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**City of Las Cruces**<sup>®</sup>  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

Item # 15

Resolution# 11-097

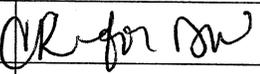
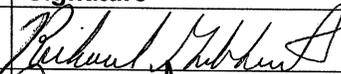
Council District: 4

For Meeting of October 18, 2010

(Adoption Date)

**TITLE:** A RESOLUTION AUTHORIZING AN OPTION TO LEASE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND SUNEDISON, FOR THE THIRTY YEAR LEASE OF UP TO 240 ACRES OF MUNICIPALLY OWNED LAND AT THE LAS CRUCES INTERNATIONAL AIRPORT FOR THE PURPOSE OF DEVELOPING A SOLAR ENERGY PROJECT.

**PURPOSE(S) OF ACTION:** Agree to terms of a lease for an undeveloped area of the airport property to SunEdison and allow SunEdison a 1 year option to determine if the project is viable at this site.

<b>Name of Drafter:</b> Christine Logan		<b>Department:</b> Community Development		<b>Phone:</b> 541-2286	
<b>Department</b>	<b>Signature</b>	<b>Phone</b>	<b>Department</b>	<b>Signature</b>	<b>Phone</b>
Community Development		528-3067	Budget		541-2281
			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

SunEdison develops, finances, operates and manages solar plants across the globe. The company has created efficient, money-saving solutions that last more than 20 years. In North America alone, SunEdison has more than 102.6 MW of solar energy capacity at over 353 operational sites. In New Mexico, they have been selected by El Paso Electric to provide power to the company.

This Resolution authorizes a long term lease (30 years) of part of the south half of Section 28 on the Las Cruces International Airport property to SunEdison for development of a photovoltaic (PV) solar project. The land is located north of Interstate 10, west of the Armory, and south of the airport runways. SunEdison would be responsible for developing the access road necessary to serve the project as well as for any utility extensions that may be necessary.

This property and a similar size property south of the West Mesa Industrial Park were appraised at an annual lease value of \$640 per acre in August of 2010. There are significant restrictions and development reviews required of this property because of its priority use as a part of the airport property. Because of the restrictions, a \$500 per acre proposal has been negotiated.

(Continue on additional sheets as required)

The Option to Lease agreement provides SunEdison with nonexclusive right to conduct feasibility and technical studies on the south half of Section 28 (covering approximately 320 acres) for one year. An option payment of \$1,000 would be due immediately. Based on their studies, SunEdison could identify the exact size and location of a project site (estimated to be 100 to 150 acres) and then enter into an exclusive lease for that area.

SunEdison is pursuing this option to lease for airport land as well as an option to purchase City land south of the West Mesa Industrial Park. In addition to city land, SunEdison is pursuing options for several other properties in Dona Ana and Otero Counties. Based on the results of feasibility and technical studies, four or five options may result in two or three actual leases. If the option on city land expires without being exercised, all commitments to SunEdison are terminated.

The Lease Agreement would only cover the amount of land reasonable for the size of the final project (approximately 10 acres per megawatt of power to be delivered) and would run for 30 years. Lease payments would start at \$500 per acre per year and increase by 2% each 5 years. For a 150 acre site, the land lease would generate \$2.3M over the term of the lease. The proceeds from the lease will be deposited in the Airport Fund.

The Airport Advisory Board reviewed this proposal at their September 2 public meeting and unanimously recommended approval after modifying the original proposal to limit the project to the south half of the section (which has been incorporated into the Agreements). During the term of the lease, SunEdison must submit any and all construction for approval by the FAA and the airport manager. The City has the right to take any action necessary to protect aerial approaches to the airport and can prevent SunEdison from building anything that will limit the usefulness of the airport or constitute a hazard to aircraft. At the end of the lease, SunEdison must restore the site.

Construction of the PV project will involve hundreds of jobs. There will only be a few long term jobs associated with operation and maintenance of the facility. The capital investment required for the project is significant. SunEdison will be responsible for payment of personal property tax due on that investment.

**SUPPORT INFORMATION:**

1. Resolution.
2. Option to Lease Agreement Exhibit "A".
3. Appraisal of property
4. Lease Application
5. Vicinity Map

(Continue on additional sheets as required)

**SOURCE OF FUNDING:**

<b>Is this action already budgeted?</b>	<b>NA</b>	
	Yes	<input type="checkbox"/> See fund summary below
	No	<input type="checkbox"/> If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/> Expense reallocated from: _____
<input type="checkbox"/> Proposed funding is from a new revenue source (i.e. grant; see details below)		
<input type="checkbox"/> Proposed funding is from fund balance in the _____ Fund.		
<b>Does this action create any revenue?</b>	Yes	<input checked="" type="checkbox"/> Funds will be deposited into this fund: Airport Operating Fund (1010) in the amount \$1,000.00 (10120020-542525)
	No	<input type="checkbox"/> There is no new revenue generated by this action.

**FUND SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
NA					

**OPTIONS / ALTERNATIVES:**

1. Vote YES on the Ordinance to approve the solar Option to Lease Agreement. This would give SunEdison a 1 year option to enter into a 30 year lease for up to 240 acres of land at the Las Cruces International Airport at \$500 per acre per year.
2. Vote NO on the Ordinance to reject the option and the City will retain control of the land. SunEdison would not conduct any further analysis on this site and would locate their proposed project elsewhere.
3. Vote to AMEND this could modify the terms of the agreement and then adopt the proposal.
4. Vote to TABLE the proposal and/or instruct staff to seek alternative direction.

(Continue on additional sheets as required)

RESOLUTION NO. 11-097

**A RESOLUTION AUTHORIZING AN OPTION TO LEASE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND SUNEDISON, FOR THE THIRTY YEAR LEASE OF UP TO 240 ACRES OF MUNICIPALLY OWNED LAND AT THE LAS CRUCES INTERNATIONAL AIRPORT FOR THE PURPOSE OF DEVELOPING A SOLAR ENERGY PROJECT.**

The City Council of the City of Las Cruces is informed that:

**WHEREAS** the City of Las Cruces, New Mexico, a municipal corporation, is the owner of the Las Cruces Municipal Airport, and

**WHEREAS** SunEdison is interested in developing a photovoltaic solar energy project on a portion of the airport land site, and

**WHEREAS** this use of the property is compatible with aviation use.

**NOW, THEREFORE**, be it resolved by the governing body of the City of Las Cruces:

**(I)**

**THAT** the Option to Lease Agreement for the lease of up to 240 acres of Airport land for thirty years, subject to the conditions and terms in Exhibit "A" Option to Lease Agreement, which is attached hereto and made a part of this ordinance, is hereby approved.

**(II)**

**THAT** the proceeds of the option and lease shall be deposited in the Airport Operation Fund.

**(III)**

**THE** City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

APPROVED:

\_\_\_\_\_  
Mayor Ken Miyagishima

ATTEST:

\_\_\_\_\_  
City Clerk

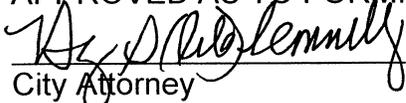
Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

VOTE:

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Pedroza:	_____
Councillor Small:	_____
Councillor Sorg:	_____
Councillor Thomas:	_____

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

**OPTION TO LEASE AGREEMENT**

**THIS OPTION TO LEASE REAL PROPERTY AGREEMENT** (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010 (the “Effective Date”) by and between the City of Las Cruces, a New Mexico municipal corporation (“Owner”), and the undersigned limited liability company, its successors or assigns, (“Optionee” and, together with Owner, each, a “Party” and together, the “Parties”). Owner represents it has sole and exclusive authority for all matters concerning the Property and sole and exclusive authority to enter into this Agreement.

**WITNESSETH:**

**WHEREAS**, Owner owns a parcel of land, any improvements located thereon and rights and easements appurtenant to the parcel (the “Property”) in the City of Las Cruces, County of Dona Ana, State of New Mexico, being the E1/2 SW 1/4 and the SE1/4 of Section 28, T23S, R1W, NMPM of the USGLO surveys and depicted on **Exhibit A** attached hereto and incorporated herein, and

**WHEREAS**, Owner desires to grant to Optionee and Optionee desires to accept from Owner an option to lease the Property or a portion thereof, together with all appurtenant rights and easements in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing mutual promises of the Parties herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto hereby agree as follows:

1. **Option.** Owner hereby grants to Optionee the right and option (the “Option”) to exercise the Lease Agreement (“Lease”) attached hereto and incorporated herein as **Exhibit B**.
  - a. Option may be exercised by Optionee from the Effective Date to and including the day that is one (1) year from the Effective Date (“Option Period”).
  - b. Within thirty (30) days prior to the expiration of the Option Period, Optionee may elect to extend its option rights for an additional twelve (12) months beyond the Option Period (the “Extended Option Period”) by provision of written notice to Owner. In the event that Optionee elects to extend the Option, the terms and conditions of this Agreement shall continue in full force and effect. The Option Period and Extended Option Period shall collectively be referred to as “Option Periods”.
  - c. Optionee agrees to pay Owner One Thousand and no/100 Dollars (\$1,000.00) upon the Effective Date. Thereafter; provided the term is extended by Optionee, Optionee agrees to pay Owner One Thousand Five Hundred and no/100 Dollars (\$1,500.00) on the first anniversary of the Effective Date. Such amounts shall be collectively referred to herein as “Option Payments”.
  - d. During the “Option Period” or the “Extended Option Period” Owner shall not sell, lease, develop, offer to sell or lease nor otherwise encumber the Property.
  - e. The Option shall be exercisable in Optionee’s sole discretion
  - f. Optionee may unilaterally terminate this Option, at any time, for any reason or no reason, with written notice to the Owner. In the event Optionee terminates this Agreement,

Owner shall be entitled to retain all payments it has then received. If Optionee elects to terminate this Option, within fifteen (15) days of Optionee's notice to Owner, Optionee shall, at its sole cost and expense, remove all of its equipment and any materials or rubbish incidental to its use, surrender the Property and restore the Property in a manner reasonably satisfactory to Owner, reasonable wear and tear and damage by casualty excepted.

g. Contemporaneously with the execution of this Agreement, the Parties shall execute, acknowledge, deliver and record among the Land Records of Dona Ana County, New Mexico, a memorandum of option agreement (the "MOA") with respect to this Agreement. This Agreement shall not be recorded. The MOA shall be in the form of **Exhibit D** attached hereto and incorporated herein. Optionee shall pay for the costs of recording the MOA.

## 2. Lease Premises.

a. Subject to its exercise of the Option, Optionee has the right to Lease the Property or a portion thereof, together with all appurtenant rights and easements ("Leased Premises").

b. The size and location of the Lease Premises shall be determined by Optionee and will require the consent of Owner. Owner's consent shall not be unreasonably withheld, conditioned or delayed. Upon determination by Optionee of the specific size and location of the Leased Premises within the Property, a detailed description of such location shall be substituted for **Exhibit C** and shall become the final description of the Leased Premises.

c. Owner shall grant such easements or other rights necessary for the successful completion of the System (as defined in the Lease), across, over, under or through land owned by Owner and not leased by Optionee. Owner has no obligation or responsibility to provide easements beyond land it owns.

d. Owner and Optionee acknowledge that the general depiction of the Leased Premises attached to this Agreement on the Effective Date may be legally insufficient. Owner and Optionee confirm to one another that, notwithstanding any insufficiency, the parties desire to enter this Agreement. Therefore, Owner and Optionee agree that (i) they are experienced in transactions of the nature provided for in this Agreement, (ii) in fact, they are thoroughly familiar with the location of the Property, and (iii) each party waives any and all claims or defenses of an insufficient legal description in a cause of action for specific performance hereunder.

## 3. Right of Entry.

a. During the Option Periods, Optionee, its employees, agents and independent contractors shall have full and complete access to the Property to evaluate, conduct, perform field inspections, invasive soil and water testing, environmental audits, engineering and boundary surveys, topographical, structural and geo-technical tests, and such other tests and inspections (collectively "Tests and Investigations") of the Property which Optionee may deem necessary or advisable in its sole discretion. However, Optionee shall provide City Airport Manager at least twenty-four (24) hours advance notice of same. For purposes of this Section 3.a, oral or electronic notice shall be sufficient. Optionee has the right, but not the obligation, to perform Tests and Investigations.

b. Upon request, and with prior consent and direction of City Airport Manager, not to be unreasonably withheld, conditioned or delayed, Optionee shall have the right to use for ingress and egress other land or easement rights owned by Owner to access the Property. At no

time shall Optionee, its employees, agents and independent contractors approach the "airfield", being that property located within the perimeter fence, as further set forth on **Exhibit E**, and being dedicated solely to aviation use.

c. With respect to this right of entry to the Property, the Parties agree as follows: (i) Optionee and Optionee's employees, agents and independent contractors shall have access to the Property twenty-four (24) hours a day, seven (7) days a week no additional charge, (ii) Optionee agrees to be responsible for any and all cost related to the permitted activities, including installation on and operation and removal of equipment on the Property, and (iii) Owner consents and agrees that Optionee may make and file applications, at Optionee's sole cost and expense, on Owner's behalf to such local, state and federal governmental entities whose approval may be necessary or advisable to enter the Property to perform said activities, and to take any actions in furtherance of Optionee's ability to proceed with timely implementation of the System. Owner shall promptly execute any such application or other documentation, and take any other actions reasonably necessary at Optionee's sole cost, as required by said governmental entity or as would reasonably assist Optionee.

#### **4. Indemnification.**

Optionee shall defend, indemnify and hold Owner harmless from and against any and all liabilities, damages, losses, costs or expenses (including, without limitation, reasonable attorney fees and court costs) arising from the entry upon, or any inspections, tests or examinations performed on the Property by Optionee, its employees or agents in connection with any Tests and Investigations. To the extent, if at all, a court of competent jurisdiction determines that Section 56-7-1 NMSA 1978 applies to any indemnification provisions in this Agreement, including certain types of insurance coverage as set forth in Section 56-7-1 NMSA 1978, such provisions shall not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee or additional insured, as the case may be, its officers, employees or agents and shall further be modified, if required, by the provisions of Section 56-7-1(B) NMSA 1978.

#### **5. Default.**

A "default" shall be deemed to have occurred in the event either party breaches any obligations set forth in this Agreement and the same is not remedied within thirty (30) days of written notice being received by the defaulting party from the non-defaulting party.

In the event of default by Optionee, Owner shall be entitled to terminate this Agreement and retain the Option Payments, as it has then received, as liquidated damages for such default, and in such event, Optionee shall have no further right whatsoever in connection with this Agreement and Owner shall have no right to seek any further damages or remedy, at law or in equity against Optionee. The Parties agree that it would be impractical and/or extremely difficult to ascertain the actual damages that would be suffered by owner as a result of any such default by Optionee, and that under the circumstances existing as of the date of this Agreement, the liquidated damages provided for in this section represent a reasonable estimate of the damages which Owner will incur as a result of any such default by Optionee.

In the event of a default by Owner, Optionee may elect, in addition to any other right available at law or in equity, to terminate this Agreement and recover from the Owner the actual damages incurred as a result of such default. In the event Closing (as defined below) is not consummated by reason of default by either Owner without fault of Optionee, then Optionee shall be entitled, in addition to any other remedies available at law or in equity, to enforce specific performance of Owner's obligations under this Agreement.

**6. Notice of Exercise of Option.**

The Option to lease the Premises may be exercised by Optionee, in its sole discretion, during the Option Periods. Optionee shall give Owner and Escrow Agent (defined below) thirty (30) days written notice of its intention to exercise this Option at any time during the Option Periods ("Option Notice"). Such Option Notice shall a) state that Optionee is exercising this Option, b) contain the date, time and place of Closing, which Closing must occur prior to the expiration of the Option Periods and c) be sent to Owner at:

City of Las Cruces  
PO Box 20000  
Las Cruces NM 88004  
Attention: City Manager

With one copy to  
City of Las Cruces  
PO Box 20000  
Las Cruces NM 88004  
Attention: Airport Manager

or at such other address as shall be designated by Owner in writing by notice to Optionee.

Notices to the Optionee shall be delivered to Optionee at:

OPTIONEE  
c/o SunEdison  
12500 Baltimore Avenue  
Beltsville, MD 20705  
Attention: Jared Schoch

and one copy to:  
SunEdison  
12500 Baltimore Avenue  
Beltsville, MD 20705  
Attention: General Counsel

with one copy to:  
SunEdison  
12500 Baltimore Avenue  
Beltsville, MD 20705  
Attention: Vice President of Sales

And one copy to:  
Shulman, Rogers, Gandal, Pordy & Ecker,  
P.A.  
12505 Park Potomac Avenue  
Sixth Floor  
Potomac, Maryland 20854  
Attention: Samuel M. Spiritos

or at such other address as shall be designated by Optionee in writing by notice to Owner. Unless otherwise provided for herein, any other notices provided for in this Agreement shall be in writing, hand delivered, sent by registered or certified U.S. Mail, postage prepaid, with return receipt requested, or by commercial overnight delivery service and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, and on the business day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) business days after deposit in the mail when sent by U.S. mail.

**7. Closing.**

Contemporaneously with the execution of this Agreement, the Parties shall execute the Lease attached hereto to be held in escrow with the law firm of Shulman, Rogers, Gandal, Pordy & Ecker, P.A., having an address of 12505 Park Potomac Avenue, 6<sup>th</sup> Floor, Potomac, Maryland 20854 (the "**Escrow Agent**"). The Lease shall be held in escrow by Escrow Agent in accordance with this Agreement and shall not become effective until Closing.

Escrow Agent shall not be liable to either of Owner or Optionee in connection with the performance of any duty imposed upon Escrow Agent hereunder for any action taken by Escrow Agent in good faith in conformity with the provisions of this Agreement in holding or dealing with the Lease. Escrow Agent may act upon any instrument or other writing believed by Escrow Agent in good faith to be genuine and to be executed and presented by the proper person in accordance with this Agreement. Escrow Agent shall have no duties or responsibilities other than as expressly set forth herein. Escrow Agent shall not be bound by a modification of this Section 7 unless such modification is in writing and signed by Owner and Optionee and, if Escrow Agent's duties hereunder are affected, by Escrow Agent.

In the event that Escrow Agent (i) shall be uncertain as to Escrow Agent's rights or duties hereunder, (ii) shall receive instructions from Owner or Optionee that, in Escrow Agent's reasonable opinion, are in conflict with any of the provisions hereof, or (iii) shall receive conflicting demands with respect to disposition of the Lease, Escrow Agent may take affirmative steps in order to terminate Escrow Agent's duties hereunder. Escrow Agent's reasonable costs and expenses in connection with such dispute shall be divided equally between Owner and Optionee.

The "Closing" shall be the date and time designated by Optionee, in accordance with this Agreement, that the Lease shall become effective. Notwithstanding the foregoing, Owner acknowledges and agrees that, unless waived by Optionee in its sole and absolute discretion, the following shall be express conditions precedent to Optionee's obligation to Closing of the transaction contemplated herein: (a) Owner's representations and warranties contained herein shall be true and correct, (b) Owner shall not otherwise be in default of the terms and conditions of this Agreement, and (c) a nationally recognized title insurance company of Optionee's choosing, ("Title Company") shall issue a "date down" endorsement to the Title Commitment subject only to those Exceptions approved by Optionee pursuant to Section 9, below. Time is of the essence in this Agreement.

**8. Closing Costs.**

Optionee shall pay for the cost of any survey, examination of title and title insurance, and payment of any other closing costs. Owner shall be responsible for real property taxes and any taxes payable by or assessed against Owner during the Option Periods. Each Party shall be responsible for its own attorneys and consultants fees.

**9. Condition of Title.**

At Optionee's cost, Optionee may obtain during the Option Periods a preliminary report (the "Title Report") of the condition of title to the Property, as well as copies of each document underlying any matters set forth in said report (each matter, an "Exception"). If Optionee, in its sole discretion, determines that the existence, use, operation, implementation or exercise of any

Exception could delay, interfere with, impair or prevent Optionee's development, operation or financing of the System, then Optionee shall notify Owner in writing of such issues ("Exception Notice"), and Owner shall seek in good faith to obtain a release, subordination, non-disturbance agreement, consent or other agreement (in a form and containing provisions reasonably acceptable to Optionee) (together the "Cure Document") from the holder(s) of the rights of such Exception that will eliminate such issue for the benefit of Optionee. If Owner is unable to deliver the Cure Document within thirty (30) business days (the "Cure Period") of Optionee's delivery of the Exception Notice to Owner, Owner shall be in default under this Agreement, provided that, at Optionee's option and upon written notice to Owner by the expiration of the Cure Period, the Cure Period shall be extended thirty (30) business days (the "Extended Cure Period") for the purpose of Owner obtaining and delivering the Cure Document to Optionee. In the event the Optionee grants an Extended Cure Period, the Option Periods shall be tolled on a day for day basis. Failure of Owner to deliver the Cure Document within the Extended Cure Period shall be a default under this Agreement.

#### **10. Owner Representations.**

Owner hereby represents, warrants, agrees and covenants to Optionee that, to the best of its knowledge:

a. No underground storage tanks for petroleum or any other substance, or underground piping or conduits are or have previously been located on the Premises, and no asbestos-containing thermal insulation or products containing PCB, formaldehyde, chlordane, or heptachlor or other Hazardous Materials have been placed on or in any structure on the Premises by Owner or, to the knowledge of Owner, by any prior Owner or user of the Premises, and there have been no release of or contamination by Hazardous Materials on the Premises. Owner has provided Optionee with all environmental studies, records and reports in its possession or control conducted by independent contractors, or Owner and all correspondence with any governmental entities concerning environmental conditions of the Premises, or which identify underground storage tanks or otherwise relate to contamination of the soil or groundwater of the Premises or effluent into the air. As used herein, "Hazardous Materials" means any substance designated as being under any applicable federal, state or local statutes, ordinances, codes, regulations, decrees, orders, laws, rulings, judgment or other governmental or judicial requirements.

b. (i) Owner has not received notice of or been served with any pending or threatened litigation, condemnation, foreclosure or sale in lieu thereof with respect to any portion of the Premises relating to or arising out of the ownership of the Premises by any person, company or governmental instrumentality, and (ii) the Premises has lawful and valid access from the Premises to existing public highways and roads, and sewer, electrical or other utility services, and all utilities which serve the Premises enter the Premises through adjoining public streets or, if they pass through an adjoining private tract, do so in accordance with valid public easements, which easement(s) shall be sufficient for the purposes of Optionee.

c. Owner has no knowledge (i) if any of the Premises is within any area determined to be flood prone or within a flood zone under Federal designation; (ii) of the severance of any mineral rights and access rights related thereto; or (iii) of the existence of any archeological materials, graves, burial sites, buildings, foundations, wetlands or endangered or protected species.

d. Other than Owner, there are no other persons or entities having legal or beneficial title or ownership interests or possessor rights to the Premises. Owner has the full legal right, power and authority, without the consent of additional parties or party, to enter into this Agreement and to perform, its obligations hereunder and the execution and delivery of this Agreement and the consummation of all transactions contemplated hereby have been duly authorized and will not result in a breach or violation of, or a default under, any lease (or other document) by which Owner or its properties are bound, or any law, administrative regulation, or court decree in a manner which could materially and adversely affect the rights of Owner hereunder. The person executing this Agreement on behalf of Owner has full power and authority to bind Owner to the obligations of Owner set forth herein, and upon execution and delivery of the same, this Agreement will constitute valid and binding instruments enforceable in accordance with their terms. The entry into and performance of Owner's obligations under this Agreement will not violate or result in a breach of any contract or agreement by which Owner is bound, the consequence of which violation would be to prevent the performance of Owner's obligations under this Agreement. No consent of any other party is required for the performance by Owner of its obligations hereunder

e. Owner is a municipal corporation, duly formed and validly existing under the laws of the State of New Mexico. There is no litigation or injunctive action or proceeding pending or, to the best of Owner's knowledge, threatened against Owner which would prevent the performance of Owner's obligations under this Agreement.

f. Owner is not bankrupt or insolvent under any applicable federal or state standard, and Owner has not filed for protection or relief under any applicable bankruptcy or creditor protection statute and has not been threatened by creditors with an involuntary applicable of any applicable bankruptcy or creditor protection statute.

g. Owner is not entering into the transactions described in this Agreement with an intent to defraud any creditor or prefer the rights of one creditor over any other. Owner and Optionee have negotiated this Agreement at arms' length and the consideration paid represents fair value for the assets to be transferred.

The representations, warranties and covenants of Owner set forth herein shall survive Closing.

#### **11. Optionee Representations.**

Optionee hereby represents, warrants, agrees and covenants to Owner that to the best of its knowledge:

a. Optionee is a limited liability company duly formed, validly existing in Delaware and is in good standing with the State of New Mexico. Optionee has the full legal right, power and authority, without the consent of additional parties or party, to enter into this Agreement and to perform, its obligations hereunder and the execution and delivery of this Agreement and the consummation of all transactions contemplated hereby have been duly authorized.

b. Optionee is not bankrupt or insolvent under any applicable federal or state standard, and Optionee has not filed for protection or relief under any applicable bankruptcy or creditor protection statute and has not been threatened by creditors with an involuntary applicable of any applicable bankruptcy or creditor protection statute.

c. Optionee is not entering into the transactions described in this Agreement with an intent to defraud any creditor or prefer the rights of one creditor over any other. Owner and

Optionee have negotiated this Option at arms' length and the consideration paid represents fair value for the Option.

d. Optionee shall, at all times, conduct its activities at the Property in a lawful manner and in compliance with all laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits and licenses which now or at any time hereafter may be applicable to the Property, or any part thereof, any of the adjoining sidewalks, streets or ways, any condition of the Property, or any part thereof, or the operation or use of the Property, or any part thereof (collectively, the "Legal Requirements").

e. Optionee shall, at all times, have the financial ability to carryout the terms and conditions of the Agreement.

The representations, warranties and covenants of Optionee set forth herein shall survive Closing.

## **12. Insurance.**

a. Owner shall maintain a self insurance fund adequate to address any liability under the New Mexico Tort Claims Act.

b. Optionee shall maintain Commercial General Liability Insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence in full force and effect throughout the term of this Agreement either through insurance policies or acceptable self-insured retentions.

c. Optionee shall carry (i) adequate property loss insurance on any property of Optionee, its employees, agents and contractors, and (ii) worker's compensation and employer's liability insurance with an insurance carrier admitted to do business in the State of New Mexico, covering all persons employed by Optionee in connection with the permitted activities of Optionee under this Agreement at the Property satisfying the requirements of the worker's compensation statutes of the State of New Mexico. The amount and terms of insurance coverage will be determined at Optionee's sole discretion. Optionee may, at its option, bring its obligations to insure under this Article within the coverage of a "blanket" policy of insurance which it may now or hereafter carry, by appropriate amendment, rider, endorsement, or otherwise. Optionee shall name Owner as an additional insured on all insurance policies maintained in accordance with this Agreement.

## **13. Preservation of Positions.**

Pending the Closing, Owner shall operate and maintain the Property in the manner in which it is currently operated and maintained. Owner shall not take any action or enter into any contract affecting the Property without Optionee's consent, which consent Optionee may withhold in Optionee's sole discretion for any reason. Loss or damage to the Property during the Option Periods by fire or from an act of God shall be at the risk of Owner.

## **14. Assignment.**

Optionee may assign this Agreement or any interest therein, with the express prior written consent of Owner, which consent shall not be unreasonably withheld, conditioned or delayed. Owner shall have thirty (30) days within which to approve or disapprove any assignment requiring Owner's approval as set forth herein, and the failure of Owner to approve or disapprove within said period shall be deemed a disapproval of the assignment.

Notwithstanding the foregoing, Optionee may, without the prior consent of Owner, (a) assign this Agreement to any other company directly or indirectly controlling, controlled by or under common control with Optionee or to an affiliate, subsidiary or parent of Optionee or a subsidiary or affiliate of Optionee's parent; (b) assign, mortgage, pledge, hypothecate or otherwise transfer this Agreement in connection with any financing of the acquisition or development of the property (including, without limitation, pursuant to a sale-leaseback transaction); or (c) assign this Agreement to any other company; provided the net worth of such company at the time of the proposed transfer is equal to or greater than the Optionee at the time of the proposed transfer, and further provided that such company shall use the Property in accordance with the Permitted Use (as defined in the Lease) and has experience operating systems similar to the System. If consent of the Owner is not required as provided for herein or if prior consent of the Owner is obtained, then in such event Optionee shall be relieved of its obligations hereunder provided that the assignee assumes all of the obligations of Optionee under this Agreement.

**15. Attorneys' Fees.**

In the event of any litigation arising out of or relating to this Agreement, or the breach or performance of it, the prevailing Party shall be entitled to recover reasonable attorneys fees incurred in connection therewith.

**16. Counterparts.**

This Agreement may be executed in multiple counterparts, each of which when taken together shall constitute but one and the same original.

**17. Governing Law.**

This Agreement shall be governed by the laws of the State of New Mexico. The Parties agree that in the event of a dispute in connection with this Agreement, the courts of Dona Ana County shall have jurisdiction.

**18. Representation on Authority of Parties.**

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

**19. Waivers.** Any waiver by any Party shall be in writing and shall not be construed as a continuing waiver. No waiver will be implied from any delay or failure to take action on account of any default by any Party. Consent by any Party to any act or omission by another Party shall not be construed to be a consent to any other subsequent act or omission or to waive the requirement for consent to be obtained in any future or other instance.

**19. Construction of Agreement.**

Each Party acknowledges that it is freely and voluntarily entering into this Agreement, uncoerced by any other person and that it has been afforded the opportunity to obtain the advice of legal counsel of its choice with regard to this Agreement in its entirety and understands the

same. Each Party and attorneys for each Party have had the opportunity to participate in the drafting and preparation of this Agreement. Therefore, the provisions of this Agreement shall not be construed in favor of or against either Party, but shall be construed as if both Parties equally prepared this Agreement.

**20. Headings.**

The paragraph headings herein are used only for the purpose of convenience only and shall not be deemed to limit the subject of the sections or paragraphs of this Agreement or to be considered in their construction.

**21. Severability.**

If any provision of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining provisions of this Agreement shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

**22. Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and shall supersede all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral or written. The foregoing sentence shall in no way affect the validity of any instrument executed by the Parties in the form of the exhibits attached to this Agreement. This Agreement shall not be modified or amended unless such modification and/or amendment is in writing and signed by both Parties.

Signature page(s) follow

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date and year hereinabove first written.

**OWNER:**  
**City of Las Cruces, a New Mexico municipal corporation**

\_\_\_\_\_  
**Ken Miyagishima, Mayor**

\_\_\_\_\_  
**Date:**

**OPTIONEE:**

**SunE EPE1, LLC, a Delaware limited liability company**

\_\_\_\_\_  
**By: Jared Schoch**

\_\_\_\_\_  
**Date:**

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**  
**Property Description:**

**EXHIBIT B**  
**FORM OF LEASE**

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** (the "Lease") is entered is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") by and between the City of Las Cruces, a New Mexico municipal corporation ("Landlord"), and the undersigned limited liability company, its successors or assigns, ("Tenant" and, together with Landlord, each, a "Party" and together, the "Parties"). Landlord represents it has sole and exclusive authority for all matters concerning the Premises, as defined below, and sole and exclusive authority to enter into this Lease.

**WITNESSETH:**

**WHEREAS**, Landlord owns a parcel of land located within the City of Las Cruces Airport ("Airport"), any improvements located thereon and appurtenant rights and easements situate in the City of Las Cruces, County of Dona Ana, State of New Mexico, being the E1/2 SE1/4 of Section 28, T23S, R1W, NMPM of the USGLO surveys ("Property"), and

**WHEREAS**, Landlord desires to lease to Tenant and Tenant desires to lease from Landlord a portion of the Property, together with all appurtenant rights and easements (the "Premises") subject to the terms and conditions stated herein. The Premises is more particularly described in **Exhibit A** attached hereto and incorporated herein, and

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the rent to be paid, and other good and valuable consideration, the legal sufficiency of which is hereby acknowledged by the Parties hereto, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises.

**TO HAVE AND TO HOLD THE SAME**, subject to the terms and conditions set forth herein.

**ARTICLE 1 –PERMITTED USE**

During the Term, Tenant shall use the Premises for any lawful purpose related to photovoltaic solar energy generation and transmission purposes and the construction, re-construction, operation, maintenance, repair, expansion and removal of a photovoltaic/ground mounted solar ray system ("System") (the "Permitted Use"). Tenant has the right to evaluate, conduct and perform field inspections, invasive soil and water testing, environmental audits, engineering and boundary surveys, topographical, structural and geo-technical tests, and such other tests and inspections as Tenant may deem necessary or desirable. The Premises shall not be used in such manner as to violate any applicable Federal, State, or local laws, regulations, codes, or ordinances. Tenant shall comply at all times with all Federal, State, and local laws, regulations, codes, and ordinances that are applicable to Tenant's development, and use of the Premises and the construction, operation, and maintenance of the System. Tenant's use of the Premises shall at all times be consistent with the Airport Master Plan (as amended or may be amended in the future, provided Tenant is provided with a copy of any such amendments), Airport Minimum Standards Ordinance (as amended, or may be amended in the future, provided Tenant is provided with a copy of any such amendments), the Building Code requirements of the New Mexico Construction Industries Division, and any City of Las Cruces ordinance now or hereafter in effect (collectively, "City Requirements"). Landlord hereby represents and warrants that, as of

the Effective Date, the use of the Premises for the construction, operation and removal of the System in accordance with the terms of this Lease is in compliance with the City Requirements. Landlord hereby agrees that the use of the Premises for the construction, operation and removal of the System in accordance with the terms of this Lease is not waste nor does it create a nuisance. Notwithstanding anything to the contrary contained herein, any and all buildings, structures and improvements to be placed on the Premises shall be subject to approval by the Federal Aviation Administration.

## **ARTICLE 2 – TERM**

**2.1 Term.** The Lease “Term” shall commence on the Effective Date and continue for a term of thirty (30) years and shall expire on the last day of the month thirty (30) years after the Effective Date. The term “Lease Year” shall mean the following: the first Lease Year shall be the period commencing with the Effective Date and expiring on the last day of the twelfth (12<sup>th</sup>) full calendar month thereafter, and each subsequent Lease Year during the Lease Term shall be the full twelve (12) month period following the expiration date of the immediately preceding Lease Year.

**2.2 Termination.** Tenant may unilaterally terminate this Lease, at any time, for any reason or no reason, with at least thirty (30) days written notice to the Landlord. Such written notice shall set forth the effective termination date, which shall be not less than thirty (30) days or more than one hundred eight (180) days after the day on which such termination notice is received by Landlord. In the event Tenant terminates this Lease, Landlord shall be entitled to retain all payments it has then received based on a prorated amount applicable up to the effective termination date, and Landlord shall return all remaining amounts to Tenant within thirty (30) days of the effective termination date. If Tenant elects to terminate this Lease, Tenant shall, at its sole cost and expense prior to the effective termination date, remove all of its equipment and any materials or rubbish incidental to its use, surrender the Property and restore the Property in a manner reasonably satisfactory to Landlord, reasonable wear and tear and damage by casualty excepted and shall thereafter be released from any further liability under this Lease.

## **ARTICLE 3 – RENT**

**3.1 Rent.** As rental for the Premises (“Rent”), Tenant shall pay to Landlord during the Term, Five Hundred and no/100 Dollars (\$500.00) per acre per year. Such amount shall be paid annually, in advance for each Lease Year during the Term. The annual rent shall be due and payable on the first day of the Lease Year,. Effective on the first (1<sup>st</sup>) day of the: (i) fifth (5<sup>th</sup>) Lease Year, (ii) tenth (10<sup>th</sup>) Lease Year, (iii) fifteenth (15<sup>th</sup>) Lease Year, (iv) twentieth (20<sup>th</sup>) Lease Year and (v) twenty-fifth (25<sup>th</sup>) Lease Year, the Rent then in effect shall be increased by two percent (2%).

**3.2 Interest On Late Payments.** If Tenant fails to pay any installment of the Rent within fifteen (15) days after the same is due and payable, then, without limiting Landlord in the exercise of any other right or remedy of Landlord with respect to such failure, Tenant shall pay Landlord interest on any such late Rent payment amount at the rate of per annum equal to the “prime rate” (as reported in The Wall Street Journal) plus two percent (2%). Notwithstanding the foregoing, in no event shall such interest exceed twelve percent (12%) at any time.

#### **ARTICLE 4 – TAXES AND UTILITY CHARGES**

**4.1 Real Property Taxes and Assessments.** Landlord is responsible for all valid real property taxes and assessments assessed against the Premises.

**4.2 Personal Property Taxes.** Tenant shall pay directly to the taxing authority all personal property taxes and assessments, or installments thereof, which are levied, assessed, charged or imposed on or against the personal property on the Premises during the Term.

**4.3 Utilities; Services.** Tenant shall make arrangements for obtaining and, during the Term, shall pay for all utilities and services furnished to, or to be used on behalf of Tenant on the Premises. Landlord shall cooperate with Tenant and will allow a third party service provider, with the required permits from governmental agencies, to install, operate, maintain a data, telecommunication or fiber optic line and such other lines as required to support of the System and Tenant's business operations on the Premises, as determined in Tenant's sole discretion.

#### **ARTICLE 5 – ACCESS TO PREMISES**

**5.1 Tenant Access to Premises.** Tenant and Tenant's employees, agents, representatives, contractors, and vendors shall have access to the Premises twenty-four (24) hours a day, seven (7) days a week, at no additional charge, during the Term. In connection with Tenant's access, construction, and use of the Premises, including, without limitation, access to electrical distribution or transmission facilities, Tenant and Tenant's employees, agents, representatives, contractors, and vendors shall have access to public road(s) maintained by State or local government authorities. During the Term, Tenant shall have access to the land contiguous to the Premises which is owned by Landlord for ingress and egress to the Premises; provided, however, at no time shall Tenant, its employees, agents and independent contractors approach the "airfield", being that property located within the perimeter fence, as further set forth on **Exhibit B**, and being dedicated solely to aviation use.

**5.2 Landlord Access to Premises.** Landlord may enter the Premises at all reasonable times, after not less than forty-eight (48) hours prior written notice (unless in the event of an emergency) to inspect the same to the extent reasonably required. A Tenant representative shall accompany Landlord during its entry to the Premises at all times. Notwithstanding the foregoing, Tenant shall in no event be restricted from installing gates, locks or other devices or systems, including without limitation alarm systems, which would in any way restrict access to the Premises. Notwithstanding anything to the contrary contained herein, Landlord shall at all times have the right to (i) operate the Airport in the best interest of the public, (ii) to maintain, improve, or further develop the Airport or public use facilities of the Airport as it sees fit, regardless of any protest of the Tenant, and (iii) lease additional space to other concessions at the Airport, regardless of any objection of the Lessee.

#### **ARTICLE 6 - CONSTRUCTION OF SOLAR FACILITY; REPAIRS AND MAINTENANCE; ALTERATIONS AND IMPROVEMENTS AND REMOVAL**

**6.1. Construction of the System.** Tenant, at Tenant's sole option, cost and expense, shall construct or cause to be constructed on the Premises the System, as well as any and all appurtenant facilities and equipment necessary, in Tenant's sole and absolute discretion, for the operation thereof, including without limitation, transmission and distribution lines or conduits.

**6.2 Approvals.** At any time and from time to time during the Term, Landlord agrees to cooperate with Tenant, at no out of pocket expense to Landlord, in making application for and obtaining all licenses, permits and any and all other necessary approvals (“Approvals”) that may be required for Tenant’s Permitted Use of the Premises. This shall include, but shall not be limited to, making joint filings for approvals and taking any other actions reasonably necessary, at Tenant’s sole cost.

**6.3 Alterations and Improvements.** Tenant shall have the right, at any time and from time to time during the Term, at its sole cost and expense, to (a) make additions, changes, alterations, or improvements, structural or otherwise, to the System; and (b) demolish and remove the System or any other structures hereafter located on the Premises.

**6.4 Removal of System.** Except as specifically provided herein, the removal of the System from the Premises by Tenant shall not terminate this Lease.

**6.5 Title to the System.** At all times while this Lease is in force and effect, all rights to, title to and possession of the System (including without limitation to all additions, alterations, and improvements thereto or replacements thereof, all appurtenant fixtures, machinery and equipment installed therein), all renewable energy produced by the System, all “Environmental Attributes” and all “Solar Incentives” belong solely to Tenant and shall remain the personal property of Tenant and shall not attach to or be deemed a part of, or fixture to, the Premises. The System is an integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices, interconnection equipment, wiring, poles, ground mounted solar rays and conduits. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code, as adopted in the State in which the Property is located. “Environmental Attributes” shall mean, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, or Green-e® products. “Solar Incentives” includes, without limitation, any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies.

**6.6 Landlord Not Obligated to Make Improvements.** Landlord shall not interfere with Tenant’s use, operation and maintenance of the System in any way, and shall in no event be obligated to make any repairs, improvements, alterations, replacements or renewals of any kind, nature or description whatsoever to the System.

## **ARTICLE 7 - LIENS**

**7.1 Landlord Liens.** Landlord shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics’, labor or materialman’s lien), charge, security interest, encumbrance or claim of any nature (“Liens”) on or with respect to the System the Lease or any interest therein. If, because of any act or omission of Landlord, any mechanics' or other lien or order for the payment of money shall be filed against the Premises (whether or not such lien or order is valid or enforceable as such), Landlord shall, at Landlord’s own cost and expense, forthwith use commercially reasonable efforts to cause the same to be canceled and discharged of record or insured against by an insurance company or bonded by a

surety company. If Landlord shall fail to discharge any such mechanic's or materialmen's lien within the fifteen (15) day period provided for above, Tenant may, at its option, discharge such lien and treat the cost thereof (including reasonable attorneys' fees incurred in connection therewith) as a Rent credit against the next installment of Rent falling due; it being expressly agreed that such discharge by Tenant shall not be deemed to waive or release the default of Landlord in not discharging such lien.

**7.2 Waiver of Landlord's Lien.** Landlord acknowledges that Tenant has entered into, or will enter into, a financing arrangement which may include promissory notes and financial and security agreements for the financing of the System, as collateral, with a third party financing entity (and may in the future enter into additional financing arrangements with other entities) ("Tenant Financing"). In connection therewith, Landlord (i) hereby consents to the Tenant Financing; (ii) disclaims any interest in the System, as fixtures or otherwise; (iii) agrees that the System is exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such System may be removed at any time without recourse to legal proceedings, and (iv) shall take no action to impede or interfere with a third party financing entity enforcing its rights pursuant to its agreement(s) with Tenant

**7.3 Mechanics' Liens.** Tenant shall not suffer or permit any mechanics' or other liens to be recorded or filed against the Premises or against the interest therein of Landlord. If, because of any act or omission of Tenant, any mechanics' or other lien or order for the payment of money shall be filed against the Premises or against Landlord (whether or not such lien or order is valid or enforceable as such), Tenant shall, at Tenant's own cost and expense, forthwith use commercially reasonable efforts to cause the same to be canceled and discharged of record or insured against by an insurance company or bonded by a surety company in the event Tenant elects to contest the validity thereof. Subject to the foregoing, Tenant shall have the right at its own expense to contest all such liens and orders.

#### **ARTICLE 8 – INDEMNIFICATION**

Tenant shall indemnify, defend and hold Landlord, and Landlord's partners, directors, officers, agents and employees, successors and assigns, harmless from and against all claims, losses, liabilities, damages, costs, and expenses (including reasonable attorneys' and consultants' fees, costs and expenses) arising from the Tenant's breach of any term or condition of this Lease or from the negligence or willful misconduct of Tenant or its agents, employees or contractors in or about the Premises. The duties described in this section apply as of the Effective Date of this Lease and survive the termination of this Lease. To the extent, if at all, a court of competent jurisdiction determines that Section 56-7-1 NMSA 1978 applies to any indemnification provisions in this Lease, including certain types of insurance coverage as set forth in Section 56-7-1 NMSA 1978, such provisions shall not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee or additional insured, as the case may be, its officers, employees or agents and shall further be modified, if required, by the provisions of Section 56-7-1(B) NMSA 1978.

#### **ARTICLE 9 – CONDEMNATION AND DESTRUCTION OF PREMISES**

**9.1 Complete Taking.** If, at anytime during the Term, the whole of the Premises is taken for any lawful power or authority by the exercise of the right of condemnation or eminent domain, including any such taking by "inverse condemnation," then this Lease shall terminate. If this Lease terminates; it shall terminate as of the earlier of the date that title vests in the condemnor or the date that the condemnor takes possession of the property so taken ("Date of Taking"). In such event, Rent and all other charges payable hereunder shall be prorated and paid to the date of termination.

**9.2 Partial Taking.** If, at anytime during the Term, a portion of the Premises, or other access way which is reasonably necessary for access to the Premises, is taken for the purposes set forth in this Article, and such taking materially affects the operation of the System on the Premises, Tenant shall have the right to terminate this Lease. If Tenant so elects to terminate this Lease, Tenant shall give written notice of such termination to Landlord within ninety (90) days after the date of Tenant's receipt of notice of such taking. Such notice shall state the effective termination date which shall be determined by Tenant. In such event, Rent and all other charges payable hereunder shall be prorated and paid to the effective termination date.

**9.3 Allocation of Condemnation Award.** If the whole or a part of the Premises is taken by condemnation, Tenant and Landlord shall each have the unqualified right to pursue its remedies against the condemnor for the full value of its fee or leasehold interest, as applicable, and other interests in and to the Premises. Tenant shall be entitled to that portion of the award given for the value of Tenant's leasehold interest, the System, Tenant's relocation expenses and other expenses of Tenant included within such recovery or award. The provisions of this section shall survive any termination of this Lease.

#### **ARTICLE 10 - BANKRUPTCY**

If, at any time during the Term, bankruptcy, insolvency or other similar proceedings shall be instituted by or against either party (the "Bankrupt Party"), whether or not such proceedings result in an adjudication against the Bankrupt Party, or should a receiver of the business or assets of the Bankrupt Party be appointed, such proceedings or adjudication shall not affect the validity of this Lease so long as the other party does not exercise its right to terminate this Lease and the rent and other amounts owing hereunder continue to be paid when due, and the other terms, covenants and conditions of this Lease on the part of the Bankrupt Party to be performed are performed, and in such event this Lease shall remain in full force and effect in accordance with its terms.

#### **ARTICLE 11 - ASSIGNMENT AND SUBLETTING**

Tenant may assign this Lease, or sublet or license the Premises, any interest therein or portion thereof, (collectively, an "Assignment") with the prior written consent of Landlord which consent shall not be unreasonably withheld, conditioned or delayed. Any Assignment by Tenant without any required prior written consent of Landlord shall not release Landlord of its obligations hereunder and shall not relieve Tenant of all future performance, liabilities, and obligations under this Lease. This Lease runs with the Land and is binding upon and inure to the benefit of the Parties, their respective successors, personal representatives, heirs and assigns. Notwithstanding anything to the contrary contained in this Lease, Tenant, without the prior consent of Landlord, may a) assign and sublet the Premises, any interest therein or portion thereof to any other company directly or indirectly controlling, controlled by or under common

control with Tenant, or an affiliate, subsidiary or parent of Tenant or a subsidiary or affiliate of Tenant's parent; and b) assign, mortgage, pledge, hypothecate or otherwise transfer without notice or consent its interest in this Lease and/or its interest in the System to any financing entity, or agent on behalf of any financing entity, or to any other entity to whom Tenant has, including, but not limited to, (i) obligations for borrowed money or in respect of guaranties thereof, (ii) obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof, or (c) assign this Lease to any other company; provided the net worth of such company at the time of the proposed transfer is equal to or greater than the Tenant at the time of the proposed transfer, and further provided that such company shall use the Premises in accordance with the Permitted Use and has experience operating systems similar to the System. Landlord shall have thirty (30) days within which to approve or disapprove any assignment requiring Landlord's approval as set forth herein, and the failure of Landlord to approve or disapprove within said period shall be deemed a disapproval of the assignment, provided that such consent is not being unreasonably withheld, conditioned or delayed. Any permitted Assignment shall relieve Tenant of all future performance, liabilities, and obligations under this Lease.

#### **ARTICLE 12 - EVENTS OF DEFAULT; REMEDIES**

**12.1 Events of Default.** The occurrence of any one or more of the following events (in this Article sometimes called an "Event of Default") shall constitute a default and breach of this Lease:

- (a) Failure to pay any monetary obligation required to be paid and such failure shall continue for a period of thirty (30) days after written notice that the same is due and payable.
- (b) Breach any material non-monetary obligation, covenant or representation or warranty under this Lease for a period of twenty (20) days after written notice of breach; provided that if more time is required to complete such performance, Parties commence such performance within the twenty (20) day period and thereafter diligently pursue its completion without interruptions.

**12.2 Parties' Remedies in Case of Default.**

- (a) Upon a Landlord Event of Default and upon the expiration of any cure or notice period required by this Lease, Tenant may: (i) terminate the Lease and recover from Landlord the actual damages incurred as a direct result of the Event of Default; and/or (iii) except as limited by the Lease, exercise any other remedy Tenant may have at law or equity or under the Lease.
- (b) Upon a Tenant Event of Default, Landlord shall be entitled to terminate the Lease and retain the Rent payments, as it has then received, as liquidated damages for such Event of Default of Tenant, and in such event, Tenant shall have no further right whatsoever to lease the Premises and Landlord shall have no right to seek any further damages or remedy, at law or in equity. The Parties agree that it would be impractical and/or extremely difficult to ascertain the actual damages that would be suffered by owner as a result of any such Event of Default by Tenant, and that under the circumstances existing as of the date of this Agreement, the liquidated damages provided for in this section represent a reasonable estimate of the damages which Landlord will incur as a result of any such Event of Default by Tenant.

#### **ARTICLE 13 - SURRENDER OF THE PREMISES; REMOVAL OF THE SYSTEM**

At the expiration of this Lease pursuant to the provisions hereof, Tenant shall quit and surrender the Premises to Landlord in good order, condition and repair in accordance with the provisions of this Article. Provided Landlord is not in default under this Lease beyond any applicable cure period, such surrender of the Premises and removal of the System shall be accomplished at Tenant's sole cost and expense. If Landlord is in default under this Lease beyond any applicable cure period, the Tenant's expenses incurred in the surrender of the Premises and removal of the System shall be a recoverable expense. On a mutually convenient date, but in no case later than ninety (90) days after the termination of the Lease, Tenant shall remove from the Premises the System (including all additions, alterations, and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein), and shall make commercially reasonable efforts to restore the Premises to substantially the condition in which it existed upon start of construction, reasonable wear and tear and loss by casualty or other causes beyond Tenant's reasonable control excepted.

#### **ARTICLE 14 - QUIET ENJOYMENT**

**14.1 Covenant of Quiet Enjoyment.** Landlord hereby covenants and agrees that if Tenant shall perform all the covenants and agreements herein stipulated to be performed on Tenant's part, Tenant shall at all times during the continuance hereof have the peaceable and quiet enjoyment and possession of the Premises without any hindrance from Landlord or any person or persons lawfully claiming the Premises.

**14.2 Right to Possession.** Landlord covenants, warrants and represents that Landlord alone has the full right to lease the Premises, has rights of access thereto from the nearest public roadway, which Tenant is legally permitted to use and the Premises and access rights are free and clear of all liens, encumbrances and restrictions and that possession of the Premises will be delivered to Tenant as of the Effective Date, subject to the terms and conditions of this Lease. Landlord acquired fee simple title to the Land by US Patent Number 30-83-0090 dated April 20, 1983 and recorded in Book 279 at pages 684 to 689 as Instrument No. 3855 in the Official Land Records of Dona Ana County, New Mexico.

**14.3 Easement for Sunlight.** Landlord will take all commercially reasonable actions, as necessary, to prevent other buildings, structures or flora located on the Property (and Landlord will, at Tenant's cost, join with Tenant in action to prevent buildings, structures or flora located on contiguous properties) from overshadowing or otherwise blocking or interfering with access of sunlight to the System, including but not limited to such actions as may be reasonably necessary to obtain solar access easement for such purpose. Landlord shall not place any buildings or other structures on (i) the Property, (ii) the Premises, or (iii) contiguous land in Section 28, T23S, R1W, NMPM of the USGLO surveys (as described in the recital above) that is controlled by Landlord, or Landlord affiliate, or that the Landlord may acquire, which does or may overshadow or otherwise block or interfere with access of sunlight to the System. Landlord and Tenant hereby acknowledge that Tenant shall have the right (but shall not be obligated) to remove, at Landlord's cost, any such buildings or other structures in violation of the preceding sentence. Tenant shall be permitted to a reimbursement of such costs as an abatement of Rent. Tenant shall have the right to enter any contiguous land owned by Landlord and remove or trim any flora (in accordance with governmental regulations) which overshadows or otherwise blocks access of sunlight to the System.

### ARTICLE 15 - TRADE FIXTURES

Anything contained in this Lease to the contrary notwithstanding, Landlord acknowledges, consents and agrees that all fixtures and equipment which are installed or placed in, on or about the System or other parts of the Premises by Tenant (collectively the "Trade Fixtures"), whether affixed to the Premises or otherwise shall be and at all times remain the property of Tenant. Provided that Tenant is not in default under the terms of this Lease beyond any applicable cure period, Tenant may remove its Trade Fixtures at any time during the Term or upon the expiration or sooner termination of this Lease. Notwithstanding the aforesaid a third party financing entity, including a financing entity under a sale/leaseback arrangement, irrespective of any default of Tenant, may remove its Collateral at any time.

### ARTICLE 16 – NOTICES AND DEMANDS

**16.1 Notice to Landlord.** Notices to Landlord and rent shall be delivered to:

City of Las Cruces  
PO Box 20000  
Las Cruces NM 88004  
Attention: City Manager

With one copy to  
City of Las Cruces  
PO Box 20000  
Las Cruces NM 88004  
Attention: Airport Manager

or at such other address as shall be designated by Landlord in writing by notice to Tenant.

**16.2 Notice to Tenant.** Notices to Tenant shall be delivered to:

SunEdison  
c/o SunEdison  
12500 Baltimore Avenue  
Beltsville, MD 20750  
Attention: Jared Schoch

and one copy to:  
SunEdison  
12500 Baltimore Avenue  
Beltsville, MD 20705  
Attention: General Counsel

with one copy to:  
SunEdison  
12500 Baltimore Avenue  
Beltsville, MD 20705  
Attention: Vice President of Sales

and one copy to:  
Shulman, Rogers, Gandal, Pordy &  
Ecker, P.A.  
12505 Park Potomac Avenue  
Sixth Floor  
Potomac, Maryland 20854  
Attention: Samuel M. Spiritos

or at such other address as shall be designated by Tenant in writing by notice to Landlord.

**16.3 Notice.** Unless otherwise provided for herein any notice provided for in this Lease shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, with return receipt requested, or by commercial overnight delivery service and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, and on the business day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) business days after deposit in the mail when sent by U.S. mail.

**16.4 Notice of Damage or Emergency.** Landlord shall a) promptly notify Tenant if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, and b) immediately notify Tenant when it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises.

#### ARTICLE 18 - BROKERAGE

Landlord and Tenant warrant that there are no claims for broker's commissions or finder's fees in connection with its execution of this Lease

#### ARTICLE 19 – FORCE MAJEURE

**19.1 Definition.** “Force Majeure Event” means any act or event that prevents the affected Party from performing its obligations in accordance with the Lease, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, Force Majeure Event shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, excessive snowfall, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of a Party or as a result of such Party’s failure to comply with a collective bargaining Lease); and (v) action by a governmental authority causing a moratorium on any activities related to the Lease. A Force Majeure Event shall not be based on the economic hardship of either Party.

**19.2 Excused Performance.** Except as otherwise specifically provided in the Lease, neither Party shall be considered in breach of the Lease or liable for any delay or failure to comply with the Lease (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 19 shall immediately (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

#### ARTICLE 20 – INSURANCE

**20.1 Landlord Insurance.** Owner shall maintain a self insured fund adequate to address any liability under the New Mexico Tort Claims Act.

**20.2 Tenant Insurance.** Tenant shall maintain the following insurance coverage in full force and effect throughout the Term of this Lease either through insurance policies or acceptable self-insured retentions: Commercial General Liability Insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence. Additionally, Tenant shall carry (i) adequate property loss insurance on any property of Tenant, its employees, agents and

contractors which need not be covered by the Landlord's property coverage; (ii) worker's compensation and employer's liability insurance with an insurance carrier admitted to do business in the State of New Mexico, covering all persons employed by Tenant in connection with the operation of the Leased Premises and the improvements satisfying the requirements of the worker's compensation statutes of the State of New Mexico; and (iii) at any time during the course of any construction, Builder's Risk insurance in such amounts with such companies and for so long as reasonably acceptable to Landlord. The amount and terms of insurance coverage will be determined at Tenant's sole discretion; provided, however, Landlord shall have the right to increase the minimum limits set forth herein during the Term in accordance with reasonably industry standards. Tenant may, at its option, bring its obligations to insure under this Article within the coverage of a "blanket" policy of insurance which it may now or hereafter carry, by appropriate amendment, rider, endorsement, or otherwise. Tenant shall name Landlord as an additional insured on all insurance policies maintained in accordance with this Lease.

**20.3 Certificates of Insurance** Each Party shall furnish evidence that the insurance required under this Section is being maintained. Each Party's insurance provided hereunder shall contain an endorsement providing that such coverage may not be canceled or materially altered with respect to the Premises except after forty-five (45) days prior written notice (ten days prior written notice for non-payment of premium) from the insurance company to the other Party.

**20.4 Additional Insureds.** Each Party's insurance policy shall be written on an occurrence basis and shall include the other Party as an additional insured as its interest may appear

**20.5 Insurer Qualifications.** All insurance maintained hereunder shall be maintained with companies either rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated) or having a parent company's debt to policyholder surplus ratio of 1:1.

## ARTICLE 21 - REPRESENTATIONS

**21.1. Representations.** Landlord hereby represents, warrants, agrees and covenants to Tenant that, to the best of it knowledge:

a. No underground storage tanks for petroleum or any other substance, or underground piping or conduits are or have previously been located on the Premises, and no asbestos-containing thermal insulation or products containing PCB, formaldehyde, chlordane, or heptachlor or other Hazardous Materials have been placed on or in any structure on the Premises by Landlord or, to the knowledge of Landlord, by any prior Landlord or user of the Premises, and there have been no release of or contamination by Hazardous Materials on the Premises. Landlord has provided Tenant with all environmental studies, records and reports in its possession or control conducted by independent contractors, or Landlord and all correspondence with any governmental entities concerning environmental conditions of the Premises, or which identify underground storage tanks or otherwise relate to contamination of the soil or groundwater of the Premises or effluent into the air. As used herein, "Hazardous Materials" means any substance designated as being under any applicable federal, state or local statutes, ordinances, codes, regulations, decrees, orders, laws, rulings, judgment or other governmental or judicial requirements.

b. (i) Landlord has not received notice of or been served with any pending or threatened litigation, condemnation, foreclosure or sale in lieu thereof with respect to any portion of the Premises relating to or arising out of the ownership of the Premises by any person, company or governmental instrumentality, and (ii) the Premises has lawful and valid access from the Premises to existing public highways and roads, and sewer, electrical or other utility services, and all utilities which serve the Premises enter the Premises through adjoining public streets or, if they pass through an adjoining private tract, do so in accordance with valid public easements, which easement(s) shall be sufficient for the purposes of Tenant.

c. Landlord has taken no action or failed to take actions that would cause a material increase in real property taxes or additional assessments on the Premises prior to Closing. The Premises is subject to "rollback taxes."

d. Landlord has no knowledge (i) if any of the Premises is within any area determined to be flood prone or within a flood zone under Federal designation; (ii) of the severance of any mineral rights and access rights related thereto; or (iii) of the existence of any archeological materials, graves, burial sites, buildings, foundations, wetlands or endangered or protected species.

e. Other than Landlord, there are no other persons or entities having legal or beneficial title or ownership interests or possessor rights to the Premises. Landlord has the full legal right, power and authority, without the consent of additional parties or party, to enter into this Lease and to perform, its obligations hereunder and the execution and delivery of this Lease and the consummation of all transactions contemplated hereby have been duly authorized and will not result in a breach or violation of, or a default under, any Lease (or other document) by which Landlord or its properties are bound, or any law, administrative regulation, or court decree in a manner which could materially and adversely affect the rights of Landlord hereunder. The person executing this Lease on behalf of Landlord has full power and authority to bind Landlord to the obligations of Landlord set forth herein, and upon execution and delivery of the same, this Lease will constitute valid and binding instruments enforceable in accordance with their terms. The entry into and performance of Landlord's obligations under this Lease will not violate or result in a breach of any contract or agreement by which Landlord is bound, the consequence of which violation would be to prevent the performance of Landlord's obligations under this Lease. No consent of any other party is required for the performance by Landlord of its obligations hereunder

f. Landlord is a duly formed and validly existing entity and is qualified to do business in and in good standing under the laws of the State of New Mexico. There is no litigation or injunctive action or proceeding pending or, to the best of Landlord's knowledge, threatened against Landlord which would prevent the performance of Landlord's obligations under this Lease.

g. Landlord is not bankrupt or insolvent under any applicable federal or state standard, and Landlord has not filed for protection or relief under any applicable bankruptcy or creditor protection statute and has not been threatened by creditors with an involuntary applicable of any applicable bankruptcy or creditor protection statute.

h. Landlord is not entering into the transactions described in this Lease with an intent to defraud any creditor or prefer the rights of one creditor over any other. Landlord and Tenant have negotiated this Lease at arms' length and the consideration paid represents fair value for the assets to be transferred.

i. During the Term, Landlord (i) will not interfere with the System and (ii) shall grant such additional easements or rights to Tenant, across, above or below other property owned by the Landlord as may be reasonably necessary to operate the System, including without limitation, the ability to construct, operate, maintain and replace electric transmission facilities across such other property.

**21.2. Representations.** Tenant hereby represents, warrants, agrees and covenants to Landlord.

a. Tenant is a limited liability company duly formed, validly existing in Delaware and is in good standing with the State of New Mexico. Tenant has the full legal right, power and authority, without the consent of additional parties or party, to enter into this Lease and to perform, its obligations hereunder and the execution and delivery of this Lease and the consummation of all transactions contemplated hereby have been duly authorized.

b. Tenant is not bankrupt or insolvent under any applicable federal or state standard, and Tenant has not filed for protection or relief under any applicable bankruptcy or creditor protection statute and has not been threatened by creditors with an involuntary applicable of any applicable bankruptcy or creditor protection statute.

c. Tenant is not entering into the transactions described in this Lease with an intent to defraud any creditor or prefer the rights of one creditor over any other. Landlord and Tenant have negotiated this Lease at arms' length and the consideration paid represents fair value for the assets to be transferred.

d. Tenant shall, at all times, conduct its activities at the Premises in a lawful manner and in compliance with all laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits and licenses which now or at any time hereafter may be applicable to the Premises, or any part thereof, any of the adjoining sidewalks, streets or ways, any condition of the Premises, or any part thereof, or the operation or use of the Premises, or any part thereof (collectively, the "Legal Requirements"). Tenant's obligations hereunder shall include the obligation to repair or alter the Premises, if necessary, to effect such compliance with all Legal Requirements first in effect after the Effective Date and applicable to the Premises as a direct result of Tenant's Permitted Use.

## ARTICLE 22 - GENERAL PROVISIONS

**22.1 Binding on Successors.** This Lease, and the rights and obligations of the Parties hereto, shall be binding upon and inure to the benefit of the Parties and their respective successors, heirs, executors, administrators and assigns.

**22.2 Severability.** If any provision of this Lease shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining provisions of this Lease shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

**22.3 Entire Agreement.** This Lease constitutes the entire agreement between the Parties pertaining to the subject matter hereof and shall supersede all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral or written. The foregoing sentence shall in no way affect the validity of any instrument executed by the Parties in the form of the exhibits attached to this Lease. This Lease shall not be modified or amended unless such modification and/or amendment is in writing and signed by both Parties.

**22.4 Recitals and Captions.** The captions used in this Lease are inserted as a matter of convenience only, and in no way define, limit or describe the scope of this Lease or the intentions of the Parties hereto, and shall not in any way affect the interpretation or construction of this Lease. The Recitals set forth above are hereby incorporated and made part of this Lease.

**22.5 No Waiver.** Any waiver by any Party shall be in writing and shall not be construed as a continuing waiver. No waiver will be implied from any delay or failure to take action on account of any default by any Party. Consent by any Party to any act or omission by another Party shall not be construed to be a consent to any other subsequent act or omission or to waive the requirement for consent to be obtained in any future or other instance.

**22.6 Holdover.** If Tenant holds over after the Term (subject to Tenants rights set forth in Article 13), such holding over shall be construed to be a tenancy from month-to-month only, and Tenant shall pay the rent which shall be increased from the annual rent in effect immediately prior to the holdover period, by twenty percent (20%) on an annual basis, but paid on a monthly basis, during any holdover period and other sums as herein required for such further time as Tenant continues in occupancy. Nothing in this Section shall be construed as Landlord's consent for Tenant to hold over.

**22.7 Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of New Mexico. The Parties agree that in the event of a dispute in connection with this Lease, the courts of Dona Ana County shall have jurisdiction.

**22.8 Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be deemed an original but all of which when taken together shall constitute but one and the same original.

**22.9 Further Assurances.** The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Lease. Landlord agrees to execute such further documentation as may reasonably be requested by a third party providing financing to Tenant.

**22.10 Short Form Lease.** This Lease shall not be recorded. Notwithstanding the aforesaid, the Parties may execute and record in the Land Records of Dona Ana County a short form memorandum of this Lease, which shall identify the Parties, the Premises, and Term. The recording costs shall be paid by Tenant.

**22.11 Estoppel Certificates.** Each party agrees that within fifteen (15) days after receipt of a written request from the other party, the recipient of the request ("Recipient") shall execute and deliver to the requesting party a certificate certifying (a) that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of the modifications and that, as so modified, this Lease is in full force and effect, (b) the date to which the rent and other charges hereunder are paid in advance, if any, (c) the then-scheduled expiration date of the Term, (d) that to Recipient's knowledge, as of the date of the certificate, there are no uncured defaults hereunder

on the requesting party's part or specifying such defaults as are claimed by Recipient, and (e) as to such other matters as may be reasonably requested by the requesting party and agreed upon by the Recipient.

**22.12 Due Authorization.** Each person executing this Lease on behalf of Landlord and Tenant, respectively, warrants and represents that the party for whom he or she is acting has been duly formed, is in good standing, and has duly authorized the transactions contemplated herein and the execution of this Lease by him or her and that, when so executed, this Lease shall constitute a valid and binding obligation of the party on whose behalf it is so executed.

**22.13 Relationship of Parties.** Nothing contained in this Lease shall be deemed to create a partnership or joint venture between Landlord and Tenant. Landlord and Tenant's relationship in this Lease shall be deemed to be one of landlord and tenant only.

**22.14 Attorneys' Fees.** In the event of any litigation arising out of or relating to this Lease, or the breach or performance of it, the prevailing Party shall be entitled to recover reasonable attorneys fees incurred in connection therewith.

**22.15 Incorporation of Exhibits.** All exhibits attached to this Lease are hereby incorporated herein as though set forth in full in this Lease itself.

**22.16 Construction.** The Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing the Lease to be drafted.

#### ARTICLE 23 - TITLE VI CIVIL RIGHTS ASSURANCES

Tenant, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration under this Lease, does hereby covenant and agree as a covenant running with the land that:

a. No person on the grounds of race, color, sex, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

b. In the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.

Tenant shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

#### ARTICLE 24 – OBSTRUCTIONS

**24.1 Aerial Approaches.** Landlord reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent Tenant from erecting, or permitting to be erected, any building or other structure on the

airport which, in the opinion of the Landlord, would limit the usefulness of the Airport or constitute a hazard to aircraft. Tenant shall, upon approval by Landlord and prior to any construction of any nature within the boundaries of the Airport, prepare and submit to the Airport Manager and the Federal Aviation Administration, Fort Worth Regional Office, 2601 Meacham Blvd, Fort Worth, TX, 76137, one executed set (four copies) of FAA form 7460-1 "Notice of Proposed Construction or Alterations", as required by Federal Aviation Regulation Part 77. This notice must be submitted at least thirty days prior to the date of the proposed construction/alteration or the date that an application for a construction permit is filed, whichever is earlier.

**24.2 Obstruction Lights.** Should a Federal Aviation Administration Obstruction Evaluation determine that obstruction lights are needed or required on new construction, or should Federal Aviation Administration rules and regulations change to require obstruction lights on existing structures which previously did not require obstruction lights, Tenant agrees to install, maintain and operate such obstruction lights on the top of buildings or structures to be placed on the Premises. If Tenant fails to install, maintain and operate such obstruction lights then the Landlord shall have the right to install, maintain and operate the same at Tenant's expense.

**24.3 Structures.** Landlord acknowledges that structures, including landing lights, may adversely affect the amount of energy produced by the System and agrees to make reasonable accommodations for the benefit of Tenant to avoid overshadowing or otherwise blocking access of sunlight to the System. Notwithstanding the foregoing, Landlord covenants that it will not take any actions during the Term that would interfere with, hinder or frustrate Tenant's ability to proceed with timely construction of the System or to generate solar electricity.

Signature page(s) follow

**IN WITNESS WHEREOF**, the parties have executed this Lease as of the date and year hereinabove first written.

**LANDLORD:**  
**City of Las Cruces, a New Mexico municipal corporation**

\_\_\_\_\_  
**Ken Miyagishima, Mayor**

\_\_\_\_\_  
**Date**

**TENANT:**

**SunE EPE1, LLC, a Delaware limited liability company**

\_\_\_\_\_  
**By: Jared Schoch**

\_\_\_\_\_  
**Date**

**EXHIBIT A**  
**DESCRIPTION OF PREMISES**

to be determined during option period and shall be not greater than the real property described in the first Whereas of this Agreement

**EXHIBIT B  
AIRFIELD**

**EXHIBIT C  
LEASED PREMISES**

**EXHIBIT D  
MEMORANDUM OF OPTION FORM**

**FORM OF MOA**

RECORDING REQUESTED BY AND  
WHEN RECORDED PLEASE RETURN TO:

PLEASE REFER ALL QUESTIONS REGARDING THIS MEMORANDUM TO:  
\_\_\_\_\_.

**MEMORANDUM OF OPTION AGREEMENT**

**THIS MEMORANDUM OF OPTION AGREEMENT** (the "Memorandum") is made as of \_\_\_\_\_, by City of Las Cruces, a New Mexico municipal corporation ("Owner"), and SunE EPE1, LLC, a Delaware limited liability company ("Optionee").

**PRELIMINARY STATEMENT**

A. Pursuant to that certain Option Agreement, dated as of \_\_\_\_\_, 2010 (the "Agreement"), Owner has granted to Optionee an option to lease from Owner its interest in the real property (the "Property") described as \_\_\_\_\_.

B. The parties are executing and recording this Memorandum so that third parties shall have notice of Optionee's option to lease the Property from Owner, and of the rights and obligations of Optionee and Owner under the Agreement.

**NOW, THEREFORE**, in consideration of the Agreement and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Owner agrees to lease to Optionee, and Optionee agrees to lease from Owner, the Property in accordance with the terms and provisions of the Agreement.
2. This Memorandum shall be governed by the laws of the State in which the Property is located.

signature page(s) follow

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

OPTIONEE:

SunE EPE1, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

OWNER:

City of Las Cruces, a New Mexico municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[Insert Notary Acknowledgement]

**EXHIBIT E**  
**AIRFIELD**

APPRAISAL OF  
100 TO 200 ACRES IN THE  
WEST MESA INDUSTRIAL PARK  
LAS CRUCES, NEW MEXICO

AUGUST 25, 2010

FOR  
CITY OF LAS CRUCES  
MS. CHRISTINE LOGAN  
ECONOMIC DEVELOPMENT ADMINISTRATOR  
PO BOX 20000  
LAS CRUCES, NM 88004

BY  
HARRY L. HANSEN, MAI, SRA  
HANSEN REAL ESTATE APPRAISALS, INC.  
545 S. MELENDRES, SUITE D  
LAS CRUCES, NM 88005

# SUMMARY APPRAISAL REPORT

## SUBJECT:

100 to 200 unimproved acres in the West Mesa Industrial Park in the City of Las Cruces, NM.

## PURPOSE OF THE APPRAISAL:

The purpose of this appraisal is to estimate the market value, as defined, of the subject property, as of the effective date of the appraisal. The estimated market value provides the basis for estimating a fair lease rate which is estimated by capitalizing the estimated value at an appropriate overall rate. The real estate interest being appraised is that of ownership in fee simple. The property is appraised as if free and clear, and as if without liens and encumbrances.

## INTENDED USE OF REPORT:

This appraisal is intended to assist the client in negotiating a lease.

**CLIENT AND INTENDED USERS:** City of Las Cruces.

**EFFECTIVE DATE OF VALUE:** August 25, 2010.

**DATE OF REPORT:** August 25, 2010.

**MARKET VALUE ESTIMATE:** \$8,000.00 PER ACRE

**LEASE VALUE ESTIMATE:** \$640.00 PER ACRE PER YEAR.

## RECENT OWNERSHIP HISTORY:

The subject property is not currently under any agreement of sale and has not been previously sold within the past three years.

**REASONABLE EXPOSURE TIME:** One to three years.

  
HARRY L. HANSEN, MAI, SRA

**DEFINITION OF MARKET VALUE:**

"Market Value" as defined in the Uniform Standards of Professional Appraisal Practice, by The Appraisal Foundation.

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and each acting in what he considers his own best interest;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

**APPRAISAL DEVELOPMENT AND REPORTING PROCESS:**

Data used in this report was collected and confirmed from local sources only. This report does not use data from other cities, counties or states and no comparisons were made of the subject property or its environs with other market areas. The appraiser has inspected the subject property. The appraiser has inspected the exterior of all comparable sale properties. The appraiser has inspected the comparable sale properties. The Sales Comparison Approach to value is the only approach considered for use in this vacant land appraisal. The estimated market value provides the basis for estimating a fair lease rate which is estimated by capitalizing the estimated value at an appropriate overall rate. The value being sought and the real estate interest being appraised is set forth in the Purpose of the Appraisal.

This Summary Appraisal Report is a brief recapitulation of the appraiser's data, analyzes, and conclusions. Supporting documentation is retained in the appraiser's file.

**IDENTIFICATION OF THE APPRAISED PROPERTY:**

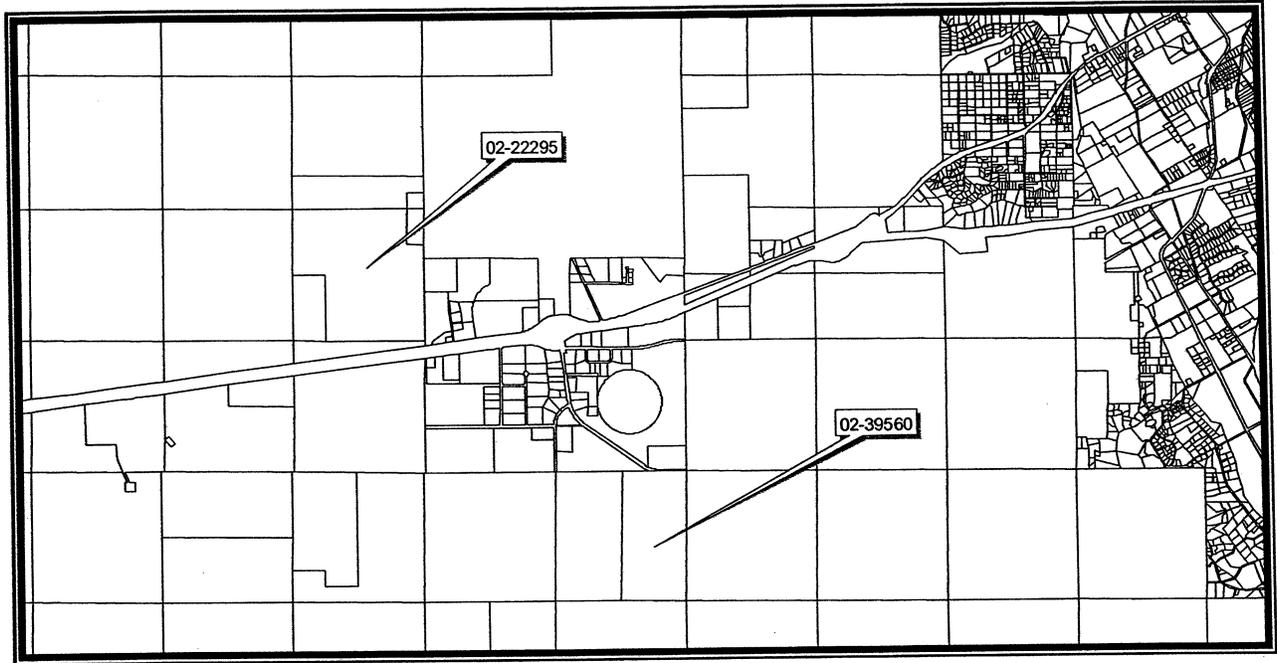
Type of Property: Undeveloped west mesa land.

Location: West Mesa Industrial Park.

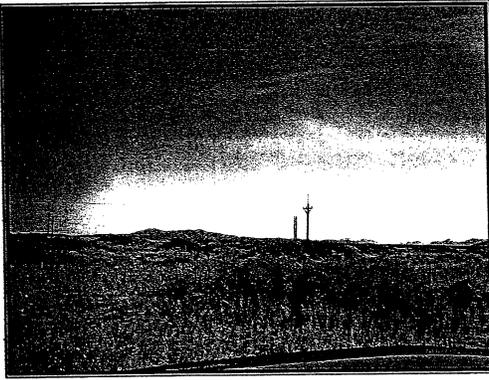
Legal Description: To be determined.

The subject is part of Doña Ana County Assessor Parcel Numbers 02-22295 and 02-39560.

<u>Parcel No.</u>	<u>Size in Acres</u>	<u>Assessed Value/Acre</u>
02-22295	540	\$200.00
02-39560	320	\$1,000.00



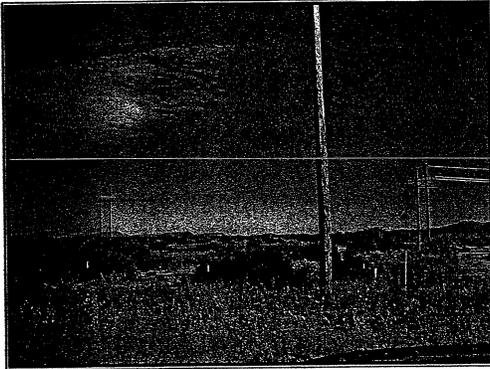
PROPERTY LOCATION MAP



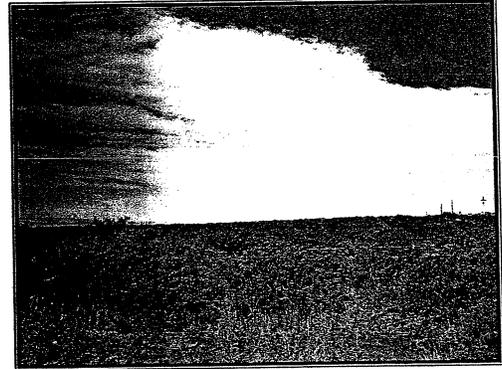
WMIP East of Armory Looking Northerly



WMIP South of I-10 looking Southerly



WMIP North of I-10 and East of Armory



WMIP South of I-10 Looking Westerly

6

7

**LOCATION DESCRIPTION:**

**Geographic Influences:**

Las Cruces, the county seat and major population center of Doña Ana County, in south-central New Mexico, is located in the Rio Grande Valley about 45 miles North of El Paso, Texas and Juarez, Mexico. Doña Ana County contains approximately 3,804 square miles. The wide level valley provides excellent farmland for the irrigated agricultural crops grown in the area. The valley is bound on the West by rolling desert and on the East by the Organ Mountains, with peaks above 8,500 feet. The elevation of the city is 3,800 feet.

The area has an arid continental climate characterized by moderately warm summers, mild winters and low rainfall. Average precipitation is approximately eight inches per year. Summer temperatures generally range 30 degrees bringing appreciable cooling at night. Daytime winter temperatures generally range between 50 and 60 degrees in the coldest months and night temperatures very rarely fall below zero. Humidity is low. Winds are usually light from the West except during late winter and spring. Las Cruces has an average growing season of 201 days, from April 10 to October 28. The area normally experiences from 75 to 80 percent of the sunshine possible each day.

**Population:**

The population of Las Cruces and Doña Ana County has increased as indicated below, according to the Las Cruces Community Profile, United States Census Bureau, and the Las Cruces Chamber of Commerce. The population of the City of Las Cruces has increased approximately 18.4% over the past decade while the entire county has increased 29%. At this rate, the population of Doña Ana County is estimated to be 225,500 by the year 2,010. This continued growth should provide a stable demand for all types of real estate in the foreseeable future.

The following table details the population growth in the City of Las Cruces and Doña Ana County from 1950 to 2000.

Year	Las Cruces	Doña Ana County
1950	12,325	39,557
1960	29,367	59,948
1970	37,857	69,773
1980	45,086	96,340
1990	62,126	135,510
1994	71,045	155,466
2000	73,539	174,682
2004	79,524*	186,095
2006		193,888*

\*US Census Bureau estimates.

**Economic Base:**

For the Doña Ana County Area, the main employment activities include agriculture and the area's largest employer, state and federal government. New Mexico State University located in Las Cruces has been an important factor attributing to area growth. According to the university registrar, the main campus fall semester enrollment for selected years is as follows:

Year	Fall Enrollment	Annual Percentage Change
1965	3,987	
1970	8,155	15.4%
1980	12,347	4.2%
1990	14,809	1.8%
2000	14,958	.1%
2005	16,072	1.4%
2008	17,198	2.3%
2009	18,497	7.6%

In addition to the main campus enrollment the Doña Ana Community College enrollment of 8,593 was a 7.5% increase over the previous year.

The NASA and White Sands Missile Range are two important government projects employing many community residents under civil service, contract, and armed forces categories. According to the New Mexico Department of Labor, the Doña Ana County civilian labor force was reported as 89,300, with 6.9% unemployment rate in September 2009. This is slightly lower than the 7.7% rate reported for the State of New Mexico. Of the 68,100 nonagricultural employment in September 2009 only 9.5% is involved in the production of goods. Total government employment of 21,800 comprises approximately 32% of the nonagricultural workforce. Doña Ana County Per Capita Income was \$17,984 in 2001 as compared to \$24,085 for the State of New Mexico. Median Household Income was \$30,740 in 2004.

**Government and Municipal Service:**

Las Cruces has a City Council, City Manager type of government with a Mayor elected at large. The city has a Municipal Planning Commission, Industrial Development Board and Municipal Zoning Commission. Municipal services include: law enforcement, fire department, water and sewer service, trash collection and natural gas service. Electric power is provided by the El Paso Electric Company and telephone service, provided by Qwest Communications is available to all parts of the community.

**Transportation:**

Rail service is provided by the Union Pacific-Southern Pacific and Burlington Northern-Santa Fe with daily freight trains. The city of Las Cruces operates a Federally Certified Airport located approximately 10 miles West of the city, where charter service is available. Commercial air service is available at the El Paso International Airport, approximately 50 miles South of Las Cruces. Local bus and taxi service is available. The entire school district is served by school bus transportation. Inter-city bus line serving the area include Greyhound Bus Lines. Las Cruces is located on the intersection of the east-west Interstate 10 and north-south Interstate 25. These highways bypass the city on the east and southwest with three exits on the east and two on the southwest.

**Construction Activity:**

Analysis of the building permits issued over the past ten years provides an accurate indication of the construction activity of the city. The following table provides this summary.

Year	Single Family Permits \$ Mill	Multi-Family Permits \$ Mil	Commercial Permits \$ Mill
2000	285 \$37.2	8 \$7.9	47 \$29.2
2001	330 \$40.7	6 \$9.6	36 \$44.1
2002	530 \$73.6	7 \$11.8	38 \$24.4
2003	796 \$115.3	5 \$18.0	39 \$25.0
2004	842 \$129.0	7 \$14.4	57 \$35.7
2005	1,529 \$224.2	15 \$20.4	41 \$26.9
2006	1,535 \$214.6	18 \$34.2	45 \$46.8
2007	985 \$118.5	13 \$3.8	36 \$29.7
2008	632 \$84.6	5 \$2.3	48 \$56.1
2009	628 \$105.4	5 \$14.3	28 \$24.5

Source: City of Las Cruces

In addition the city issued 98 mobile home permits in 2008. Commercial development has occurred primarily between North Main Street and New Mexico State University along Telshor Boulevard, Roadrunner and Lohman Avenue. New industrial building continues in the Las Cruces West Mesa Industrial Park located adjacent to the Las Cruces Airport. A large portion of the new residential subdivisions is located on the East side of the Las Cruces area. There is a regional shopping mall next to the Interstate 25 access in the east-central part of the city. Commercial permit valuation for 2008 reached an all time record high. The multi-family projects added 271 units in 2009. The County issued 170 new single-family building permits in 2009 down from 254 in 2008 for a total valuation of \$33,796,200 or \$133,055 per housing unit. The City average value per home unit was \$167,928 for 2009 up from \$133,850 in 2008. The county also issued 7 new commercial permits for \$1,512,800.

There has been an overbuilding of homes and the market is in an inventory adjustment period which will likely take one to two years to reach normal levels. Realtors in the area indicate that there is still a strong demand for homes but many deals are subject to buyers selling their homes in other parts of the country.

**Housing:**

Census data reports the total housing units in Doña Ana County for 2000 as 65,210. This represents a 33% increase since year 1990 which reported 49,148 total units. Owner occupied housing represents 67.5% while renters occupy 32.5%. Average household size is 2.98, owner occupied, and 2.58 renter occupied.

**Summary and Conclusion:**

The prospect for overall economic growth in the area is good due to the stability of the federal and state facilities, the established agribusiness, and the role Las Cruces serves as the trade center for this portion of the state. The opening of a new US-Mexico port of entry in southern Doña Ana County together with the Free Trade agreement should also have a positive economic impact on this area over the next 20 years.

**PROPERTY DESCRIPTION:**

**Location:** West Mesa Industrial Park. See attached plat map.

**Access:** No developed access.

**Size and Shape:** 100-200 acres each.

**Topography:** Level, native desert vegetation. The sites are unimproved rangeland

**Drainage:** Appears adequate. The subject is not located in a FEMA special flood hazard area. The property is identified as being in a Zone X area on FIRM number 35013C0650 E, effective September 27, 1991. The Zone X is an area determined to be outside the 500-year flood plain.

**Site Improvements:** None.

**Encroachments or Easements:** No adverse noted.

**Special Amenities:** Proximity to Airport and Interstate 10 access.

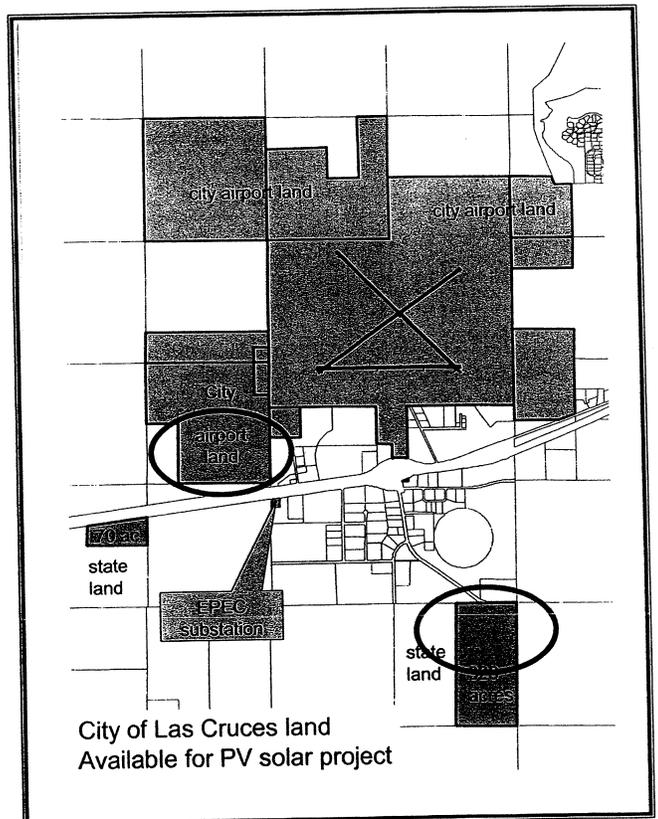
**Adverse Influences:** None.

**Environmental Concerns:** There was no apparent evidence that the property is affected by the existence of hazardous substances or detrimental environmental conditions.

**Utilities:** Public utilities include electricity, water, sewer, natural gas and telephone are nearby but not yet extended to the subject.

**Legal Limitations to Use:** The North site is City of Las Cruces land currently zoned "M3-C" - Industrial Heavy. The South site is zoned "HC" - Holding Zone District. Upon execution of the lease the sites will be restricted to solar power generation only.

**HIGHEST AND BEST USE:** Industrial development.



PROPERTY LOCATION MAP



Discussion of Sales: The sales analyzed in this appraisal are similar in many respects to the subject and different in some characteristics. The various adjustment categories are as follows:

1. Terms of Financing.
2. Conditions of Sale.
3. Date of Sale (Market Conditions).
4. Legal Use (Zoning, Covenants).
5. Physical Characteristics.
6. Location.
7. Relative size of site.
8. Availability of supporting utilities.
9. Quality of access and exposure.

The adjustment criteria and the comparability of the subject and the comparables are discussed below.

**Terms of Financing** - The subject property is being appraised on a cash equivalent basis. Therefore if any of the sales were made under either favorable or unfavorable terms, an adjustment may be called for. An example of favorable buyer terms would be below market interest rates, a very small or no down payment or excessive discount points paid by the seller on behalf of the buyer. A downward price adjustment is usually indicated for favorable terms of sales. All sales analyzed were sold for cash or its market equivalent and therefore no adjustment was considered justified for terms of sale.

**Conditions of Sale** - This adjustment is made whenever there is evidence that the sale was not "arms length". That is to say either the buyer or seller was under other than typical motivation to buy or sell. No such conditions were indicated during confirmation of these sales. Therefore no adjustments were made.

**Date of Sale** - This adjustment is made to account for increases or decreases in property value over time due to differences in market conditions, supply and demand, etc. Prices for development ran up quickly in the period between 2000 and 2006 due to competition for new residential building sites. Demand for new homes dropped quickly in 2007 followed immediately by a corresponding drop in demand for development land tracts. No appreciation since 2007 is supported. The earlier years recorded price increases of 8% to 10% or more per year. Therefore only the sales prior to 2007 were adjusted for date of sale.

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**Legal Use** - The difference in permitted uses and density of use for the subject and the sales is important in considering comparability. Generally properties with the same zoning are considered equal unless there is a protective covenant or other encumbrance restricting use. Properties with different zoning but the same general highest and best use are also considered similar. When differences in zoning or other limitations to use affect the reasons for purchasing a property or its density of use, then an adjustment is made. All sales were considered to be comparable to the subject in terms of legal use.

**Physical Characteristics** - The physical characteristics of the site including shape, topography, drainage, frontage, and soil conditions are important in considering the comparability of properties.

**Location** - Nothing affecting real estate value is more significant than the location of the property. Whenever possible sales are used that have similar location and neighborhood characteristics. The appraiser attempts to conclude whether the market recognizes that a property is superior, similar or inferior to another in terms of location characteristics.

**Size** - The relative size of a sale tract as compared to the subject may have an effect on the value. Typically, all other things being similar, a larger tract will sell for less per unit of sale, i.e. square foot or acre, than a smaller tract. Particularly if a tract is likely to be divided one or more times prior to its final use it will sell for less than a similar tract at a size typical of final highest and best use.

**Utilities** - The availability of supporting utilities is very important in analyzing the comparability of sales to the subject. Most land tracts require basic support utilities such as electricity, water, sewage treatment, and telephone prior to being utilized for any type of high-density use including residential. Adjustment must be made to account for the lack of a necessary utility and/or the cost of extending or providing it.

**Access** - The ease of access and amount of exposure can be very important criteria affecting the value of real property. Most of these sales had superior access.

**Conclusion** - Due to the lack of more recent sales along the west mesa, some sales in other areas were included.

I conclude a value of \$8,000/acre is a reasonable and supportable value based upon the available data. In order to estimate a fair lease rate for the subject I need to estimate an overall capitalization rate. In the income approach to value the value is estimated by dividing the net operating income "NOI" by the overall capitalization rate. Since I have estimated the market value by direct sales comparison I can estimate the fair lease rate by multiplying the value by the overall rate. Since there will not be any property tax liability for the City, insurance costs or management fees, the NOI and fair lease rate are considered the same.

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Band of Investment Method:

Mortgage	75%	X	7.984%	=	0.0599	
Equity	25%	X	8.00%	=	0.0200	
			Total	=	0.0799	Say 8.00%

The band of investment method is used to select a supportable overall capitalization rate. The band of investment method weighs the requirements of the debt service typical for this type of property together with the equity dividend rate estimated to be necessary to attract equity capital to this type of investment. The 7.984% mortgage rate is the rate necessary to meet the debt service, (interest and principal reduction) on a loan amortized for 30 years at 7.0% interest (interest and principal reduction) on a loan amortized for 30 years at 7.0% interest. These rates are based upon quotes from lenders servicing the subject market area for the subject property or similar type properties. The 8% equity dividend rate is estimated based upon alternate long term securities rates and considering the other factors which lead to overall equity yield including equity build up through mortgage amortization and any property appreciation in the overall property value at the time of reversion.

Based upon the indications provided by this analysis I am concluding a rate of 8.0% to be a reasonable and supportable overall rate. The fair market lease rate is estimated by multiplying the market value by the overall rate.

\$8,000	
X .080	
\$640/acre	

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LAND SALE NO. 1

Property Identification

Record ID 85  
 Property Type Residential development tract  
 Property Name West Mesa Holding  
 Address Las Cruces, Doña Ana County, New Mexico,  
 Location Off South Fairacres Road, South of I-10  
 Tax ID 03-17509 & 03-17530  
 Legal Description Part of Sections 28 & 33, T23S, R1E, N4PM

Sale Data

Grantor NZ New Mexico Land LLC  
 Grantee West Mesa Holdings LLC  
 Sale Date October 19, 2005  
 Deed Book/Page 653/875-877  
 Property Rights Fee simple  
 Conditions of Sale Arms length  
 Financing Cash to seller  
 Verification Bill Boling, agent; Confirmed by Harry Hansen

Sale Price \$1,875,000

Land Data

Zoning EH, holding zone  
 Topography This land lies in the transition area from valley  
 Utilities None  
 Shape Irregular  
 Landscaping Native desert vegetation  
 Flood Info Some small arroyos and dams

Land Size Information

Gross Land Size 309.731 Acres or 13,491,882 SF  
 Front Footage 80 ft S Fairacres Road

Indicators

Sale Price/Gross Acre \$6,054  
 Sale Price/Gross SF \$0.14

Remarks

This land was purchased for residential development speculation. It is likely to be annexed by the City in the near future. Access is limited to a half mile long 80' wide owned strip from South Fairacres Road. This development is dependent on city water and sewer service which problematic and is not yet in the area. Access requires additional right-of-way at \$30,000/acre for about 40 acres.

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## LAND SALE NO. 2

Property Identification

Record ID 31  
 Property Name Organ Mesa Development  
 Address Dripping Springs and Soledad Canyon Road, Las Cruces, Doña Ana County, New Mexico  
 Tax ID #03-16378 & #03-16379  
 Legal Description Section 18 & 19, T23S, R3E

Sale Data

Grantor Tierra Linda, LTD  
 Grantee Organ Mesa Development LLC  
 Sale Date February 4, 2003  
 Deed Book/Page 445/1427-1429  
 Property Rights Fee Simple  
 Conditions of Sale Arms Length  
 Financing Cash to seller  
 Verification John Curry - Developer; Other sources: Appraisal File #7004, MLS#702081

Sale Price \$819,450

Land Data

Zoning ER-3  
 Topography Gently Sloping with some natural arroyos  
 Utilities Moongate Water, septic system, propane gas  
 Shape Irregular  
 Flood Info Zone X - Panel 675

Land Size Information

Gross Land Size 182.100 Acres or 7,932,276 SF

Indicators

Sale Price/Gross Acre \$4,500  
 Sale Price/Gross SF \$0.10

Remarks

The purchase price is based on \$4,500 per acre and requires the purchasers to take down 182 acres first. The next 58 acres will be taken down in 18 months and the final 160 acres 18 months later all at \$4,500 per acre. The first of five phases will be developed with 42 residential lots containing on average 2.279 acres and an average building envelope of 0.893 acres. The subdivision will be known as Organ Mesa Ranch and will have asphalt paved roads with rollover concrete curbs. The lots will retail for \$90,000 on the average.

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## LAND SALE NO. 3

Property Identification

Record ID 83  
 Property Name Jackrabbit Exchange  
 Address Interstate 10 and Picacho Avenue, Las Cruces, Doña Ana County, New Mexico  
 Location West Mesa  
 Tax ID 03-01609  
 Legal Description North 1/2 Section 30, T23S, R1E

Sale Data

Grantor Bernard Given, Trustee  
 Grantee Bill & Renee Cupid  
 Sale Date January 12, 2006  
 Deed Book/Page 677/568-569  
 Property Rights Fee Simple  
 Marketing Time N/A  
 Conditions of Sale Arms Length  
 Financing Cash to seller  
 Verification Bill Cupid - Purchaser, December 7, 2005; Other sources: Appraisal File #7150; Confirmed by Scott Eschenbrenner

Sale Price \$800,000

Land Data

Zoning County  
 Topography Gently Sloping  
 Utilities All City services nearby  
 Shape Irregular

Land Size Information

Gross Land Size 130.090 Acres or 5,666,720 SF

Indicators

Sale Price/Gross Acre \$6,150  
 Sale Price/Gross SF \$0.14

Remarks

Purchased for speculation. It has been reported that the Governor will release funds in the near future to re-build this interchange and provide direct access to this parcel. Additionally, there has been discussion about creating a thoroughfare that connects this interchange 30 miles to the south at Santa Teresa. Time frame for this road is estimated at five years.

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## LAND SALE NO. 4

Property Identification

Record ID 67  
 Property Type Agricultural/development land  
 Property Name North Valley Estates  
 Address Radium Springs, Doña Ana County, New Mexico,  
 Location West of 185, N. Rio Grande  
 Tax ID 03-24838  
 Legal Description Parts of Sec 9 & 10, T21S, R1W, NMPM

Sale Data

Grantor Lois Preece  
 Grantee Ben & Jonathan Boldt  
 Sale Date June 18, 2005  
 Deed Book/Page 620/836-839  
 Property Rights Fee simple  
 Conditions of Sale Arms length  
 Financing Cash to seller  
 Verification Jonathan Boldt, grantee; Confirmed by Harry Hansen

Sale Price \$712,000

Land Data

Zoning County  
 Topography Level farmland and mesa hills  
 Utilities Electric  
 Shape Irregular  
 Flood Info Some flood area adjacent to River

Land Size Information

Gross Land Size 135.476 Acres or 5,901,335 SF

Indicators

Sale Price/Gross Acre \$5,256  
 Sale Price/Gross SF \$0.12

Remarks

This farm was purchased for residential development ten acres homesites selling for approximately \$12,000/acre.

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## LAND SALE NO. 5

Property Identification

Record ID 158  
 Address Dripping Springs Road, Las Cruces, Doña Ana County, New Mexico  
 Location To the east of Soledad Canyon Road  
 Tax ID 03-11168  
 Legal Description Section 16, T23S, R3E, NMPM

Sale Data

Grantor The State of New Mexico  
 Grantee United States of America  
 Sale Date June 8, 2009  
 Deed Book/Page 0916254  
 Property Rights Fee Simple  
 Conditions of Sale Arms length - Values determined by appraisals  
 Financing None  
 Verification Don Miller, MAI, March 8, 2010; Confirmed by Scott Eschenbrenner

Sale Price \$6,410,000 Exchange Price

Land Data

Zoning County residential  
 Topography Gently Sloping in its undeveloped condition  
 Utilities Electric, Moongate Water, Septic Tank  
 Shape Square

Land Size Information

Gross Land Size 647.420 Acres or 28,201,615 SF

Indicators

Sale Price/Gross Acre \$9,901  
 Sale Price/Gross SF \$0.23

Remarks

This parcel is a section of land that was exchanged from the State of New Mexico to the BLM. Dripping Springs Road bisects the northwest corner of the tract. This parcel was part of a 9,980 acre trade that included the bulk of the land in Chaves County. The exchange price was determined by multiple appraisals and is considered an arms length transaction.

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## LAND SALE NO. 6

Property Identification

Record ID 147  
 Address About one mile north of Dripping Springs and three miles east of Mesa Grande, Las Cruces, Doña Ana County, New Mexico  
 Tax ID 03-10424 & 03-23763  
 Legal Description South ½ of SE ¼ of Section 5, and N ½ of Section 8  
 User 2 T23S, R3E

Sale Data  
 Grantor Bureau of Land Management  
 Grantee State of New Mexico  
 Sale Date October 18, 2007  
 Deed Book/Page 0736363  
 Property Rights Fee Simple  
 Conditions of Sale Arms Length - Based on Independent Appraisal  
 Financing Cash  
 Verification Scott McDowell - State Appraiser, 505-827-5760, August 15, 2008; Other sources: smcdowell@lo.state.nm.us; Confirmed by Scott Eschenbrenner

Sale Price \$3,800,000

Land Data

Zoning ER1  
 Topography Rolling Topography  
 Utilities Available 1-mile south  
 Shape Rectangular

Land Size Information

Gross Land Size 400.000 Acres or 17,424,000 SF

Indicators

Sale Price/Gross Acre \$9,500  
 Sale Price/Gross SF \$0.22

Remarks

While part of a large land exchange between the State Land Office and the Bureau of Land Management (BLM), this transaction is considered indicative of market value as it was based on an independent appraisal, reviewed and approved by both parties.

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## LAND SALE NO. 7

Property Identification

Record ID 60  
 Address Picacho Hills Area, Las Cruces, Doña Ana County, New Mexico  
 Location Adjacent to the north of Coronado Ridge Subd.  
 Tax ID 03-25092  
 Legal Description Lot 3A1, Enchanted Desert Replat 2 of Tract 3

Sale Data  
 Grantor Burke  
 Grantee Picacho Mountain LP  
 Sale Date July 22, 2005  
 Deed Book/Page 627/1401-1405  
 Property Rights Fee Simple  
 Conditions of Sale Arms Length  
 Sale History Not sold previous 36 months  
 Verification Other sources: Sales Contract; Confirmed by Scott Eschenbrenner

Sale Price \$1,008,000

Land Data

Zoning ER4, Residential  
 Topography Rolling  
 Shape Irregular  
 Flood Info Not located in flood hazard area

Land Size Information

Gross Land Size 96.000 Acres or 4,181,760 SF

Indicators

Sale Price/Gross Acre \$10,500  
 Sale Price/Gross SF \$0.24

Remarks

This property is to be developed with Phase 1, a 67 lot residential subdivision, of the master planned Picacho Mountain Subdivision.

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## LAND SALE NO. 8

Property Identification

Record ID 84  
 Property Name Jackrabbit Exchange  
 Address North side of Interstate 10 and Picacho Avenue, Las Cruces, Doña Ana County, New Mexico  
 Location West Mesa  
 Tax ID 02-39537  
 Legal Description Northwest ¼ Section 30, T23S, R1E

Sale Data

Grantor Jack Lee Roberts  
 Grantee Trinity Properties, Bill & Renee Cupid  
 Sale Date January 12, 2006  
 Deed Book/Page 677/1206-1207  
 Property Rights Fee Simple  
 Marketing Time N/A  
 Conditions of Sale Arms Length  
 Financing Cash to seller  
 Verification Bill Cupid - Purchaser, December 7, 2005; Other sources: Appraisal File #7150; Confirmed by Scott Eschenbrenner

Sale Price \$862,500

Land Data

Zoning County  
 Topography Gently Sloping  
 Utilities Water, electric and phone nearby  
 Shape Irregular

Land Size Information

Gross Land Size 52.600 Acres or 2,291,256 SF

Indicators

Sale Price/Gross Acre \$16,397  
 Sale Price/Gross SF \$0.38

Remarks

Purchased for speculation. It has been reported that the Governor will release funds in the near future to re-build this interchange and provide direct access to this parcel. Additionally, there has been discussion about creating a thoroughfare that connects this interchange 30 miles to the south at Santa Teresa. Time frame for this road is estimated at five years.

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## LAND SALE NO. 9

Property Identification

Record ID 151  
 Property Name Picacho Land Development  
 Address Las Cruces, Doña Ana County, New Mexico,  
 Location West end of Picacho Hills Country Club  
 Tax ID 03-28908; 03-28909; 03-28910  
 Legal Description Tract 3A2B; 3A2C; 3A2D, Enchanted Desert Subdivision

Sale Data

Grantor Francis M. Burke and Martha Lou Burke  
 Grantee Picacho Mountain II Limited Partnership  
 Sale Date August 21, 2007  
 Deed Book/Page 0729108  
 Recorded Plat 22/320-321  
 Property Rights Fee Simple  
 Conditions of Sale Arms Length  
 Financing Cash to seller  
 Verification Third Party - Mark Cowen, MAI; Confirmed by Scott Eschenbrenner

Sale Price \$2,715,453

Land Data

Zoning ET2-Single family dwelling  
 Topography Sloping West Mesa Land  
 Utilities All Services available adjacent to parcel  
 Shape Irregular

Land Size Information

Gross Land Size 257.588 Acres or 11,220,533 SF

Indicators

Sale Price/Gross Acre \$10,542  
 Sale Price/Gross SF \$0.24

Remarks

This parcel is sloping land to the west of Picacho Hills Country Club and adjacent to Coronado Ridge and Las Estancias de Picacho. All utilities are available in adjacent subdivisions. This parcel was in ET2 at the time of the sale (ER4) and is now part of Las Estancias de Picacho master plan. This parcel remains undeveloped and offers favorable views of Las Cruces.

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LAND SALE NO. 10

Property Identification

Record ID 53  
 Property Type Agricultural  
 Address Las Cruces, Doña Ana County, New Mexico,  
 Location South Fairacres Road

Sale Data

Grantor William Zuckerman Trust  
 Grantee Katerina, Inc.  
 Sale Date January 27, 2004  
 Deed Book/Page 494/202-204  
 Property Rights Fee simple  
 Conditions of Sale Arms length  
 Financing Cash to seller  
 Verification Don Miller appraiser; Confirmed by Harry Hansen

Sale Price \$1,641,500

Land Size Information

Gross Land Size 235.000 Acres or 10,236,600 SF  
 Useable Land Size 232.480 Acres or 10,126,829 SF 98.93%  
 Unusable Land Size 2.520 Acres or 109,771 SF 1.07%

Indicators

Sale Price/Gross Acre \$6,985  
 Sale Price/Gross SF \$0.16  
 Sale Price/Useable Acre \$7,061  
 Sale Price/Useable SF \$0.16

Remarks

This farm was purchased for residential development.

LAND SALE NO. 11

Property Identification

Record ID 100  
 Property Type Residential  
 Address Highway 185, Las Cruces, Doña Ana County, New Mexico  
 Location Radium Springs  
 Tax ID 03-00620  
 Legal Description Lot 2, Sec 5, T21S, R1W, NMPM

Sale Data

Grantor Burtchin & Moore  
 Sale Date June 19, 2009  
 Property Rights Fee Simple  
 Conditions of Sale Arms length  
 Financing Cash to seller  
 Verification MLS#802933; Confirmed by Harry Hansen

Sale Price \$125,000

Land Data

Zoning County  
 Topography Various from street grade to hilltop  
 Utilities None  
 Shape Irregular  
 Landscaping Native desert  
 Flood Info Partial flood

Land Size Information

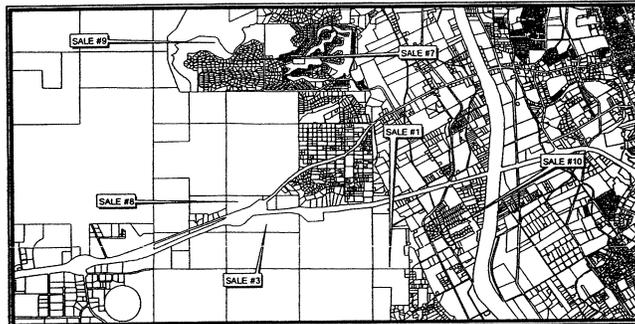
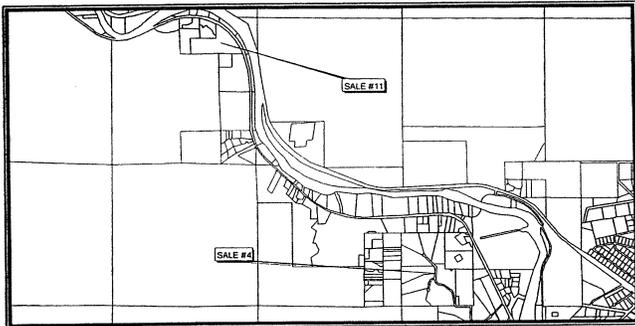
Gross Land Size 25.000 Acres or 1,089,000 SF

Indicators

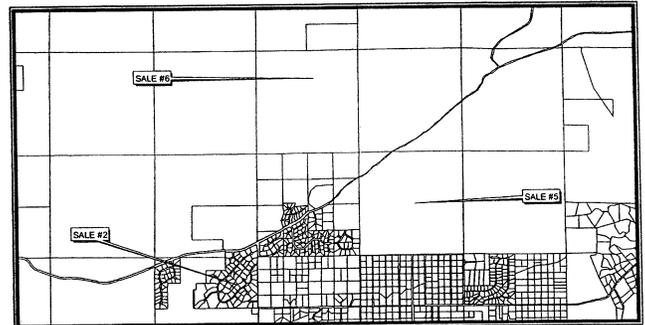
Sale Price/Gross Acre \$5,000  
 Sale Price/Gross SF \$0.11

Remarks

This site has some standing water along part of the road frontage.  
 Building site is hilltop.



COMPARABLE LAND SALES MAPS



COMPARABLE LAND SALES MAPS

**RECONCILIATION AND FINAL VALUE CONCLUSION:**

Therefore it is my conclusion, based upon an inspection of the property and data gathered in the investigation as related in this report that the market value of the subject property as of the date of appraisal was \$8,000.00/acre and the lease rate is \$640.00/acre per year.

**LIMITING CONDITIONS AND ASSUMPTIONS:**

By this notice, all persons and firms reviewing, using or relying on this report in any manner bind themselves to accept these assumptions and limiting conditions. Do not use this report if you do not so accept. These conditions are a part of the appraisal report. They are prefaces to any certification, definition, fact or analysis, and are intended to establish as a matter of record that the appraiser's function is to provide a present market value indication for the subject property based upon the appraiser's observations as to the subject property and real estate market. This appraisal report is an economic study to estimate value as defined in it. It is not an engineering, construction, legal or architectural study nor survey and expertise in these areas, among others, is not implied.

The liability of Hansen Real Estate Appraisals, Inc. and employees and affiliated independent contractors is limited to the client only and to the fee received by appraiser (total per appraisal). Further, there is no accountability, obligation, or liability to any third party.

The legal description is assumed to be correct as used in this report as furnished by the client, his representative, or as derived by the appraiser.

We assume no responsibility for matters legal in character, nor do we render any opinion as to title, which is assumed to be marketable. Unless otherwise stated, all existing liens and encumbrances have been disregarded. The property is appraised as though free and clear and under responsible ownership and competent management.

Any sketches in this report are included to assist the reader in visualizing the property. We have made no survey of the property and assume no responsibility about such matters.

This appraisal is made on the premise that there are no other encumbrances limiting the use of the appraisal property than those herein reported.

The information contained in this report was gathered from seemingly reliable sources, but is in no sense guaranteed.

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Possession of this report or any copy of it does not carry with it the right of publication, nor may it be used for other than its intended use. The physical reports remain the property of the appraiser for the use of the client, the fee being for the analytical services only. The client may distribute copies of this appraisal report in its entirety to such third parties as he may select; however, selected portions of this appraisal report shall not be given to third parties without the prior written consent of the signatories of this appraisal report. Neither all nor any part of this appraisal report shall be disseminated to the public by advertising media, public relations, news, sales or other media for public communication without the prior written consent of the appraiser.

We assume that there are no hidden or unapparent conditions of the property, subsoil or structures, which would render it more or less valuable. We assume no responsibility for such conditions or for the engineering required to discover such factors.

The value estimated in this report is based on the assumption that the property is not negatively affected by the existence of hazardous substances or detrimental environmental conditions. The appraiser is not an expert in the identification of hazardous substances or detrimental environmental conditions. The appraiser's routine inspection of and inquiries about the subject property did not develop any information that indicated any apparent significant hazardous substances or detrimental environmental conditions, which would affect the property negatively. It is possible that tests and inspections made by a qualified hazardous substance and environmental expert would reveal the existence of hazardous materials and environmental conditions on or around the property that would negatively affect its value.

The Americans with Disabilities Act ("ADA") became effective January 26, 1992. I have not made a specific compliance survey to determine if it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative effect upon the value of the property. Since I have no direct evidence relating to this issue, I did not consider possible noncompliance with the requirements of ADA in estimating the value of the property.

The contract for appraisal, consultation or analytical service is fulfilled, and the total fee is payable upon completion of the report. The Appraiser(s) or those helping in preparation of the report will not be asked or required to give testimony in court or hearing because of having made the appraisal, in full or in part, nor engage in post appraisal consultation with client or third parties except under separate and special arrangement and at an additional fee. If testimony or deposition is required because of any subpoena, the client shall be responsible for any additional time, fees, and charges regardless of issuing party.

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**CERTIFICATION:**

I certify that, to the best of my knowledge and belief:

- \* The statements of fact contained in this report are true and correct.
- \* The reported analyzes, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyzes, opinions, and conclusions.
- \* I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.
- \* I have no bias with respect to the property that is the subject of this report or the parties involved with the assignment.
- \* My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- \* My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- \* My analyzes, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Uniform Standards of Professional Appraisal Practice, the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.
- \* I have made a personal inspection of the property that is the subject of this report.
- \* No one provided significant professional assistance to the person signing this report.
- \* I certify that the use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- \* As of the date of this report, I have completed the requirements of the continuing education program of the Appraisal Institute.

Respectfully submitted,

  
Harry L. Hansen, MAI, SRA

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Professional Seminars Attended:

Appraising in 2009. Sponsored by Appraisal Institute, Ruidoso, NM.  
 Appraisal Tools Tune-Up. Sponsored by Appraisal Institute, Ruidoso, NM.  
 Declining Markets & Sales Concessions; 2009. Sponsored by Appraisal Institute, El Paso, TX.  
 Attacking & Defending an Appraisal in Litigation; 2008. Sponsored by Appraisal Institute, El Paso, TX.  
 7-Hour National Standards of Professional Practice, (USPAP); 2008. Sponsored by American Society of Farm Managers and Rural Appraisers and Appraisal Institute, Ruidoso, NM.  
 Forecasting Revenues; 2007. Sponsored by Appraisal Institute, Santa Teresa, NM.  
 Evaluating Commercial Construction; 2006. Sponsored by Appraisal Institute, Santa Teresa, NM.  
 Evaluating Residential Construction; 2006. Sponsored by Appraisal Institute, Santa Teresa, NM.  
 Appraisal Consulting: A Solutions Approach for Professionals; 2006. Sponsored by Appraisal Institute, Albuquerque, NM.  
 FHA and the New Residential Appraisal Form; 2006. Sponsored by Appraisal Institute, El Paso, TX.  
 Rates and Ratios: Making Sense of GIM's, OARs, and DCF; 2004. Sponsored by Appraisal Institute, Albuquerque, NM.  
 Mathematically Modeling Real Estate Data; 2004. Sponsored by Appraisal Institute, El Paso, TX.  
 Analyzing Commercial Lease Clauses: Understanding Implications for Property Value and Marketability; 2003. Sponsored by Appraisal Institute, El Paso, TX.  
 Effective Appraisal Writing; 2002. Sponsored by Appraisal Institute, Ruidoso, NM.  
 Feasibility Analysis, Market Value and Investment Timing: Introducing the Impact of Option Value; 2002. Sponsored by Appraisal Institute, El Paso, TX.  
 The Road Less Traveled...Special Purpose Properties; 2001. Sponsored by Appraisal Institute, Ruidoso, NM.  
 Conservation Easements; 2001. Sponsored by American Society of Farm Managers and Rural Appraisers and Appraisal Institute, Albuquerque, NM.

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## HARRY L. HANSEN, MAI, SRA

Professional Seminars Attended:

Appraisal of Non-Conforming Uses; 2000. Sponsored by Appraisal Institute, Albuquerque, NM.  
 Small Hotel/Motel Valuation; 1998. Sponsored by Appraisal Institute, Ruidoso, NM.  
 Eminent Domain & Condemnation Appraising; 1998. Sponsored by Appraisal Institute, Albuquerque, NM.  
 The Internet and Appraising; 1998. Sponsored by Appraisal Institute, Albuquerque, NM.  
 Water Rights in New Mexico; 1997. Sponsored by Appraisal Institute, Santa Fe, NM.  
 Valuation of Leased Fee Interests; 1997. Sponsored by Appraisal Institute, Albuquerque, NM.  
 Special Purpose Properties; 1996. Sponsored by Appraisal Institute, Albuquerque, NM.  
 The Appraiser as Expert Witness; 1996. Sponsored by Appraisal Institute, El Paso, TX.  
 Analyzing Operating Expenses; 1996. Sponsored by Appraisal Institute, Albuquerque, NM.  
 Standards of Professional Practice, Parts A & B (USPAP); 1995. Sponsored by Appraisal Institute, Albuquerque, NM.  
 Fair Lending and the Appraiser; 1995. Sponsored by Appraisal Institute, Las Cruces, NM.  
 Understanding Limited Appraisals and Reporting Options - General; 1995. Sponsored by Appraisal Institute, Albuquerque, NM.  
 Environmental Risk and the Real Estate Appraisal Process; 1994. Sponsored by Appraisal Institute, Ruidoso, NM.  
 5.0B Limited Scope Appraisals and the Uniform Standards of Professional Appraisal Practice; 1994. Sponsored by NAIFA, El Paso, TX.  
 Feasibility Analysis and Highest and Best Use - Nonresidential Properties; 1994. Sponsored by Appraisal Institute, El Paso, TX.  
 Subdivision Analysis; 1994. Sponsored by Appraisal Institute, Albuquerque, NM.  
 Mock Trial; 1993. Sponsored by Appraisal Institute, El Paso, TX.  
 The Appraiser's Legal Liabilities; 1992. Sponsored by Appraisal Institute, Las Cruces, NM.

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Education:

New Mexico State University / M.S., Agricultural Economics - 1972.  
 Course 101, Society of Real Estate Appraisals, University of Texas at El Paso.  
 Course 1-B, American Institute of Real Estate Appraisers, Indiana Univ.

Affiliation/Professional Designations:

MAI, SRA; Member - Appraisal Institute; Currently certified under the Appraisal Institute Continuing Education Program.  
 Past President - Borderland Chapter of Society of Real Estate Appraisers, 1988-89.  
 Past President - El Paso/Las Cruces Chapter of Society of Real Estate Appraisers, 1982-83.  
 Currently Certified by the New Mexico Real Estate Appraisers Board - Certificate #00044-G.

Community Activity:

Member - Rotary Club of Las Cruces.  
 Member at Large - Board of Directors, Mesilla Valley Community of Hope.

Professional Experience:

Have been engaged in the appraisal of real estate since 1972. Appraisal assignments have been completed for governmental agencies, commercial banks, savings and loan associations, estates, builders and investors in the south-central New Mexico area. Currently approved in the State of New Mexico by BBVA Compass Bank, Bank of America, Bank of the Rio Grande, Bank of the Southwest, Bank 34, Citizens Bank of Las Cruces, Community First National Bank, First Federal Bank of New Mexico, First American Bank, First New Mexico Bank, First Savings Bank, Pioneer Bank, Wells Fargo, Western Heritage Bank. Appraisal assignments have included the valuation of residential, multi-family, commercial, rural, industrial and development property.

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## HARRY L. HANSEN, MAI, SRA

Professional Seminars Attended:

Appraisal Regulations of the Federal Banking Agencies; 1992. Sponsored by Appraisal Institute, Albuquerque, NM.  
 Appraising Troubled Properties; 1992. Sponsored by Appraisal Institute, El Paso, TX.  
 Uniform Standards of Professional Appraisal Practice; 1990. Sponsored by NAIFA, El Paso, TX.  
 New Fannie Mae Form 1025 - Small Residential Income Property Appraisal Report Form; 1990. Sponsored by SREA, Las Cruces, NM.  
 The SREA Review Form; 1990. Sponsored by SREA, Las Vegas, NV.  
 Equity Residual Techniques; 1990. Sponsored by SREA, Las Vegas, NV.  
 State Regulation (Licensing & Certification); 1990. Sponsored by SREA, Las Vegas, NV.  
 The new FNMA Guidelines/Two - Four Units; 1990. Sponsored by SREA, Las Vegas, NV.  
 Professional Practice & the Society of Real Estate Appraisers; 1989. Sponsored by SREA, Albuquerque, NM.  
 Litigation Valuation; 1989. Sponsored by AIREA, El Paso, TX.  
 Mineral Rights; 1988. Sponsored by UNM, Las Cruces, NM.  
 Water Rights; 1988. Sponsored by UNM, Las Cruces, NM.  
 Real Estate and the New Federal Tax Law; 1988. Sponsored by UNM, Las Cruces, NM.  
 Real Estate Risk Analysis; 1987. Sponsored by AIREA, El Paso, TX.  
 Depreciation Analysis Seminar; 1987. Sponsored by SREA, Roswell, NM.  
 Uniform Residential Appraisal Report; 1987. Sponsored by SREA, Las Cruces, NM.  
 Federal Home Loan Bank Board, R-41B; 1986. Sponsored by AIREA, Albuquerque, NM.  
 Appraising Apartments; 1979. Sponsored by SREA, El Paso, TX.

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A D D E N D U M

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**Assessor's Parcel Search Results**

[Return to Real Property Search](#)

[Return To Search Screen Code Abbreviations](#)

**Account Information**

ACCOUNT#:	12903
NAME1:	CITY OF LAS CRUCES
NAME2:	
ADDRESS:	PO BOX 20000
CITY:	LAS CRUCES
STATE:	NM
ZIP:	88004
FAMILY EXEMPTION:	
VETERAN EXEMPTION:	

**Parcel Information**

The Assessor's Office can provide information about deeds posted to Assessor's parcel accounts. This information is provided as a courtesy to the public and is not intended to constitute legal advice. Individuals are encouraged to contact an attorney, professional land surveyor or title company for information about legal descriptions. Copies of deeds can be obtained from the Doña Ana County Clerk's Office.

PARCEL	PROPERTY ADDRESS				
02-22295					
MAPCODE	FOLDER	SEC	TWP	RGE	
0213004137266262	31554	28	23S	1W	
SUBDIVISION		BLOCK	LOT		
- NOT APPLICABLE					

**Land Information**

LAND SIZE	VALUE METHOD	NUMBER LOTS	UNIT PRICE	LAND TYPE
540.00	PA	0	200	V

**Improvement**

DISCLAIMER

Square footage info. without building detail or value denotes new building not yet added to assessment record.

TYPE USE	TOT BLDG AREA	EXTERIOR WALL	QUALITY	YEAR BUILT
BEDROOMS		FULL BATHS		HALF BATHS
ATT GARAGE FIN		ATT GARAGE UNFIN		
OPEN PORCH		ENCLOSED PORCH		DECK PORCH

**Commercial Improvements**

GROUND FLOOR AREA	EXTERIOR WALL	YEAR BUILT

**Detached Structures**

STRUCTURE	MEASURE1	MEASURE2

**Valuation Information**

LAND VALUE	RES BLDG VALUE	NON-RES BLDG VALUE	FULL VALUE
108000	0	0	108000

**Recording Information**

RECORDING INFORMATION
BK 279 PG 684-89
PATENT 30-83-0090

**Taxes**

BILLS PAID	Amount	BILLS UNPAID	Amount
199676364			N/A
199778247			N/A

# Assessor's Parcel Search Results

[Return to Real Property Search](#)

[Return To Search Screen Code Abbreviations](#)

## Account Information

ACCOUNT#:	196528
NAME1:	CITY OF LAS CRUCES
NAME2:	
ADDRESS:	PO BOX 20000
CITY:	LAS CRUCES
STATE:	NM
ZIP:	88004
FAMILY EXEMPTION:	
VETERAN EXEMPTION:	

## Parcel Information

The Assessor's Office can provide information about deeds posted to Assessor's parcel accounts. This information is provided as a courtesy to the public and is not intended to constitute legal advice. Individuals are encourage to contact an attorney, professional land surveyor or title company for information about legal descriptions. Copies of deeds can be obtained from the Doña Ana County Clerk's Office.

PARCEL		PROPERTY ADDRESS				
02-39560						
MAPCODE	FOLDER	SEC	TWP	RGE		
0213002139130263	32830	2	24S	1W		
SUBDIVISION					BLOCK	LOT
4623 - CITY OF LC KENNON ANNEXATION DONA ANA COUNTY NM						

## Land Information

LAND SIZE	VALUE METHOD	NUMBER LOTS	UNIT PRICE	LAND TYPE
320.04	PA	0	1000	V

199879513	N/A
199981555	N/A
200083583	N/A
200184768	N/A
2002561	N/A
200387918	N/A
200489635	N/A
200591948	N/A
200695013	N/A
200799087	N/A
2008102311	N/A
2009103244	N/A

\*\* TAX REFLECTS ORIGINAL BILL AMOUNT ONLY ...NO PAYMENTS, PENALTY OR INTEREST FOR FURTHER DETAILS CONTACT THE TREASURER  
[Print this page.](#)

## Improvement

### DISCLAIMER

Square footage info. without building detail or value denotes new building not yet added to assessment record.

TYPE USE	TOT BLDG AREA	EXTERIOR WALL	QUALITY	YEAR BUILT
BEDROOMS		FULL BATHS		HALF BATHS
ATT GARAGE FIN		ATT GARAGE UNFIN		
OPEN PORCH		ENCLOSED PORCH		DECK PORCH

## Commercial Improvements

GROUND FLOOR AREA	EXTERIOR WALL	YEAR BUILT

## Detached Structures

STRUCTURE	MEASURE1	MEASURE2

## Valuation Information

LAND VALUE	RES BLDG VALUE	NON-RES BLDG VALUE	FULL VALUE
320000	0	0	320000

## Recording Information

RECORDING INFORMATION
10024553 - (public view)

## Taxes

BILLS PAID	Amount	BILLS UNPAID	Amount
200184887			N/A
2002676			N/A
200388043			N/A
200489773			N/A

200592102	N/A
200695195	N/A
200799338	N/A
2008102583	N/A
2009103516	N/A

\*\* TAX REFLECTS ORIGINAL BILL AMOUNT ONLY ...NO PAYMENTS, PENALTY OR INTEREST FOR FURTHER DETAILS CONTACT THE TREASURER  
[Print this page.](#)

Harry Hansen

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**From:** Christine Logan [clogan@las-cruces.org]  
**Sent:** Tuesday, August 24, 2010 10:43 AM  
**To:** Harry Hansen  
**Subject:** RE: West Mesa lease rates

Proceed. The sooner the better

---

**From:** Harry Hansen [mailto:hansen@zianet.com]  
**Sent:** Tuesday, August 24, 2010 10:28 AM  
**To:** Christine Logan  
**Subject:** RE: West Mesa lease rates

I think that is enough information. I can do this within three weeks for \$2,500 plus tax. Thanks, Harry

---

**From:** Christine Logan [mailto:clogan@las-cruces.org]  
**Sent:** Tuesday, August 24, 2010 9:56 AM  
**To:** Harry Hansen  
**Subject:** RE: West Mesa lease rates

Harry,

What I need is an opinion on the lease value. We are looking at entering into leases for photovoltaic power generation.

The sites would be 100 to 200 acres. One north of the interstate, in the southwest corner of airport land. The other south of the industrial park near the southeast corner.

Other details of the lease will be (not yet finalized)

- restricted for PV solar power generation only.
- 30 year with 2, 10 year renewal options.
- Land as is – neither has city utilities or existing roadway access.
- Annual lease payments in advance, lease rate will increase by set percentage every 5 years.
- Assignable subject to same terms and conditions.
- Solar company responsible for surveying to establish exact size and location within the larger parcels.
- Also responsible for all improvements and permitting.

Is that enough information? If there are other factors that would affect the lease value, give me a call and we can discuss further.

FYI – city entered into a similar lease inside the industrial park (attached). Hatch has a solar lease in their industrial park. I understand that Santa Fe and Alamogordo airports have similar leases.

Thanks!

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**From:** Harry Hansen [mailto:hansen@zianet.com]  
**Sent:** Tuesday, August 24, 2010 9:08 AM  
**To:** Christine Logan  
**Subject:**

Hi Christine, Bill Hamm asked me to contact you in regards to doing an appraisal on undeveloped land in the West Mesa Park. He indicated three general areas and said the City will be leasing the land approximately 100 acres. Can you tell me more specifically what you need? Thanks Harry

8/26/2010

**LAS CRUCES INTERNATIONAL AIRPORT LEASE APPLICATION**  
**RETURN THIS COMPLETED APPLICATION TO:**  
**City of Las Cruces, Airport Manager, P.O. Box 20000, Las Cruces, NM 88004**

Use this Application Form to request a Lease of Land, Facilities, or Commercial Rights at the Las Cruces International Airport. Complete all blocks with the appropriate information; mark blocks "N/A" when they do not apply to your request. Continue on separate sheets if additional room is required.

**1. INITIAL THE LEASE OR LEASES FOR WHICH YOU ARE APPLYING:**

\_\_\_\_\_ SPECIALIZED AVIATION SERVICE OPERATION (SASO) LEASE: All persons (other than transient aircraft operators) using the Las Cruces International Airport for commercial purposes are required to enter into a non-exclusive lease agreement with the City for the right to conduct such commercial activities on City property (e.g., the Airport).

X \_\_\_\_\_ LAND LEASE: All persons wishing to construct improvements at the Airport must first enter into a Land Lease for a suitable Parcel. Return this form, with \$250.00 earnest money to the Airport Manager who will initiate the lease approval process, which will include approval/disapproval by the City Council.

\_\_\_\_\_ FACILITY LEASE: All persons wishing to occupy City-owned improvements at the Airport must first enter into a Facility Lease for the desired facility. Return this form, with \$250.00 earnest money to the Airport Manager who will initiate the lease approval process, which will include approval/disapproval by the City Council.

**2. APPLICANT INFORMATION:**

Name: SunEdison Phone: ( 443 ) 909 7200

Address: 12500 Baltimore Avenue Fax: ( 301 ) 909 7166  
Beltsville, MD 20705 E-mail: gtinkham@sunedison.com

If applying as a business or other legal entity: Business Name: SunE EPE1, LLC

President/CEO: C. Domenech d.b.a. SunEdison

**3. ACTIVITIES PROPOSED: Initial activities proposed to be conducted. For commercial activities, you will be required to conduct those activities proposed, and must also obtain a City of Las Cruces Business Registration, when required by law.**

<p>_____ <u>Customer Services:</u></p> <p>_____ Food services including catering, restaurants, etc.</p> <p>_____ Temporary lodging, such as hotel and motel operations.</p> <p>_____ Transportation services, such as rental cars, shuttle buses, and taxis.</p> <p>_____ <u>Airline Operations:</u></p> <p>_____ Air Carrier or Air Taxi Operations.</p> <p>_____ Transportation of cargo and/or mail by aircraft.</p> <p>_____ Other scheduled air transportation services or patrol activities.</p> <p>_____ <u>Aircraft Support Services:</u></p> <p>_____ Aircraft manufacture, maintenance, repair and storage (as defined by the FARs):</p> <p>_____ Aircraft painting and/or washing using chemicals.</p> <p>_____ Aircraft major and minor repair and maintenance.</p> <p>_____ Manufacture, repair, or reconditioning of either new and/or used aircraft and/or parts.</p> <p>_____ Specialized repair services for aircraft appliances or aircraft components.</p> <p>_____ Warranty or guarantee service or supply.</p> <p>_____ Flammable liquid storage and/or sales.</p> <p>_____ Preventive Maintenance for aircraft.</p>	<p>_____ Sales, leasing, financing, insuring and/or brokerage of aircraft, airframes, engines, and/or other aeronautical items.</p> <p>_____ Storage of aircraft and parts.</p> <p>_____ Line Services (see Commercial Policy).</p> <p>_____ <u>On-Demand Flying Services:</u></p> <p>_____ Aerial photography or survey.</p> <p>_____ Agricultural operations (including "crop dusting").</p> <p>_____ Aircraft Charter operations for any purpose.</p> <p>_____ Aircraft rental to the public.</p> <p>_____ Banner towing.</p> <p>_____ Corporate Flight Operations.</p> <p>_____ Dropping objects from aircraft.</p> <p>_____ Fire fighting (water and chemical applications) and 'smoke jumping'.</p> <p>_____ Pilot instruction conducted independently of an FAR Part 141 certified flight school.</p> <p>_____ Pilot Schools conducted in accordance with FAR Part 141.</p> <p>_____ Parachute jumping.</p> <p>_____ Sightseeing flights.</p> <p>X _____ Other (list): <u>solar farm</u></p>
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The City Council may elect to review any application for approval, modification, or disapproval.

  
(Applicant's Initials)

**LAS CRUCES INTERNATIONAL AIRPORT LEASE APPLICATION**

**4. Aircraft to be based on the Leasehold (if any):**

Class	Category	How Many	Proposed Use
N/A			

**5. Toxic or hazardous chemicals/substances, subject to regulation, permitting, and inspection by the EPA or NM State Environment Department, to be used/stored on the leasehold or other location on the Airport:** None .

**6. Briefly Describe Your Proposed Land or Facility Requirements and Location on the Airport:**  
 Approximately 130-150 acres to support the development and operation of a photovoltaic solar farm. Power generated from this will feed into the El Paso Electric grid at the existing substation south of the airport via an underground electric conduit.

**7. FOR FACILITY LEASES ONLY: What Lease Terms do You Desire:** N/A  
 \_\_\_\_\_ Maximum. Initial Term: One (1) year, with four (4) one (1) year optional extended terms.  
 \_\_\_\_\_ Other. Describe:

**8. FOR LAND LEASES ONLY: Briefly Describe the Proposed Improvements You Plan to Construct:**  
 1.) Please see attached project description.

The City Council may elect to review any application for approval, modification, or disapproval.

  
 (Applicants Initials)

**LAS CRUCES INTERNATIONAL AIRPORT LEASE APPLICATION**

9. FOR SASO LEASES ONLY: N/A.

- What is Your Proposed Occupancy on the Airport?

\_\_\_\_ Tenant of the City    \_\_\_\_ Sub-let from another Lessee or Tenant    \_\_\_\_ Non-Resident ("Through-the-Fence")

- City of Las Cruces Business Registration/License Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

- List any Positions Which Will Require FAA or EPA Certification or Licensure:

Number	Job Title	License or Certificate Required
_____	_____	_____
_____	_____	_____
_____	_____	_____

- List the Hours of Proposed Operation for Your Business. You will be Required to Operate No Less Than at Those Times Listed. (FBOs offering Line Services must be open 7:00 a.m. - 7:00 p.m. daily):

Monday:	_____ or 24 HOURS	Friday:	_____ or 24 HOURS
Tuesday:	_____ or 24 HOURS	Saturday:	_____ or 24 HOURS
Wednesday:	_____ or 24 HOURS	Sunday:	_____ or 24 HOURS
Thursday:	_____ or 24 HOURS	Holidays:	_____ or 24 HOURS

10. Amount and Types of Insurance Coverage to be Obtained (see current Airport Policies for required coverage):

<u>TYPE INSURANCE</u>	<u>MINIMUM AMOUNTS</u>	<u>AMOUNT TO BE OBTAINED</u>
General Liability:	Each Incident    \$1,000,000	<u>\$1,000,000</u>
Fire Casualty:	Each Accident    \$ 300,000	<u>\$300,000</u>
Environmental Remediation:	Each Incident    \$1,000,000	<u>\$1,000,000</u>
Other:		<u>tbd</u>

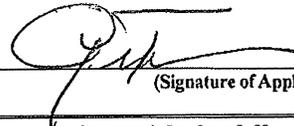
APPLICANT'S CERTIFICATION: The above application is true and complete to the best of my knowledge.

August 10, 2010

(Date of Application)

Geoffrey Tinkham

(Printed or typed Name of Applicant)

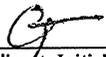


(Signature of Applicant)

**Return this form to the Airport Manager for processing, with the following attached:**

- Any additional information continued from the application, referenced by question number.
- Proof of Insurance.
- If sub-letting, a copy of the sub-letting agreement.
- If operating an FAA Certified business, a copy of the Certificate.

The City Council may elect to review any application for approval, modification, or disapproval.

  
(Applicants Initials)

**LAS CRUCES INTERNATIONAL AIRPORT LEASE APPLICATION****CONTINUATION SHEET.**

Please continue any narrative from the application on this page.

Please reference your continuation by number.

Please attach additional continuation pages as required.

1.) Project description:

The project will be a 12 MW energy generating facility consisting of a solar field of photovoltaic (PV) panels attached to a ground-mounted one-axis tracker system; an electrical collection system will convert generated power from direct current (DC) to alternating current (AC). The rows of panels will slowly track the sun's path each day during daylight hours. An underground power line (interconnection) path will convey the generated electricity from the project site to an existing off-site utility-owned substation located to the south of the airport grounds, on the south side of Highway 10.

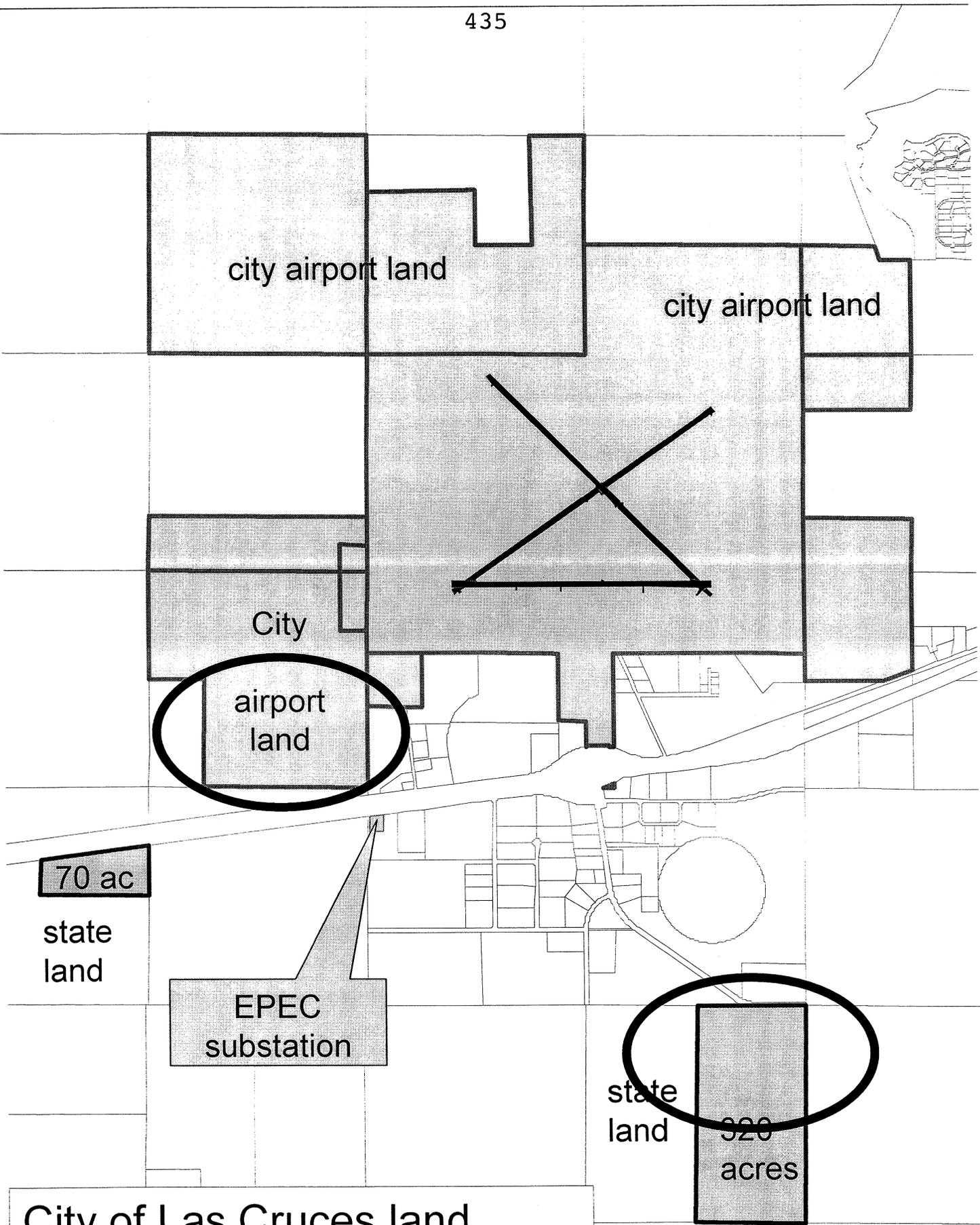
The solar field rows of panels will be at a height of only six to eight feet tall at their tallest point. Interspersed in the project will be prefabricated equipment shelters, housing electronic inverters and wiring connections.

The project operation is virtually noiseless, does not pollute air or water. Operation and maintenance of the project would have no traffic impact. There will be 2-3 full time employees dedicated to the operation of the project.

FAA approval and all other required additional approvals will be obtained.

The City Council may elect to review any application for approval, modification, or disapproval.

  
(Applicant's Initials)



City of Las Cruces land  
Available for PV solar project