shall be used to describe the existing environmental conditions at the Airport Movement Areas (the "Baseline Environmental Conditions"). A qualified firm acceptable to Operator shall perform such Phase 1 and 2 Environmental Reports. If the Phase 1 and/or 2 Environmental Reports indicate that Hazardous Materials are present at, on or under the Airport Movement Areas, and the presence of such Hazardous Materials is substantially likely to give rise to a demand by relevant federal, state or local governmental authorities for the remediation, treatment, containment or removal of such Hazardous Materials, then City shall be required to remove such Hazardous Materials in accordance with Subparagraph 20.3.2 below.

20.3.2 To the extent required by any Environmental Statute or other applicable law, City shall, as soon as reasonably practical following the Agreement

Commencement Date, remove any Hazardous Materials that are existing on the Airport Movement Areas as of the Operating Agreement Commencement Date and/or that were brought onto or released at the Airport Movement Areas prior to the Operating Agreement Commencement Date. In addition to City's obligation to remove any Hazardous Materials as set forth in the preceding sentence, City hereby covenants and agrees to remove any Hazardous Materials which migrate onto or are otherwise discovered on, under or about the Airport Movement Areas by Operator in connection with Operator's use and operation of the Airport Movement Areas (including Operator's development of any Improvements on the Airport Movement Areas) regardless of the original source of such Hazardous Material (unless caused by Operator or Operator Affiliates). If and to the extent that any Hazardous Materials are discovered on, under or about the Airport Movement Areas and the presence thereof is attributable to the actions or omissions of any third-party, then City shall diligently pursue and use its best efforts to cause such third-party to remove such Hazardous Materials in accordance with all applicable laws (including all applicable Environmental Statutes).

20.3.3 At any time during the Term of this Operating Agreement if (i) City does not remove any Hazardous Materials from the Airport Movement Areas that are required to be removed by City in accordance with this Operating Agreement; or (ii) City does not diligently pursue and use its best efforts to cause any responsible third-party to remove any Hazardous Materials located on the Airport Movement Areas which are attributable to such third party in accordance with this Operating Agreement, then notwithstanding anything contained herein to the contrary, Operator's sole and exclusive remedy shall be to exercise either or both of the remedies set forth in Subparagraphs 20.3.3 (a) or 20.3.3 (b) below:

a) Operator shall have the right and authority (acting on behalf of City), but not the obligation, to undertake City's obligations pursuant to Subparagraph 20.3.2 above on behalf of City ("Self-Help"), including to remove any such Hazardous Materials from the Airport Movement Areas and/or to pursue any potentially responsible third party with respect to any Hazardous Materials located on, under or about the Airport Movement Areas, in which case City shall assign to Operator any and all claims and rights City may have against any such third party. All costs and expenses incurred by Operator in connection with the performance of such actions (including, without limitation, attorneys' fees, costs and other litigation expenses) shall be collectively referred to herein as "Self-Help Costs". Operator shall be immediately entitled to full reimbursement from City of all Self-Help Costs.

b) If, in Operator's reasonable judgment, Operator is unable to perform its obligations under this Operating Agreement on any portion of the Airport Movement Areas as a result of the presence or suspected presence of Hazardous Materials (regardless of the original source thereof (unless caused by Operator or Operator Affiliates), then

Operator shall have the right, but not the obligation, to terminate this Operating Agreement in its entirety or terminate its obligations as to those portion of the Airport Movement Areas where Operator is unable to render the services required of Operator as set forth in Paragraph 8.2 of this Operating Agreement.

20.3.4 City shall and hereby does agree to defend, indemnify and hold Operator, its officers, directors, shareholders, partners and employees harmless from and against any and all causes of actions, suits, demands or judgments of any nature whatsoever, losses, damages, penalties, expenses, fees, claims, costs (including response and remedial costs), and liabilities (including liabilities arising under a claim of strict liability), including, but not limited to, attorneys' fees and costs of litigation, arising out of or in any matter connected with: (i) the violation of any Environmental Statute or other applicable federal, state or local environmental Law with respect to any Hazardous Materials other than Operator-Caused Hazardous Materials (as defined in Paragraph 20.4 below); or (ii) the presence, "release" or "threatened release" of or failure to remove by City of Hazardous Materials (other than Operator-Caused Hazardous Materials) on, under or about the Airport Movement Areas.

20.4 Removal and Indemnity by Operator. To the extent required by any Environmental Statute or other applicable law, Operator shall remove any Hazardous Materials that are brought onto or released at the Airport Movement Areas during the Term of this Operating Agreement by Operator, Operator's employees, direct tenants or Subtenants, contractors, licensees or invitees (collectively, "Operator Affiliates") during the Term of this Operating Agreement (collectively, "Operator-Caused Hazardous Materials"). Operator shall and hereby does agree to defend, indemnify and hold City harmless from and against any and all causes of actions, suits, demands or judgments of any nature whatsoever, losses, damages, penalties, expenses, fees, claims, costs (including response and remedial costs), and liabilities, including, but not limited to, attorneys' fees and costs of litigation, arising out of or in any matter connected with: (i) the violation by Operator or any Operator Affiliates of any Environmental Statute or other applicable federal, state or local environmental Law with respect to any Operator-Caused Hazardous Materials brought onto or released at the Airport Movement Areas during the Term of this Operating Agreement; or (ii) the presence, "release" or "threatened release" of or failure to remove, if required by this Section 20, by Operator or any Operator Affiliates during the Term of this Operating Agreement, any Operator Caused Hazardous Materials.

21.0 MISCELLANEOUS

21.1 Interpretation. In all cases the language in all parts of this Operating Agreement shall be construed simply, according to its fair meaning and not strictly for or against the drafter of this Operating Agreement or for or against City or Operator. The terms "City" and "Operator" as used herein shall include the plural as well as the singular, and the neuter shall include the masculine and the feminine genders.

- 21.2 Headings. The Section, Paragraph and Subparagraph designations or headings contained herein are inserted solely for convenience of reference and do not in any way govern the intent or construction of this Operating Agreement. Any reference to a Paragraph shall be deemed to include a reference to all subparagraphs therein.
- 21.3 Successors and Assigns. Subject to the provisions of Section 13 of this Operating Agreement, this Operating Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, and wherever a reference in this Operating Agreement is made to either of the Parties hereto such reference shall be deemed to include, wherever applicable, also a reference to the successors and assigns of such Party, as if in every case so expressed.
- 21.4 Governing Law. This Operating Agreement shall be governed by and construed in accordance with the laws of the State of California; however, this Operating Agreement shall also be subject to any federal law that may be applicable due to matters associated with the FAA's regulation of airports and the City's federal grant assurances.
- 21.5 Entire Agreement. This Operating Agreement together with any written modifications or amendments hereto hereafter entered into shall constitute the entire agreement between the Parties relative to the subject matter hereof, and shall supersede any prior agreement or understanding, if any, whether written or oral, which Operator may have had relating to the subject matter hereof with City.
- 21.6 No Oral Modification. This Operating Agreement may be changed, waived or discharged only by an instrument in writing signed by the Parties.
- 21.7 Counterparts. This instrument may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute and be construed as one and the same instrument.
- 21.8 Consent. Unless otherwise specifically provided in this Operating Agreement, whenever in this Operating Agreement the consent or approval of City or Operator is required, it is agreed by City and Operator that such consent or approval will not be unreasonably withheld and will be promptly considered.
- 21.9 Attorneys' Fees. In any action or proceeding which either Party brings against the other to enforce its rights hereunder, the unsuccessful Party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees, which amounts shall be a part of the judgment in said action or proceeding.
- 21.10 Time of Essence. Time is of the essence with respect to each and every provision of this Operating Agreement.
- 21.11 Independent Contractor. This Operating Agreement is by and between the City and Operator and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between City and Operator.

- 21.12 General Cooperation. City and Operator each agree to reasonably cooperate with one another in order to carry out the intent of any term or provision of this Operating Agreement.
- 21.13 Public Records. Operator understands that written information submitted to and/or obtained by City from Operator, relating to this Operating Agreement and/or the Airport, and which is prepared, used or retained by the City may be open to inspection by the public pursuant to the California Public Records Act (Gov. Code, §6250 et seq.), as now in force or hereafter amended, or otherwise may be made available to the public.

22.0 RIGHT OF FIRST REFUSAL

- 22.1 Right of First Refusal. In the event it shall be allowed by the appropriate governing entity, including but not limited to the FAA, and City elects to sell the Airport Movement Areas or any interest therein to a third party, City hereby grants, for and in consideration of the mutual covenants and benefits contained herein, and for good and valuable consideration, Operator, subject to the terms and conditions hereinafter set forth, the exclusive right of first refusal to purchase the hereinabove described Airport Movement Areas. This right of first refusal shall remain in full force and effect during the Term of the Operating Agreement.
- 22.2 First Offer. City expressly agrees that it shall not sell the Airport Movement Areas or any interest therein to any other person unless it has first offered to sell the property to the Operator on the same terms, price and conditions submitted by any other person to City or by City to any other person during the Term of this Operating Agreement.
- 22.2.1 Notice. In the event that City desires to sell the Airport Movement Areas or any interest therein, it shall give Operator written notice of its desire to sell the Airport Movement Areas and of the terms, price and conditions for the sale of the Airport Movement Areas along with a copy of any proposed agreement in connection therewith, and Operator shall have sixty (60) days after receipt of said written notice to exercise its right of first refusal to purchase the Airport Movement Areas or any interest therein by giving written notice thereof to City, which written notice will be considered timely if received by City prior to the expiration of the said sixty (60) day period.
- 22.2.2 Modification. In the event Operator declines to exercise its Right of First Refusal after receiving the notice required in Subparagraph 22.2.1 and thereafter City and the prospective purchaser modify by more than five percent (5%) the price, the amount of down payment or make any other material change in the offer, or in the event that the sale is not consummated within one hundred eighty (180) days of the date of the notice, then Operator's Right of First Refusal shall be reinstated with respect to that transaction.

23.0 FAA REVIEW

City understands that Operator may submit this Operating Agreement to the FAA's regional office to allow the FAA to review the Operating Agreement and note any terms that are inconsistent with FAA policy. However, it is stated FAA policy not to "approve" agreements between third parties, and this Operating Agreement is not contingent on an FAA statement of approval.

The Parties additionally agree that this Operating Agreement is also subject to the terms of approvals required in connection with other governmental financing or any deed restrictions as such may have existed and which have been disclosed to Operator as of the Operating Agreement Commencement Date, including those listed on Exhibit "E" (Existing Agreements).

24.0 MEMORANDUM OF OPERATING AGREEMENT

Following completion by Operator of a metes and bounds legal description of the Airport Movement Areas, a Memorandum of Operating Agreement, in the form attached to this Operating Agreement as Exhibit "C," shall be executed by the City and Operator and shall be recorded in the Official Records of the County of San Diego.

IN WITNESS WHEREOF, City and Operator have executed this Operating Agreement as of the day and year first above written.

"CITY":

APPROVED AS TO FORM
OCEANSIDE CITY ATTORNEY
Barbara L. Hamilton
BARBARA L. HAMILTON
Assistant City Attorney

THE CITY OF OCEANSIDE,
a municipal corporation

By: _____

Name: _____
Title: _____

"COMPANY":

AIRPORT PROPERTY VENTURES, LLC,
a California limited liability company

By: *John J. Driscoll*

Name: John J. Driscoll
Title: President

By: *Lydia H. Kennard*

Name: Lydia H. Kennard
Title: Secretary

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On Oct 01, 2008

Date

before me, Michael Ohannesian, Notary Public

Here Insert Name and Title of the Officer

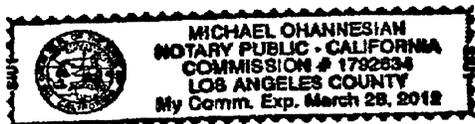
personally appeared John J. Driscoll and Lydia H. Kennard

Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Place Notary Seal Above

Signature [Handwritten Signature]

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Operating Agreement to and between The City of Oceanside, CA and Airport Property Ventures, LLC.

Document Date: Oct 01, 2008

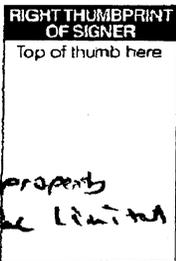
Number of Pages: 30 Exhibits

Signer(s) Other Than Named Above: The City of Oceanside

Capacity(ies) Claimed by Signer(s)

Signer's Name: John J. Driscoll

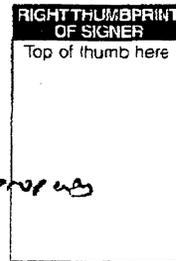
- Individual
- Corporate Officer — Title(s): President
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: Airport Property Ventures, LLC a California Limited Liability Company

Signer's Name: Lydia H. Kennard

- Individual
- Corporate Officer — Title(s): Secretary
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: Airport Property Ventures, LLC a California Limited Liability Company

EXHIBIT "A"
LEGAL DESCRIPTION

VESTING: THE CITY OF OCEANSIDE

APNS: 145-020-24 & 146-030-06

PARCEL 1

THAT PORTION OF SECTION 13 AND THE WEST HALF OF SECTION 18, TOWNSHIP 11 SOUTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO OFFICIAL PLAT THEREOF, ALL IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SECTION 13 AS SHOWN ON RECORD OF SURVEY NO. 16861 RECORDED FEBRUARY 2, 2001 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AS DOCUMENT NO. 2001-0063233;

THENCE ALONG THE WESTERLY LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 13 AS SHOWN ON SAID RECORD OF SURVEY NO. 16861 SOUTH 00°23'25" WEST, 794.57 FEET TO THE NORTHWEST CORNER OF PARCEL 2 AS SHOWN ON SAID RECORD OF SURVEY NO. 16861;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 2 NORTH 80°33'25" EAST 42.23 FEET TO THE EASTERLY RIGHT-OF-WAY OF BENET ROAD AS SHOWN ON SAID RECORD OF SURVEY NO. 16861 AND THE **TRUE POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID NORTHERLY LINE OF PARCEL 2 AND ITS EASTERLY PROLONGATION NORTH 80°33'25" EAST 3303.71 FEET;

THENCE LEAVING SAID EASTERLY PROLONGATION SOUTH 09°26'35" EAST 377.33 FEET TO THE NORTHERLY RIGHT-OF-WAY OF STATE ROUTE 76 (11-SD-76) AS SHOWN ON RECORD OF SURVEY NO. 14995 RECORDED NOVEMBER 2, 1995 AS FILE NO. 1995-0498513;

THENCE ALONG SAID RIGHT-OF-WAY SOUTH 72°36'48" WEST 1488.18 FEET TO AN ANGLE POINT THEREIN;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY NORTH 71°41'26" WEST 58.29 FEET TO THE NORTHERLY RIGHT-OF-WAY OF AIRPORT ROAD AS SHOWN ON SAID RECORD OF SURVEY NO. 14995, AND A POINT ON A NON-TANGENT 180.01 FOOT RADIUS CURVE, CONCAVE SOUTHERLY, A RADIAL FROM SAID POINT BEARS SOUTH 45°47'41" WEST;

THENCE WESTERLY ALONG SAID CURVE AND SAID RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 63°12'12" A DISTANCE OF 198.57 FEET;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY SOUTH 72°35'29" WEST 252.93 FEET TO THE NORTHERLY BOUNDARY OF OCEANSIDE INDUSTRIAL SUBDIVISION ACCORDING TO MAP THEREOF NO. 3748 RECORDED NOVEMBER 18, 1957;

THENCE ALONG SAID NORTHERLY BOUNDARY NORTH 64°26'08" WEST 143.64 FEET TO THE NORTHWEST CORNER OF SAID NORTHERLY BOUNDARY, BEING A POINT IN THE EASTERLY LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 13 AS SHOWN ON SAID RECORD OF SURVEY NO. 14995;

THENCE ALONG SAID EASTERLY LINE NORTH 00°13'39" EAST 86.92 FEET TO AN ANGLE POINT IN THE SOUTHERLY BOUNDARY OF PARCEL 1 DESCRIBED IN GIFT DEED TO THE CITY OF OCEANSIDE RECORDED JUNE 4, 1962 AS FILE/PAGE NO. 94349;

THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID PARCEL 1 SOUTH 80°33'25" WEST 1293.38 FEET TO THE EASTERLY RIGHT-OF-WAY OF BENET ROAD AS SHOWN ON SAID RECORD OF SURVEY NO. 16861;

THENCE ALONG SAID RIGHT-OF-WAY NORTH 00°23'25" EAST 76.60 FEET TO THE BEGINNING OF A 2030.00 FOOT RADIUS CURVE, CONCAVE WESTERLY;

THENCE NORTHERLY ALONG SAID CURVE AND SAID RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 3°09'28" A DISTANCE OF 111.88 FEET;

THENCE LEAVING SAID RIGHT-OF-WAY NORTH 80°33'25" EAST 3116.70 FEET;

THENCE NORTH 09°26'35" WEST 72.00 FEET;

THENCE SOUTH 80°33'25" WEST 3109.57 FEET TO THE EASTERLY RIGHT-OF-WAY OF BENET ROAD AS SHOWN ON SAID RECORD OF SURVEY NO. 16861, AND A POINT ON A NON-TANGENT 2030.00 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL FROM SAID POINT BEARS SOUTH 85°11'25" WEST;

THENCE NORTHERLY ALONG SAID RIGHT-OF-WAY AND SAID CURVE THROUGH A CENTRAL ANGLE OF 2°30'59" A DISTANCE OF 89.16 FEET TO THE **TRUE POINT OF BEGINNING.**

CONTAINING 27.872 ACRES MORE OR LESS.

PARCEL 2

THAT PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER AND THE NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 11 SOUTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO OFFICIAL PLAT THEREOF, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, LYING WITHIN THE LAND DESCRIBED AS PARCEL 1 ON THAT CERTAIN CERTIFICATE OF COMPLIANCE NO. PLA-07-99 RECORDED DECEMBER 7, 1999 AS DOCUMENT NO. 1999-0796388 OF OFFICIAL RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SECTION 13 AS SHOWN ON RECORD OF SURVEY NO. 16861 RECORDED FEBRUARY 2, 2001 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AS DOCUMENT NO. 2001-0063233;

THENCE ALONG THE WESTERLY LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 13 AS SHOWN ON SAID RECORD OF SURVEY NO. 16861 SOUTH 00°23'25" WEST, 794.57 FEET TO THE NORTHWEST CORNER OF PARCEL 2 AS SHOWN ON SAID RECORD OF SURVEY NO. 16861;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 2 NORTH 80°33'25" EAST 1557.78 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE CONTINUING NORTH 80°33'25" EAST 826.62 FEET TO THE WESTERLY LINE OF PARCEL 1 DESCRIBED IN FINAL ORDER OF CONDEMNATION RECORDED OCTOBER 14, 1994 AS DOC. NO. 1994-0604672 OF OFFICIAL RECORDS OF SAID COUNTY;

THENCE ALONG THE WESTERLY BOUNDARY OF SAID PARCEL 1 THE FOLLOWING COURSES:

NORTH 2°37'51" EAST 220.17 FEET TO THE BEGINNING OF A 4781.63 FOOT RADIUS CURVE, CONCAVE WESTERLY;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0°32'14" A DISTANCE OF 44.83 FEET;

THENCE NORTH 2°05'37" EAST 96.75 FEET TO THE BEGINNING OF A 408.12 FOOT RADIUS CURVE, CONCAVE EASTERLY;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 14°22'23" A DISTANCE OF 102.38 FEET;

THENCE NON-TANGENT TO SAID CURVE NORTH 0°06'55" EAST 47.86 FEET TO A POINT ON A NON-TANGENT 1645.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY, A RADIAL FROM SAID POINT BEARS NORTH 05°00'56" WEST;

THENCE LEAVING THE WESTERLY BOUNDARY OF SAID PARCEL 1 DESCRIBED IN FINAL ORDER OF CONDEMNATION RECORDED OCTOBER 14, 1994 AS DOC. NO. 1994-0604672, WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 18°45'56" A DISTANCE OF 538.77 FEET;

THENCE NORTH 76°15'00" WEST 398.24 FEET TO THE BEGINNING OF AN 83.00 FOOT RADIUS CURVE, CONCAVE SOUTHERLY;

THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 30°45'00" A DISTANCE OF 44.55 FEET;

THENCE SOUTH 73°00'00" WEST 11.50 FEET TO THE WESTERLY BOUNDARY OF PARCEL 1 AS SHOWN ON SAID RECORD OF SURVEY NO. 16861;

THENCE ALONG SAID WESTERLY LINE OF PARCEL 1 SOUTH 09°26'35" EAST 787.23 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 12.757 ACRES MORE OR LESS.

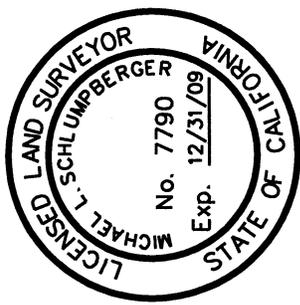
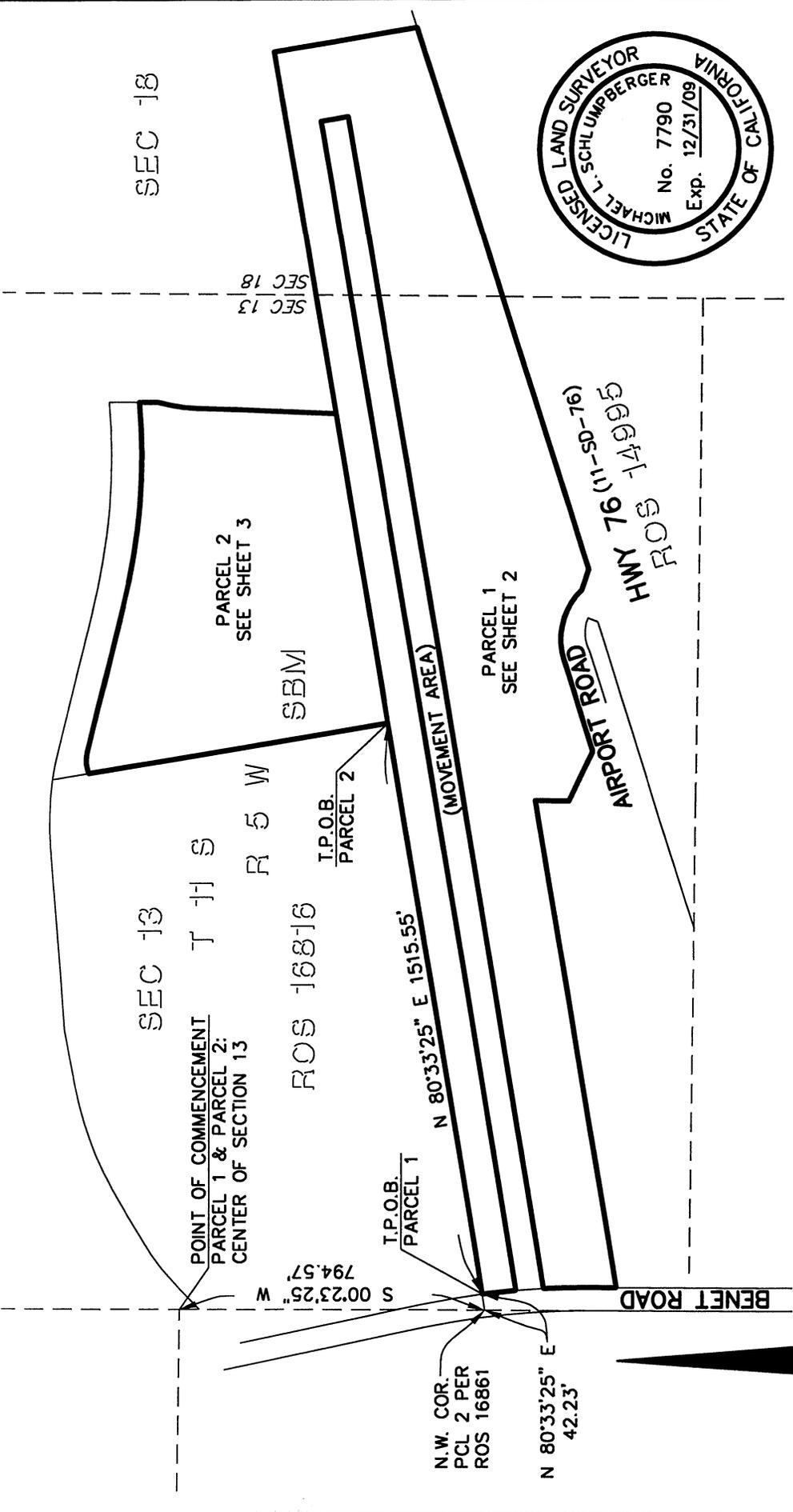
ATTACHED HERETO AND MADE A PART HEREOF IS AN EXHIBIT PLAT

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.


MICHAEL SCHLUMPBERGER, PLS 7790

September 24, 2008
DATE





THIS PLAT WAS PREPARED BY ME OR
 UNDER MY DIRECTION IN CONFORMANCE WITH
 THE PROFESSIONAL LAND SURVEYOR'S ACT.

 MICHAEL L. SCHLUMBERGER, PLS 7790

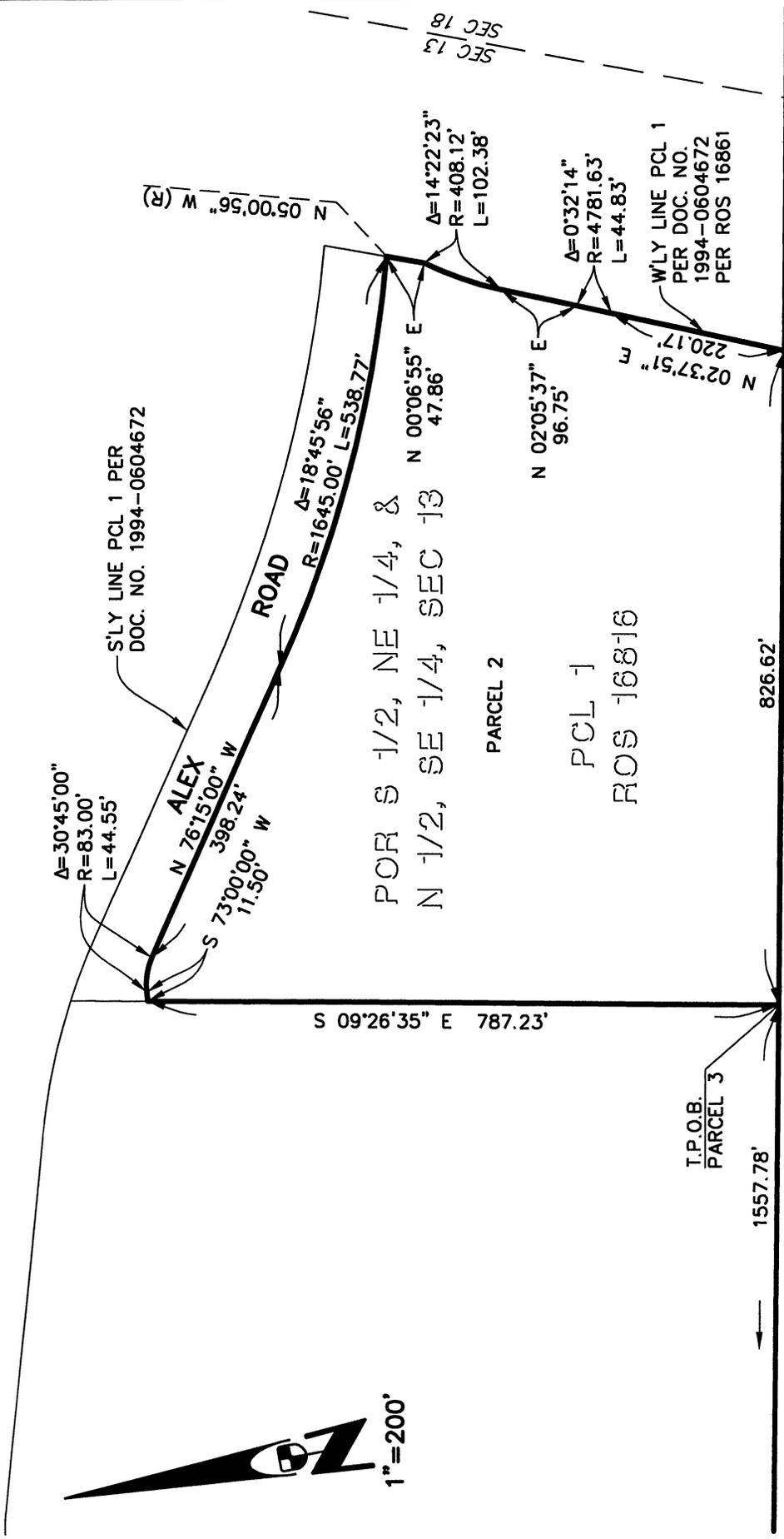
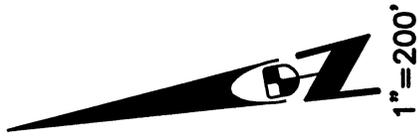
PARCEL AREAS
 PARCEL 1: 27.872 ACRES MORE OR LESS
 PARCEL 2: 12.757 ACRES MORE OR LESS

Right-of-Way Engineering Services, Inc.
 Land Surveying
 4167 Avenida de la Plata Ste. 114 • Oceanside, CA 92056
 (*760) 732-1366 FAX (760) 732-1367
 Drawing file name: Airport Lease Exhibit A.dwg
 Job No. 0808-0076-01

NOTE: ALL DIMENSIONS SHOWN
 HEREON ARE COMPILED FROM
 RECORD DATA.

1"=400'

CITY OF OCEANSIDE - AIRPORT
 LEASE PARCEL 1 AND PARCEL 2
 SEPTEMBER 24, 2008 SHEET 1 OF 3



SEE SHEET 2

PARCEL 1

PARCEL 2

PCL 1
ROS 16816

CITY OF OCEANSIDE - AIRPORT	
LEASE PARCEL 1 AND PARCEL 2	
SEPTEMBER 24, 2008	SHEET 3 OF 3

EXHIBIT "A-1"
LEGAL DESCRIPTION

VESTING: THE CITY OF OCEANSIDE

APN: 146-030-06

PARCEL 3 (MOVEMENT AREA)

THAT PORTION OF SECTION 13 AND THE WEST HALF OF SECTION 18, TOWNSHIP 11 SOUTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO OFFICIAL PLAT THEREOF, ALL IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SECTION 13 AS SHOWN ON RECORD OF SURVEY NO. 16861 RECORDED FEBRUARY 2, 2001 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AS DOCUMENT NO. 2001-0063233;

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THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 2 NORTH 80°33'25" EAST 42.23 FEET TO THE EASTERLY RIGHT-OF-WAY OF BENET ROAD AS SHOWN ON SAID RECORD OF SURVEY NO. 16861, AND A POINT ON A NON-TANGENT 2030.00 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL FROM SAID POINT BEARS SOUTH 82°40'26" WEST;

THENCE SOUTHERLY ALONG SAID CURVE AND SAID RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 2°31'00" A DISTANCE OF 89.16 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE LEAVING SAID RIGHT-OF-WAY NORTH 80°33'25" EAST 3109.57 FEET;

THENCE SOUTH 09°26'35" EAST 72.00 FEET;

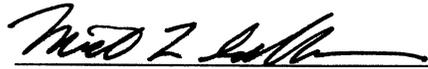
THENCE SOUTH 80°33'25" WEST 3116.70 FEET TO SAID EASTERLY RIGHT-OF-WAY AND A POINT ON A NON-TANGENT 2030.00 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL FROM SAID POINT BEARS SOUTH 87°13'57" WEST;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 2°02'32" A DISTANCE OF 72.36 FEET TO THE **TRUE POINT OF BEGINNING**;

CONTAINING 5.145 ACRES MORE OR LESS.

ATTACHED HERETO AND MADE A PART HEREOF IS AN EXHIBIT PLAT.

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.



MICHAEL SCHLUMPBERGER, PLS 7790

September 24, 2008
DATE



SEC 18

SEC 13

POINT OF COMMENCEMENT
PARCEL 3 (MOVEMENT AREA):
CENTER OF SECTION 13

SEC 13
SEC 18

R 5 W

SBM

ROS 16816

S 82°40'26" W (R)

S 85°11'25" W (R)

N.W. COR.
PCL 2 PER
ROS 16861

N 80°33'25" E
42.23'

I.P.O.B.
PARCEL 3

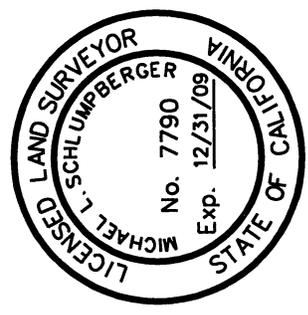
BENET ROAD

PARCEL 3 (MOVEMENT AREA) SEE SHEET 2

AIRPORT ROAD

HWY 76 (111-SD-76)
ROS 14995

CURVE DATA
C1 Δ=2°31'00" R=2030.00' L=89.16'



THIS PLAT WAS PREPARED BY ME OR
UNDER MY DIRECTION IN CONFORMANCE WITH
THE PROFESSIONAL LAND SURVEYOR'S ACT.

Michael L. Schlumberger
MICHAEL L. SCHLUMBERGER, PLS 7790

PARCEL AREA
PARCEL 3: 5.145 ACRES MORE OR LESS

1"=400'

NOTE: ALL DIMENSIONS SHOWN
HEREON ARE COMPILED FROM
RECORD DATA.

Right-Of-Way Engineering Services, Inc.
Land Surveying
4167 Avenida de la Plata Ste. 114 • Oceanside, CA 92056
(760) 732-1366 FAX (760) 732-1367
Drawing file name: Airport Lease Exhibit A-1.dwg
Job No. 0808-0076-01

CITY OF OCEANSIDE - AIRPORT

LEASE PARCEL 3 (MOVEMENT AREA)

SEPTEMBER 24, 2008

SHEET 1 OF 2

ROS 16816

N 80°33'25" E
42.23'

C1 S 85°11'25" W (R)

C2 S 87°13'57" W (R)

I.P.O.B.

PARCEL 3

N 80°33'25" E 3109.57'

S 80°33'25" W 3116.70'

PARCEL 3 (MOVEMENT AREA)

CURVE DATA

C1 Δ=2°31'00" R=2030.00' L=89.16'

C2 Δ=2°02'32" R=2030.00' L=72.36'

S 82°40'26" W (R)

BENET ROAD

AIRPORT ROAD

SEE BELOW LEFT

SEE ABOVE RIGHT

S 09°26'35" E
72.00'

N 80°33'25" E 3109.57'

S 80°33'25" W 3116.70'

PARCEL 3 (MOVEMENT AREA)

SEC 13
SEC 18

AIRPORT RD.

ROS 14995

HWY 76 (11-SD-76)

1"=200'



CITY OF OCEANSIDE - AIRPORT

LEASE PARCEL 3 (MOVEMENT AREA)

SEPTEMBER 24, 2008

SHEET 2 OF 2

EXHIBIT "A-2"

PREMISES

[To be provided by the City of Oceanside and verified by Airport Property Ventures prior to expiration of the Feasibility Period]

EXHIBIT "B"

OCEANSIDE MUNICIPAL AIRPORT LEASE AGREEMENT

[To be attached after execution.]

EXHIBIT "C"

MEMORANDUM OF OPERATING AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

The City of Oceanside

Attention: City Manager and City Attorney

MEMORANDUM OF OPERATING AGREEMENT

THIS MEMORANDUM OF OPERATING AGREEMENT ("Memorandum") is made as of _____, 2008, by and between THE CITY OF OCEANSIDE, a municipal corporation ("City"), and AIRPORT PROPERTY VENTURES, LLC, a California limited liability company ("Operator").

City and Operator have entered into that certain Operating Agreement dated as of _____ 2008 ("Operating Agreement"), pursuant to which City has contracted with Operator to operate, manage and maintain the movement areas of the Airport located in the City of Oceanside, County of San Diego, State of California and more particularly described on Exhibit "A-1" (Airport Movement Areas and Existing Airfield Improvements), which is attached and incorporated by this reference, all subject to the terms and covenants set forth in the Operating Agreement. The purpose of this Memorandum is to give notice of the existence of the Operating Agreement and the provisions thereof, including without limitation provisions providing for the entry into a new agreement following a foreclosure upon the circumstances described therein. To the extent that any provision of this Memorandum conflicts with any provision of the Operating Agreement, the Operating Agreement shall control.

This Memorandum may be executed in counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first written above.

"CITY"

THE CITY OF OCEANSIDE,
a municipal corporation

By: _____
Name: _____
Title: _____

"OPERATOR"

AIRPORT PROPERTY VENTURES, LLC
a California limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT "D"

EXISTING AGREEMENTS

[To be provided by the City of Oceanside and verified by Airport Property Ventures prior to expiration of the Feasibility Period]

EXHIBIT "E"

EXISTING EQUIPMENT AND ROLLING STOCK

[To be provided by the City of Oceanside and verified by Airport Property Ventures prior to expiration of the Feasibility Period]

EXHIBIT "F"

MAINTENANCE OBLIGATIONS

AIRFIELD MAINTENANCE – MAINTAINING AIRFIELD

1. Runway, taxiway, intersection and threshold, sign repair, bulb replacement.
2. Weed control, documents and reports to department of agriculture.
3. Mow and edge all grass areas.
4. Maintain all landscaping.
5. Maintain all irrigation systems.
6. Fence repairs.
7. Maintenance and repair of automatic gate and card-key system for vehicle entrances.
8. Maintenance and repair of push-button, walk-in gates.
9. Maintain all signage.
10. Keep all areas clean of debris and litter.
11. Enforce all airport rules and regulations.
12. Maintain all concrete and asphalt surfaces.
13. Take care of all aspects of storm water monitoring.
14. File reports and documents for spraying weeds and applying pesticides.
15. Keep daily records of aircraft on field for filing, billing, and security reasons.
16. Runway Inspection - Daily Reporting.
17. Maintenance for runway and taxi system regulators, relays, transmitters for pilot-controlled lighting.

EXHIBIT "F"

MAINTENANCE OBLIGATIONS (CONTINUED)

AIRPORT TERMINAL BUILDING AREA MAINTENANCE

- A. EXTERIOR MAINTENANCE OF ADMINISTRATION BUILDING
 - 1. Clean driveway, sidewalks and parking lot.
 - 2. Clean patios.
 - 3. Mow and edge grass area.
 - 4. Clean, weed, fertilize and maintain plants and flowers in all planters.
 - 5. Maintain all sprinkler systems.
 - 6. Maintain signage in driveway and parking lot.
 - 7. Trim trees.

- B. AIRPORT TERMINAL BUILDING MAINTENANCE
 - 1. General maintenance of all common areas.
 - 2. Painting interior and exterior.
 - 3. All interior and exterior lighting, including bulb replacement.
 - 4. Minor plumbing and electrical.
 - 5. Clean airport office, lobby, hallway, kitchen and locker room.
 - 6. Clean restrooms and supply with soap, toilet paper, seat covers and paper towels.
 - 7. Window cleaning:
 - a. All exterior windows.
 - b. Interior windows in lobby and airport office.

EXHIBIT "G"

FAA GRANT ASSURANCES

1. FAA grant # 3-06-0173-01 50' Clear Zone North side of runway.
2. FAA grant # 3-06-0173-02 4.5 acres, South side of runway.
3. FAA grant # 3-06-0173-04 Airport Improvement Program.
4. FAA grant # 3-06-0173-05 Airport Improvement Program.
5. FAA grant # 3-06-01739-03 14.7 acres, North side of airfield.

MEMORANDUM

Public Works Department

To: Honorable Mayor and City Council

From: Peter Weiss, City Manager

By: Gary Gurley, General Services, Public Works Department

Date: October 7, 2008

Subject: Airport Lease Agreement

The proposed airport lease agreement included in your Council packets for your October 8, 2008 meeting did not included Exhibit A-3. The exhibit is attached for your review.

EXHIBIT "A-3"

DEVELOPMENT PROGRAM AND TIMELINE

DEVELOPMENT PROGRAM

Subject to Section 2.2 of this Lease and any limitations imposed by the FAA, Caltrans, City, any other applicable governmental agency, or a court of competent jurisdiction, Tenant plans to develop approximately 256,740 total square feet on both the North Side and the South Side of the Airport; approximately 82,500 square feet of building area will be developed on the South Side and approximately 174,240 square feet of building area will be developed on the North Side.

The overall development of the Premises shall contain all or some of the following:

- Storage hangars;
- Airplane storage hangars of varying sizes;
- Commercial aviation hangars;
- Tie downs, both grass and asphalt;
- A terminal building with office, retail, and pilot areas,
- Park and common areas;
- Fuel delivery and sales areas;
- Open area;
- Office, retail, industrial, and hotel space, as appropriate;
- Other uses deemed appropriate for the Airport;
- On- and off-site improvements and utilities;
- Security;
- Aircraft wash areas;
- Landscaping.

It is Tenant's intent to begin development of the South Side Improvements upon the commencement of the Term of the Lease. However, Tenant shall not be required to develop any New Improvements until such time as the following occurs: (i) achievement of 95% occupancy on all Existing and New Improvements, if any; (ii) reasonably achievable average market rents so as to support a reasonable return on the cost of development; and (iii) all entitlements have been received for the New Improvement.

This development process shall continue until the Airport is built out to the approximate building area stated above. Landlord understands that the type, size, and location of the New Improvements shall be subject to adjustment based on the market conditions and that the ultimate size and configuration may yield a total square footage more or less than that designated above.

EXHIBIT "A-3" (Continued)

DEVELOPMENT PROGRAM AND TIMELINE

DEVELOPMENT SCHEDULE

The development timeline is as follows:

Predevelopment	Years 1 to 2:
Phase 1 - South Side	Years 2 to 4 82,500 square feet of hangar and terminal space
Phase 2 - North Side	Years 3 to 5 60,000 square feet of hangar 10.5 acres of infrastructure
Phase 3 - North Side	Years 4 to 6 40,000 square feet of hangar
Phase 4 - North Side	Years 5 to 7 74,240 square feet of hangar
TOTAL PROJECT DEVELOPMENT TIME	Approximately 7-8 years (Construction phasing will be based on market conditions.)