

BY AUTHORITY

ORDINANCE NO. _____

COUNCIL BILL NO. CB13-0484

SERIES OF 2013

COMMITTEE OF REFERENCE:

BUSINESS, WORKFORCE, & SUSTAINABILITY

A BILL

For an ordinance approving a proposed Loan Agreement between the City and County of Denver and SH COD XXV, LLC, related to a Ground Lease at Denver International Airport.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. The proposed Ground Lease between the City and County of Denver and SH COD XXV, LLC, in the words and figures contained and set forth in that form in the above-named Agreement available in the office and on the web page of City Council, and to be filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. 2013-0589 is hereby approved.

COMMITTEE APPROVAL DATE: July 25, 2013

MAYOR-COUNCIL DATE: July 30, 2013

PASSED BY THE COUNCIL: _____, 2013

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____, 2013

ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2013; _____, 2013

PREPARED BY: Debra Overn, Assistant City Attorney,  DATE: August 1, 2013

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Douglas J. Friednash, City Attorney for the City and County of Denver

BY: _____, Assistant City Attorney

DATE: August 1, 2013

LOAN AGREEMENT

THIS LOAN AGREEMENT ("Loan Agreement" or "Agreement"), is made and entered into as of the date set forth on the signature page below, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("Lender" or "City"), and **SH COD XXV, LLC**, a Delaware limited liability company authorized to do business in the State of Colorado, and also the sole owner of the Denver Solar 4, LLC, a Colorado limited liability company ("the Borrower").

WITNESSETH:

WHEREAS, pursuant to Section 516 of the 1984 Airport System General Bond Ordinance, Ordinance No. 626, Series of 1984, as supplemented and amended to the date hereof (the "General Bond Ordinance"), Net Revenues remaining in the Capital Fund established under the General Bond Ordinance after all deposits and credits required under the General Bond Ordinance have been made are permitted to be used for any lawful purposes relating to the Airport System (as defined in the General Bond Ordinance) as the Manager of the City's Department of Aviation (the "Manager") may from time to time determine; and

WHEREAS, the Manager has determined that it is necessary and in the best financial interests of the Airport System that such Net Revenues remaining in the Capital Fund in the amount of One Million Dollars (\$1,000,000.00) be loaned to the Borrower for the purposes and on the terms provided in this Loan Agreement; and

WHEREAS, Borrower has executed a Promissory Note (the "Note") in the principal sum of One Million Dollars (\$1,000,000.00), of even date herewith and generally in the form attached as **Exhibit A**, and

WHEREAS, the Borrower is ready, willing, and able to meet the conditions of this Loan Agreement; and

WHEREAS, as additional security for the aforesaid indebtedness, Borrower grants to Lender a security interest in the Collateral as defined below to secure the Indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law;

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, the parties agree as follows:

1. CONTINGENCIES: The City's loan is contingent upon the following:

A. Conditions Precedent to Closing: City's obligation to make any advance to the Borrower under this Agreement is subject to the following conditions precedent, with all documents, instruments opinions reports and other items required under this Agreement to be in form and in substance satisfactory to City. City shall have received evidence that this Agreement and all related documents have been duly authorized, executed, and delivered by Borrower to City.

1. The City will have entered into and executed a Subordination Agreement with the Borrower's Senior Lender, to be generally in the form attached as **Exhibit B**.
2. City shall have received such opinions of counsel, supplemental opinions, and documents as City may request.
3. The security interest in the Collateral shall have been duly authorized, created and perfected with appropriate lien priority and shall be in full force and effect.
4. City, at its own option and for its sole benefit, shall have conducted an audit of Borrower's accounts, inventory, equipment, books, records and operations, and City shall be satisfied as to their conditions.
5. Borrower represents and warrants to City that it is a limited liability company for profit which is, and at all times shall be duly organized, validly existing, and in good standing under and by virtue of the laws of the State of Colorado.
6. Unless otherwise previously disclosed to City in writing, Borrower has not entered into or granted any security agreements, or permitted the filing or attachments of any security interest on or affecting any of the Collateral directly or indirectly securing repayment of Borrower's Loan and Note, that would be prior or that may in any way be superior to City's security interests and rights in and to such Collateral. Notwithstanding the above, the Loan and Note will be subordinated to the Senior Lender, as specified in the Subordination Agreement to be executed by the City and Borrower's Senior Lender.

B. Perfection of Security Interest: Borrower agrees to execute a Promissory Note and to take whatever actions are reasonably requested by City to perfect and continue City's security interest in the Collateral. Upon request of City, Borrower will deliver to Lender any and all of the documents evidencing or constituting the Collateral (i.e., lien releases from Borrower's subcontractors), and Borrower will note City's interest upon any and all chattel paper and instruments if not delivered to City for possession of City. Contemporaneous with the execution of this Agreement, Borrower will execute one or more UCC financing statements and any similar statements as may be required or permitted by applicable law, and City will file such financing statement and all such similar statements in the appropriate location or locations.

C. Representations and Warranties Concerning Equipment: With respect to the equipment, Borrower represents and warrants to City:

1. All equipment represented by Borrower to be equipment for purposes of this Agreement conforms to the requirements of the definition of equipment;
2. All equipment values listed on schedules delivered to City will be true and correct, subject to immaterial variance;
3. The value of the equipment will be determined on a consistent accounting basis;
4. Except as agreed to the contrary by City in writing, all equipment is now and at all times hereafter will be in Borrower's physical possession;
5. Except as reflected in the equipment schedules delivered to City, all eligible equipment is now and at all times hereafter will be of good quality, and free from defects, subject to normal wear and tear;
6. Eligible equipment is not now and will not at any time hereafter be stored with a bailee, warehouseman, or similar party without City's prior written consent, and, in such event, Borrower will concurrently at the time of bailment cause any such bailee, warehouseman, or similar party to issue and deliver to City, in form acceptable to City, warehouse receipts in City's name evidencing the storage of equipment; and
7. City, its assigns, or agents shall have the right at any time during Borrower's normal business hours and at City's expense to inspect and examine the equipment and to check and test the same as to quality, quantity, value and condition.

2. LOAN TO BORROWER:

A. Subject to the terms of this Loan Agreement, on the Commercial Operation Date set forth in the Power Purchase Agreement between City and Borrower, the City agrees to lend Borrower the sum of One Million Dollars (\$1,000,000.00), to be repaid, together with interest at the rate of zero percent (0%) per annum over a term of twenty (20) years. Such principal and interest shall be due and payable in annual installments of Fifty Thousand Dollars (\$50,000) commencing 12 months after the date of disbursement of the funds to the Borrower and following execution of a promissory note in form attached hereto which is satisfactory to the City evidencing this loan (the "Promissory Note"), and should continue thereafter on the 12 month anniversary each succeeding year. The entire unpaid balance shall be due and payable on or before the first day of the twentieth (20th) year following the date of disbursement of the funds to the Borrower the Lender.

B. Notices to Lender. Borrower will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any:

1. change in Borrower's name;

2. change in Borrower's assumed business name;
3. change in the authorized signer(s);
4. change in Borrower's principal office address;
5. change in Borrower's principal residence;
6. conversion of Borrower to a new or different type of business entity; or
7. materially change in any other aspect of Borrower that directly or indirectly relates to any agreements between Borrower and Lender.
8. Borrower will take reasonable steps to notify Lender upon any change in Borrower's name or principal residence.

3. **SECURITY FOR REPAYMENT:** As security for this loan, the Borrower agrees to execute a Promissory Note and to perfect a security interest in all of its assets, including accounts, goods, inventory, machinery, equipment, furniture, fixtures, contract rights, and general intangibles, now owned or hereafter acquired, and wherever located, but including those located at Denver International Airport, Denver, Colorado and other solar project assets owned by the Colorado 2013 Solar LLC entity (the "**Collateral**"), and the proceeds thereof.

4. **SUBORDINATION:** This Loan and Note shall be subordinated to the Borrowers Senior Lender as described in the Subordination Agreement, generally in the form attached as Exhibit B, to be executed by the parties.

5. **USE AND DISBURSEMENT OF FUNDS:** Loan proceeds will be issued to the Colorado 2013 Solar LLC and used specifically for the acquisition of the completed commissioned Denver Solar 4 LLC 2MWDC photovoltaic solar electrical generation plant, as more fully described on Exhibit A to the Denver Solar 4, LLC Solar Power Purchase Agreement. The 2MWDC photovoltaic solar electrical generation plant will be located on the property, as more fully described in the Denver Solar 4 LLC Ground Lease Agreement (the "Property"). Acquisition funds will be disbursed at a scheduled closing, payable to Borrower

6. **DEADLINE FOR DISBURSEMENT OF FUNDS:** Borrower agrees that all conditions required for a closing hereunder shall have been met within three hundred and sixty five (365) days following the date of this Loan Agreement, or the City may terminate this Loan Agreement. All documentation will be submitted on or before loan closing. These deadlines may be extended with the written approval of the City.

7. **DESIGN STANDARDS:** Borrower agrees to complete the construction or installation on the Property in accordance with plans approved by the City.

8. **ENVIRONMENTAL:** No loan proceeds may be obligated or spent until Borrower has received written environmental clearance from the City, which shall not be unreasonably withheld, conditioned or delayed. Any special environmental conditions reasonably imposed by the City must be incorporated into the design and construction of the project. The Borrower covenants that it shall not allow any hazardous substances to be above, in, on, or under the Property, and that it shall not generate, use, have, manage or release or allow (to the extent subject to Borrower's control) the generation, use, presence, management or release of any hazardous substance above, in, on, under or from the Property. Borrower shall be solely responsible for, and shall indemnify and hold harmless the City, its officers, agents, and employees, from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence of hazardous substances on, under or about the Property to the extent caused by the operations, acts or omissions of Borrower.

9. **DEFAULT AND ACCELERATION:** Borrower expressly agrees that the refusal or inability of the Borrower to make the payments called for to the City, any other default or breach of this Loan Agreement, the Promissory Note, or UCC Security Documents, shall constitute a default. The City also may declare a default if any material warranty, representation or statement made or furnished to the City by or on behalf of Borrower in connection with this Loan proves to have been false in any material respect when made or furnished. Upon the existence of a default which remains uncured thirty (30) days after Borrower's receipt of written notice thereof, or in the event the City exercises its option to purchase the System pursuant to the Denver Solar 4 LLC Ground Lease Agreement, the City, subject to the provisions of the Subordination Agreement, shall have the right to accelerate any outstanding obligations of the Borrower, which shall be immediately due and payable, including payments under the Promissory Note. Borrower agrees to pay a late charge of the Base Rate plus 2% (i.e., 7.5%) per annum of any annual installment not received on or before the fifteenth (15th) day after the installment is due. City shall be in default under this Loan Agreement if City breaches any material term and fails to cure such breach within sixty (60) days from receipt of written notice, becomes insolvent, or makes a bankruptcy filing that is not dismissed within sixty (60) days.

10. **EXPENSES:** Each Party agrees to pay all direct costs, expenses, and attorney fees reasonably incurred by the other Party in connection with the other Party's breach or default of this Loan Agreement, the Promissory Note, or UCC Security Documents. The Borrower agrees to pay reasonable costs associated with the loan closing, but in no event greater than \$1,000.00.

11. **INSECURITY:** The Borrower agrees that should the City reasonably deem this loan to be insecure, in accordance with this Loan Agreement or with Borrower's Promissory Note if due solely to the voluntary or involuntary dissolution or cessation of business by the Borrower, the filing of a petition in bankruptcy or an assignment for the benefit of creditors, the breach of any loan agreement or security agreement to any other lenders on the project, such insecurity

shall be deemed a default under the Article herein entitled "DEFAULT AND ACCELERATION" and the entire amount of the loan shall be immediately due and payable, notwithstanding the Borrower's full compliance with any payment obligations under this Loan Agreement or the Promissory Note.

12. **EXAMINATION OF RECORDS:** The Borrower agrees that the City or any of its duly authorized representatives, including the City Auditor, shall, until the expiration of three (3) years after the final payment under this Loan Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Borrower involving transactions related to this Loan Agreement, subject to the Colorado Open Records Act and any other similar laws.

13. **CONDITIONS:** This Loan Agreement is subject to the City's Charter and Revised Municipal Code, as the same may be amended from time to time. The obligation of the City to lend the above sums shall only extend to payment of monies.

14. **ASSIGNMENT:** The City is not liable under this Loan Agreement to any party other than the Borrower. The Borrower shall not assign its interest in this Loan Agreement except upon prior written consent of the City which shall not be unreasonably withheld, conditioned or delayed.

15. **INSURANCE:** As a condition of this loan, Borrower or its contractor shall procure and maintain insurance stated on the Certificate of Insurance attached as Exhibit C.

16. **INDEMNIFICATION:** The Borrower shall defend, release, indemnify and save and hold harmless the City against any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend, release, indemnify, and save and hold harmless the City from any and all claims, demands, suits, actions, liabilities, causes of action or legal or equitable proceedings of any kind or nature, including workers' compensation claims, of or by anyone whomsoever, in any way to the extent resulting from or arising out of the Borrower's activities or performance in connection herewith, including acts or omissions of the Borrower or its officers, employees, representatives, suppliers, invitees, licensees, subconsultants, subcontractors, and agents. This indemnity clause shall also cover the City's defense costs, in the event that the City, in its sole discretion, elects to provide its own defense. This indemnification obligation shall survive termination of this Loan Agreement. The insurance coverage specified constitutes the minimum requirements, and these requirements do not lessen or limit the liability of the Borrower under this Loan Agreement. The Borrower shall maintain, at its own expense, any additional kinds and amounts of insurance that it may deem necessary.

17. **WAIVER:** No waiver of any breach or default under this Loan Agreement shall be held to be a waiver of any other or subsequent breach or default. All remedies afforded in this Loan Agreement shall be construed as cumulative, in addition to every other remedy provided herein or by law.

18. **NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under this contract, the Borrower agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Borrower further agrees to insert the foregoing provision in all subcontracts hereunder.

19. **BINDING EFFECT:** This Loan Agreement shall be binding upon the parties and shall inure to the benefit of their respective successors, assigns, representatives, and heirs.

20. **COMMERCIAL TRANSACTION:** Borrower agrees and warrants that this Loan Agreement and the obligations created herein constitute a commercial transaction and is not a consumer obligation or consumer related loan or obligation.

BORROWER HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS SECURITY AGREEMENT AND AGREES TO ITS TERMS.

[SIGNATURE PAGES AND EXHIBITS FOLLOW]

Contract Control Number: PLANE-201311770-00

Contractor Name: SH COD XXV LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

By _____

By _____

By _____



EXHIBIT A: FORM OF PROMISSORY NOTE

Borrower: **SH COD XXV, LLC**, Colorado limited liability company

Note Date: _____, 2013

Principal Amount: \$1,000,000.00

FOR VALUE RECEIVED, Borrower promises to pay to the order of the City and County of Denver, a municipal corporation of the State of Colorado, ("Lender"), 8500 Pena Boulevard Denver, Colorado 80249-6340 (the "City), the principal sum of One Million Dollars (\$1,000,000.00), advanced by the City pursuant to the Loan Agreement (the "Loan Agreement") between Borrower and the City together with interest on the outstanding unpaid balance of such principal amount at the rate of zero percent (0%) per annum.

Principal and interest shall be due and payable over a term of twenty (20) years after disbursement of the funds to Borrower, in annual installments of Fifty Thousand Dollars (\$50,000.00), commencing twelve (12) months after disbursement of the funds to Borrower and continuing thereafter on the first day of each succeeding calendar year during the indebtedness. The balance remaining unpaid plus accrued interest shall be due and payable on or before the first day of the Twentieth (20th) year. All payments of principal and interest shall be made at the City's offices at the address shown above, or at such other place as the City shall have designated to Borrower in writing.

In the event that Borrower shall fail to make any annual payment due to the City within fifteen (15) days after the due date thereof, the City may at its option deduct such unpaid amounts from its payment obligations under the Denver Solar 4 Power Purchase Agreement, City Contract No. -----, or impose a late charge upon Borrower in an amount not to exceed seven and one half percent (7.5%) per annum of said unpaid annual payment. Borrower agrees that such charge reasonably approximates the damage to the City that will result from a late payment. Lender's imposition of late payment charges shall not limit in any manner Lender's other rights and remedies provided herein or in the Security Document.

This Promissory Note may be prepaid in whole or in part, at any time, without notice or penalty. Partial prepayments will not, unless agreed to by City in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule.

This Promissory Note is secured by, and the holder of this Promissory Note is entitled to the benefits of the Loan Agreement of even date herewith ("Security Document"). Reference is made to the Security Document for a description of the property covered thereby and the rights, remedies and obligations of the holder hereof in respect thereto.

In the event of (i) any default in any payment of the principal or interest on this Promissory

Note when due and payable, or (ii) any default or event of default under the provisions of the Security Document, then the unpaid principal balance of this Promissory Note, plus accrued interest and all other obligations of Borrower to City, direct or indirect, absolute or contingent, now existing or hereafter arising, shall, at the option of the City, become immediately due and payable upon notice or demand, and the City shall have and may exercise any and all of the rights and remedies provided herein or in the Security Document.

In the event of any such default, Borrower agrees to pay on demand all of the City's reasonable costs and expenses incurred for the recovery of all or any part of or for the protection of the indebtedness, or to enforce the City's rights under the Security Document, including, without limitation, reasonable attorneys' fees.

Borrower waives presentment, notice of dishonor, notice of acceleration and protest, and assents to any extensions of time with respect to any payment due under this Promissory Note, to any substitution or release of collateral and to the addition or release of any party. No waiver of any payment or other right under this Promissory Note shall operate as a waiver of any other payment or right.

This Promissory Note is made and dated as of the date above written, and is to be governed by and construed according to the laws of the State of Colorado.

SH COD XXV, LLC
a Colorado limited liability company

I.R.S. No. _____

By: _____ Title,
President "**BORROWER**"

EXHIBIT B
[FORM] SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT is made and entered into as of _____ (“Effective Date”), by and between SH COD XXV, LLC, a Colorado limited liability company (hereinafter referred to as “Borrower”), and the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (hereinafter referred to as the “City”).

RECITALS:

A. Borrower is the owner of certain personal property, described as follows:

INSERT DESCRIPTION

(the “Property”). “Property” shall in no case be construed as including any real property on which the Property is located, or any personal property of the City.

B. The Borrower has applied to Senior Lender for a loan for the acquisition, construction, rehabilitation, development, equipping and/or operation of the Property (the “Senior Loan”).

C. The Senior Loan is evidenced by the Senior Note (a copy of which is attached hereto) secured by, among other things, that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (collectively the “Senior Security Instrument”), dated as of the date hereof, encumbering the Property, and will be advanced to Borrower pursuant to the Senior Loan Agreement.

D. Junior Lender is making a loan (the “Junior Loan”) to Borrower in the original principal amount of \$1,000,000, which Junior Loan is evidenced by a certain note dated as of the date hereof made by Borrower to Junior Lender (the “Junior Note”) and secured by, among other things, that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (collectively the “Junior Security Instrument”) encumbering the Property, and will be advanced to Borrower pursuant to that certain Loan Agreement (the “Junior Loan Agreement”) dated as of the date hereof between Borrower and Junior Lender.

E. As a condition to the making of the Senior Loan, Senior Lender requires that Junior Lender execute and deliver this Agreement prior to the making of the Junior Loan and the granting of the Junior Security Instrument by Borrower.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce the making of the Senior Loan and to induce Senior Lender to consent to the Junior Loan and the Junior Security Instrument, Junior Lender hereby agrees as follows:

SH COD XXV, LLC
201311770-00
Loan Agreement

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**CITY AND COUNTY OF DENVER
CERTIFICATE OF INSURANCE - DEPARTMENT OF AVIATION**

Certificate Holder:

CITY AND COUNTY OF DENVER
Attn: Risk Management, Suite 8810
Manager of Aviation
Denver International Airport
8500 Peña Boulevard, Room 8810
Denver CO 80249

CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201311770 – Solar IV Loan Agreement

I. MANDATORY COVERAGE

Colorado Workers' Compensation and Employer Liability Coverage

Coverage: COLORADO Workers' Compensation

Minimum Limits of Liability (In Thousands)

WC Limits: \$100, \$500, \$100

And Employer's Liability Limits:

Any Policy issued under this section must contain, include or provide for the following:

1. All States Coverage or Colorado listed as a covered state for the Workers' Compensation
2. Waiver of Subrogation and Rights of Recovery against the City and County of Denver (the "City"), its officers, officials and employees.

Commercial General Liability Coverage

Coverage: Commercial General Liability (coverage at least as broad as that provided by ISO form CG0001 or equivalent)

Minimum Limits of Liability (In Thousands):

Each Occurrence:	\$1,000
General Aggregate Limit:	\$2,000
Products-Completed Operations Aggregate Limit:	\$2,000
Personal & Advertising Injury:	\$1,000
Fire Damage Legal - Any one fire:	\$1,000

Any Policy issued under this section must contain, include or provide for the following:

1. City, its officers, officials and employees as additional insureds, per ISO form CG2010 and CG 2037 or equivalents.
2. Coverage for defense costs of additional insureds outside the limits of insurance, per CG0001.
3. Liability assumed under an Insured Contract (Contractual Liability).
4. The full limits of coverage must be dedicated to apply to this project/location, per ISO form CG2503 or equivalent.
5. Waiver of Subrogation and Rights of Recovery, per ISO form CG2404 or equivalent.
6. Separation of Insureds Provision required
7. General Aggregate Limit Applies Per: Policy ___ Project ___ Location ___, if applicable

Business Automobile Liability Coverage

Coverage: Business Automobile Liability (coverage at least as broad as ISO form CA0001)

Minimum Limits of Liability (In Thousands): Combined Single Limit \$1,000

Any Policy issued under this section must contain, include or provide for the following:

1. Symbol 1, coverage for any auto. If no autos are owned, Symbols 8 & 9, (Hired and Non-owned) auto liability.
2. If this contract involves the transport of hazardous cargo such as fuel, solvents or other hazardous materials may occur, then Broadened Pollution Endorsement, per ISO form CA 9948 or equivalent and MCS 90 are required.

II. ADDITIONAL COVERAGE

Umbrella Liability

Coverage:

Umbrella Liability, Non Restricted Area		
Minimum Limits of Liability (In Thousands)	Each Occurrence and aggregate	\$1,000

Any Policy issued under this section must contain, include or provide for the following:

1. City, its officers, officials and employees as additional insureds.
2. Coverage in excess of, and at least as broad as, the primary policies in sections WC-1, CGL-1, and BAL-1.
3. **If operations include unescorted airside access at DIA, then a \$9 million Umbrella Limit is required.**

III. ADDITIONAL CONDITIONS

It is understood and agreed, for the benefit of the City, that the following additional conditions shall apply to all coverage specified herein

- All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
- With the exception of professional liability and auto liability, a Waiver of Subrogation and Rights of Recovery against the City, its officers, officials and employees is required for each coverage period.
- The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
- Advice of renewal is required.
- All insurance companies issuing policies hereunder must carry at least an A -VI rating from A.M. Best Company or obtain a written waiver of this requirement from the City's Risk Administrator.
- Compliance with coverage requirement by equivalent herein must be approved in writing by the City's Risk Administrator prior to contract execution.
- No changes, modifications or interlineations on this Certificate of Insurance shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

NOTICE OF CANCELLATION

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, or sustain a material change in coverage adverse to the City, the issuing company or its authorized Agent shall give notice to the Department of Aviation in accordance with policy provisions.