

**GROUND LEASE - LESSEE TO CONSTRUCT IMPROVEMENTS**

This lease is made and executed on September 1, 2012, by and between The City of Venice, a corporation organized and existing under the laws of the State of Florida, having its principal office at 401 West Venice Avenue, City of Venice, County of Sarasota, State of Florida, referred to here as “lessor”, and Venice Pier Group, Inc., a corporation organized and existing under the laws of the State of Florida, having its principal office at 1600 Harbor Drive South, City of Venice, County of Sarasota, State of Florida, herein referred to here as “lessee”.

**1. DEMISE; DESCRIPTION OF PREMISES**

Lessor leases to lessee and lessee leases from lessor, for the purpose of conducting lawful business and for no other purpose, the following described premises with the appurtenances, situated in the City of Venice, County of Sarasota, State of Florida, and more particularly described as follows:

The City of Venice owns a stormwater retention pond just to the southeast of Sharky’s restaurant in Venice, FL. The Lessee intends to construct solar panels as further set forth in Paragraph 12 of this Lease, which will be set into the western 2/3 of the existing stormwater retention pond. This area will comprise approximately 90’ x 120’. A survey is attached hereto as Exhibit A, which more accurately shows the demised premises.

As used in this lease, the term “premises” refers to the real property described above and to any improvement located on the property from time to time during the term of this lease.

**2. TERM**

The initial term of this lease shall be for ten (10) years, commencing on September 1, 2012

and ending on August 31, 2022. As used in this lease, the expression “term of this lease” refers to such initial term and to any renewal of the initial term as provided below. Additionally, it is understood by both parties that the FAA must review this Lease, its proposed new construction and its intended purpose from a navigation safety perspective. The FAA may not approve the new construction or the intended purpose of the Lease from a navigation safety perspective. Should the FAA fail to allow the Lease’s intended purpose, which is the construction of a minimum of a 25 Kw solar field, then the Lessee and Lessor shall be relieved of all further responsibilities under this Lease as of the date the disapproval of the Lease has been communicated to both the Lessee and Lessor.

**3. RENT**

Lessee shall pay to Lessor \$10.00 (Ten and no hundredths dollars) and one percent (1%) of the annual gross value of the electricity produced from the solar field to be constructed as set forth in Paragraph 12 of this Lease, as rent per year during the initial ten (10) year term of this Lease in lawful money of the United States of America at 401 W. Venice Avenue, Venice, Florida 34285, or at any other address the Lessor may designate. The annual rent of \$10.00 (Ten and no hundredths dollars) plus applicable sales tax shall be payable on the date of the commencement of this Lease. On each anniversary date of the execution date of this Lease, Lessee shall pay the \$10.00 annual rent in advance for the upcoming year and on that date, the Lessee will also pay the immediately preceding year’s one percent (1%) of the annual gross value of the electricity produced from the solar field.

The parties assume that FPL is going to bill the lessee at the General Service Demand Rate (GSD-1) in its most recent rate sheet, which currently is the Thirty Third Revised Sheet No. 8.105. That rate sheet charges a customer a base customer charge, which is a flat number; a fuel charge, a

non-fuel charge and a demand charge, all three of which are arrived from multiplying a base number by the number of kilowatt hours (kWh) used that month. If another rate sheet is used by FPL, the parties shall calculate the annual gross value of the electricity produced by referring to the then existing rate sheet used by FPL and by calculating it in a similar manner as set forth in the next paragraph.

The annual gross value of the electricity produced shall be calculated on a monthly basis and then totaled for the immediately preceding twelve (12) months on each anniversary date of the execution of this Lease (i.e., on September 1, 2013 looking back at the preceding twelve (12) months FPL bills) by adding the customer service charge, the fuel charge and the non-fuel charge and demand charge which will result in the electric service amount shown on a monthly FPL bill and then dividing that number by the kilowatt hours used on that month's FPL bill, which will result in the unit cost per kilowatt hour (kWh) for that month. The monthly unit cost per kWh will be multiplied by the number of kWh produced by the solar field each month and each monthly total will be added together which will result in the annual gross value of the electricity produced. The lessee shall pay one percent (1%) of the annual gross value of the electricity produced to the lessor. The parties shall use the then existing rate sheet in use by FPL to calculate the annual gross value of the electricity produced.

**4. WARRANTIES OF TITLE AND QUIET POSSESSION**

Lessor covenants that lessor is seized of the leased premises in fee simple and has full right to make this lease and that lessee shall have quiet and peaceable possession of the leased premises during the term of this lease. While the Lessor owns leased premises in fee simple, the stormwater retention pond is governed by Environmental Resource Permit (ERP) and Beaches of Coastal System

Coastal Construction Control Line (CCCL) permits granted by the Florida Department of Protection (FDEP). The Lessee shall at all times through the terms of this Lease comply with all existing permits, modified permits and any new permits and take whatever steps required by any governmental agency to comply with all rules, regulations and permits, including, but not limited to, all building permits, site preparation permits, at its own expense.

**5. DELIVERY OF POSSESSION**

If, for any reason whatsoever, lessor cannot deliver possession of the leased premises to lessee at the commencement of the lease term, as specified above, this lease shall not be void or voidable, nor shall lessor be liable to lessee for any loss or damage resulting from the inability to deliver possession; in that event there shall be a proportionate reduction of rent covering the period between the commencement of the lease term and the time when lessor can deliver possession.

**6. USES PROHIBITED**

Lessee shall not use or permit the leased premises, or any part of them, to be used for any purpose or purposes other than the purpose or purposes for which the premises are leased. No use shall be made or permitted to be made of the premises, or acts done, that will cause a cancellation of any insurance policy covering the building located on the premises, or any part of the premises; nor shall lessee sell, or permit to be kept, used, or sold, in or about the premises, any article prohibited by the standard form of fire insurance policies. Lessee shall, at its sole cost, comply with all requirements, pertaining to the leased premises, of any insurance organization or company, necessary for the maintenance of insurance, as provided in this lease, covering any building and appurtenances at any time located on the leased premises.

**7. WASTE AND NUISANCE PROHIBITED**

During the term of this lease, lessee shall comply with all applicable laws affecting the leased premises, the breach of which might result in any penalty on lessor or forfeiture of lessor's title to the premises. Lessee shall not commit or suffer to be committed any waste on the leased premises, or any nuisance.

**8. ABANDONMENT OF PREMISES**

Lessee shall not vacate or abandon the premises at any time during the term of this lease. If lessee abandons, vacates, or surrenders the leased premises, or is dispossessed by process of law, or otherwise, any personal property belonging to lessee and left on the premises shall be deemed to be abandoned, at the option of lessor, except such property as may be encumbered to lessor.

**9. LESSOR'S RIGHT OF ENTRY**

Lessee shall permit lessor and the agents and employees of lessor to enter the leased premises at all reasonable times for the purpose of inspecting them, or for the purpose of posting notices of non-responsibility for alterations, additions, or repairs, without any rebate of rent and without any liability to lessee for any loss of occupation or quiet enjoyment of the premises.

**10. NOTICES**

All notices, demands, or other writings in this lease provided to be given or made or sent, or which may be given or made or sent, by either party to this lease to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, registered and postage prepaid, and addressed as follows:

TO LESSOR: City of Venice, 401 W. Venice Avenue, Venice, FL 34285

TO LESSEE: 1600 Harbor Drive South, Venice, FL 34285

The address to which any notice, demand, or other writing may be given or made or sent to any party mentioned above may be changed by written notice given by the party mentioned above.

**11. TAXES AND ASSESSMENTS**

a. Taxes as additional rent. As additional rent under this lease, lessee shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature and kind whatsoever. This includes all governmental charges regardless of name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge on or against the leased premises, or any part of the premises, the leasehold of lessee here, the premises described here, any building or buildings, or any other improvements now or which will be made in the future, or on or against lessee's estate which may be a subject of taxation, or on or against lessor by reason of its ownership of the fee underlying this lease, during the entire term of this lease, excepting only those taxes specifically excepted below.

b. Assessments affecting improvements. Specifically and without in any way limiting the generality of the above, lessee shall pay all special assessments, levies or charges made by any municipal or political subdivision for local improvements. They shall be paid in cash as they are due and before they become delinquent. They shall be paid as required by the act and proceedings under which any assessments, levies or charges are made by any municipal or political subdivision. If the right is given to pay either in one sum or in installments, lessee may elect either mode of payment, and its election shall be binding on lessor. If, by making any such election to pay in installments, any of the installments shall be payable after the termination of this lease or any extended term of this lease, the unpaid installments shall be prorated as of the date of termination, and amounts payable

after such date shall be paid by lessor. All of the taxes and charges under this Section 11 shall be prorated at the commencement and expiration of the term of this lease.

c. Taxes excepted. Anything in this section to the contrary notwithstanding, lessee shall not be required to pay any estate, gift, inheritance, succession, franchise, income, or excess profits taxes which may be payable by lessor or lessor's legal representative, successors, or assigns, nor shall lessee be required to pay any tax that might become due on account of ownership of property other than that leased in this agreement, which may become a lien on the property leased or collectable out of it.

d. Contesting taxes. If lessee shall in good faith desire to contest the validity or amount of any tax, assessment, levy, or other governmental charge agreed to be paid by lessee, lessee shall be permitted to do so, and to defer payment of such tax or charge, the validity or amount of which lessee is so contesting, until final determination of the contest, on giving to lessor written notice prior to the commencement of any such contest, which shall be at least thirty (30) days prior to delinquency, and on protecting lessor on demand by a good and sufficient surety bond against any such tax, levy, assessment, rate, or governmental charge, and from any costs, liability, or damage arising out of any contest.

e. Disposition of rebates. All rebates on account of any taxes, rates, levies, charges, or assessments required to be paid and paid by lessee under the provisions of this lease shall belong to lessee. Lessor will, on the request of lessee, execute any receipts, assignments, or other acquittances that may be necessary in the premises in order to secure the recovery of any such rebates, and will pay over to lessee any such rebates that may be received by lessor.

f. Receipts. Lessee shall obtain and deliver receipts or duplicate receipts for all taxes,

assessments, and other items required under this lease to be paid by lessee, promptly on payment of them.

g. The demised premises are currently zoned GU but are being used for a non-GU purpose, which may result in taxes being levied by Sarasota County. As of the date of the execution of this Lease, Lessor knows of no property taxes that would be due and owing on this property. However, if any taxes of any sort are levied upon the property by any governmental entity, then the Lessee shall be solely responsible for the payment of those taxes.

## **12. CONSTRUCTION OF A MINIMUM 25 KW SOLAR FIELD**

a. Plans and specifications. On or before September 1, 2015, lessee shall, at lessee's sole expense, prepare plans and specifications for a minimum of a 25 Kw solar field, one (1) charging station capable of charging one vehicle and one electric golf cart in two (2) parking spaces of the existing parking lot next to the existing stormwater retention pond as set forth in Paragraph 1 of this Lease to be erected on the premises (hereinafter "new construction"). This Lease may be canceled by either the Lessee or the Lessor if the new construction is not completed within the first three (3) years of the commencement of the initial term of this Lease.

The charging stations shall accommodate current automobile and golf cart electric hookups. The Lessee covenants and warrants that the charging stations shall provide free charging to the general public between the hours of 8 a.m. through 5 p.m. EST daily, seven days per week, at a minimum. The use of the charging stations shall be subject to reasonable rules and regulations that will be agreed upon by the Lessor and Lessee prior to commencement of the new construction. Lessee shall also provide a web based application which will allow the general public to log on and view the electrical production of the solar field. No other use of the property shall be allowed and



any attempt to use the property for another use will result in default under the terms of this Lease, allowing the Lessor to re-enter and take possession of the premises, and any other remedies provided for by Florida law.

Such plans and specifications shall be submitted to lessor for lessor's written approval or any revisions required by lessor. Lessor shall not unreasonably withhold approval, and in the event of disapproval, lessor shall give to lessee an itemized statement of the reasons why within thirty (30) days after the plans and specifications are submitted to lessor. If the plans and specifications are not approved by lessor and lessee in writing within thirty (30) days after they are first submitted to lessor, then lessor and lessee shall each select an arbitrator, and the two arbitrators so selected shall select a third arbitrator. The three arbitrators selected shall hear and determine the controversy, and their decision as to the final plans and specifications shall be final and binding on both lessor and lessee, who shall bear the cost of the arbitration equally between them. The arbitrators shall determine the controversy and notify lessor and lessee in writing of their determination within thirty (30) days after the controversy had first been submitted to them. Prior to the commencement of any such work, lessee shall furnish lessor with a good and sufficient surety bond guaranteeing the completion of the new construction and the payment of all bills for it.

b. Alterations, improvements, and changes permitted. Lessee shall have the right to make such alterations, improvements, and changes to any of the new construction which may from time to time be on the premises as lessee may deem necessary, or to replace any of the new construction with a new one of at least equal value, provided that prior to making any structural alterations improvements, or changes, or to replacing any new construction, lessee shall obtain lessor's written approval of plans and specifications for it, which approval lessor shall not

unreasonably withhold, as long as the value of the new construction shall not be diminished and the structural integrity of the new construction shall not be adversely affected by those alterations, improvements, or changes, or as long as any proposed new construction is at least equal in value to the one it is to replace, as the case may be. All new construction must not interfere with the operation of the existing stormwater management system in order to maintain compliance with any existing, modified, or new permits. The cost of bringing the new construction into compliance with any existing, modified or new permits is the sole responsibility of the Lessee. In the event of disapproval, lessor shall give to lessee an itemized statement of the reasons why. If lessor does not disapprove the plans and specifications provided for in this section within thirty (30) days after they have been submitted to lessor, the plans and specifications shall be deemed to have been approved by lessor. Lessee will in no event make any alterations, improvements, or other changes of any kind to any new construction on the premises that will decrease the value of the building, or that will adversely affect the structural integrity of the building. Prior to commencing any work that will cost in excess of \$1,000.00 (One Thousand and no hundredths dollars), lessee shall furnish lessor, on demand, with a good and sufficient surety bond insuring the completion of the work and the payment of all bills for it.

c. Restoration and replacement of currently existing structure. Lessee shall, at the expiration or other termination of the lease, restore the demised premises to the condition they were in prior to the commencement of this Lease to the sole satisfaction of the Lessor. However, if the Venice City Council at its sole discretion were to accept ownership and responsibility of the new construction, then Lessee and the City of Venice shall agree on what portions of the new construction shall be removed by Lessee and what portions of the demised premises shall be restored to their

condition prior to the commencement of this Lease. The parties agree that the City of Venice shall pay nothing for ownership of the new construction should it desire to assume ownership and responsibility of the new construction. The City of Venice shall notify Lessee of its intention as to the new construction within thirty (30) days of being informed by Lessee that it is not exercising an option for a renewal term, or within thirty (30) days of the termination or expiration of the initial term of this Lease, if no notice is given by Lessee to Lessor.

### **13. REPAIRS AND DESTRUCTION OF IMPROVEMENTS**

a. Maintenance of improvements. Lessee shall, throughout the term of this lease, at its own cost, and without any expense to lessor, keep and maintain the premises, including all new construction and improvements of every kind that may be a part of the premises, and all landscaping, and all appurtenances to the premises, including sidewalks adjacent to the premises, in good, sanitary, and neat order, condition and repair, and, except as specifically provided in this lease, restore and rehabilitate any improvements of any kind that may be destroyed or damaged by fire, casualty, or any other cause whatsoever. Lessor shall not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the leased premises or improvements on it. Lessee shall also comply with and abide by all federal, state, county, municipal, and other governmental statutes, ordinances, laws, and regulations affecting the premises, the improvements on the premises, or any activity or condition on or in such premises.

b. Damage to and destruction of improvements. The damage, destruction, or partial destruction of any building or other improvement that is a part of the premises shall not release lessee from any obligation under this lease, except as expressly provided below. In case of damage to or destruction of any such new construction or improvement, lessee shall at its own expense

promptly repair and restore the new construction or improvement to a condition as good or better than that which existed prior to the damage or destruction. Without limiting such obligations of lessee, it is agreed that the proceeds of any insurance covering the damage or destruction shall be made available to lessee for repair or replacement. If the damage is more than forty percent (40%) of the improvements or within three years of the termination of the Lease term, the Lessee shall have the option of terminating the Lease or repairing the damage. If the Lessee terminates the Lease, the provisions of paragraph 12(c) will apply.

#### **14. UTILITIES**

Lessee shall fully and promptly pay for all water, gas, heat, light, power, telephone service, and other public utilities of every kind furnished to the premises throughout the term of this lease, and all other costs and expenses of every kind whatsoever of or in connection with the use, operation, and maintenance of the premises and all activities conducted on the premises. Lessor shall have no responsibility of any kind for any of such costs and expenses.

#### **15. LIENS**

a. Lessee's duty to keep premises free of liens. Lessee shall keep all of the premises and every part of the premises and all buildings and other improvements at any time located on the premises free and clear of any and all mechanics', materialmen's, and other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with any operations of lessee, any alteration, improvement, or repairs or additions which lessee may make or permit or cause to be made, or any work or construction, by, for, or permitted by lessee on or about the premises, or any obligations of any kind incurred by lessee. Lessee shall at all times promptly and fully pay and discharge any and all claims on which

any lien may or could be based, and shall indemnify lessor and all of the premises and improvements on the premises against all liens and claims of liens and suits or other proceedings pertaining to those liens. Lessee shall give lessor written notice no less than thirty (30) days in advance of the commencement of any construction, alteration, addition, improvement, or repair estimated to cost in excess of \$1000.00 (One Thousand and no hundredths dollars), in order that lessor may post appropriate notices of lessor's nonresponsibility.

b. Contesting liens. If lessee desires to contest any lien, it shall notify lessor of its intention to do so within thirty (30) days after the filing of the lien. In such a case, and provided that lessee shall on demand protect lessor by a good and sufficient surety bond against any lien and cost, liability, or damage arising out of such contest, lessee shall not be in default under this lease until thirty (30) days after the final determination of the validity of the lien, within which time lessee shall satisfy and discharge the lien to the extent held valid. However, the satisfaction and discharge of any such lien shall not, in any case, be delayed until executions had on any judgment rendered on it, and such delay shall be a default of lessee under this lease. In the event of any such contest, lessee shall protect and indemnify lessor against all loss, expense, and damage resulting from the contest.

**16. INDEMNIFICATION OF LESSOR**

Lessor shall not be liable for any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by lessee or by any person who may at any time be using or occupying or visiting the leased premises or be in, on, or about the premises, whether the loss, injury, death, or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of lessee or of any occupant, subtenant, visitor, or user of any portion of the premises, or shall result from or be caused by any other matter or thing. Lessee shall indemnify lessor against all

claims, liability, loss or damage whatsoever on account of any such loss, injury, death, or damage. Lessee waives all claims against lessor for damages to the new construction and improvements that are now on or will later be placed or built on the premises and to the property of lessee in, on, or about the premises, and for injuries to persons or property in or about the premises, from any cause arising at any time. Furthermore, the Lessor is not responsible for any damage to the new construction, equipment installed or any other improvements undertaken by Lessee. This includes but is not limited to, any damage to new construction, equipment installed or any other improvements due to the fact that it is standing in stormwater retention pond, flooding of the pond, or any events that can be attributed to the operation of the stormwater management system and the stormwater retention pond.

#### **17. ATTORNEYS' FEES**

If any action at law or in equity shall be brought to recover any rent under this lease, or for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of this lease, or for the recovery of the possession of the leased premises, the prevailing party shall be entitled to recover from the other party as part of the prevailing party's costs reasonable attorneys' fees, the amount of which shall be fixed by the court and shall be made a part of any judgment or decree rendered. The attorney's fees awarded to the prevailing party shall be at the trial as well as the appellate level, if applicable.

#### **18. OPTION TO RENEW**

Lessee shall have the option to renew this Lease for an additional ten (10) year term at the expiration of the initial period (August 31, 2022) and then again for another additional ten (10) year term at the expiration of the first renewal period (August 31, 2032), subject to the conditions below,

and otherwise subject to and on all of the terms and conditions herein contained. Notice of the options to renew shall be given to Lessor in writing at the address specified in Paragraph 12 of this Lease no later than thirty (30) days prior to the expiration of the current ten (10) year term. The rent for the first renewal term (commencing on September 1, 2022) of ten (10) years shall increase to \$10.00 (Ten and no hundredths dollars) and five (5) % of the annual gross value of the electricity produced from the solar field to be constructed as set forth in Paragraph 12 of this Lease and will be paid on the same monthly schedule as during the initial term. The rent for the second renewal term (commencing on August 31, 2032) shall be at the same rate as the first renewal term. Lessee shall in no event be entitled to renew the term of this lease, even though notice is timely given, unless lessee shall have timely performed all of its obligations under this lease, and shall not be in default in the performance of any of its obligations, on the date of the expiration of the initial term of this lease.

#### **19. REDELIVERY OF PREMISES**

Lessee shall pay the rent and all other sums required to be paid by lessee under this lease in the amounts, at the times, and in the manner provided in this lease, and shall keep and perform all the terms and conditions of this lease on its part to be kept and performed, and at the expiration or sooner termination of this lease, lessee shall peaceably and quietly quit and surrender the premises to lessor in good order and condition subject to the other provisions of this lease. In the event of the non-performance by lessee of any of the covenants which lessee has undertaken, this lease may be terminated as provided in this lease.

#### **20. REMEDIES CUMULATIVE**

All remedies conferred on lessor shall be deemed cumulative and no one exclusive of the other, or of any other remedy conferred by law.

## 21. INSURANCE

Lessee shall procure and maintain, during the life of the Lease Agreement, insurance listed below. The policies of insurance shall be primary and written on forms acceptable to the Lessor and placed with insurance carriers approved and licensed by the Insurance Department in the State of Florida and meet a minimum financial AM Best and Company rating of no less than A:VII. No changes are to be made to these specifications without prior written specific approval by the Lessor.

Commercial General Liability providing coverage for premises and operations including but not limited to bodily injury, property damage, contractual, products and completed operations, collapse, underground and explosion, owner's and contractor's protective, contractual and personal injury with limits of not less than \$1,000,000 per occurrence, \$1,000,000 aggregate.

### **Policy Form:**

A. All policies required by this Lease Agreement, unless specific approval is given by the Lessor, are to be written on an occurrence basis, shall name the City of Venice, its Elected Officials, Officers, Agents, Employees as additional insured as their interest may appear under this Lease Agreement. Insurer(s) shall agree to waive all rights of subrogation against the City of Venice, its Elected Officials, Officers, Agents, & Employees.

B. Each insurance policy required by this Lease Agreement shall:



(1) apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability;

(2) be endorsed to state that coverage shall not be suspended, voided or canceled by either party except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to the City of Venice Risk Manager.

The Lessor shall retain the right to review, at any time, coverage form/policy, and amount of insurance.

The procuring of required policies of insurance shall not be construed to limit Lessee's liability nor to fulfill the indemnification provisions and requirements of this Lease Agreement.

The Lessee shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Lease Agreement and shall be solely responsible for the payment of any deductible and/or retention to which such policies are subject, whether or not the Lessor is an insured under the policy. Deductible levels should be acceptable to the Lessor.

Certificates of Insurance evidencing Occurrence form coverage and conditions to this Lease Agreement are to be furnished to the Lessor's Risk Manager, 401 West Venice Avenue, Venice, FL 34285, ten (10) business days prior to commencement of Lease Agreement and a minimum of thirty (30) calendar days prior to expiration of the insurance policy.

Notices of Claims associated with this Lease Agreement shall be provided to the Lessee's insurance company and the Lessor's Risk Manager, as soon as practicable after notice to the Lessee.

**22. PROHIBITION OF INVOLUNTARY ASSIGNMENT**

Neither this lease nor the leasehold estate of lessee nor any interest of lessee under the lease in the demised premises or in the new construction or improvements on the premises shall be subject to involuntary assignment, transfer, or sale, or to assignment, transfer, or sale by operation of law in any manner whatsoever, except through statutory merger, consolidation, devise or intestate succession. Any such attempt at involuntary assignment, transfer, or sale shall be void and of no effect.

**23. NOTICE OF DEFAULT**

The lessee shall not be deemed to be in default under this lease in the payment of rent or the payment of any other moneys required in this agreement, or in the furnishing of any bond or insurance policy when required unless lessor shall first give to lessee ten (10) days' written notice of the default and lessee fails to cure the default within ten (10) days thereafter.

Except as to the provisions or events referred to in the preceding sentence of this section, lessee shall not be deemed to be in default under this lease unless lessor first gives to lessee ten (10) days' written notice of the default, and lessee fails to cure the default within a ten (10) day period or, if the default is of such a nature that it cannot be cured within ten (10) days, lessee fails to commence to cure the default within such period of thirty (30) days or fails to proceed to the curing of the default with all possible diligence.

## 24. DEFAULT

In the event of any breach of this lease by lessee, lessor, in addition to the other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of lessee. Should lessor elect to re-enter, as provided in this agreement, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, lessor may either terminate this lease or it may from time to time, without terminating this lease, re-let the leased premises or any part of the premises for such term or terms, which may be for a term extending beyond the term of this lease, and at such rent or rents and on such other terms and conditions as lessor in its sole discretion may deem advisable with the right to make alternations and repairs to the leased premises. On each such re-letting:

(a) Lessee shall be immediately liable to pay to lessor, in addition to any indebtedness other than rent due under this lease, the expenses of re-letting and of any alterations and repairs, incurred by lessor, and the amount, if any, by which the rent reserved in this lease for the period of re-letting, up to but not beyond the term of this lease, exceeds the amount agreed to be paid as rent for the leased premises for the period of re-letting; or

(b) At the option of lessor, rents received by lessor from re-letting shall be applied, first, to the payment of any indebtedness, other than rent due under this lease from lessee to lessor; second, to the payment of any expenses of re-letting and of any alterations and repairs; third, to the payment of rent due and unpaid under this lease; and the remainder, if any, shall be held by lessor and applied in payment of future rent as the rent may become due and payable under this lease.

If lessee has been credited with any rent to to be received by re-letting under above option (a),

and the rent shall not be promptly paid to lessor by the new tenant, or if rentals received from re-letting under above option (b) during any month is less than that to be paid during that month by lessor under this lease, lessee shall pay any deficiency to lessor. The deficiency shall be calculated and paid monthly. No re-entry or taking possession of the leased premises by lessor shall be construed as an election on the part of lessor to terminate this lease unless a written notice of such intention is given to lessee or unless the termination of the lease is decreed by a court of competent jurisdiction.

Notwithstanding any re-letting without termination, lessor may at any time after that elect to terminate this lease for any previous breach. Should lessor at any time terminate this lease for any breach, in addition to any other remedy it may have, lessor may recover from lessee all damages incurred by reason of the breach, including the cost of recovering the premises, and including the worth at the time of the termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this lease for the remainder of the stated term over the then reasonable rental value of the premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from lessee to lessor.

**25. LESSOR’S RIGHT TO PERFORM**

In the event that lessee by failing or neglecting to do or perform any act or thing provided for in this lease, defaults under this lease and the failure continues for a period of ten (10) days after written notice from lessor specifying the nature of the act or thing to be done or performed, then lessor may, but shall not be required to, do or perform or cause to be done or performed such act or thing, entering on the leased premises for such purpose, if lessor shall so elect, and lessor shall not be or be held liable or in any way responsible for any loss, inconvenience, annoyance, or damage

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resulting to lessee on account of it and lessee shall repay to lessor on demand any expenses, including compensation to the agents and employees of lessor. Any act or thing done by lessor pursuant to the provisions of this section shall not be construed as a waiver of any such default by lessee, or as a waiver of any covenant, term, or condition contained in this lease or the performance of it, or of any other right or remedy of lessor. All amounts payable by lessee to lessor under any of the provisions of this lease, if not paid when the amounts become due as in this lease provided, shall bear interest from the date they become due until paid at the rate of five (5) % percent per year, compounded annually.

## **26. EFFECT OF EMINENT DOMAIN**

a. Effect of total condemnation. In the event the entire leased premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this lease shall terminate and expire as of the date of the taking, and lessee shall then be released from any liability accruing under this lease after that date.

b. Effect of partial condemnation. In the event a portion of the leased premises shall be so appropriated or taken and the remainder of the property shall not be suitable for the use then being made of the property by lessee, or if the remainder of the property is not one undivided parcel of property, lessee shall have the right to terminate this lease as of the date of the taking on giving to lessor written notice of the termination within ten (10) days after lessor has notified lessee in writing that the property has been appropriated or taken.

In the event of partial taking and lessee does not terminate this lease, this lease shall continue in full force and effect as to the part not taken, and the rent to be paid by lessee during the remainder of the term, subject to adjustment as provided in the rent adjustment provisions of Section 3 of this

lease, shall be determined in the manner provided for above in the rent adjustment provisions. That determination shall not affect or change the times at which lessor may require an adjustment in rent under the provisions; however, the words “which in no event shall be less than the rent then being paid by lessee” appearing in the rent adjustment provisions shall not apply with respect to the determination, but shall apply with respect to any subsequent adjustment under the provisions.

c. Condemnation award. In the event of the termination of this lease by reason of the total or partial taking of the premises by eminent domain, then in any condemnation proceedings lessor and lessee shall be free to make claim against the condemning or taking authority of the amount of any damage done to them, respectively, as a result of the taking.

In the event of a partial taking of the premises and this lease is not terminated, then lessee shall have the right to make claim against the condemning or taking authority for only the un-amortized cost of the improvements placed on the leased premises by lessee and located on the premises at the time of the taking or appropriation, which improvements shall be deemed to amortize in equal annual amounts over the period commencing with the date of completion of the improvements and ending August 31, 2022.

**27. WAIVER**

The waiver by lessor of, or the failure of lessor to take action with respect to any breach of any term, covenant, or condition contained in this lease shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach, or of any other term, covenant, or condition contained in the lease. The subsequent acceptance of rent under this lease by lessor shall not be deemed to be a waiver of any preceding breach by lessee of any term, covenant, or condition of this lease, other than the failure of lessee to pay the particular rental so accepted, regardless of lessor’s

knowledge of the preceding breach at the time of acceptance of rent.

**28. EFFECT OF LESSEE’S HOLDING OVER**

Any holding over after the expiration of the term of this lease, with consent of lessor, shall be construed to be a tenancy from month to month, at the same monthly rent as required to be paid by lessee for the period immediately prior to the expiration of the term of this lease, and shall otherwise be on the terms and conditions specified in this lease, so far as applicable.

**29. PARTIES BOUND**

The covenants and conditions contained in this lease shall, subject to the provisions as to assignment, transfer, and sub-letting, apply to and bind the heirs, successors, executors, administrators, and assigns of all of the parties to this lease; and all of the parties to this lease shall be jointly and severally liable under the lease.

**30. TIME OF THE ESSENCE**

Time is of the essence of this lease, and of each and every covenant, term, condition, and provision of this lease.

**31. FLORIDA LAW**

This Lease will be governed by the laws of the State of Florida, as to both interpretations and performance.

**32. CHOICE OF VENUE**

The parties hereby agree that the exclusive venue for any dispute under this lease, not otherwise covered by an arbitration provision, shall be the Circuit Court of the Twelfth Judicial Circuit, in and for Sarasota County. The parties waive their right to federal court jurisdiction and any right of removal to federal court jurisdiction.

### **33. ENTIRE AGREEMENT**

This Lease sets forth the entire agreement between the parties to this Lease. There are no other promises, agreements, conditions or understandings, either oral or written, between the parties. No subsequent alteration, amendment, change or addition to this Lease will be valid and binding on the parties unless it is in writing and signed by both parties.

### **34. REPRESENTATIVES BOUND HEREBY**

The terms of this Lease will be binding on the parties' heirs, successors, assigns, and representatives.

### **35. INSOLVENCY, BANKRUPTCY, ETC. OF LESSEE**

If Lessee is declared insolvent or adjudicated a bankrupt, or if Lessee makes an assignment for the benefit of creditors, or if Lessee's leasehold interest is sold under execution by a trustee in bankruptcy, or if a receiver is appointed for Lessee, without prejudice to its rights hereunder and at its option, the Lessor may terminate this Lease and re-take possession of the premises without notice to Lessee, or any assignee or transferee, trustee, using force if necessary.

### **36. SECTION CAPTIONS**

The captions appearing under the section number designations of this lease are for convenience only and are not a part of this lease and do not in any way limit or amplify the terms and provisions of this lease.



CITY OF VENICE, FLORIDA

BY: *John W. Holic*  
JOHN W. HOLIC, MAYOR

ATTEST:

*Lori Stelzer*  
LORI STELZER, City Clerk

Mayor John W. Holic

AUG 29 2012

LESSOR, VENICE PIER GROUP, INC

*Michael V Pachota* (PRESIDENT)

MICHAEL V PACHOTA (PRINT NAME)

Approved By City Council

Date: August 28, 2012

## SKETCH OF DESCRIPTION PROPOSED SOLAR LEASE AREA

SHEET 1 OF 2

CURVE TABLE

CURVE	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH	ARC LENGTH
C1	17.37'	40°30'26"	N 36°21'32" W	12.03'	12.28'
C2	17.89'	87°20'27"	N 28°05'40" E	24.70'	27.27'

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 14°34'04" E	82.02'
L2	S 73°26'34" W	1.80'
L3	S 73°26'34" W	16.00'
L4	S 75°08'04" W	32.81'
L5	S 75°34'36" W	25.76'
L6	S 14°49'30" E	28.47'
L7	S 75°10'30" W	19.75'
L8	N 14°49'30" W	18.00'
L9	N 09°40'21" W	10.65'
L10	N 29°00'59" W	33.84'
L11	N 03°00'02" E	15.79'
L12	N 02°49'30" W	6.85'
L13	N 77°37'38" E	30.46'
L14	N 75°16'39" E	32.94'
L15	N 75°40'33" E	19.97'
L16	N 75°40'33" E	1.80'

## NOTES:

1. This sketch does not represent a boundary survey. The purpose of this sketch is to graphically depict the description shown on sheet 2 of 2.

2. All bearings and distances shown hereon refer to Grid, NAD 1927, derived from the use of Sarasota County G.P.S. Control Monuments SAR 103 and LORAN. The reference bearing between said monuments is S.02°41'07"E. To convert Grid dimensions to ground dimensions the distance should be divided by the scale factor of 0.999965806.

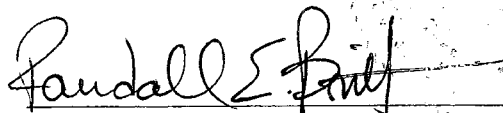
3. See boundary survey prepared by Britt Surveying, Inc., dated March 8, 2010, Job Number 09-07-01A, and Venice Pier Parking Lot Improvement Asbuilts, Sheet C5, prepared by Britt Surveying, Inc. dated October 3, 2006.

## DESCRIPTION: "LEASE AREA"

A Parcel of Land lying and being in Section 19, Township 39 South, Range 19 East, Sarasota County, Florida and being more particularly described as follows:

BEGINNING at a point that is 91.70 feet East of and 1881.82 feet South of the Northwest corner of said Section 19; thence S.14°34'04"E. , a distance of 82.02 feet ; thence S.73°26'34"W. , a distance of 1.80 feet ; thence S.73°26'34"W. , a distance of 16.00 feet; thence S.75°08'04"W., a distance of 32.81 feet; thence S.75°34'36"W., a distance of 25.76 feet; thence S.14°49'30"E., a distance of 28.47 feet; thence S.75°10'30"W., a distance of 19.75 feet; thence N.14°49'30"W., a distance of 18.00 feet; thence N.09°40'21"W., a distance of 10.65 feet; thence N.29°00'59"W., a distance of 33.84 feet; thence N.03°00'02"E., a distance of 15.79 feet; thence N.02°49'30"W., a distance of 6.85 feet to a point on a curve to the right, having: a radius of 17.37 feet, a central angle of 40°30'26", a chord bearing of N.36°21'32"W., and a chord length of 12.03 feet; thence along the arc of said curve, an arc length of 12.28 feet to a point of compound curvature of a curve to the right, having: a radius of 17.89 feet, a central angle of 87°20'27", a chord bearing of N.28°05'40"E., and a chord length of 24.70 feet; thence along the arc of said curve, an arc length of 27.27 feet to the end of said curve; thence N.77°37'38"E., a distance of 30.46 feet; thence N.75°16'39"E., a distance of 32.94 feet; thence N.75°40'33"E., a distance of 19.97 feet; thence N.75°40'33"E., a distance of 1.80 feet to the POINT OF BEGINNING.

Parcel contains 8820 Square Feet, or 0.2025 Acres



Randall E. Britt, Professional Land Surveyor  
Florida Certification Number 3979

Note: Not Valid Unless Imprinted With Embossed Land Surveyor's Seal

THIS SKETCH DOES NOT REPRESENT A BOUNDARY SURVEY  
SEE SHEET 1 OF 2 FOR DESCRIPTION

PREPARED FOR:

SHARKY'S ON THE PIER

DATE: AUGUST 14, 2012JOB NUMBER: 12-08-01 S&D

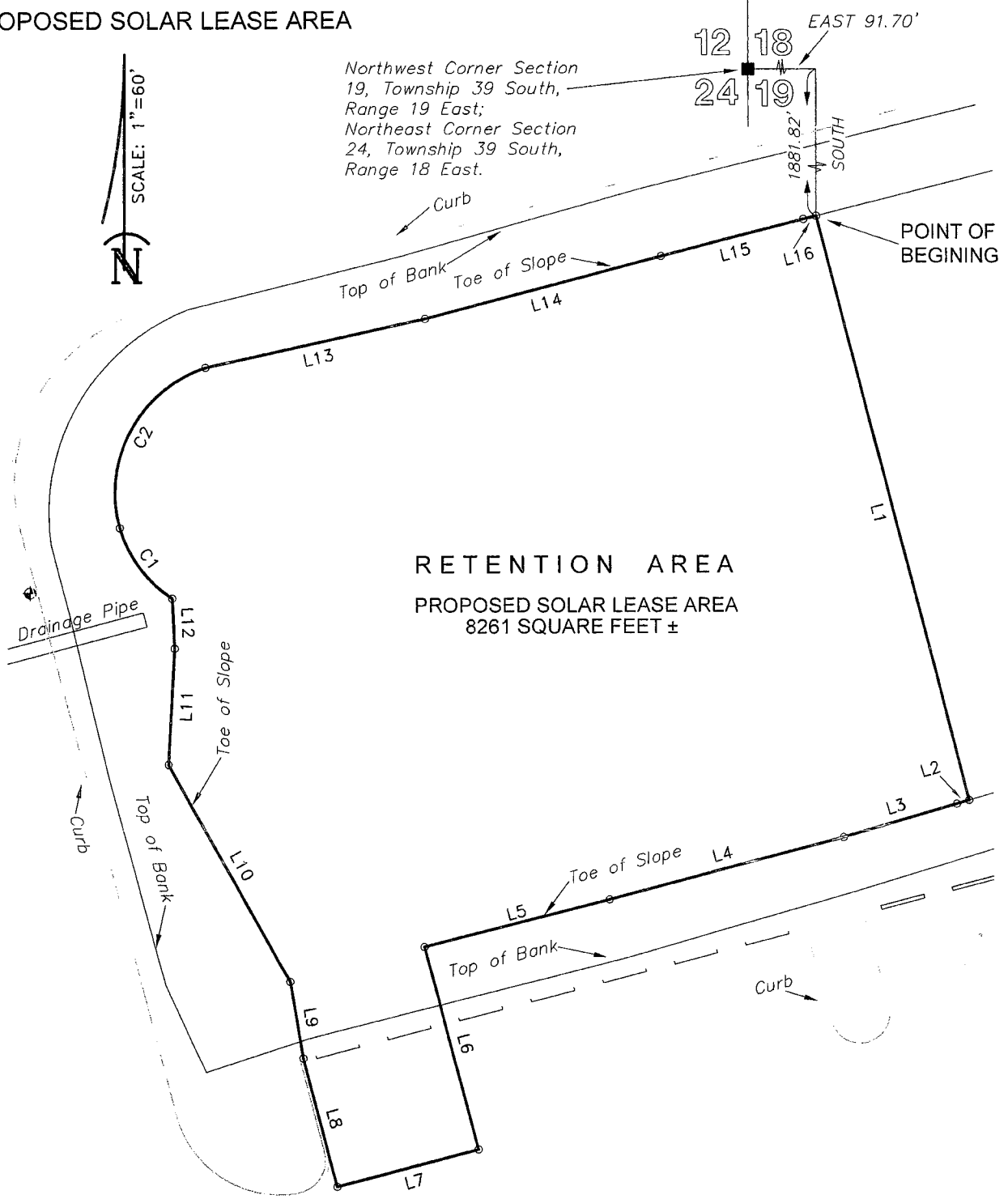
### BRITT SURVEYING, INC.

LAND SURVEYORS AND MAPPERS  
CERTIFICATE OF AUTHORIZATION NO. L.B. 6638

606 Cypress Avenue Venice Florida 34285  
Telephone: (941) 493-1396 Fax: (941) 484-5766

Email: bsi@brittsurveying.com

**SKETCH OF DESCRIPTION  
PROPOSED SOLAR LEASE AREA**



THIS SKETCH DOES NOT REPRESENT A BOUNDARY SURVEY  
SEE SHEET 1 OF 2 FOR DESCRIPTION

PREPARED FOR:

SHARKY'S ON THE PIER

DATE: AUGUST 14, 2012

JOB NUMBER: 12-08-01 S&D



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