GRAND COUNTY AIRPORT BOARD
RESCHEDULED MEETING
AGENDA

August 12, 2024 @ 5:30 p.m.
Grand County Library, 257 E. Center Street
Moab, UT 84532

Join Zoom Meeting https://us02web.zoom.us/j/85919598974
To join by phone: Dial (669) 900-6833 Meeting ID: 859 1959 8974

A. Call to Order

B. General Business

   1. Approve minutes of July 1, 2024 (Regular meeting)

C. Citizens to be Heard

D. Action Items: Discussion and Consideration (some for Recommendation to County Commission with approvals subject to limitation):

   1. Letter to County Clerk Gabe Woytek, requesting a monthly or quarterly report of Airport finances (drafted by Randy).
   2. Letter of intent from Alvin Chung to build a hangar, with lot choices and dimensions.
   3. Propose moving forward with digital advertising by Lions Back Resort for a minimum of one year until we get a system in place that meets the Board's expectations.

E. Discussion Items:

   1. Status of Solar Power Purchase Agreement with Neighborhood Power (was on the 8/6/2024 County Commission meeting).

   2. County Attorney requires all Contracts and Leases now get legal review, unlike before.

   3. Project Reports
      a. Taxiway A1 Relocation - Still waiting on grant offer from FAA. The bid amount is $106,964 over the amount requested, to continue with the project Grand County can carry this amount until the end of the project and receive a reimbursement. This request is on the Aug. 20 CC meeting.
      b. Drive through gate replacement (FEMA Grant) - ICA finalized. Passed legal review on 8/6. Waiting for Commission Chair signature. Gate has an eight week build time. Gate will be ordered once the ICA is signed.
      c. Beacon Tower - makeover is finished.
      d. Mini-split heating/cooling unit for baggage screening area - ICA done & sent to Eco HVAC of Moab, upon receipt of COI it will be sent for Commission Chair signature.
      e. FAA ATP BIL application submitted - terminal modifications.

F. Reports:

   1. Airport Monthly Data Report - July 2024 & Virtower Data
   2. Any questions on Director's Report for July 2024
   3. County Commission
   4. City of Moab
   5. Travel Council
   6. Solar Committee
   7. (Lease) Insurance Subcommittee
   8. Other reports for Airport Board

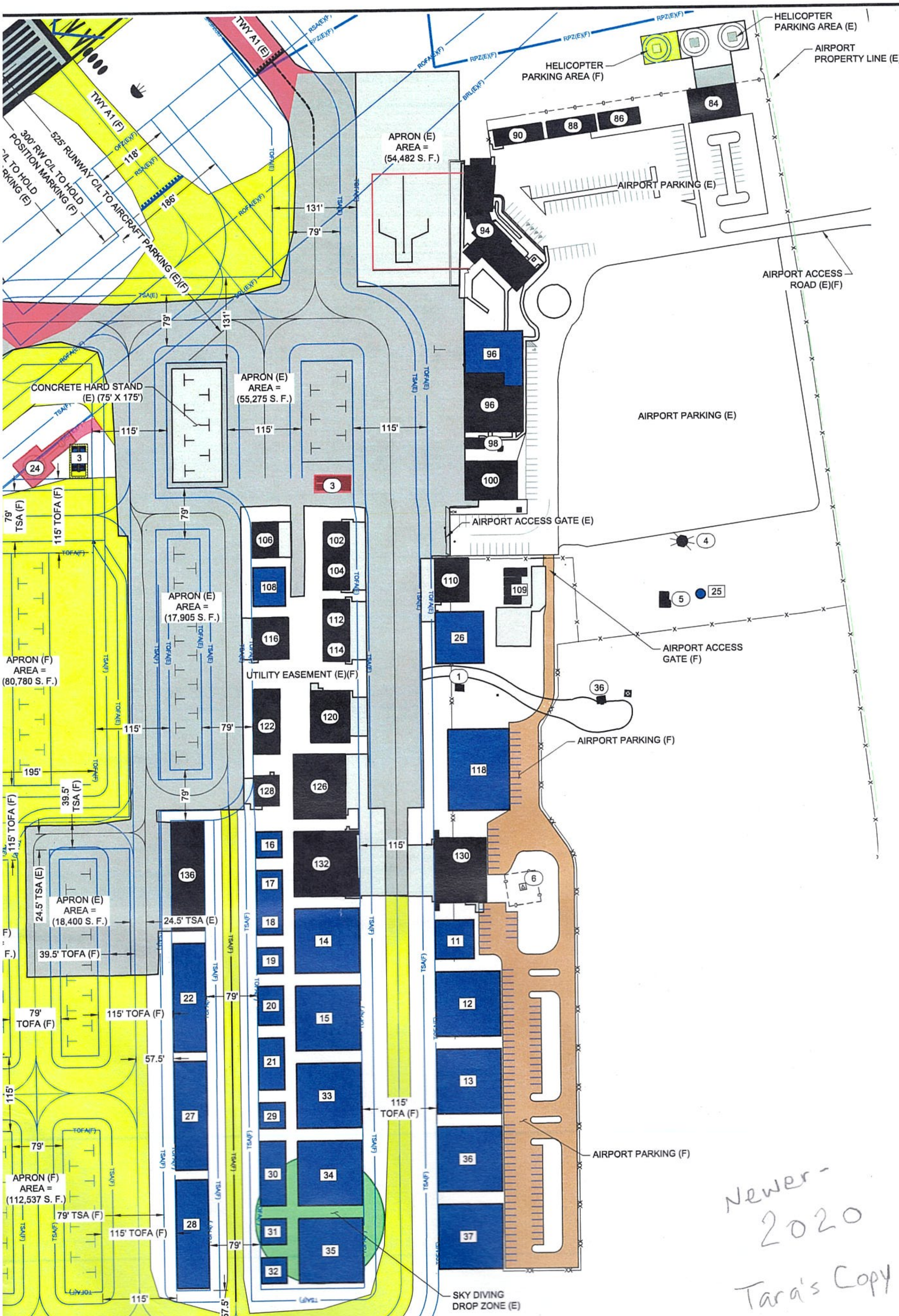
G. Future Considerations

H. Closed Session, if necessary

I. Adjourn

Those with special needs requests wishing to attend Airport Board meetings are encouraged to contact the County two (2) days in advance of these events. Specific accommodations necessary to allow participation of disabled persons will be provided to the maximum extent possible. Requests, or any questions or comments can be communicated to: (435) 259-1346.

Posted by: Tara Collins
at the Grand County Commission Chambers __________ Date __________ Time



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Tara's Copy

ARMSTRONG

PLANNING ENGINEERING CONSTRUCTION

GRAND JUNCTION, CO: 970.242.0101
DENVER, CO: 303.296.4949
PHOENIX, AZ: 602.803.7079
ALBUQUERQUE, NM: 505.508.2192
www.armstrongconsultants.com

CANYONLANDS FIELD
GRAND COUNTY, UTAH

AIRPORT LAYOUT PLAN

No.	Project No.	Date	Revision / Description	File	Drwn.	Chkd.	Apprvd.
2	196524	09/2020	AS-BUILT AIP 032	6524503	GWK	JZP	JZP
1	166393	05/2019	AS-BUILT - AIP's 030 & 031	6393503	LKB	JZP	JZP
0	146251	09/2015	ORIGINAL ISSUE	6251503	GWK	JMR	JZP

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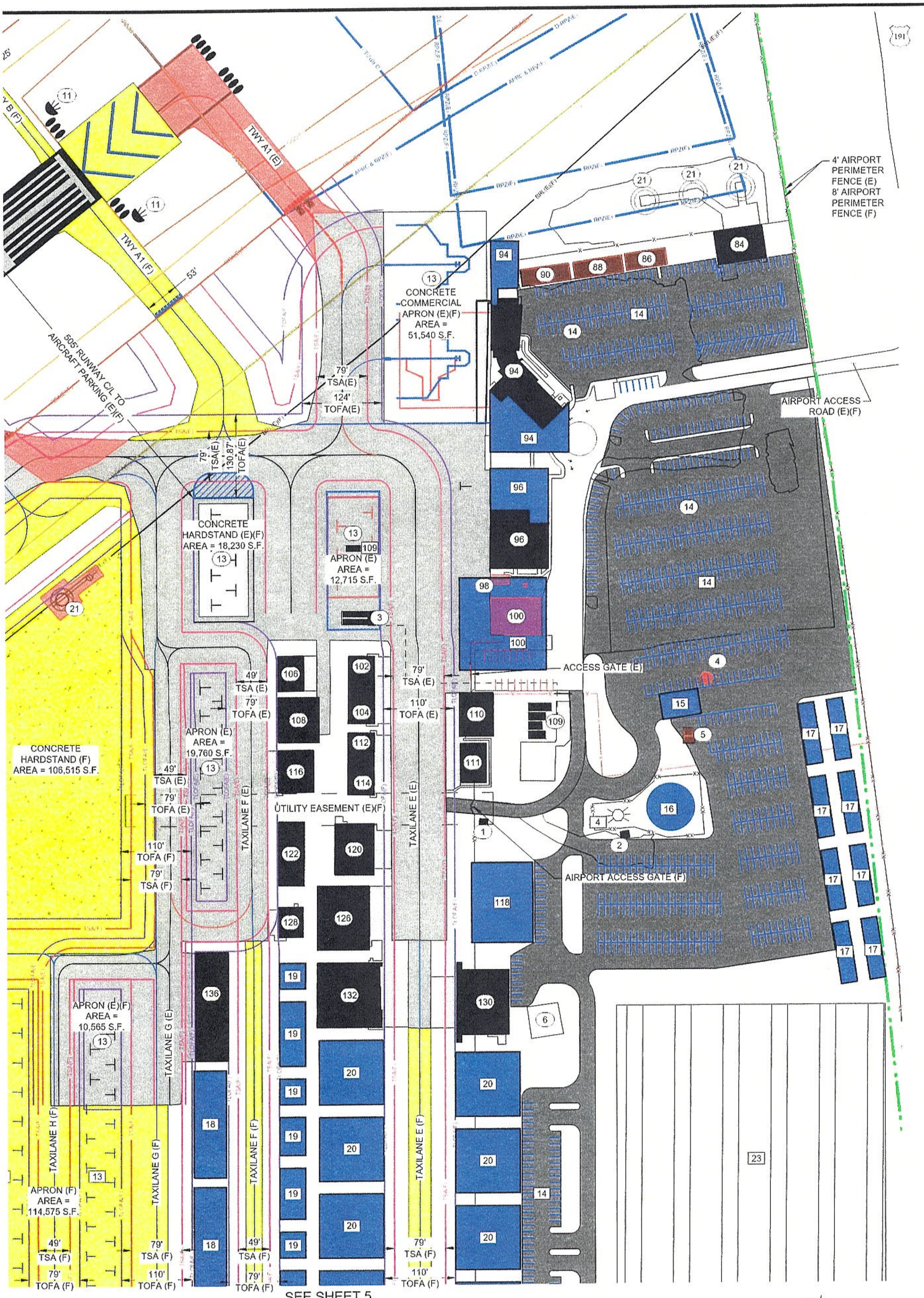
TERMINAL AREA DRAWING

Sheet: 4 of: 17



05/2023

ARMSTRONG

A LOCHNER COMPANY

CANYONLANDS REGIONAL AIRPORT
GRAND COUNTY, UTAH

AIP No. 3-49-0020-042-2022
AIRPORT LAYOUT PLAN

No.	ACI No.	Date	Revision / Description	File	Drwn.	Chkd.	Apprvd.
0	226796	05/2023	ORIGINAL ISSUE	6796503	RA	JPH	JZP

THE PREPARATION OF THIS DOCUMENT MAY HAVE BEEN SUPPORTED IN PART THROUGH THE AIRPORT IMPROVEMENT PROGRAM FINANCIAL ASSISTANCE FROM THE FEDERAL AVIATION ADMINISTRATION AS PROVIDED UNDER TITLE 49 U.S.C. SECTION 47104. THE CONTENTS DO NOT NECESSARILY REFLECT THE OFFICIAL VIEWS OR POLICY OF THE FAA. ACCEPTANCE OF THIS REPORT BY THE FAA DOES NOT IN ANY WAY CONSTITUTE A COMMITMENT ON THE PART OF THE UNITED STATES TO PARTICIPATE IN ANY DEVELOPMENT DEPICTED THEREIN NOR DOES IT INDICATE THAT THE PROPOSED DEVELOPMENT IS ENVIRONMENTALLY ACCEPTABLE OR WOULD HAVE JUSTIFICATION IN ACCORDANCE WITH APPROPRIATE PUBLIC LAWS.

TERMINAL AREA DRAWING

Sheet: 4 of: 24

GRAND COUNTY AIRPORT BOARD
REGULAR MEETING
MINUTES

July 1, 2024 @ 4:00 p.m.
Grand County Commission Chambers, 125 E. Center Street
Moab, UT 84532

A. Call to Order

1. The meeting was called to order at 4:06 p.m.
2. Members present: Jody Patterson, Bill Hawley, Bill Winfield (County Rep.), Alex Borichevsky (Travel Council Rep.), and Randy Martin. Airport Director Tammy Howland was also present. On Zoom were Laurel Catto and Shalee Bryant.
3. Members not present: Jason Taylor (Moab City Rep.).
4. Others present: Director's Assistant Tara Collins. On Zoom were Bill Prather and Ed Prather of Airport Garage Co. Later, County Attorney Stephen Stocks joined on Zoom.

B. General Business

1. Approve minutes of June 3, 2024 (Regular meeting)
Motion by Alex to approve the minutes, seconded by Randy, approved 5-0, with Laurel abstaining.

C. Citizens to be Heard - None.

D. Action Items: Discussion and Consideration (some for Recommendation to County Commission with approvals subject to limitation):

1. Consult with County Attorney Stephen Stocks re: insurance terms for airport leases and operating agreements. (Tabled until Stocks can be present.)

2. Rydman Lease for Lot 16 - Attorney Sloan's redline edits to Section 21: Insurance. (Tabled until Stocks can be present.)

3. Revised Lease for Airport Garage Co. - redline of Section 24: Relocation.

Tammy showed the redline edits to the section on Relocation. (These edits were <u>not</u> discussed at the June 3 meeting. The impetus for them came a few days after that meeting, from Bill Prather's stated concerns in a phone call to Tammy.) Bill W. raised objections to the edits, saying that Prather should have to pay to relocate the garages, even if the purpose was for additional surface parking. Bill Prather joined in, and said they would be willing to relocate for any other reason, for vertical airport projects, but that they consider their garages to be <u>part of</u> the whole airport parking operation, so they didn't feel it was reasonable to make them pay for relocation for more parking. He also said they'd be more amenable to pay for relocation for any reason if they were allowed to orient the garages as they show on the ALP, as a north-south footprint, as they would take up much less room adjacent to the current parking lot, coming from the east boundary. Tammy reiterated that when the airport gets to the point of needing more parking, there are much bigger issues than parking that would have to be dealt with. She said normally, relocation costs are on the County, regardless of what it is for. Tammy said Prather's concerns that led to this edit were due to some comments that were made at the last board meeting, with members casually and with levity implying that it would not be a big deal to just move the garages for any reason. Prather interjected that relocating would be a mere aggravation for the airport, but it would be a catastrophe for the Prathers. Bill W. reiterated that it had been previously agreed that Prather would pay the cost of relocation for any reason, Shalee agreed. Tammy clarified that Prather requested these edits <u>after</u> the June meeting, due to comments made at the June meeting. Jody asked Tammy what the current parking capacity is, if the parking slots were organized more efficiently. Tammy said that she and Armstrong estimated there were currently 375 slots. Shalee pointed out that the goal of the Airport is to plan for long-term growth, so this edit might put the Airport between a rock and a hard place, in terms of deciding to grow or not. Jody posited that additional parking could develop <u>around</u> the garages, to the west and then south. Tammy confirmed that the beacon tower is slated to be moved in the future as well. Shalee pointed out, like the Prathers, that it still made the most sense to line up the garages in a north-south direction. Bill H. pointed out that, in addition to the visual drawback of a north-south orientation, there was also the consideration that these garages would fill up and then the Prathers would want to build even more sets of garages, so they should be east-west, so they can be stacked. Ed Prather said that he and Tammy had worked out how much space to leave open between the western edge of the garages, and the beacon tower, so there would be plenty of room for a future road heading south.

Bill H. said they had tinkered with this a long time, and he thought it important that they move forward, so he made a **Motion** to accept the redlines and move on. This was seconded by Randy, and approved 5-0. (Shalee was temporarily not present.)

Tammy said there was not really any room to add indoor space to the terminal, and Bill H. suggested that they build upwards, like a second floor.

Bill H. asked if Armstrong could update the map of the airport that's in the ALP. Tammy clarified that as we get closer to finishing the Taxiway A-1 reconstruction, Armstrong would do a revision of the map, with as-builts showing. For now, Armstrong is updating a map for in-house use. They agreed to do that back on June 25, in response to our request.

Jody moved the meeting back to Action Items 1 and 2:

1. Consult with County Attorney Stephen Stocks re: insurance terms for airport leases and operating agreements.

Tammy said that in the process of generating leases for new hangars and development, the one step that hangs us up is the insurance requirements. We get a lot of pushback on insurance. The previous County Attorney (Sloan) is the one who made our current insurance requirements.

Attorney Stocks said that it is in the County's interest to have strong insurance requirements, however, that needs to be balanced with what is obtainable in the insurance world. Also, he said it matters how each individual is utilizing their hangar.

Tammy pulled up the Lease Template, Insurance section 21. There was discussion about which tenants currently have these insurance requirements: only tenants whose lease was drafted when Sloan was County Attorney and later. Tammy said a long-term tie-down would also need these types of insurance.

Laurel weighed in, as she has been on both sides of this issue, as a tenant and hangar owner, and an attorney. She started at the top of Section 21 and made suggestions for the board to consider.

i. Commercial General Liability. Laurel said this is not obtainable in the insurance market during the construction phase. During construction, one should hold Builder's Risk Liability. As for Aviation Liability, Laurel said that it would be very difficult for most pilots to obtain this coverage for over $1 million. She recommended capping the Aviation Liability coverage to $1 million. She suggested putting these 3 items in 3 separate paragraphs, in chronological order.

Bill Hawley asked if these covered tie-downs. Laurel said she personally would like to see all based aircraft name Grand County as additional insured, including for tie-downs. It's not going to cost anything. There is an administrative cost, as someone must keep a list of whose insurance is current and check everyone off. She would like the airport to be able to make a direct claim under that policy, if someone damages the airport with their airplane. For the definition of "based aircraft", Laurel suggested that the airport draw a line in the sand, say, more than 90 days a year. Tammy interjected that the State defines based aircraft as one which is at a particular airport for more than half of the year, so 6 months.

Laurel said that for General Liability, the $1M/$2M is the standard limit. Laurel mentioned how rocky the aviation insurance industry currently is, due to fleet recalls, the grounded planes due to the war in Ukraine, and insurance companies just generally more wary of insuring pilots. Laurel said if you can't get insured, you can't fly. Well, she said, you could be self-insured, but then you can't rent a hangar from anybody. So you would have to park outside.

Laurel said Commercial General Liability (CGL) only applies to hangar owners, not tie-downs or subtenants. Those 2 groups would be covered by their Aviation Liability, if they damage something. CGL covers the hangar operation, and Aviation Liability covers the plane and the pilot, when behind the yoke of the plane.

There was discussion about particular planes that cannot be insured. The airport would need to decide whether to allow uninsurable aircraft. Laurel clarified that someone with no insurance is still liable for errors, their entire balance sheet is at risk. The insurance just ensures the damaged party can collect from the erring insured. Laurel believes that if an airport user has insurance, they must name Grand County as additional insured. One possible option is to have uninsured pilots present a person, a third party, who agrees to be responsible for that pilot and any errors or damages. Tammy said that another airport's requirement is that if a person is self-insured, they had to show a certain amount of dollar assets.

Jody wondered whether a private individual, who's not operating as an LLC or other business entity, can even get CGL. Laurel explained that the CGL is really just liability insurance, whether the operator is commercial or private. She gave the example of homeowner's insurance, which covers liability, even though it's just your private home. It might be better to just call it "General Liability". Laurel provided the distinction with Ground Hangar Keeper's Liability: that is to insure the hangar's owner is covered if an aircraft is damaged while inside the third-party hangar. Laurel was not convinced that hangar keeper's needed to be required here, since it's hard to imagine the Airport being liable for such damage, and it is expensive coverage, so the cost-benefit ratio is not there. Also it discourages hangar owners from taking an occasional subtenant, and transient visitors are good for the airport. Also, it's duplicative, since the airplane owner should have his own insurance. Laurel said she would never allow an airplane in her hangar that did not have insurance, and she would require a waiver of subrogation from their insurance company.

After more discussion, it was proposed that we require hangar keeper's insurance only for those entities that are in the business of moving, maintaining, and refueling aircraft. Laurel pointed out that the liability portion of the hangar property insurance would cover what hangar keeper's is meant to cover. To move forward, Jody suggested they form a subcommittee, as Tammy suggested at the prior meeting. He also suggested we contact the AOPA (Airport Owners and Pilots Association), and ask for their input on insurance. Bill H. suggested we pare down to the bare minimum of insurance. He also thought they should more clearly define who or what they're trying to protect, and to what extent. He questioned the property insurance requirement, how does that protect the airport, and Laurel responded that the airport does have a remainder property interest in the improvements. Stocks suggested that the insurance requirements may be different for each lease, depending on how tenants are using the property.

Jody suggested that to move forward, they form a subcommittee, and he volunteered to be on it. Randy also volunteered to be on it, saying that he deals wit this stuff all the time. And Laurel will be the third volunteer. Laurel said this conversation had been really helpful. **Motion** by Laurel to form the insurance subcommittee, seconded by Randy, approved 4-1, with Bill H. opposing. Later, Laurel said that, to the extent these requirements are changed, the subcommittee should determine how those changes apply to current tenants' contractual requirements. She said these should be applied universally, so maybe they should go into a Minimum Standard.

2. Rydman Lease for Lot 16 - Attorney Sloan's redline edits to Section 21: Insurance.

   Attorney Sloan's redline was showing on the screen. Jody clarified that it seems like there are 3 distinct categories of tenant: commercial operations like Redtail Air, tenants who hold their lease as an LLC, and third, a tenant who leases as an individual. There was discussion again about insurance requirements and the new subcommittee. Bill H. said the terminology used in the Lease Template was not common, and Laurel agreed that the wording could be streamlined. Bill H. also thought the insurance requirements should be the same for all tenants. He wants these put into the Minimum Standards too. Tammy strongly agreed, because it should be fair across the board.

   For the Rydman lease, Jody wondered if we could add the $ amounts on Aviation Liability, and then add in language that whatever updates to the Minimum Standards occur in the future, would apply to the Rydman lease, as a way to move forward with this lease. Bill W. thought that there should be multiple different lease insurance requirements, depending on the type of operation. But he wants to try and let Rydman move forward now. Randy wondered if they should table the Rydman lease until the subcommittee makes its revisions. Tammy said we couldn't ask the Rydmans to go into the lease blindly (i.e. having to comply with future Minimum Standards, but not knowing what those would be.)
   Motion by Randy to table this item, until the subcommittee decides on insurance, seconded by Alex, approved 5-0.

4. Recommend Submission of application for the Bipartisan Infrastructure Airport Terminal Projects Funding Opportunity. See supporting documents, NOFO will be published Monday July 1st. (Notice of Funding Opportunity).

   Tammy showed the flyer that was posted today: "Building Better Airports Across America". She said it was an opportunity for airport terminal building renovation projects. She's been working with the County IT department on security cameras. They are having structural issues with the terminal building, sinking, walls cracking, roof issues. Also the pretty sandstone wall on the south side of the terminal is losing some stone. That is causing some leaking into the terminal. The rooftop HVAC units are obsolete. Randy asked if any paving could be added to this list, but Tammy thought paving was better suited for CIB funding.

   Motion by Randy to go ahead and submit the application, seconded by Bill H. Tammy mentioned there was a possibility of adding solar panels to the terminal, through this BIL type of funding. Approved 5-0.

E. Discussion Items:

1. OPMA Training Certificates due once a year - Open & Public Meetings Act, per Utah State Code 52-4-104.
   Go to: https://training.auditor.utah.gov/collections
   Jody encouraged everyone to update their training.

2. Project Reports
   a. Ramp/Taxiway A1 - Bid accepted, waiting for grant offer from FAA.
   b. Drive through gate replacement - 2 bids received by June 11. The bids were evaluated on a spreadsheet by Tammy, Tara, and Rea in accordance with the weighted criteria outlined in the RFP. Custom Fence Co. was chosen, and they accepted the offer.
   c. Beacon Tower - Tammy said it will be painted tomorrow. And it would be getting some LED obstruction lights on it, basically a makeover.

F. Reports:

1. Airport Monthly Data Report - June 2024 & Virtower Data
   Tammy pointed out the enplanements. Fuel sales are still down. Redtail's flights to SLC are looking up, and that contributes to enplanements too. We will send out the updated stats when June numbers come in.

2. Any questions on Director's Report for June 2024 - They talked about the plane that sank in the asphalt, and the car that was hit twice in the parking lot.

3. County Commission - Bill W. said he looked at the CIB list, and there was nothing on it for the Airport. He thought possibly we were ranked outside of the one-to-ten ranking. He wants to help push up those Airport projects on that ranked list.

4. City of Moab - Jason not here.

5. Travel Council - Alex said Adam Whalen of Love's Communication is setting up digital advertising at the Airport. Tammy said they set up a day to meet, to decide on a system.

6. Solar Committee - Bill H. said they had a presentation from Neighborhood Power (a company), and some of the folks here were present. Jody mentioned that that presentation was recorded and is available to anyone who wants to watch it. Bill W. and Mary are bringing it to the County Commission on July 16, Bill H. will make a short presentation there. Then at the meeting in August, the Commission will decide on it. Bill H. thought the grants would be fairly easy to come by. Tammy said this company will help us get the grants, they don't leave us on our own to do that.

7. Other reports for Airport Board - None

G. Future Considerations - Randy saw in the Times-Independent an article about misuse of the TRCC funds. Randy said it's important that the Airport Board can see monthly financial reports from the Clerk's office. Bill W. said the County did just hire a County Financial Director. Randy would like to draft a letter for the Chair's signature, requesting monthly financial reports from the Clerk's office. Jody, Bill W. and Laurel were fine with that idea.

H. Closed Session, if necessary

I. Adjourn - at 6:24 p.m.

Alvin Chung
Mesha Holdings LLC
1715 Canyon Circle
Farmington UT 84129

August 1 2024

Tammy Howland
Grand County Airport Board
110 W Aviation Way
Moab UT 84532

To Whom It May Concern,

I am writing this letter in regards to leasing a plot of land at the Canyonlands Regional Airport (CNY). This plot of land will be used to erect a small aluminum hangar for a single aircraft. This would be a T-style hangar. The total amount of land needed for this hangar will be a 62'x40' plot.

We thank the airport board in its time and consideration.

Signed

Alvin Chung
Mesha Holdings LLC

Attached below are the following:

Exhibit 1: Hangar Dimensions
Exhibit 2: Plat Map and Selected Plots

Exhibit 1

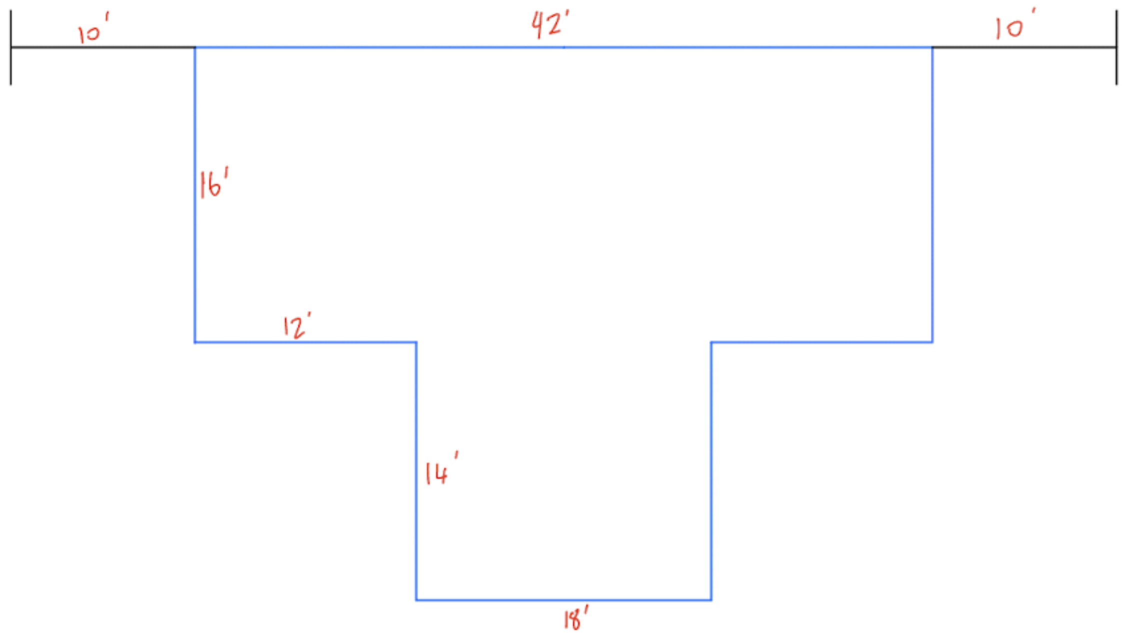
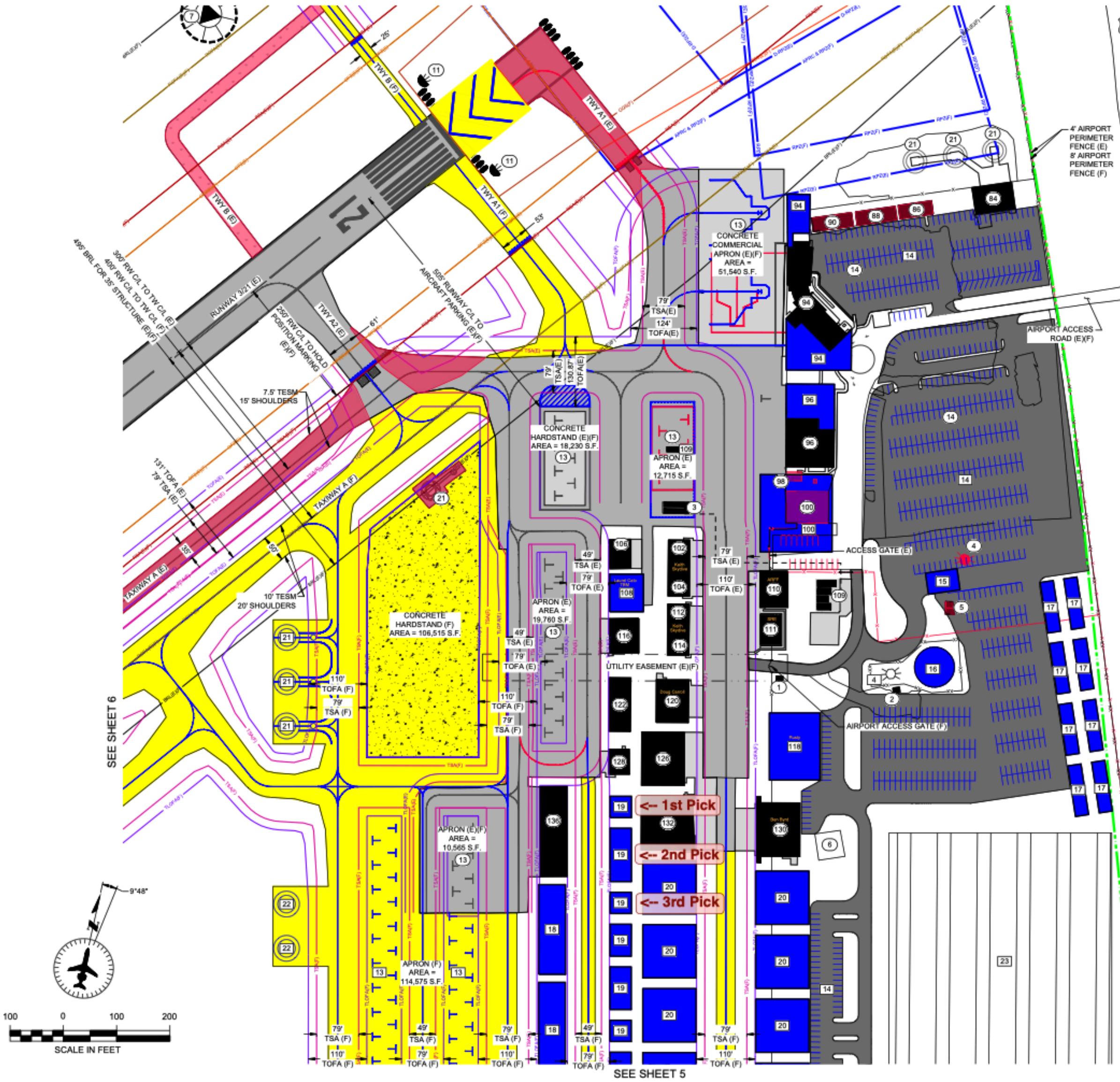


Exhibit 2



CONCRETE COMMERCIAL APRON (E)(F) AREA = 51,540 S.F.
CONCRETE HARDSTAND (E)(F) AREA = 18,230 S.F.
APRON (E) AREA = 12,715 S.F.
APRON (E) AREA = 19,760 S.F.
CONCRETE HARDSTAND (F) AREA = 106,515 S.F.
APRON (E)(F) AREA = 10,565 S.F.
APRON (F) AREA = 114,575 S.F.
<-- 1st Pick
<-- 2nd Pick
<-- 3rd Pick
UTILITY EASEMENT (E)(F)
ACCESS GATE (E)
AIRPORT ACCESS GATE (F)
AIRPORT ACCESS ROAD (E)(F)
4' AIRPORT PERIMETER FENCE (E)
8' AIRPORT PERIMETER FENCE (F)
RUNWAY 3/21 (E)
TAXIWAY A (F)
TAXIWAY A (E)
TWY A1 (E)
TWY A1 (F)
TWY A2 (E)
TWY B (E)
TWY B (F)
7.5' TESM 15' SHOULDERS
10' TESM 20' SHOULDERS
SEE SHEET 6
SEE SHEET 5
SCALE IN FEET
100
0
100
200

AIRPORT PROPERTY LEASE BY AND BETWEEN
GRAND COUNTY UTAH
CANYONLANDS REGIONAL AIRPORT
AND
LB MOAB OWNER, LLC
FOR
ELECTRONIC ADVERTISING SPACE in TERMINAL

Airport Property Lease
Table of Contents

AIRPORT PROPERTY LEASE

This AIRPORT LEASE AGREEMENT ("Agreement"), is made and entered into this 2nd day of April, 2024 by and between **Grand County**, a political subdivision of the State of Utah ("County"), whose address is 125 East Center St., Moab, UT, 84532, and **LB Moab Owner, LLC**, a Delaware LLC, with address of 3827 Lafayette St., Suite 219, Denver, CO, 80205. ("Tenant"), collectively referred to hereinafter as the "Parties" and individually as a "Party."

RECITALS:

A. The County owns and operates the Canyonlands Regional Airport ("Airport"), located in Grand County, State of Utah; and

B. The Tenant desires to advertise their products in an electronic format in the Terminal; and

C. The Parties now desire to enter into this Agreement, to lease Terminal wall space ("Premises"), as described and defined in Exhibit A, for such purposes and under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the Parties, and their successors and assigns, the Tenant and County agree as follows:

1. PREMISES
    a. Lease of Premises. County hereby leases to Tenant and Tenant hereby leases from County the following Premises:
        i. The combined square footage of two electronic screens, having approximately 60 total square feet of space, hereinafter "Space," located in the Airport Terminal, being more particularly described in Exhibit A, which is attached hereto. Tenant may alter the location of these screens within the Terminal, with prior approval from the Airport Director.
    b. <u>Premises Ingress and Egress</u>. Tenant is hereby granted during the term of this Lease the right to pedestrian and vehicular ingress to and egress from the Premises over and across public roadways serving the Airport for Tenant, its employees, representatives, agents, patrons, guests and suppliers, subject to such nondiscriminatory and lawful ordinances, rules and regulations as now or may hereafter have application at the Airport. It is understood and agreed that County hereby retains the right of ingress and egress over, through and across the Premises at any time for purposes of inspection and such other needs as County may have in connection with the operation of the Airport.
    c. As-Is Condition; No Express or Implied Warranties. TENANT HAS EXAMINED, AND ACCEPTS, THE PREMISES AND ANY FIXTURES ON THE LEASED SPACE, IN THEIR PRESENT "AS-IS" PHYSICAL CONDITION. NO REPRESENTATION, STATEMENT, OR WARRANTY, EXPRESS OR IMPLIED, HAS BEEN MADE OR IS MADE BY OR ON BEHALF OF COUNTY AS TO THE CONDITION OF THE PREMISES, OR AS TO THE FITNESS FOR ANY PARTICULAR USE THAT MAY BE MADE

OF THE PREMISES. IN NO EVENT SHALL COUNTY BE LIABLE FOR ANY REASONABLY APPARENT DEFECT IN THE PREMISES FOR THE USE PERMITTED UNDER THIS AGREEMENT NOT WITHIN THE COUNTY'S CONTROL.

2. INITIAL TERM & AGREEMENT RENEWAL
   a. The initial term of this Lease shall begin on April 2, 2024 ("Effective Date") and continue for one year until April 1, 2025, at which time it may be renewed for additional one-year terms upon the mutual agreement of the Parties.
   b. Tenant will provide a written request to County not less than sixty (60) days prior to the expiration of the Agreement or renewal for each additional one year.
   c. Upon Tenant's request for renewal, the County shall review the condition of the Premises and market rental rates and determine any conditions of renewal such as required Tenant improvement to the Premises or increased Rent based on market rental rates, which conditions shall be provided to Tenant for review thirty (30) days prior to expiration of the Agreement and integrated into the annual fee payment schedule.
   d. Each annual renewal is subject to County approval; provided, however, that the County shall have no obligation to renew if the Tenant is in Default or does not agree to the conditions imposed under Section 2(c).

3. RENT
   a. <u>Rent.</u> Tenant agrees to pay County the Base Rate of Forty Dollars ($40.00) per week ($20.00 per screen per week), or One Hundred Twenty Dollars ($120.00) per month ($60.00 per screen per month) ("Rent") as established in the County Fee Ordinance, unless and until adjusted under Section 3(d).
      i. Rent shall be paid in advance, and may be paid in monthly installments.
      ii. If paid monthly, Rent shall be prorated in the month this Agreement commences for any partial tenancy and shall be due on the first of each month without further invoice from the County.
   b. <u>Place of Payment.</u> All payments due by Tenant to County under this Agreement shall be remitted to: **<u>County Clerk, 125 East Center, Moab, Utah 84532</u>**.
   c. <u>Delinquent Payments</u>. Without waiving any other right of action available to County, if Tenant fails to pay any installment of monthly rent or any other fee due hereunder within thirty (30) days of the date the said rent or other fee is due, Tenant agrees to pay County a late fee equal to ten percent (10%) of the total said delinquent installment of rent or other fee ("Late Fee"). Any payments past due more than thirty (30) days shall also have interest added thereon at the rate of ten percent (10%) per annum ("Default Interest").
   d. <u>Rental Adjustments:</u>
      i. The annual rent payable under this Agreement shall be adjusted based on the approved annual County Fee Schedule terminal rent rates.

4. EXPIRATION / TERMINATION
   a. Prior to expiration or termination of this Agreement, and subject to Section 7, the Tenant will return the Premises to its original condition.
   b. Upon expiration or termination, Tenant shall thereafter have no further rights to or interest in the Premises. Except as otherwise provided by this Agreement,

Tenant shall not remove any improvements from the Premises, nor waste or destroy any improvements.

5. CANCELLATION BY TENANT
    a. This Agreement may be cancelled by Tenant at any time, by Tenant giving written notice to County.

6. USES AND PRIVILEGES OF TENANT
    a. Premises Use. Tenant shall use the Premises solely for electronic advertising on screens. Allowable use includes:
        i. Family-friendly advertising for Lion's Back Resort.
    b. Premises Prohibited Uses. Tenant understands the following uses of the Premises are considered "Prohibited Uses" and are expressly prohibited by this Agreement:
        i. Tenant agrees not to change or add to the allowed subject matter, nor to sublet electronic advertising space to another entity, nor to advertise for other companies, without prior approval from Airport Management;
        ii. Anything deemed "inappropriate" by Airport Administration or is offensive in any way.

7. MINIMUM STANDARDS AND RULES AND REGULATIONS
    a. Compliance. Tenant represents throughout the duration of this Agreement to comply with the Airport Minimum Standards and Rules and Regulations as approved or amended by the County, which can be found at www.grandcountyutah.net on the Airport page.
    b. Violation. The County shall strictly enforce the Minimum Standards and Rules and Regulations, especially those requirements related to federal law and federal grants. The County expressly reserves its full remedies in such enforcement, including civil fines, criminal penalties, and termination of this Agreement.
    c. Conflict. In the event of conflict between this Lease and the CNY Minimum Standards or Rules and Regulations, the terms of the CNY Minimum Standards or Rules and Regulations shall control.

8. INSPECTION
    a. Tenant Inspection. Tenant agrees to inspect all Premises and surrounding area and provide any information to the County pertaining to concerns or issues related to the Premises.
    b. Tenant Responsibility. It shall be the sole responsibility of Tenant to develop, maintain, repair and operate the entirety of the Premises and all Improvements and facilities thereon at Tenant's sole cost and expenses.
    c. Satisfactory Condition. Tenant will not do or permit anything that would deface, damage, or deteriorate the value thereof, and agrees it will leave the Premises in a condition satisfactory to the County if and when it vacates the Premises, with normal wear and tear excepted.
    d. County Inspection. The County shall have the right to inspect the Leased Premises during regular Business Hours for compliance with this Lease and the Airport Minimum Standards and Rules and Regulations.

9. IMPROVEMENTS

a. “Improvements” or “Tenant Improvement” as used in this Agreement shall include 2 stationary electronic screens on 2 existing terminal walls.
b. Plans and specifications for other Improvements to be constructed on the Premises shall require written approval from the County prior to commencement of construction or installation of any other Improvements.
c. Any modifications or alterations in such plans or concerning any Improvements to the Premises shall similarly require written approval by the County before the Improvements are installed.
d. All construction plans and specifications for any Improvements, including site work such as ramp access, shall conform in all respects to the architectural requirements of County ordinances, building codes and regulations of County and such other authority as may have jurisdiction over the Premises or Tenant’s operations thereon.

10. TAXES AND LICENSES
a. Tenant shall pay on or before the last date on which payment therefore may be made without penalty or interest, and regardless of whether Grand County is a party thereto, all taxes, assessments, licenses and charges levied against Tenant's personal property, and all licenses and permits necessary for Tenant's operations under Federal or State statutes or local ordinances, insofar as they are applicable to Tenant’s operations or use of the Premises at the Airport (hereinafter called "Impositions").
b. Tenant may protest by appropriate proceedings in good faith and at its expense, the existence, amount, or validity of any Imposition and the extent of Tenant's liability therefore.
c. Tenant agrees to indemnify County and hold County harmless from any and all losses, judgments, decrees, costs, (including reasonable attorney's fees), claims or demands for payment of any such Impositions or arising from Tenant's contest thereof.

11. REPAIR AND MAINTENANCE
a. Tenant shall not permit rubbish, debris waste material or anything unsightly or detrimental to health, or likely to create a fire hazard, or conducive to deterioration, to remain on any part of the Premises or to be disposed of improperly.
b. Tenant agrees to maintain the Leased Premises and its Improvements in a way that will reflect positively on the overall appearance of the Airport.
c. Tenant shall not store any inoperable equipment unless undergoing maintenance or reconstruction.
d. Unsightly materials not being used or creating a hazard shall be discarded or removed.
e. If any Airport property is damaged during the installing or uninstalling of the digital screens, or from any other aspect of the presence of the screens, Tenant shall be fully and solely responsible for repairing said damage.
f. If Tenant fails to make any repairs or do any work required of Tenant under the Terms of this Agreement within thirty (30) days after written notice of the need for repairs, the County may cause to be performed such work for the account and at the expense of Tenant.

i. All sums so expended by the County, together with twenty (20%) percent of cost for administration, shall be paid by Tenant to County on demand.

12. SIGNS

a. Tenant shall not, without the prior written approval of the County, erect or display any sign on the Airport, the Premises or any hangar or other structure constructed thereon.

   i. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters or other similar devices.

b. Prior to erection, construction or placing of any sign at the terminal, Tenant shall submit to County for approval, drawings, sketches, and dimensions of such signs which shall be in accordance with duly adopted Airport Sign Standards or any applicable standards in County's Land Use Code.

c. Any conditions, restrictions, or limitations with respect to the use of such signs as are stated by the County in writing shall become conditions of this Lease.

13. INDEMNIFICATION

a. County, its officers, representatives, agents and employees shall not be responsible or liable for, and Tenant agrees to indemnify, hold harmless, and defend County, its officers, representatives, agents and employees from and against all claims, damages, expenses, liabilities and judgments: (a) for injury to persons, loss of life or damage to property occurring on the Premises or arising from their operations (including property and officers, employees and agents of County); (b) all other losses arising from Tenant's operations and other use of the Premises or the Airport pursuant to this Agreement; (c) for workers compensation claims; and (d) for acts and omissions of Tenant's officers, employees, representatives, agents, servants, invitees, patrons, customers, subtenants contractors, subcontractors, successors, assigns, suppliers, and all other persons doing business with Tenant (excluding County, its officers, employees, representatives, and agents).

b. Tenant shall not be liable for damage or injury occasioned by the negligence of the County, its designated agents, servants or employees.

c. Tenant's liability under this paragraph shall be reduced by the proceeds from any insurance carried by Tenant to the extent that such proceeds are applied toward payment of such claims, damages, expenses, liabilities and judgments.

14. INSURANCE

a. County hereby expressly disclaims any and all liability for any and all losses, damage, and/or claims to the personal property or possessions of the Tenant or for personal property or possessions of others which are in the care, custody, and control of Tenant, including but not limited to the loss of use and/or diminishment of value.

b. County shall not be required to carry insurance on any of Tenant's property or to replace in whole or in any part of Tenant's property, including Tenant Improvements.

c. Tenant shall carry and keep in force applicable insurance coverage of each policy or policies, as follows:

    i. **Commercial General Liability / Business Liability**: Insurance including property damage, bodily injury and personal injury.
        1. $1,000,000 per occurrence and $2,000,000 aggregate;
    ii. **Workers Compensation Insurance:** Statutory, in compliance with State of Utah law, unless a written waiver is obtained from the State;
    iii. **Property Insurance:** against all risks of loss to the Leased Premises and any Tenant Improvements at full replacement cost with no coinsurance limits maintained (not applicable).

d. The limits of insurance shall not in any manner impair the obligations of Tenant to indemnify, protect, defend and hold harmless County as specified in this Agreement.

e. <u>Each insurance policy must include Grand County as additional insured.</u>

f. <u>Tenant shall provide the County with a Certificate of Insurance evidencing Tenant's compliance with the requirements of this paragraph, to be attached hereto, then annually each year, or within 5 days of request by the County.</u>
    i. Any insurance policy shall be written by insurance companies authorized to do business in the State of Utah and shall be written by companies approved by the County, such approval not to be unreasonably withheld.
    ii. Certificates of insurance shall be delivered to the County at least ten (10) days prior to the effective date of the insurance policy for which the certificate is issued.
    iii. Each such certificate shall contain (a) a statement of the coverage provided by the policy; (b) a statement certifying County is listed as an additional insured in the policy; (c) a statement of the period during which the policy is in effect; (d) a statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and (e) an agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in amount for any reason whatsoever without at least thirty (30) days' prior written notice to County.

g. In County's sole discretion and as it deems necessary, it may periodically review, reevaluate, and increase these insurance requirements and policy amounts. In the event County requires the Tenant to purchase additional insurance policies or increase policy amounts, County shall provide thirty (30) days' advance written notice to Tenant. In the event Tenant is unwilling or unable to procure such additional insurance, the Tenant may terminate this Lease by providing written notice to the County. Annual rent and other fees due hereunder shall be payable only to the date of said termination.

h. To the extent allowed by the State of Utah law, the Parties hereto each hereby release and relieve the other and waive their claim of recovery for loss or damage to property on the Premises arising out of, or incident to, fire, lighting and other perils to the extent that said claims, actions, damages, liability and expenses are covered by insurance of either Party, whether due to negligence of either Party, their agents, or employees, or otherwise so coverable by insurance. The Parties agree to cause such release and to endorse such provisions of insurance policies issued for the Premises or Parties which are the subject of this Agreement.

i. If Tenant, for any reason, fails to maintain insurance coverage as required by this Agreement, the same shall be deemed a material breach of this Agreement. The

Tenant must cease operations during any vacancy in insurance coverage until coverage has been approved.

15. DAMAGE OR DESTRUCTION
    a. If any portion of the structure on the Premises or the appurtenances thereto shall be damaged or destroyed by a fire or any other cause or natural disaster, and this Agreement is not terminated as hereinafter provided, Tenant shall at its expense, remove the debris within sixty (60) days.
    b. Tenant shall have the option to repair such damage or destruction and if Tenant elects to repair such damage or destruction, Tenant shall pay the excess over the insurance proceeds to complete such repair.
    c. In the event of such damage or destruction, Tenant shall be entitled to all property salvaged from the Premises prior to the expiration of this Lease and if terminated, Tenant shall not be required to restore any structures on the Premises.
    d. If this Lease is not so terminated, it shall continue and Tenant shall not be entitled to any reduction of abatement of rent.

16. OBLIGATIONS OF COUNTY
    a. Clear Title.
        i. County covenants and agrees that at the granting and delivery of this Agreement it has good title to the Premises, and that County has full right and authority to lease the same.
    b. Operation as a Public Airport.
        i. County or its successor covenants that it will operate and maintain the Airport as a public airport consistent with and pursuant to the Sponsor's Assurances Agreement given by County to the United States Government under the Federal Airport and Airway Development Act.
    c. Maintenance of Airport.
        i. County reserves the right to develop, improve, and maintain all Public Airport Facilities as the County sees fit.
        ii. County shall, throughout the term hereof, maintain all public areas and facilities, such as access roads on the Airport, in good and adequate condition for use by cars and trucks, and shall maintain clear and uninterrupted access to the parking area over said access areas and roads; provided, however, County may, at any time, temporarily or permanently, close any roadway or right of way for such access, ingress or egress whether inside or outside the terminal building, or any other area at Airport, in its environs presently or hereafter used as such, so long as a means of access, ingress and egress reasonably equivalent to that formerly provided, and not adverse to Tenant's continued use and enjoyment of the Premises is substituted therefore and is concurrently made available therefore.
        iii. Tenant understands and agrees that there may be inconveniences caused by inclement weather and construction or renovations of buildings and roadways, and Tenant hereby releases and discharges County from any and all claims, demands or causes of action which Tenant now or any time hereinafter may have against County arising or alleged to arise out

of the closing of any right of way or other area used as such, whether within or without Airport.

iv. If Tenant shall damage any facility of the Airport, including but not limited to hangars, buildings, runways, taxiways, roads, utility extensions, lighting, signs, towers, signs or any other similar facility, Tenant shall be obligated to pay the necessary and reasonable cost of repairs to County without regard to whether or not said damage is caused by negligence on the part of Tenant.

17. DEFAULT

a. The following shall constitute a material default and breach of this Agreement by the Tenant:

   i. Failure to Pay Rent / Perform Covenants.

      1. The failure of Tenant to pay any amounts due under this Agreement on the date the fees are due, with or without notice; or

      2. The failure of Tenant to perform any other of the term, condition or other obligations of this Agreement to be observed or performed by Tenant for more than thirty (30) days after written notice of such failure is given to Tenant.

   ii. Abandonment of Premises.

      1. If Tenant should abandon the Premises for a period of thirty (30) days or longer, the abandonment shall be considered a material default and breach of this Agreement.

   iii. Provides Materially False Information.

      1. If Tenant, or an agent of Tenant, falsifies any report furnished to County pursuant to the terms of this Agreement, the false reporting shall be considered a material default and breach of this Agreement.

   iv. Bankruptcy or Insolvency.

      1. If Tenant or any guarantor of this Agreement shall become bankrupt or insolvent, or file any debtor proceedings concerning the Premises in any court, or cause this Agreement to be taken under any writ of execution, or a petition seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or other relief of the same shall be considered a material default and breach of this Agreement.

         a. Additionally, the filing or execution of attachment, encumbrance, lien or stop notice either against the Premises, County, or Tenant related to the use or possession of the Premises shall be considered a material default and breach of this Agreement.

         b. Tenant shall not properly commence and expeditiously pursue action to dismiss any such involuntary petition or answer or to vacate such receivership, or, if after diligently exhausting Tenant's remedies, such petition shall not be dismissed or the receivership vacated within ninety (90) days.

v. Unapproved or Unauthorized Transfer of Interest.

1. If Tenant should make an unapproved or unauthorized transfer of any interest acquired under this Agreement, or assign this Agreement for the benefit of creditors, the same shall be considered a material default and breach of this Agreement.

vi. Failure to Comply with Insurance Requirements.

1. Failure to comply with insurance requirements as needed for the type of operation in relation to this Agreement shall be considered a material default and breach of this Agreement.

vii. Other Agreement Provisions.

1. Failure to comply with provisions of this Agreement within ten (10) days after written notice of such failure to comply shall be considered a material default and breach of this Agreement.

b. In addition to any other rights and remedies prescribed in State of Utah law, upon Tenant's material default and breach of this Agreement, County may avail itself of the following remedies which are cumulative and not exclusive:

i. Delinquent Payments. Without waiving any other right of action available to County, if Tenant fails to pay any installment of monthly or annual rent or any other fee due hereunder within ten (10) days of the date the said rent or other fee is due, with or without notice, Tenant shall owe a late fee equal to ten percent (10%) of the total said delinquent installment of rent or other fee ("Late Fee"). Any payments past due more than thirty (30) days shall also have interest added thereon at the rate of ten percent (10%) per annum ("Default Interest").

ii. Right of Surrender.

1. Tenant may surrender possession of the Premises at any given time by giving the County notice of its intent to surrender the Premises. Upon receiving notice of intent to surrender, the County may agree not to evict Tenant on the condition that the Tenant surrenders possession of the Premises in a timely manner.
2. Upon surrender of the Premises to County, this Agreement shall terminate and Tenant is obligated to pay County any and all outstanding unpaid rental amounts, fees, or late charges as outlined in this Agreement as applicable and subject to County's duty to mitigate any damages.

iii. Right to Re-Enter.

1. County may seek to reenter and recover possession of the Premises by any lawful means available under State of Utah law, in which case this Agreement shall immediately terminate, and Tenant must immediately remove all personal property, including aircraft, from the Premises.

iv. Right to Relet Premises.

1. Should County elect to re-enter the Premises, as herein provided, or take possession of the Premises pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Agreement or it may from time to time, without terminating this Agreement, make such alterations and repairs as may be necessary in order to relet the Premises at such rental or

rentals and upon such other terms and conditions as County in its sole discretion may deem advisable.

2. Upon each reletting, all rentals received by the County from such reletting shall be applied first to the payment of any indebtedness other than rent due hereunder from Tenant to County; second, to the payment of any costs and expenses of such reletting, including brokerage fees and attorney's fees and of costs of such alterations and repairs; third, to the payment of residue and unpaid hereunder, and the rent due, if any, shall be held by County and applied in payment of future rent as the same may become due and payable hereunder.
3. If such rentals received from such reletting during any month are less than that to be paid that month by Tenant hereunder, Tenant, upon demand shall pay any such deficiency to the County.

c. Damages.

   i. Should County terminate this Agreement at any time for any such breach, County may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the Premises, reasonable attorney's fees, and including the worth at the time of such termination the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Agreement for the remainder of the stated Term over the then reasonable rental value of the Premises for the remainder of the Term, subject, however, to the County's duty to mitigate damages, all of which amounts shall be immediately due and payable from the Tenant to County.

      1. In the event a lawsuit is brought for recovery of possession of the Premises, for the recovery of rent or any other amount due under the provisions of this Agreement, or because of breach of any other covenant herein contained on the part of Tenant to be kept or performed, and a breach is established, Tenant shall pay to County all expenses incurred therefore, including reasonable attorney's fees.
      2. No remedy herein or elsewhere in this Agreement or otherwise by law, statute or equity, conferred upon or reserved to County or Tenant shall be exclusive of any other remedy, but shall be cumulative, and may be exercised from time to time and as often as the occasion may arise. Nothing herein or elsewhere in this Agreement shall be construed to relieve a Party of its duty to mitigate its damages.
      3. All monies due under this Agreement from Tenant to County shall be due on demand, unless otherwise specified, and if not paid when due, shall bear interest at the rate of 1.75% per month.

18. COSTS AND ATTORNEYS' FEES

a. The parties agree in the event of default, the defaulting party agrees to pay all reasonable costs, attorney's fees and expenses in enforcing this Lease. Any action commenced concerning the provisions of this Lease shall be held in the Seventh Judicial District Court located in Grand County, Utah.

19. QUIET ENJOYMENT
    a. County covenants with Tenant that upon performing the obligations herein provided on its part to be performed, Tenant shall have quiet enjoyment and peaceful possession of the Premises during the Term of this Agreement subject to the Minimum Standards and Rules and Regulations.

20. PUBLIC RECORDS
    a. It is specifically understood by Tenant that the County is a public body under State of Utah law and must comply with open records and meeting laws.

21. NON-DISCRIMINATION
    a. Tenant agrees for its owners, managers, directors, supervisors, employees, personal representatives, successors in interest and assigns, as part of the consideration hereof, not to discriminate in any manner against any person on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability, in Operator's use of the Premises, including, but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

22. SPONSOR'S ASSURANCES
    a. This Agreement shall be subordinate to the provisions of any existing or future agreements between County and the United States Government, relative to the operation and maintenance of the Airport, the execution of which has been or will be required as a condition precedent to the granting of Federal funds for the development of the Airport, to the extent that the provisions of any such existing or future agreements are generally required by the United States at other civil air carrier airports receiving Federal funds and provided that County agrees to give Tenant written notice in advance of execution of such agreements of any provisions which will modify the terms of this Lease.

23. RIGHT OF FLIGHT
    a. Tenant understands and agrees that County reserves the right of flight for the passage of aircraft above the surface of the Premises in accordance with Federal Aviation Administration criteria, and such right of flight shall include the right to cause in such airspace such noises as may be inherent to the operation of aircraft now known or hereinafter used for navigation of or flight in the air; and that County reserves the right to use such airspace for landing at, taking off from or operating aircraft on or over said Airport.

24. NOTICE AND PLACE FOR PAYMENT OF FEES
    a. Any notice or demand of any kind which County may be required to serve on Tenant under terms of this Agreement, may be served upon Tenant (as an alternative to personal service upon Tenant) by mailing a copy thereof by certified or registered mail, return receipt requested, addressed to:

LB MOAB OWNER, LLC
Attn: Jon Dwight
3827 Lafayette St., Suite 219
Denver, CO 80205
Phone: 970-708-0691

Or by email to:
E-mail: jon@inventdp.com

i. Or at any other such place as Tenant may designate to the County in writing.

b. Any notice or demand of any kind which Tenant may be required or desire to serve upon County under terms of this Agreement, may be served upon County (as an alternative to personal service upon County) by mailing a copy thereof by certified or registered mail, return receipt requested, addressed to:

Grand County Clerk/Auditor
125 East Center St.
Moab, Utah 84532

With a Copy To:
Airport Director
125 E. Center St.
Moab, Utah 84532

County Attorney
125 East Center St.
Moab, Utah 84532

i. Or at any other such place as the County may designate to Tenant in writing.

c. Fees shall be paid to the County at the address set forth in this Agreement.

d. No successor to County's interest shall be entitled to receive Fee payments until Tenant shall have been furnished with:
   i. a letter signed by the grantor of such interest setting forth the name and address of the person entitled to receive such rent; and
   ii. a photostatic copy of the deed or other instrument by which such interest passed.

25. COMPLIANCE WITH LAWS

a. Tenant agrees to abide by and conform to all of the Airport Rules and Regulations, Minimum Standards, Airport Security Program, County policies, County ordinances, and actions by the Grand County Commission, County and State and Federal Laws and regulations pertaining to operations and activities of Tenant at or upon the Airport, whether now in effect or hereinafter enacted.

b. County agrees that such rules, regulations, ordinances and actions will not treat Tenant less favorably than those similarly situated as Tenant at the Airport.

c. Tenant agrees that if it fails to correct violations of any such Airport rules and regulations, County policies, County Ordinances, actions by the County Commission, State or Federal laws pertaining to Airport fire, health and safety within a reasonable time after actual notice of violation thereof from County, County may, in addition to any other remedies provided by law, statute or in equity, after reasonable time and notice, cause such violations to be cured for the account and at the expense of Tenant, and all sums so expended by County together with twenty (20%) percent for cost of administration shall be paid by Tenant on demand or cause this Lease to be canceled.

d. Tenant shall further conduct all of its activities in an orderly and proper manner and so as not to annoy or be offensive to others at the Airport. The County shall have the right to complain to Tenant as to the demeanor, conduct, and appearance of Tenant's personnel and invitees, whereupon Tenant will ensure removal or remedy the complaint. It is further expressly understood that the willful failure on the part of the Tenant to remove the cause of the complaint shall require a formal complaint and review in consideration of material breach of this Agreement.

26. EVENT OF WAR OR NATIONAL EMERGENCY

a. During time of war or national emergency County shall have the right to establish an Agreement with the United States Government for use of the landing area or any part thereof, for military or naval use and, if any such Agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the Agreement to the United States Government, shall be suspended.

27. ASSIGNMENT AND SUBLETTING

a. The Tenant shall not assign, transfer, sublet, pledge, hypothecate, surrender or otherwise encumber or dispose of this Agreement or any estate created by this Agreement or any interest in any portion of the same, or permit any other person, or persons, company or corporation to occupy the Premises without the prior written consent of County being first obtained and such must be made subject to the terms and conditions of this Lease.

28. AMENDMENTS.

a. This Agreement may be changed, amended, or modified only upon the written consent of both Parties.

29. SEVERABILITY.

a. If any paragraph of this Agreement is for any reason found invalid or unenforceable, the invalid or unenforceable provision shall be deemed severed from the remainder of this Agreement and the remaining paragraphs shall remain in full force and effect to the fullest extent of the law.

30. MISCELLANEOUS PROVISIONS

a. The various rights and remedies herein contained and reserved to each of the parties, shall not be considered as exclusive of any other right or remedy of such party but shall be construed as cumulative and shall be in addition to every other remedy now or hereinafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall be construed as a waiver of any default or nonperformance or as acquiescence therein.

b. Nothing herein contained nor any acts of the parties hereto shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the Parties hereto, it being understood and agreed that the relationship between the parties hereto is that of landlord and tenant.
c. 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 308(a) of the Federal Aviation Act of 1958, as amended.
d. The headings of the several articles and sections contained herein are for convenience only and do not define, limit or construe the contents of such articles and sections. When required by the context, the singular shall include the plural and the neuter gender shall include the feminine and masculine genders and shall include a corporation, firm or association.
e. All negotiations and oral agreements acceptable to both parties have been incorporated herein. This Agreement may not be amended or modified by any act or conduct of any of the parties or by any oral agreement which is not reduced to writing.
f. This Agreement shall be construed under Utah law and shall be interpreted in the Seventh Judicial District Court in Grand County, Utah..
g. “Tenant” as used herein shall include its successors, assigns, guests, invitees, licensees, personnel, directors, officers, members, and shareholders.

IN WITNESS WHEREOF, the hands of the Parties:

SIGNED: ____
Jon Dwight, Authorized Signatory, LB Moab Owner, LLC DATE

SIGNED: ____
Jacques Hadler, Grand County Commission Chair DATE

ATTEST: ____
Gabriel Woytek, County Clerk DATE

EXHIBIT A

PREMISES

Description:

Wall space for 2 electronic screens, in pink.

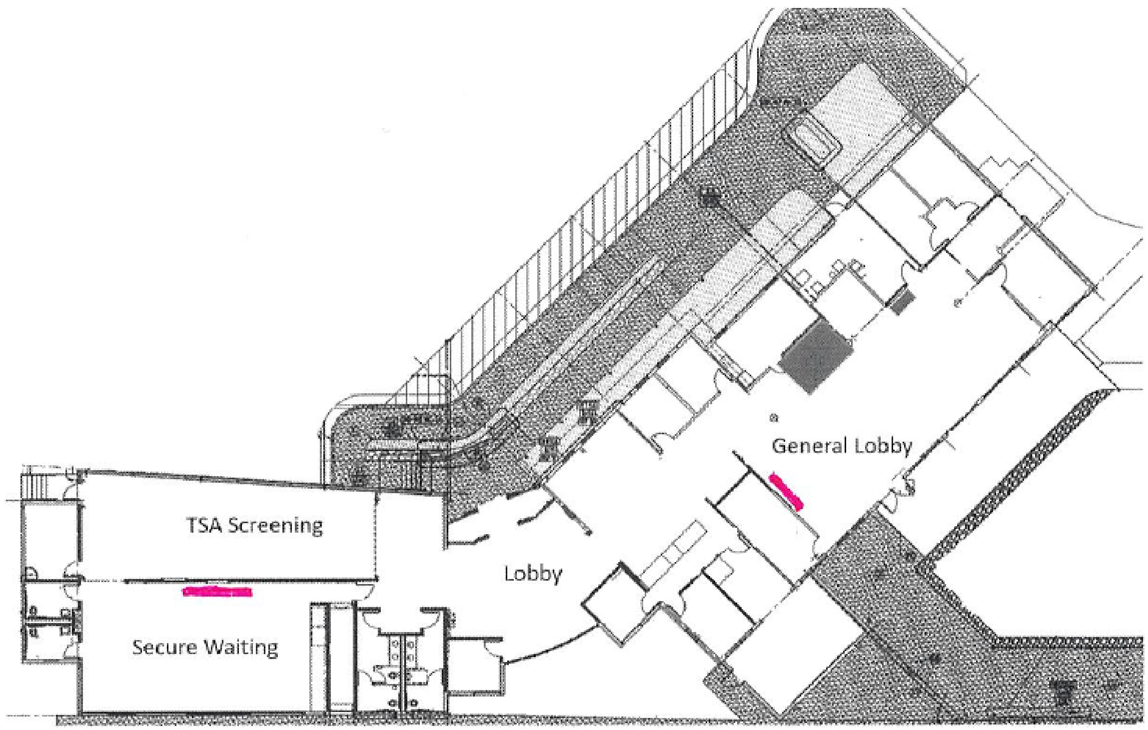


EXHIBIT B

CERTIFICATES OF INSURANCE (COI)


PRIVATE
Call us: 805-783-2060
www.polyperformance.com
EXIT
SHUTTLE / TAXI


2.15.24
STEVE SPAGNUOLO
utely devastating end to yesterday's Super Bowl Parade in Kansas City.
EXIT
EMERGENCY
EXIT ONLY
STOP

Solar Purchase Agreement

This Solar Power Purchase Agreement (this "**Agreement**") is entered into by the parties listed below (each a "**Party**" and collectively the "**Parties**") as of the date signed by Seller below (the "**Effective Date**").

Purchaser:	**Canyonlands Field Airport**	**Seller:**	**Neighborhood Power Corporation**
Name and Address	Canyonlands Field Airport 112 West Aviation Way Moab, UT 84532 Attn:	**Name and Address**	Neighborhood Power Corporation 415 Dairy Rd., #-216 Kahului, HI 96732 Attn: Stephen Gates or Corporation President
Phone	(435) 259-4849	**Phone**	(808) 215-9040
E-mail		**E-mail**	sgates@neighborhoodpower.com
Premises Ownership	Purchaser [ ] owns [ ] leases the Premises.	**Additional Seller Information**	

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electric energy from the solar panel system described in **Exhibit 2** (the "**System**") and installed at the Purchaser's facility described in **Exhibit 2** (the "**Facility").**

The exhibits listed below are incorporated by reference and made part of this Agreement.

Exhibit 1	Basic Terms and Conditions
Exhibit 2	System Description
Exhibit 3	Credit Information
Exhibit 4	General Terms and Conditions
Exhibit 5	Memorandum of Site Lease
Exhibit 6	Site Lease Agreement

Purchaser: Bellavista Properties

Signature: ______________________________

Printed Name:

Title:

Date: ______________________________

Seller: Neighborhood Power Corporation

Signature: ______________________________

Printed Name: Stephen Gates

Title: President

Date: ______________________________

Exhibit 1
Basic Terms and Conditions

1. **Term:** Twenty-five (25) years, beginning on the Commercial Operation Date.

2. **Additional Terms:** Up to three (3) Additional Terms of five (5) years each

3. **Environmental Incentives and Environment Attributes:** Accrue to Purchaser.

4. **Contract Price:** $0.074 cents per kWh and 0.0% annual escalator**:**

Year	$/kWh
1	0.074
2	0.074
3	0.074
4	0.074
5	0.074
6	0.074
7	0.074
8	0.074
9	0.074
10	0.074
11	0.074
12	0.074
13	0.074
14	0.074
15	0.074
16	0.074
17	0.074
18	0.074
19	0.074
20	0.074
21	0.074
22	0.074
23	0.074
24	0.074
25	0.074

5. **Purchaser Options to Purchase System**. As set forth in Section 16(b).

6. **System Installation**:

Includes:	[X] Design, engineering, permitting, installation, monitoring, tax incentives paperwork processing of the System. [X] Limited Warranty. [X] Any like substantive equipment, in the sole discretion of the Seller.
Excludes:	[X] Any required (code) upgrades to electrical switchgear that exceed $15K.

Exhibit 2
System Description

1. **System Location:** 112 West Aviation Way, Moab UT 84532

2. **System Size:** 220kW-dc

3. **Expected First Year Energy Production:** 371,140 kWh

4. **Expected Structure: [X]** Ground Mount [ ] Roof Mount [ ] Parking Structure [ ] Other

5. **Expected Module(s):**

Manufacturer/Model	Estimated Quantity
Bifacial Solar Panels (Model and Manufacturer TBD)	400

6. **Expected Inverter(s):**

Manufacturer/Model	Estimated Quantity
SMA or equivalent (Model and Manufacturer TBD)	Approx. 4

7. **Expected Batteries / Microgrid:**

Manufacturer/Model	Estimated Quantity
N/A	N/A

8. **Facility and System Layout:** See **Exhibit 2, Attachment A**

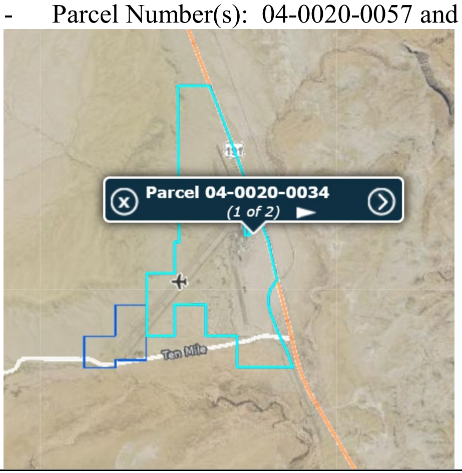
9. **Utility:** Rocky Mountain Power

Exhibit 2
Attachment A:
Facility and System Layout

An Aerial Photograph of the Facility:

Conceptual Drawing of the System (subject to final engineering changes): See plansets

Vehicle Access Point: US Highway 191 and West Aviation Way
Delivery Point(s):
- **Snow Mobile Equipment Building**
- Meter #341545248
- Account #59013956-002 3
- Rate: Schedule 23
- **Equipment Vault**
- Meter #350978404
- Account #59186716-005 1
- Rate: Schedule 23
- **Qd Airport**
- Meter #348223988
- Account #59186716-002 8
- Rate: Schedule 23
- **Hangar / Main Terminal**
- Meter #348204559
- Account #59186716-005 1
- Rate: Schedule 6 (before solar) and Schedule 6A (after solar)
- Parcel Number(s): 04-0020-0057 and 04-0020-0034



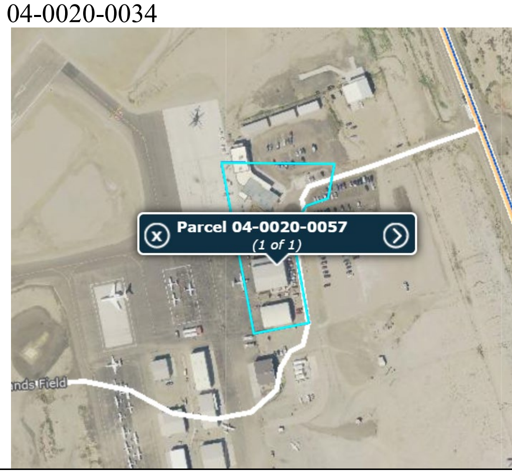


Exhibit 3
Credit Information

Upon request, Purchaser shall supply Seller with the following credit information, corporate records, financial statements and real estate documents:

PURCHASER INFORMATION							
Name:						**Tax ID:**	
Previous & Other Names:				**Website:**			
Corporate Address:							
City, State, Zip							
Phone Number:			**Fax Number:** (___) ___-_____				
Entity Type Check One:	**S-Corp**	**C-Corp**	**Partnership**	**Sole Prop**	**LLC**	**LLP**	**Other**
Property Address for Solar Installation:			**State:**		**Zip Code:**	**Property Owned by Applicant**	
Property Type: Commercial	**Insurance Agent Name**		**Agents Phone:** (___) ___-_____		**Name of Property Owner if Not Applicant**		

Information Requested: Please submit the information required below via electronic format to lsim@neighborhoodpower.com

Corporate Records

- Corporate Resolution to sign this Agreement, Copy of Articles of Incorporation, Partnership Agreement, Fictitious Name Statement or Organizational Formation Documents (If applicable).

Financial Statements

- 3 Years of full audited financial statements

Real Estate Documents

- Copies of Lease Hold Agreement Liens or Third-Party Security Interests in the Premises

Seller may request you provide additional documentation to complete the credit evaluation process. Seller will notify you if additional information is required.

The above information and any information attached is furnished to Seller and its Financing Parties in connection with the Application of credit for which you may apply or credit you may guarantee. You acknowledge and understand that the Lender is relying on this information in deciding to grant or continue credit or to accept a guarantee of credit. You represent warranty and certify that the information provided herein is true, correct and complete. The Lender is authorized to make all inquiries deemed necessary to verify the accuracy of the information contained herein and to determine your creditworthiness. You authorize any person or consumer-reporting agency to give the Lender any information it may have about you. You authorize the Lender to answer questions about its credit experience with you. Subject to any non-disclosure agreement between you and Lender, this form and any other information given to the Lender shall be the Lender's property. If your application for business credit is denied you have the right to a written statement of the specific reason for the denial. To obtain the statement, please contact Seller. You must contact us within 60 days from date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request.

NOTICE: The Federal Equal Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance programs; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Office of the Comptroller of the Currency,

Signature: **Title:** **Date:**

Exhibit 4
Solar Power Purchase Agreement
General Terms and Conditions

1. **Definitions and Interpretation**: Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

2. **Purchase and Sale of Electricity.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy generated by the System during the Initial Term and any Additional Term (as defined in **Exhibit 1**, and collectively the "**Term**"). Electric energy generated by the System will be delivered to Purchaser at the delivery point(s) identified on **Exhibit 2** (the "**Delivery Point**"). Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point. Purchaser may purchase electric energy for the Facility from other sources if the Purchaser's electric requirements at the Facility exceed the output of the System. Any purchase, sale and/or delivery of electric energy generated by the System prior to the Commercial Operation Date shall be treated as purchase, sale and/or delivery of limited amounts of test energy only and shall not indicate that the System has been put in commercial operation by the purchase, sale and/or delivery of such test energy.

3. **Term and Termination**.

   a. **Initial Term.** The initial term ("**Initial Term**") of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in **Exhibit 1,** unless earlier terminated as provided for in this Agreement. The "**Commercial Operation Date**" is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point. Such notice shall be deemed effective unless Purchaser reasonably objects within five (5) days of the date of such notice. Upon Purchaser's request, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller's contractor and the interconnection or similar agreement with the entity authorized and required under applicable law to provide electric distribution service to Purchaser at the Facility (the "**Utility**"), as set forth on **Exhibit 2**. This Agreement is effective as of the Effective Date and Purchaser's failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.

   b. **Additional Terms.** Prior to the end of the Initial Term or of any applicable Additional Term, as defined below, if Purchaser has not exercised its option to purchase the System, either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in **Exhibit 1** (each such additional period, an "**Additional Term**"). Such notice shall be given, if at all, not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the Initial Term or the then current Additional Term, as applicable. The Party receiving the notice requesting an Additional Term shall respond positively or negatively to that request in writing within thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed a rejection of the offer for an Additional Term. If both Parties agree to an Additional Term, the Additional Term shall begin immediately upon the conclusion of the Initial Term or the then current term on the same terms and conditions as set forth in this Agreement. If the Party receiving the request for an Additional Term rejects or is deemed to reject the first Party's offer, this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.

4. **Billing and Payment**.

   a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electric energy generated by the System and delivered to the Delivery Point at the $/kWh rate shown in **Exhibit 1** (the "**Contract Price**"). The monthly payment for such energy will be equal to the applicable $/kWh rate multiplied by the number of kWh of energy generated during the applicable month, as measured by the System meter.

b. **Monthly Invoices.** Seller shall invoice Purchaser monthly, either manually or through ACH. Such monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser.

c. The Contract Price includes ACH invoicing. If manual invoicing is required, a twenty-five dollar ($25) handling charge will be added to each invoice.

d. **Taxes.** Purchaser shall either pay or reimburse Seller for any and all taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the Utility's electric distribution system; provided, however, Purchaser will not be required to pay or reimburse Seller for any taxes during periods when Seller fails to deliver electric energy to Purchaser for reasons other than Force Majeure or as a result of Purchaser's acts or omissions. For purposes of this Section 4(c), "**Taxes**" means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller's revenues due to the sale of energy under this Agreement, which shall be Seller's responsibility.

e. **Payment Terms.** All amounts due under this Agreement shall be due and payable net twenty (20) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the twenty (20) day period shall accrue interest at the annual rate of two and three-fourths percent (2.75%) over the prime rate, as published in the Wall Street Journal (but not to exceed the maximum rate permitted by law). The Prime Rate floor is three and a half percent (3.5%).

5. Environmental Attributes and Environmental Incentives.

Unless otherwise specified on **Exhibit 1**, Seller is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser's purchase of electricity under this Agreement does not include Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out–of–pocket costs or expenses in connection with such actions unless reimbursed by Seller. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser, if engaged in commerce and/or trade, shall submit to Seller for approval any press releases regarding Purchaser's use of solar or renewable energy and shall not submit for publication any such releases without the written approval of Seller. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Purchaser's timely publication.

"**Environmental Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags tradable renewable credits and Green-e® products.

"**Environmental Incentives**" means any and all credits, rebates, subsidies, payments or other incentives that relate to self–generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.

"**Governmental Authority**" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission or the California Public Utilities Commission), or any arbitrator with authority to bind a party at law.

"**Tax Credits**" means any and all (a) investment tax credits, (b) production tax credits and (c) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

6. **Conditions to Obligations**.

a. **Conditions to Seller's Obligations**. Seller's obligations under this Agreement are conditioned on the completion of the following conditions to Seller's reasonable satisfaction:

i. Completion of a physical inspection of the Facility and the property upon which the Facility is located (the "**Premises**") including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Facility and the Premises for the System;

ii. Approval of (A) this Agreement and (B) the Construction Agreement (if any) for the System by Seller's Financing Parties. "**Construction Agreement**" as used in this subsection means an agreement between Seller and any contractor or subcontractor to install the System;

iii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits;

iv. Receipt of all necessary zoning, land use and building permits; and

v. Execution of all necessary agreements with the Utility for interconnection of the System to Facility electrical system and/or the Utility's electric distribution system; and

vi. Receipt, award, or allocation of the 2022 Inflation Reduction Act's 10% Low-Income Communities Bonus Credit Program tax credit adder, and 25% (or higher) federal Rural Energy for America Program (REAP) grant for the System.

b. **Failure of Conditions.** If any of the conditions listed in subsection (a) are not satisfied by the Condition Satisfaction Date, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate new dates then Seller may terminate this Agreement upon ten (10) days written notice to Buyer without liability for costs or damages or triggering a default under this Agreement.

c. **Commencement of Construction**. Seller's obligation to commence construction and installation of the System is conditioned on Seller's receipt of (A) proof of insurance for all insurance required to be maintained by Purchaser under this Agreement, (B) written confirmation from any person holding a mortgage, lien or other encumbrance over the Premises or the Facility, as applicable, that such person will recognize Seller's rights under this Agreement for as long as Seller is not in default hereunder and (C), a signed and notarized original copy of the Lease agreement suitable for recording, substantially in the form attached hereto as **Exhibit 6** (the "**Lease Agreement**").

d. **Conditions to Purchaser's Obligations**. Purchaser's obligations under Section 4(a) are conditioned on the occurrence of the system generating electricity.

7. **Seller's Rights and Obligations**.

a. **Permits and Approvals**. Seller, with Purchaser's reasonable cooperation, shall use commercially reasonable efforts to obtain, at its sole cost and expense:

i. any zoning, land use and building permits required to construct, install and operate the System; and

ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Facility electrical system and/or the Utility's electric distribution system.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such agreements, permits and approvals.

b. **Standard System Repair and Maintenance.** Seller shall construct and install the System at the Facility. During the Term, Seller will operate and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense, except for any repairs or maintenance resulting from Purchaser's negligence, willful misconduct or breach of this Agreement. Seller shall not be responsible for any work done by others on any part of the System unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's contractors. If the System requires repairs for which Purchaser is responsible, Purchaser shall pay Seller for diagnosing and correcting the problem at Seller or Seller's contractors' then current standard rates. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility to make standard repairs.

c. **Non-Standard System Repair and Maintenance.** If Seller incurs incremental costs to maintain the System due to conditions at the Facility or due to the inaccuracy of any information provided by Purchaser and relied upon by Seller, the pricing, schedule and other terms of this Agreement will be equitably adjusted to compensate for any work in excess of normally expected work required to be performed by Seller. In such event, the Parties will negotiate such equitable adjustment in good faith.

d. **Breakdown Notice.** Seller shall notify Purchaser within twenty-four (24) hours following Seller's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Purchaser shall notify Seller immediately upon the discovery of an emergency condition affecting the System.

e. **Suspension.** Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser.

f. **Use of Contractors and Subcontractors.** Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement, provided however, that such contractors and subcontractors shall be duly licensed and shall provide any work in accordance with applicable industry standards. Notwithstanding the foregoing, Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors. [If a list of pre-approved contractors and subcontractors to be used for construction of the System is desired, such list shall be scheduled on an appendix to this Exhibit. All contractors and subcontractors to be used for the construction of the System, other than those that may be scheduled on an appendix to this Exhibit, shall be subject to Purchaser's prior written consent, not to be unreasonably withheld.]

g. **Liens and Payment of Contractors and Suppliers.** Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Facility free and clear of any liens related to such charges, except for those liens which Seller is permitted by law to place on the Facility following non-payment by Purchaser of amounts due under this Agreement. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Facility or the Premises in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Facility and the Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Facility and the Premises.

h. **No Warranty.** NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise. [The Limited Warranty will provide Purchaser with a separate contract from this Agreement. No rights provided to Purchaser by the Limited Warranty may be asserted under this

Agreement. No warranty is made in this Agreement. Therefore, any warranty claim must be made independently of this Agreement and will not affect Purchaser's obligations under this Agreement.]

8. **Purchaser's Rights and Obligations**.

a. **License[1] to the Premises; Facility Access Rights.** Without limiting Seller's rights under the Lease Agreement, Purchaser grants to Seller and to Seller's agents, employees, contractors and assignees an irrevocable non-exclusive license running with the Premises (the "**License**") for access to, on, over, under and across the Premises for the purposes of (i) installing, constructing, operating, owning, maintaining, accessing, altering, protecting, repairing, removing and replacing the System; (ii) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters necessary to interconnect the System to Purchaser's electric system at the Facility, to the Utility's electric distribution system, if any, or for any other purpose that may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Seller shall notify Purchaser prior to entering the Facility except in situations where there is imminent risk of damage to persons or property. The term of the License shall continue until the date that is one hundred and twenty (120) days following the date of expiration or termination of this Agreement (the "**License Term**"). During the License Term, Purchaser shall ensure that Seller's rights under the License and Seller's access to the Premises and the Facility are preserved and protected. Purchaser shall not interfere with nor shall it permit any third parties to interfere with such rights or access. The grant of the License shall survive termination of this Agreement by either Party. The rights granted under this License shall be independent of, and shall not merge with, the rights granted under the Lease Agreement.

b. **OSHA Compliance.** Both parties shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in their performance under this Agreement.

c. **Maintenance of Facility.** Purchaser shall, at its sole cost and expense, maintain the Facility in good condition and repair. Purchaser will ensure that the Facility remains interconnected to the Utility's electric distribution system at all times and will not cause cessation of electric service to the Facility from the Utility. Purchaser is fully responsible for the maintenance and repair of the Facility's electrical system and of all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.

d. **No Alteration of Facility.** Purchaser shall not make any alterations or repairs to the Facility which could adversely affect the operation and maintenance of the System without Seller's prior written consent. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost. In addition, Purchaser shall pay Seller an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during such disconnection or removal; (ii) revenues that Seller would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during such disconnection or removal; (iii) revenues from Environmental Attributes that Seller would have received with respect to electric energy that would have been produced by the System during such disconnection or removal; and (iv) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) would have received with respect to electric energy that would have been produced by the System during such disconnection or removal. Determination of the amount of energy that would have been produced during any disconnection or removal shall be in accordance with the procedures in Section 10(b). All of Purchaser's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.

[1] The Agreement provides for access to the Premises through a license. However, it is recognized that access has also been provided through a lease or sublease.

e. **Outages.** Purchaser shall be permitted to be off line for a total of forty-eight (48) daylight hours (each, a "**Scheduled Outage**") per calendar year during the Term, during which hours Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of forty-eight (48) daylight hours per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Purchaser shall pay Seller an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during the outage; (ii) revenues that Seller would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during the outage; (iii) revenues from Environmental Attributes that Seller would have received with respect to electric energy that would have been produced by the System during the outage; and (iv) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) would have received with respect to electric energy that would have been produced by the System during the outage. Determination of the amount of energy that would have been produced during the removal or disconnection shall be in accordance with the procedures in Section 10(b).

f. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim. Notwithstanding anything else herein to the contrary, pursuant to Section 19.a), Seller may grant a lien on the System and may assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party.

g. **Security.** Purchaser shall be responsible for using commercially reasonable efforts to maintain the physical security of the Facility and the System against known risks and risks that should have been known by Purchaser. Purchaser will not conduct activities on, in or about the Premises or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.

h. **Insolation.** Purchaser understands that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System's Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in preserving the System's existing Insolation levels. The Parties agree that reducing Insolation would irreparably injure Seller, that such injury may not be adequately compensated by an award of money damages, and that Seller is entitled to seek specific enforcement of this Section 8(h) against Purchaser.

i. **Data Line.** Purchaser shall provide Seller a high speed internet data line during the Term to enable Seller to record the electric energy generated by the System. If Purchaser fails to provide such high speed internet data line, or if such line ceases to function and is not repaired, Seller may reasonably estimate the amount of electric energy that was generated and invoice Purchaser for such amount in accordance with Section 4.

j. **Breakdown Notice.** Purchaser shall notify Seller within twenty-four (24) hours following the discovery by it of (i) any material malfunction in the operation of the System; or (ii) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Seller immediately upon (i) an interruption in the supply of electrical energy from the System; or (ii) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

k. **Purchaser Financial Statements.** Within ten (10) days after Seller's written request therefor, but not more than once a year, Purchaser shall deliver to Seller a copy of the financial statements (including at least a year end balance sheet, a statement of profit and loss, and a statement of cash flows) of Purchaser and of any guarantor of Purchaser's obligations under this Agreement for the most recently completed year, prepared in accordance with generally accepted accounting principles (and, if such is Purchaser's normal practice, audited by an independent certified public accountant), all then available subsequent interim statements, and such other financial information as may reasonably be requested by Seller. Any information that Purchaser discloses to Seller under this Section 8(k) shall be Confidential Information subject to Section 20.

9. Change in Law.

"**Change in Law**" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller's obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations; provided, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Purchaser from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.

10. Relocation of System.

a. System Relocation. If Purchaser ceases to conduct business operations at the Facility, or otherwise vacates the Facility prior to the expiration of the Term, Purchaser shall have the option to provide Seller with a mutually agreeable substitute premises located within the same utility district as the terminated System or in a location with similar utility rates and Insolation. Purchaser shall provide written notice at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it wants to make this substitution. In connection with such substitution, Purchaser shall execute an amended agreement that shall have all of the same terms as this Agreement except for the (i) Effective Date; (ii) License, which will be amended to grant rights in the real property where the System relocated to; and (iii) Term, which will be equal to the remainder of the Term of this Agreement calculated starting at the shutdown of the System pursuant to such relocation, and shall toll until the relocated System achieves commercial operation of such new location. Such amended agreement shall be deemed to be a continuation of this Agreement without termination. In addition, Purchaser shall be obligated to provide a new executed and notarized Lease agreement covering the substitute premises in form and content substantially similar to the Lease Agreement. Purchaser shall also provide any new consents, estoppels, or acknowledgments reasonably required by Financing Parties in connection with the substitute premises.

b. Costs of Relocation. Purchaser shall pay all costs associated with relocation of the System, including all costs and expenses incurred by or on behalf of Seller in connection with removal of the System from the Facility and installation and testing of the System at the substitute facility and all applicable interconnection fees and expenses at the substitute facility, as well as costs of new title search and other out-of-pocket expenses connected to preserving and refiling the security interests of Seller's Financing Parties in the System. In addition, Purchaser shall pay Seller an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during the relocation; (ii) revenues that Seller would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during the relocation; ; (iii) revenues from Environmental Attributes that Seller would have received with respect to electric energy that would have been produced by the System during the relocation; and (iv) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) would have received with respect to electric energy that would have been produced by the System during the relocation. Determination of the amount of energy that would have been produced during the relocation shall be based, during the first Contract Year, on the estimated levels of production and, after the first Contract Year, based on actual operation of the System in the same period in the previous Contract Year, unless Seller and Purchaser mutually agree to an alternative methodology. "**Contract Year**" means the twelve month period beginning at 12:00 AM on the Commercial Operation Date or on any anniversary of the Commercial Operation Date and ending at 11:59 PM on the day immediately preceding the next anniversary of the Commercial Operation Date, provided that the first Contract Year shall begin on the Commercial Operation Date.

c. Adjustment for Insolation; Termination. Seller shall remove the System from the vacated Facility prior to the termination of Purchaser's ownership, lease or other rights to use such Facility. Seller will not be required to restore the Facility to its prior condition but shall promptly pay Purchaser for any damage caused by Seller during removal of the System, but not for normal wear and tear. If the substitute facility has inferior Insolation as compared to the original Facility, Seller shall have the right to make an adjustment to **Exhibit 1** such that Purchaser's payments to Seller are the same as if the System were located at the original Facility, increased to the extent necessary to compensate Seller for reduced revenues from Environmental Attributes and reduced Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) receive as a result of the relocation. If Purchaser is unable to provide such substitute facility and to relocate the System as provided, any early termination will be treated as a default by Purchaser.

11. Removal of System at Expiration.

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option), Seller shall, at its expense, remove all of its tangible property comprising the System from the Facility on a mutually convenient date, but in no event later than one hundred and eighty (180) days after the expiration of the Term. Excluding ordinary wear and tear, the Facility shall be returned to its original condition including the removal of System mounting pads or other support structures. In no case shall Seller's removal of the System affect the integrity of Purchaser's roof, which shall be as leak proof as it was prior to removal of the System and shall be flashed and/or patched to existing roof specifications. Seller shall leave the Facility in neat and clean order. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Facility to its original condition (other than ordinary wear and tear) at Seller's cost. Purchaser shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal.

12. Measurement.

Seller shall install one or more meter(s), as Seller deems appropriate, at or immediately before the Delivery Point to measure the output of the System. Such meter shall meet the general commercial standards of the solar photovoltaic industry or the required standard of the Utility. Seller shall maintain the meter(s) in accordance with industry standards.

13. Default, Remedies and Damages.

a. Default. Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed to be the "**Defaulting Party**", the other Party shall be deemed to be the "**Non-Defaulting Party**", and each event of default shall be a "**Default Event**":

i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay ("**Payment Default**");

ii. failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure within the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;

iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;

iv. Purchaser loses its rights to occupy and enjoy the Premises;

v. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect, and, if any such bankruptcy or other proceedings were initiated by a third party, if such proceedings have not been dismissed within sixty (60) days following receipt of a written notice from the Non-Defaulting Party demanding such cure; or

vi. Purchaser prevents Seller from installing the System or otherwise failing to perform in a way that prevents the delivery of electric energy from the System. Such Default Event shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.

b. Remedies.

i. Remedies for Payment Default. If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages.

ii. Remedies for Other Defaults. On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement or suspend its performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event. If Purchaser terminates this contract without cause prior to commencement of System installation a five thousand dollar ($5,000) design cancellation fee shall also apply in addition to any other remedy available to Seller.

iii. Damages Upon Termination by Default. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):

A. Purchaser. If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to [for any given Contract Year, the amount set forth on **Exhibit 4, Attachment A** attached hereto] [the sum of (1) reasonable compensation, on a net after tax basis assuming a tax rate of thirty five percent (35%), for the loss or recapture of (a) the investment tax credit equal to thirty percent (30%) of the System value; (b) MACRS accelerated depreciation equal to eighty five percent (85%) of the System value, (c) loss of any Environmental Attributes or Environmental Incentives that accrue or are otherwise assigned to Seller pursuant to the terms of this Agreement (Seller shall furnish Purchaser with a detailed calculation of such compensation if such a claim is made), (d) other financing and associated costs not included in (a), (b) and (c), (2) the net present value (using a discount rate of (6%)) of the projected payments over the Term post-termination, had the Term remained effective for the full Initial Term, (3) removal costs as provided in Section 13(b)(iii)(C) and (4) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller.] **[**The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement.] The Termination Payment shall not be less than zero.

B. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility, any removal costs incurred by Purchaser, and any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero.

C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 13(b)**,** then following such termination, Seller shall, at the sole cost and expense of the Defaulting Party, remove the equipment (except for mounting pads and support structures) constituting the System. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

14. Representations, Warranties and Covenants.

a. **General Representations and Warranties.** Each Party represents and warrants to the other the following as of the Effective Date:

i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).

ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

b. **Purchaser's Representations, Warranties and Covenants.** Purchaser represents and warrants to Seller the following as of the Effective Date and covenants that throughout the Term:

i. Site Lease. Purchaser has title to or a leasehold or other property interest in the Premises. Purchaser has the full right, power and authority to grant the License contained in Section 8(a). Such grant of the License does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Facility and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Facility. If Purchaser does not own the Premises or Facility, Purchaser has obtained all required consents from the owner of the Premises and/or Facility to grant the License and enter into and perform its obligations under this Agreement.

ii. Other Agreements. Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser or the Facility is bound.

iii. Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to the Facility's physical configuration, Purchaser's planned use of the Facility, and Purchaser's estimated electricity requirements, is accurate in all material respects.

iv. Purchaser Status. Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.

v. Hazardous Substances. There are no Hazardous Substances at, on, above, below or near the Premises.

vi. No Pool Use. No electricity generated by the System will be used to heat a swimming pool.

15. System and Facility Damage and Insurance.

a. **System and Facility Damage.**

i. Seller's Obligations. If the **System** is damaged or destroyed other than by Purchaser's gross negligence or willful misconduct, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees (A) to pay for the cost of such restoration of the System or (B) to purchase the System "AS-IS" at the greater of (1) the Fair Market Value of the System and (2) [the sum of the amounts described in Section 13.b.iii.A)(1) and Section 13.b.iii.A)(3)] [for any given Contract Year, the amount set forth on **Exhibit 4, Attachment A** attached hereto].

ii. Purchaser's Obligations. If the **Facility** is damaged or destroyed by casualty of any kind or any other occurrence other than Seller's gross negligence or willful misconduct, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall promptly repair and restore the Facility to its pre-existing condition; provided, however, that if more than 50% of the Facility is destroyed during the last five years of the Initial Term or during any Additional Term, Purchaser may elect either (A) to restore the Facility or (B) to pay the Termination Payment and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

b. **Insurance Coverage.** At all times during the Term, Seller and Purchaser shall maintain the following insurance:

i. Seller's Insurance. Seller shall maintain (A) property insurance on the System for the replacement cost thereof, (B) commercial general liability insurance with coverage of at least $1,000,000 per occurrence and $2,000,000 annual aggregate, (C) employer's liability insurance with coverage of at least $1,000,000 and (iv) workers' compensation insurance as required by law.

ii. Purchaser's Insurance. Purchaser shall maintain commercial general liability insurance with coverage of at least one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) annual aggregate.

c. **Policy Provisions.** All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance (A) not less than ten (10) days written notice before the insurance is cancelled, or terminated as a result of non-payment of premiums, or (B) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other party.

d. **Certificates.** Upon the other Party's request, each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

e. **Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

16. **Ownership; Option to Purchase**.

a. **Ownership of System**. Throughout the Term (except as otherwise permitted in Section 19), Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes (unless otherwise specified on Exhibit 1), and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility or the Premises. Each of the Seller and Purchaser agree that the Seller (or the designated assignee of Seller permitted under Section 19) is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility or the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Purchaser is not the fee owner, Purchaser will obtain such consent from such owner. Upon request, Purchaser agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Facility (if the Facility is leased by Purchaser), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises. To the extent that Purchaser does not own the Premises or Facility, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or Facility or termination of Purchaser's lease of the Premises and/or Facility.

b. **Option to Purchase**. At the end of each Contract Year beginning with the (sixth) 6th Contract Year and the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to the Fair Market Value of the System. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. Any such purchase shall be on an as-is, where-is basis, and Seller shall not provide any warranty or other guarantee regarding the performance of the System, provided, however, that Seller shall assign to Purchaser any manufacturers warranties that are in effect as of the purchase, and which are assignable pursuant to their terms.

c. **Determination of Fair Market Value**. "**Fair Market Value**" means, in Seller's reasonable determination, the greater of: (i) the amount that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the System and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition and costs of removal from a current location shall not be a deduction from the valuation, and (ii) [for any given Contract Year, the amount set forth on Exhibit 4, Attachment A attached hereto] [the present value (using a discount rate of eight percent (8%) of all associated future income streams expected to be received by Seller arising from the operation of the System for the remaining term of the Agreement including but not limited to the expected price of electricity, Environmental Attributes, and Tax Credits and factoring in future costs and expenses associated with the System avoided]. Seller shall determine Fair Market Value within thirty (30) days after Purchaser has exercised its option to Purchase the System. Seller shall give written notice to Purchaser of such determination, along with a full explanation of the calculation of Fair Market Value, including without limitation, an explanation of all assumptions, figures and values used in such calculation and factual support for such assumptions, figures and values. If Purchaser reasonably objects to Seller's determination of Fair Market Value within thirty (30) days after Seller has provided written notice of such determination, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System based on the formulation set forth herein, and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Upon purchase of the System, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

17. **Indemnification and Limitations of Liability**.

a. **General**. Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the "**Indemnified Parties**"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 14 and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 17(a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 17(c).

b. **Notice and Participation in Third Party Claims**. The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "**Claim**"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 17(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 17(b) for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.

c. **Environmental Indemnification**. Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 17(c)(i)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises or the Premises generally or any deposit, spill or release of any Hazardous Substance.

i. "**Hazardous Substance**" means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.

d. **Limitations on Liability**.

i. No Consequential Damages. Except with respect to indemnification for third party claims pursuant to this Section 17 and damages that result from the willful misconduct of a Party, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such. The Parties agree that (1) in the event that Seller is required to recapture any Tax Credits or other tax benefits as a result of a breach of this Agreement by Purchaser, such recaptured amount shall be deemed to be direct and not indirect or consequential damages, and (ii) in the event that Seller is retaining the Environmental Attributes produced by the System, and a breach of this Agreement by Purchaser causes Seller to lose the benefit of sales of such Environmental Attributes to third parties, the amount of such lost sales shall be direct and not indirect or consequential damages.

ii. Actual Damages. Except with respect to indemnification for third party claims pursuant to Section 26 and damages that result from the willful misconduct of Seller, Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments made (or, as applicable, projected to be made) by Purchaser under this Agreement. The provisions of this Section (17)(d)(ii) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Seller must be brought within one (1) year after the cause of action accrues.

18. Force Majeure.

a. "**Force Majeure**" means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.

b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.

c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that solely impacts Purchaser's ability to make payment.

d. If a Force Majeure event continues for a period of one hundred eighty (180) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, then at any time during the continuation of the Force Majeure event, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

19. Assignment and Financing.

a. Assignment. This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, (ii) directly or indirectly assign this Agreement and the System to an affiliate or subsidiary of Seller, (iii) assign this Agreement and the System to any entity through which Seller is obtaining financing or capital for the System and (iv) assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Seller's obligations hereunder by the assignee). In the event of any such assignment, the Seller shall be released from all its liabilities and other obligations under this Agreement. However, any assignment of Seller's right and/or obligations under this Agreement, shall not result in any change to Purchaser's rights and obligations under this Agreement. Purchaser's consent to any other assignment shall not be unreasonably withheld if Purchaser has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

b. Financing. The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. "**Financing Parties**" means person or persons providing construction or permanent financing to Seller in connection with construction, ownership, operation and maintenance of the System, or if applicable, means, if applicable, any person to whom Seller has transferred the ownership interest in the System, subject to a leaseback of the System from such person. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to Section 19(a)(i)-(iv), Purchaser agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties.

c. Successor Servicing. The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Seller or its affiliates by Financing Parties, that such Financing Parties may require that Seller or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the "**Successor Provider**"). Purchaser agrees to accept performance from any Successor Provider so appointed so long as such Successor Provider performs in accordance with the terms of this Agreement.

20. Confidentiality and Publicity.

a. Confidentiality. If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's business ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a

Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement, including but not limited to obtaining financing for the System. Notwithstanding the above, a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "**Representatives**"), and affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information). Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 20(a), except as set forth in Section 20(b). All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 20(a) by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of the provision of this Section 20(a). To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 20(a), but shall be in addition to all other remedies available at law or in equity.

b. **Permitted Disclosures**. Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law.

21. **Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

22. **Miscellaneous Provisions**

a. **Choice of Law**. The law of the state where the System is located shall govern this Agreement without giving effect to conflict of laws principles.

b. **Arbitration and Attorneys' Fees**. Any dispute arising from or relating to this Agreement shall be arbitrated in Hawaii. The arbitration shall be administered by Dispute Prevention & Resolution, Inc. in accordance with the Arbitration Rules, Procedures & Protocols of Dispute Prevention & Resolution, Inc., and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.

c. **Notices**. All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document.

d. **Survival**. Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 4 (Representations and Warranties), Section 7(h) (No Warranty), Section 15(b) (Insurance Coverage), Section 17 (Indemnification and Limits of Liability), Section 20 (Confidentiality and Publicity), Section 22(a) (Choice of Law), Section 22 (b) (Arbitration and Attorneys' Fees), Section 22(c) (Notices), Section 22 (g) (Comparative Negligence), Section 22(h) (Non-Dedication of Facilities), Section 22(j) (Service Contract), Section 22(k) (No Partnership) Section 22(l) (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 22(n) (No Third Party Beneficiaries).

e. **Further Assurances**. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

f. **Right of Waiver**. Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time (other than with respect to and/or relating to the obligation to make any payment due under this Agreement); provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

g. **Comparative Negligence**. It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.

h. **Non-Dedication of Facilities**. Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 11 of this Agreement.

i. **Estoppel**. Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

j. **Service Contract**. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.

k. **No Partnership**. No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.

l. **Full Agreement, Modification, Invalidity, Counterparts, Captions**. This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

m. **Forward Contract**. The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

n. **No Third-Party Beneficiaries**. Except for assignees, Financing Parties, and Successor Providers permitted under Section 19, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.

Exhibit 4
Attachment A
Termination Payment

Termination Payment		
Contract Year	**Termination Amount**	**% Total Costs**
1	$440,512	114.50%
2	$424,354	110.30%
3	$387,805	100.80%
4	$348,178	90.50%
5	$307,397	79.90%
6	$265,846	69.10%
7	$257,382	66.90%
8	$248,918	64.70%
9	$239,685	62.30%
10	$230,451	59.90%
11	$221,218	57.50%
12	$211,215	54.90%
13	$200,443	52.10%
14	$189,286	49.20%
15	$177,359	46.10%
16	$164,663	42.80%
17	$151,198	39.30%
18	$136,578	35.50%
19	$121,574	31.60%
20	$104,261	27.10%
21	$86,179	22.40%
22	$66,558	17.30%
23	$45,783	11.90%
24	$38,473	10.00%
25	$38,473	10.00%

Exhibit 5
Memorandum of Site Lease

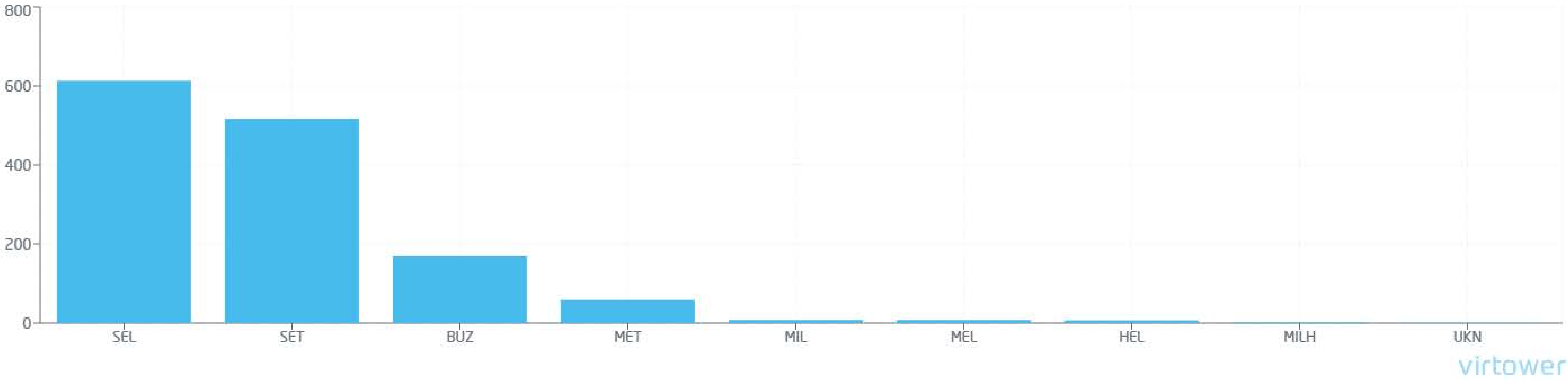
Exhibit 6
Site Lease Agreement

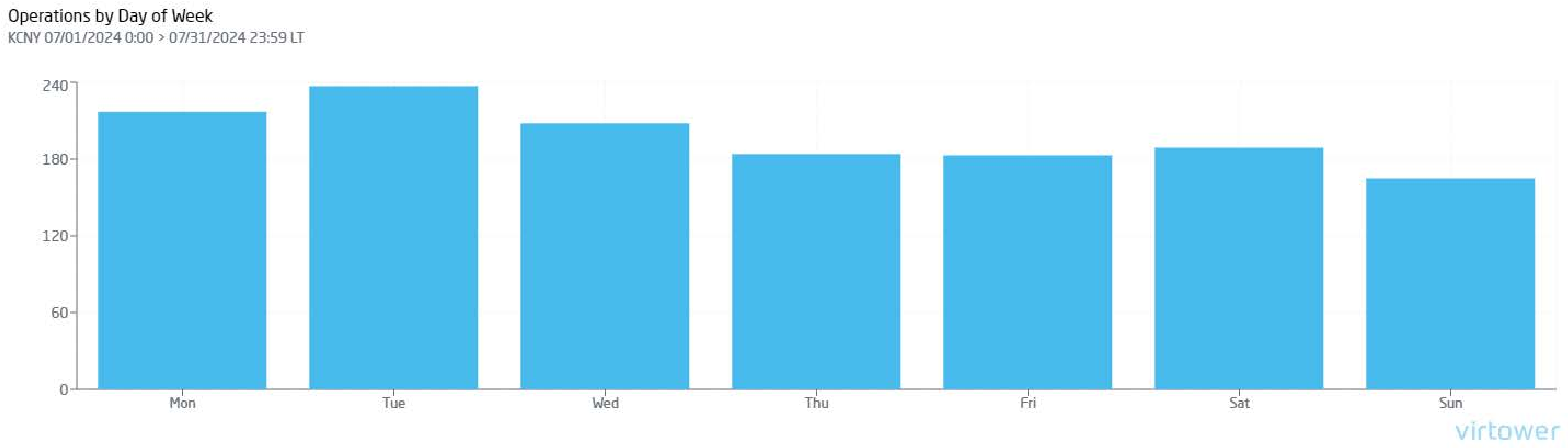
Operations Based vs Visiting

KCNY 07/01/2024 0:00 > 07/31/2024 23:59 LT

Operations by Aircraft Category

KCNY 07/01/2024 0:00 > 07/31/2024 23:59 LT

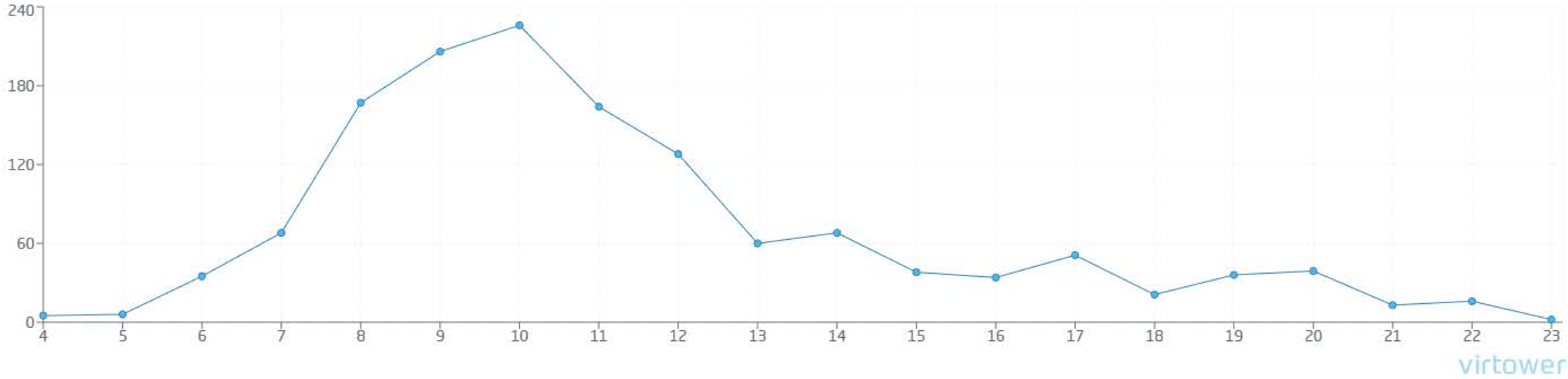




Operations by Day of Week
KCNY 07/01/2024 0:00 > 07/31/2024 23:59 LT
240
180
120
60
0
Mon
Tue
Wed
Thu
Fri
Sat
Sun
virtower

Operations per Hour (Landings & Takeoffs)

KCNY 07/01/2024 0:00 > 07/31/2024 23:59 LT



Landings per Runway

KCNY 07/01/2024 0:00 > 07/31/2024 23:59 LT

virtower

Takeoffs per Runway

KCNY 07/01/2024 0:00 > 07/31/2024 23:59 LT

virtower

Airport Director Report for July 2024
Canyonlands Regional Airport (CNY)
08/06/2024

1. Safety & Security:
    a. Beacon Tower painted, obstruction lights replaced with LED’s.
    b. Taxiway Edge lines painted

2. Misc. Items:
    a. Repairs made to bi-fold door on Hangar B (Redtail Hangar)
    b. Compressor for Terminal roof top HVAC unit replaced
    c. Tammy Howland completed the AAAE Certified Member training and certification for airport executives.
    d. Andrea Erwin completed the AAAE Basic and Advanced Airport Safety & Operations Specialist training and certification.

August 2024

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
			1 3343 Dept 1045 3344 Arr 1430 3347 Dept 1500 3348 Arr 2100	2 3343 Dept 0830 3344 Arr 1200 3345 Dept 1230 3346 Arr 1630 3349 Dept 1715 3348 Arr 2100	3 3343 Dept 1045 3344 Arr 1430 3347 Dept 1500 3348 Arr 2100	4 3343 Dept 0830 3344 Arr 1200 3345 Dept 1230 3346 Arr 1630 3349 Dept 1715 3348 Arr 2100
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26 3343 Dept 1045 3344 Arr 1430 3347 Dept 1500 3348 Arr 2100	27 3343 Dept 1045 3344 Arr 1430 3347 Dept 1500 3348 Arr 2100	28 3343 Dept 1045 3344 Arr 1430 3347 Dept 1500 3348 Arr 2100	29 3343 Dept 1045 3344 Arr 1430 3347 Dept 1500 3348 Arr 2100	30 3343 Dept 0830 3344 Arr 1200 3345 Dept 1230 3346 Arr 1630 3349 Dept 1715 3348 Arr 2100	31 3343 Dept 1045 3344 Arr 1430 3347 Dept 1500 3348 Arr 2100	3343 Dept 0830 3344 Arr 1200 3345 Dept 1230 3346 Arr 1630 3349 Dept 1715 3348 Arr 2100