

TO BE RECORDED AND WHEN RECORDED
RETURN TO:

Jones Hall, A Professional Law Corporation
650 California Street, 18th Floor
San Francisco, California 94111
Attention: Christopher K. Lynch, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

LEASE

This LEASE (this "Lease"), dated as of _____, 1, 20__, is between the COUNTY OF SANTA BARBARA, a county duly organized and existing under the laws of the State of California (the "City"), and the SANTA BARBARA COUNTY FINANCE CORPORATION, INC., a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation").

BACKGROUND:

1. On March 16, 2010, the Board of Supervisors of the County (the "Board of Supervisors") adopted Resolution No. 10-068, entitled "Resolution Declaring Intention to Finance Installation of Distributed Generation Renewable Energy Sources, and Energy Efficiency and Water Efficiency Improvements" (the "Resolution of Intention"), to initiate proceedings under Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California ("Chapter 29") to establish the emPowerSBC program (the "Program"), pursuant to which the County will enter into contractual assessments to finance the installation of renewable energy, energy efficiency and water efficiency improvements ("Authorized Improvements") as described in the Resolution of Intention.

2. By the Resolution of Intention, the Board of Supervisors provided that one or more series of bonds would be issued or other financing relationships would be entered into under the Improvement Bond Act of 1915, Division 10 of the Streets and Highways Code of California (the "1915 Act").

3. On April 13, 2010, after holding a duly noticed public hearing at which interested persons were allowed to object to or inquire about the proposed Program or any of its particulars, the Board of Supervisors adopted Resolution No. _____, entitled "Resolution Confirming Report Relating to the Financing of the Installation of

Distributed Generation Renewable Energy Sources and Energy Efficiency and Water Efficiency Improvements and Approving and Ordering Other Related Matters,” (the “Resolution Confirming Program Report”), pursuant to which the Board of Supervisors, among other things, (i) confirmed and approved a report (the “Program Report”) addressing all of the matters set forth in Section 5898.22 of Chapter 29, (ii) established the Program, and (iii) authorized execution of agreements (“Assessment Contracts”) with the owners of property in the County (the “Program Area”) to provide for the levy of contractual assessments (the “Contractual Assessments”) to finance installation of Authorized Improvements.

4. The County wishes to provide long-term financing for the installation of Authorized Improvements on participating parcels in the County and for other capital projects of the County by leasing certain real property and improvements (the “Leased Property”) to the Corporation pursuant to this Lease and sub-leasing the Leased Property back from the Corporation under a Sublease, dated as of _____, 20__ (the “Sublease”).

5. The County expects to make the lease payments payable to the Corporation under the Sublease that are attributable to the installation of Authorized Improvements with Contractual Assessment installments paid by participating property owners to the County.

6. The Corporation has assigned certain of its rights in the Sublease to [Trustee], as trustee (the “Trustee”) under an Assignment Agreement dated as of _____, 1, 20__, which has been recorded concurrently herewith (the “Assignment Agreement”), and in consideration of such assignment the Trustee has entered into a Trust Agreement dated as of _____, 1, 20__, between the Trustee, the County and the Corporation, under which the Trustee has agreed to execute and deliver \$_____ aggregate principal amount of Certificates of Participation, each evidencing a direct, undivided fractional interest in the lease payments to be paid by the County under the Sublease.

7. The County is authorized to enter into this Lease and the Sublease with the Corporation to provide financing for the Program under Chapter 29 and Section 25536(c) of the California Government Code.

A G R E E M E N T :

In consideration of the foregoing and the material covenants hereinafter contained, the County and the Corporation formally covenant, agree and bind themselves as follows:

SECTION 1. *Lease of Property to the Corporation.* The County hereby leases to the Corporation, and the Corporation hereby leases from the County, the real property which is described more fully in Appendix A, on the terms and conditions hereinafter set forth.

SECTION 2. *Term; Possession.* The term of this Lease commences, and the Corporation becomes entitled to possession of the Leased Property, as of the date of execution and delivery hereof. This Lease ends, and the right of the Corporation

hereunder to possession of the Leased Property thereupon ceases, on the date on which all of the outstanding Certificates are paid in full, or provision is made for such payment in accordance with the Trust Agreement, and the Trust Agreement has been discharged under Section 13.01 thereof, but under any circumstances not later than September 2, ____.

SECTION 3. *Rental.* In consideration of the lease of the Leased Property hereunder, and as rental therefor, the Corporation shall cause the Certificates to be executed and delivered under the Trust Agreement and shall cause the amount of \$_____ to be deposited into the Project Fund which is established under the Trust Agreement, to be disbursed by the Trustee upon requisitions of the County to finance the Program.

SECTION 4. *Financing Purpose; Leaseback to County.* The Corporation hereby agrees to sub-lease the Leased Property back to the County under the Sublease for the purpose of providing financing for the Program and for other capital projects of the County.

SECTION 5. *Assignments and Subleases.* Unless the County is in default under the Sublease, the Corporation may not assign its rights under this Lease or sublet all or any portion of the Leased Property, except as provided in the Sublease, without the prior written consent of the County.

SECTION 6. *Right of Entry.* The County reserves the right for any of its duly authorized representatives to enter upon the Leased Property, or any portion thereof, at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

SECTION 7. *Termination.* The Corporation agrees, upon the termination of this Lease, to quit and surrender the Leased Property in the same good order and condition as the Leased Property was in at the time of commencement of the term hereof, reasonable wear and tear excepted.

SECTION 8. *Default.* If the Corporation defaults in the performance of any obligation on its part to be performed under the terms of this Lease, which default continues for 30 days following notice and demand for correction thereof to the Corporation, the County may, and at the written direction of the Trustee and the County, shall exercise any and all remedies granted by law, except that no merger of this Lease and of the Sublease shall be deemed to occur as a result thereof and this Lease may not be terminated by the County as a remedy for such default. Notwithstanding the foregoing, so long as the Sublease remains in effect, the County shall continue to pay the Lease Payments to the Trustee.

SECTION 9. *Amendments.* The Corporation and the County may at any time amend or modify any of the provisions of this Lease, but only: (a) with the prior written consents of the Owners of a majority in aggregate principal amount of the Outstanding Certificates; or (b) without the consent of the Trustee or any of the Certificate Owners, but only if such amendment or modification is for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the County or the Corporation contained in this Lease, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the County or the Corporation,
- (ii) to cure any ambiguity, or to cure, correct or supplement any defective provision contained herein, for the purpose of conforming to the original intention of the County and the Corporation,
- (iii) to amend any provision thereof relating to the Tax Code, but only if and to the extent such amendment will not adversely affect the exclusion from gross income of interest represented by any of the Certificates under the Tax Code, in the opinion of Bond Counsel,
- (iv) to amend the description of any component of the Leased Property to reflect accurately the property originally intended to be included therein, or to effectuate any substitution of property as permitted by Section 4.6 of the Sublease or any release or property as permitted by Section 4.7 of the Sublease,
- (v) in any other respect whatsoever as the Corporation and the County deem necessary or desirable, provided that, in the opinion of Bond Counsel, such modifications or amendments do not materially adversely affect the interests of the Owners of the Certificates.

The County must obtain and cause to be filed with the Trustee an opinion of Bond Counsel with respect to any amendment or modification hereof, stating that all conditions precedent to such amendment as set forth in this Section have been satisfied. Promptly following the effective date of any amendment or modification under this Section, the County must mail written notice thereof to each rating agency which then maintains a rating on the Certificates.

SECTION 10. *Quiet Enjoyment.* The Corporation at all times during the term of this Lease shall peaceably and quietly have, hold and enjoy all of the Leased Property, subject to the provisions of the Sublease and subject only to Permitted Encumbrances.

SECTION 11. *Waiver of Personal Liability.* All liabilities under this Lease on the part of the Corporation are solely corporate liabilities of the Corporation as a nonprofit public benefit corporation, and the County hereby releases each and every member and officer of the Corporation of and from any personal or individual liability under this Lease. No member or officer of the Corporation or its governing board is at any time or under any circumstances individually or personally liable under this Lease for anything done or omitted to be done by the Corporation hereunder.

SECTION 12. *Taxes.* The County will pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Leased Property and any improvements thereon.

SECTION 13. *Eminent Domain.* If the whole or any part of the Leased Property, or any improvements thereon, are taken by eminent domain proceedings, the interest of

the Corporation will be the aggregate amount of the then unpaid principal components of the Lease Payments payable under the Sublease and the balance of the award, if any, will be paid to the County. The County hereby waives any and all rights that it has or may hereafter have to acquire the interest of the Corporation in and to the Leased Property through the eminent domain powers of the County.

SECTION 14. *Partial Invalidity.* If any one or more of the terms, provisions, covenants or conditions of this Lease are to any extent declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Lease will be affected thereby, and each provision of this Lease will be valid and enforceable to the fullest extent permitted by law.

SECTION 15. *Notices.* Any notice, request, complaint, demand or other communication under this Lease must be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopy, telex or other form of telecommunication, at its number set forth below. Notice will be effective either (a) upon transmission by telecopy, telex or other form of telecommunication, (b) 48 hours after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The County, the Corporation and the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

*If to the County
or the Corporation:*

County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101
Attention: County of Santa Barbara
Chief Executive Officer

If to the Trustee:

[to come]

SECTION 16. *Governing Law.* This Lease is governed by the laws of the State of California.

SECTION 17. *Third Party Beneficiary.* The Trustee is hereby made a third party beneficiary hereunder with all rights of a third party beneficiary.

SECTION 18. *Binding Effect.* This Lease inures to the benefit of and is binding upon the Corporation, the County and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 19. *Severability of Invalid Provisions.* If any one or more of the provisions contained in this Lease are for any reason held to be invalid, illegal or unenforceable in any respect, then such provision or provisions will be deemed severable from the remaining provisions contained in this Lease and such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, and this

Lease shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Corporation and the County each hereby declares that it would have entered into this Lease and each and every other Section, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Lease may be held illegal, invalid or unenforceable.

SECTION 20. *Section Headings.* All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

SECTION 21. *Execution in Counterparts.* This Lease may be executed in any number of counterparts, each of which is an original but all together constitute one and the same instrument. It is also agreed that separate counterparts of this Lease may be separately executed by the Corporation and the County, all with the same force and effect as though the same counterpart had been executed by each of the Corporation and the County.

SECTION 22. *Defined Terms.* All capitalized terms used herein and not otherwise defined have the respective meanings given those terms in the Trust Agreement.

IN WITNESS WHEREOF, the County and the Corporation have caused this Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

**SANTA BARBARA COUNTY
FINANCE CORPORATION, INC.**

By _____
President

Treasurer

COUNTY OF SANTA BARBARA

By _____
Chair of the Board of Supervisors

[SEAL]

ATTEST:

Michael F. Brown,
Clerk of the Board of Supervisors

**APPROVED AS TO ACCOUNTING
FORM:**

Robert W. Geis, C.P.A.,
Auditor-Controller

APPROVED AS TO FORM:

Dennis Marshall,
County Counsel

APPROVED AS TO FORM:

Ray Aromatorio,
Risk Manager

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

The property constituting the Leased Property consists of the land located in the County of Santa Barbara, State of California, which is described as follows, including all buildings, improvements and facilities at any time situated thereon.