



SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY

REGULAR MEETING AGENDA MAY 23, 2019 8:30 A.M.

Chairman Mark D. Radecki
Vice Chair Cory C. Moss
Board Member Abraham Cruz
Board Member Catherine Marcucci
Board Member Newell Ruggles

Location: City Council Chamber, 15651 East Stafford Street, City of Industry, California

Addressing the Agency:

- **Agenda Items:** Members of the public may address the Successor Agency on any matter listed on the Agenda. In order to conduct a timely meeting, there will be a three-minute time limit per person for any matter listed on the Agenda. Anyone wishing to speak to the Successor Agency is asked to complete a Speaker's Card which can be found at the back of the room and at each podium. The completed card should be submitted to the Secretary prior to the Agenda item being called and prior to the individual being heard by the Successor Agency.

- **Public Comments (Non-Agenda Items Only):** Anyone wishing to address the Successor Agency on an item not on the Agenda may do so during the "Public Comments" period. In order to conduct a timely meeting, there will be a three-minute time limit per person for the Public Comments portion of the Agenda. State law prohibits the Successor Agency from taking action on a specific item unless it appears on the posted Agenda. Anyone wishing to speak to the Successor Agency is asked to complete a Speaker's Card which can be found at the back of the room and at each podium. The completed card should be submitted to the Secretary prior to the Agenda item being called by the Secretary and prior to the individual being heard by the Successor Agency.

Americans with Disabilities Act:

- In compliance with the ADA, if you need special assistance to participate in any meeting (including assisted listening devices), please contact the Office of the Secretary to the Successor Agency (626) 333-2211. Notification of at least 72 hours prior to the meeting will assist staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting.

Agendas and other writings:

- In compliance with Government Code Section 54957.5(b), staff reports and other public records permissible for disclosure related to open session agenda items are available at City Hall, 15625 East Stafford Street, Suite 100, City of Industry, California, at the office of the Secretary of the Successor Agency during regular business hours, Monday through Thursday, 8:00 a.m. to 5:00 p.m., Fridays 8:00 a.m. to 4:00 p.m. Any person with a question concerning any agenda item may call the City Clerk's Office at (626) 333-2211

1. Call to Order
2. Flag Salute
3. Roll Call
4. Public Comments

5. **BOARD MATTERS**

- 5.1 Consideration of the Register of Demands for May 9, 2019

RECOMMENDED ACTION: Ratify the Register of Demands for May 9, 2019.

- 5.2 Consideration of the Register of Demands for May 23, 2019

RECOMMENDED ACTION: Approve the Register of Demands and authorize the appropriate Agency Officials to pay the bills.

- 5.3 Consideration of the minutes of June 21, 2018 special joint meeting and the April 25, 2019 regular meeting

RECOMMENDED ACTION: Approve as submitted.

- 5.4 Consideration of Amendment No. 2 to the License Agreement with OHL, USA, Inc. to extend the term for the Use of Assessor's Parcel Nos. 8719-007-928 and 8719-007-930, located at 248 North Grand Avenue

RECOMMENDED ACTION: Approve the Amendment.

- 5.5 Consideration of Resolution No. SA 2019-03 – A RESOLUTION OF THE SUCCESSOR AGENCY TO THE INDUSTRY URBAN DEVELOPMENT AGENCY ("SUCCESSOR AGENCY") APPROVING A NEW LEASE AGREEMENT BY AND BETWEEN THE SUCCESSOR AGENCY AND THE INDUSTRY EAST BUSINESS CENTER, LLC, ("IEBC") FOR A PORTION OF THE PROPERTY DESCRIBED IN THE UNRECORDED LEASE AGREEMENT DATED APRIL 28, 2005 BY AND BETWEEN THE SUCCESSOR AGENCY'S PREDECESSOR IN INTEREST, THE INDUSTRY URBAN-DEVELOPMENT AGENCY, AND THE IEBC'S PREDECESSOR IN INTEREST, INDUSTRY EAST LAND, LLC, AND MORE COMMONLY KNOWN AS BUILDINGS NOS. 11 AND 12

RECOMMENDED ACTION: Adopt Resolution No. SA 2019-03.

- 5.6 Consideration of Resolution No. SA 2019-04 – A RESOLUTION OF THE SUCCESSOR AGENCY TO THE INDUSTRY URBAN DEVELOPMENT AGENCY (“SUCCESSOR AGENCY”) APPROVING A NEW LEASE AGREEMENT BY AND BETWEEN THE SUCCESSOR AGENCY AND THE INDUSTRY EAST BUSINESS CENTER, LLC (“IEBC”) FOR A PORTION OF THE PROPERTY DESCRIBED IN THE UNRECORDED LEASE AGREEMENT DATED APRIL 28, 2005 BY AND BETWEEN THE SUCCESSOR AGENCY’S PREDECESSOR IN INTEREST, THE INDUSTRY URBAN-DEVELOPMENT AGENCY, AND THE IEBC’S PREDECESSOR IN INTEREST, INDUSTRY EAST LAND, LLC., AND MORE COMMONLY KNOWN AS BUILDING NO. 2

RECOMMENDED ACTION: Adopt Resolution No. SA 2019-04.

6. Adjournment. Next regular Successor Agency meeting will be on Thursday, June 27, 2019 at 8:30 a.m.

SUCCESSOR AGENCY

ITEM NO. 5.1

**Successor Agency To The
Industry Urban-Development Agency
Authorization For Payment of Bills
May 9, 2019**

<u>FUND</u>	<u>DESCRIPTION</u>	<u>DISBURSEMENTS</u>
	IUDA ADMIN	0.00
221	IUDA PROJECT 1	39,265.00
222	IUDA PROJECT 2	6,619,627.25
	TOTAL ALL FUNDS	6,658,892.25

<u>BANK</u>	<u>NAME</u>	<u>DISBURSEMENTS</u>
WFBK	WELLS FARGO BANK	6,619,627.25
BOFA	BANK OF AMERICA	39,265.00
	TOTAL ALL BANKS	6,658,892.25

**Successor Agency To The
Industry Urban Development Agency**

Wells Fargo Bank

May 9, 2019

Check	Date			Payee Name	Check Amount
IUDAADM.WF.CHK - IUDA Admin WF Checking					
32406	05/09/2019			BUTSKO UTILITY DESIGN INC.	\$19,860.00
	Invoice	Date	Description	Amount	
	119672	03/26/2019	UTILITY DESIGN-IBC PROJ	\$19,860.00	
32407	05/09/2019			CITY OF DIAMOND BAR	\$6,499,388.00
	Invoice	Date	Description	Amount	
	04/20/19	04/20/2019	TRAFFIC MITIGATION AGREEMENT FOR IBC PROJECT	\$6,499,388.00	
32408	05/09/2019			CNC ENGINEERING	\$77,070.00
	Invoice	Date	Description	Amount	
	458573	04/25/2019	BAKER PKY SLOPE MAINT	\$832.50	
	458580	04/25/2019	DIAMOND BAR CREEK	\$82.50	
	458581	04/25/2019	INDUSTRY EAST TRAFFIC MITIGATION	\$1,497.50	
	458574	04/25/2019	GRAND AVE/GOLDEN SPRINGS DR INTERSECTION	\$1,637.50	
	458575	04/25/2019	IBC-EAST SIDE ROADWAYS	\$27,241.25	
	458576	04/25/2019	IBC-WEST SIDE ROADWAYS	\$34,942.50	
	458577	04/25/2019	IBC-FUTURE PHASES AND STUDIES	\$7,143.75	
	458578	04/25/2019	IBC-TRAFFIC MITIGATION GRAND & FERRERO PKY	\$3,507.50	
	458579	04/25/2019	IBC-TRAFFIC MITIGATION BREA CYN & CHERYL LN	\$185.00	
32409	05/09/2019			ENVIRONS, INC.	\$2,110.21
	Invoice	Date	Description	Amount	
	3268	04/19/2019	LANDSCAPE PLANS-IBC PROJ	\$2,110.21	
32410	05/09/2019			L A COUNTY DEPT OF PUBLIC	\$949.00

**Successor Agency To The
Industry Urban Development Agency**

Wells Fargo Bank

May 9, 2019

Check	Date			Payee Name	Check Amount
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IUDAADM.WF.CHK - IUDA Admin WF Checking

Invoice	Date	Description	Amount
IN190000707	03/27/2019	TAX PACKAGE RECORDING FEE-IBC PROJ	\$949.00
<hr/>			
32411	05/09/2019		\$746.79
Invoice	Date	Description	Amount
17846	04/16/2019	BLUEPRINT SVC-MP 99 31 16	\$746.79
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32412	05/09/2019		\$1,280.00
Invoice	Date	Description	Amount
0011255966	04/15/2019	NOTICE INVITING BIDS FOR CONTRACT GGS-0387	\$1,280.00
<hr/>			
32413	05/09/2019		\$18,223.25
Invoice	Date	Description	Amount
0347370	03/31/2019	ENGINEERING SVC-IBC PROJ	\$18,223.25

Checks	Status	Count	Transaction Amount
			\$6,619,627.25
Total		8	

**Successor Agency To The
Industry Urban Development Agency**

Bank of America

May 9, 2019

Check	Date	Payee Name	Check Amount
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08PJ1REVLOAN - 2008 PJ1 Revol Loan - Restricted

1048	04/24/2019		IUDA-ADMINISTRATIVE ACCOUNT	\$2,265.00
	Invoice	Date	Description	Amount
	4/24/19	04/24/2019	2008 SUB-LIEN TAX BOND-REG 4/25/19	\$2,265.00

PJ1.BOFA.CHK - Project 1 BofA Checking

1141	04/23/2019		IUDA-ADMINISTRATIVE ACCOUNT	\$37,000.00
	Invoice	Date	Description	Amount
	A2 REG 4/25/19	04/23/2019	TRANSFER OF FUNDS REGISTER 4/25/19	\$37,000.00

Checks	Status	Count	Transaction Amount
	Total	2	\$39,265.00

**Successor Agency To The
Industry Urban-Development Agency
Authorization For Payment of Bills
May 9, 2019**

Reviewed By: _____ Date _____

Approved By: _____ Date _____

SUCCESSOR AGENCY

ITEM NO. 5.2

**Successor Agency To The
Industry Urban-Development Agency
Authorization For Payment of Bills
May 23, 2019**

<u>FUND</u>	<u>DESCRIPTION</u>	<u>DISBURSEMENTS</u>
	IUDA ADMIN	0.00
221	IUDA PROJECT 1	4,642.34
222	IUDA PROJECT 2	1,019,342.28
	TOTAL ALL FUNDS	1,023,984.62

<u>BANK</u>	<u>NAME</u>	<u>DISBURSEMENTS</u>
WFBK	WELLS FARGO BANK	1,019,342.28
BOFA	BANK OF AMERICA	4,642.34
	TOTAL ALL BANKS	1,023,984.62

**Successor Agency To The
Industry Urban Development Agency**

Wells Fargo Bank

May 23, 2019

Check	Date			Payee Name	Check Amount
IUDAADM.WF.CHK - IUDA Admin WF Checking					
32414	05/23/2019			ALL AMERICAN ASPHALT	\$332,832.50
	Invoice	Date	Description	Amount	
	#21IBC-0384E	05/01/2019	IBC-ROADWAYS AND SEWERS	\$91,850.00	
	#21IBC-0384H51	05/01/2019	IBC-ROADWAYS AND SEWERS	\$258,500.00	
32415	05/23/2019			COMMUNITY BANK	\$17,517.50
	Invoice	Date	Description	Amount	
	#21IBC-0384E-R	05/01/2019	RETENTION-IBC ROADWAYS AND SEWERS	\$4,592.50	
	#21IBC-0384H51-R	05/01/2019	RETENTION-IBC WEST SIDE ROADWAYS	\$12,925.00	
32416	05/23/2019			BRIGHTVIEW LANDSCAPE	\$26,100.00
	Invoice	Date	Description	Amount	
	#51GCD-0382	05/01/2019	BAKER PKY SLOPE MAINT	\$26,100.00	
32417	05/23/2019			CNC ENGINEERING	\$74,204.08
	Invoice	Date	Description	Amount	
	458600	05/09/2019	BAKER PKY SLOPE MAINT	\$566.25	
	458601	05/09/2019	IBC-EAST SIDE ROADWAYS	\$38,881.25	
	458602	05/09/2019	IBC-WEST SIDE ROADWAYS	\$28,196.25	
	458603	05/09/2019	IBC-FUTURE PHASES AND STUDIES	\$1,502.83	
	458604	05/09/2019	IBC-TRAFFIC MITIGATION	\$2,632.50	
	458605	05/09/2019	IBC-TRAFFIC MITIGATION	\$2,425.00	
32418	05/23/2019			COUNTY OF LA DEPT OF PUBLIC	\$61.00
	Invoice	Date	Description	Amount	

**Successor Agency To The
Industry Urban Development Agency**

Wells Fargo Bank

May 23, 2019

Check	Date		Payee Name	Check Amount
IUDAADM.WF.CHK - IUDA Admin WF Checking				
	5/8/2019	05/08/2019	IBC RECORDING PARCEL MAP 353-RECORDING FEE	\$61.00
32419	05/23/2019		COUNTY OF LA DEPT OF PUBLIC	\$462.00
	Invoice	Date	Description	Amount
	5/8/2019-A	05/08/2019	IBC RECORDING PARCEL MAP 353-TAX CLEARANCE	\$462.00
32420	05/23/2019		COUNTY OF LA DEPT OF PUBLIC	\$429.00
	Invoice	Date	Description	Amount
	5/8/2019-B	05/08/2019	IBC RECORDING PARCEL MAP 353-TAX BOND	\$429.00
32421	05/23/2019		ENVIRONS, INC.	\$300.00
	Invoice	Date	Description	Amount
	3278	05/06/2019	LANDSCAPE PLANS-IBC PROJECT	\$300.00
32422	05/23/2019		L A COUNTY DEPT OF PUBLIC	\$1,791.00
	Invoice	Date	Description	Amount
	5/9/2019	05/09/2019	PLAN CHECK FEE-IBC LANDSCAPING GRAND AVE	\$1,791.00
32423	05/23/2019		L A COUNTY DEPT OF PUBLIC	\$1,791.00
	Invoice	Date	Description	Amount
	5/9/2019-A	05/09/2019	PLAN CHECK FEE-IBC LANDSCAPING PHASE 3	\$1,791.00
32424	05/23/2019		LEIGHTON CONSULTING INC	\$24,951.28
	Invoice	Date	Description	Amount
	35338	05/08/2019	GEOTECHNICAL SVC-IBC PROJECT	\$22,200.48
	35335	05/08/2019	GEOTECHNICAL SVC-IBC PROJECT	\$103.40
	35336	05/08/2019	GEOTECHNICAL SVC-IBC PROJECT	\$2,647.40

**Successor Agency To The
Industry Urban Development Agency**

Wells Fargo Bank

May 23, 2019

Check	Date		Payee Name	Check Amount
IUDAADM.WF.CHK - IUDA Admin WF Checking				
32425	05/23/2019		MX GRAPHICS, INC.	\$616.40
	Invoice	Date	Description	Amount
	17999	05/02/2019	BLUEPRINT SVC-MP 99 31 16	\$616.40
32426	05/23/2019		PBLA ENGINEERING, INC.	\$9,400.00
	Invoice	Date	Description	Amount
	108-2-0419	04/01/2019	DRAINAGE DESIGN-IBC PROJECT	\$9,400.00
32427	05/23/2019		RKA CONSULTING GROUP	\$24,987.50
	Invoice	Date	Description	Amount
	28694	04/30/2019	INTERSECTION IMPROVEMENT-CITY OF WALNUT	\$24,987.50
32428	05/23/2019		SHAWNAN	\$473,138.00
	Invoice	Date	Description	Amount
	#9IBC-0386A	05/01/2019	IBC-WEST SIDE ROADWAYS	\$5,760.00
	#9IBC-0386C	05/01/2019	IBC-WEST SIDE ROADWAYS	\$322,080.00
	#9IBC-0386K	05/01/2019	IBC-WEST SIDE ROADWAYS	\$170,200.00
32429	05/23/2019		AMERICAN BUSINESS BANK	\$24,902.00
	Invoice	Date	Description	Amount
	#9IBC-0386A-R	05/01/2019	RETENTION-IBC WEST SIDE ROADWAYS	\$288.00
	#9IBC-0386C-R	05/01/2019	RETENTION-IBC WEST SIDE ROADWAYS	\$16,104.00
	#9IBC-0386K-R	05/01/2019	RETENTION-IBC WEST SIDE ROADWAYS	\$8,510.00

**Successor Agency To The
Industry Urban Development Agency**

Wells Fargo Bank

May 23, 2019

Check	Date	Payee Name	Check Amount
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IUDAADM.WF.CHK - IUDA Admin WF Checking

32430	05/23/2019			
	Invoice	Date	Description	Amount
	14001-63B	04/18/2019	57/60 FWY CONFLUENCE PROJECT	\$10,530.02

Checks	Status	Count	Transaction Amount
	Total	17	\$1,024,013.28

**Successor Agency To The
Industry Urban Development Agency**

Wells Fargo Voided Checks

May 23, 2019

Check	Date		Payee Name	Check Amount
IUDAADM.WF.CHK - IUDA Admin WF Checking				
32371	03/14/2019		05/06/2019	L A COUNTY DEPT OF PUBLIC
	Invoice	Date	Description	Amount
			VOIDED CK-INCORRECT AMOUNT	(\$1,557.00)
	02/26/19	02/26/2019	PLAN CHECK FEE-IBC LANDSCAPING PHASE 3 EAST	\$1,557.00
32372	03/14/2019		05/06/2019	L A COUNTY DEPT OF PUBLIC
	Invoice	Date	Description	Amount
			VOIDED CK-INCORRECT AMOUNT	(\$1,557.00)
	02/26/19-A	02/26/2019	PLAN CHECK FEE-IBC LANDSCAPING PHASE 3 WEST	\$1,557.00
32373	03/14/2019		05/06/2019	L A COUNTY DEPT OF PUBLIC
	Invoice	Date	Description	Amount
			VOIDED CK-INCORRECT AMOUNT	(\$1,557.00)
	02/26/19-B	02/26/2019	PLAN CHECK FEE-IBC LANDSCAPING GRAND AVE	\$1,557.00

Checks	Status	Count	Transaction Amount
	Total	3	(\$4,671.00)

**Successor Agency To The
Industry Urban Development Agency**

Bank of America

May 23, 2019

Check	Date	Payee Name	Check Amount
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PJ1.BOFA.CHK - Project 1 BofA Checking

1142	05/06/2019		IUDA-ADMINISTRATIVE ACCOUNT	\$2,000.00
	Invoice	Date	Description	Amount
	A2 REG 5/9/19	05/06/2019	TRANSFER OF FUNDS REGISTER 5/9/19	\$2,000.00
<hr/>				
1143	05/23/2019		CITY OF INDUSTRY	\$494.34
	Invoice	Date	Description	Amount
	2019-00000183	04/30/2019	REIMBURSEMENT FOR USPS APRIL 2019 RENT (4/24-	\$494.34
<hr/>				
1144	05/23/2019		CITY OF INDUSTRY	\$2,148.00
	Invoice	Date	Description	Amount
	05/13/2019	05/13/2019	USPS MAY 2019 RENT OWED TO CITY DUE TO SALES	\$2,148.00

Checks	Status	Count	Transaction Amount
<hr/>			
Total		3	\$4,642.34

**Successor Agency To The
Industry Urban-Development Agency
Authorization For Payment of Bills
May 23, 2019**

Reviewed By: _____ Date _____

Approved By: _____ Date _____

SUCCESSOR AGENCY

ITEM NO. 5.3

JOINT SPECIAL MEETING MINUTES OF THE
CITY OF INDUSTRY CITY COUNCIL, SUCCESSOR
AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY, INDUSTRY PUBLIC
UTILITIES COMMISSION, AND INDUSTRY PUBLIC FACILITIES AUTHORITY

JUNE 21, 2018
PAGE 1

CALL TO ORDER

The Joint Special Meeting of the City Council, Successor Agency to the Industry Urban-Development Agency, Industry Public Utilities Commission, and Industry Public Facilities Authority of the City of Industry, California, was called to order by Mayor/Chairman/President Radecki at 9:01 a.m. in the City of Industry Council Chamber, 15651 East Stafford Street, California.

FLAG SALUTE

The flag salute was led by Mayor/Chairman/President Radecki.

ROLL CALL

PRESENT: Mark Radecki, Mayor/Chairman/President
Cory Moss, Mayor Pro Tem/Vice Chair/Commissioner
Abraham N. Cruz, Council Member/Board Member/Commissioner
Newell W. Ruggles, Council Member/Board Member/Commissioner

ABSENT: Catherine Marcucci, Council Member/Board Member/Commissioner

STAFF PRESENT: Troy Helling, Acting City Manager; Jamie M. Casso, City Attorney; Joshua Nelson, Contract City Engineer; and Diane M. Schlichting, City Clerk.

PUBLIC COMMENTS

There were none.

ACTION ITEMS

5.1 PRESENTATION AND DISCUSSION REGARDING THE FY 2018-2019 PROPOSED BUDGET

Acting Finance Director Yamini Pathak provided a presentation along with Finance Manager Steven Avalos. Both were available to answer any questions. Discussion ensued between staff, legal counsel and Contract City Engineer Josh Nelson.

JOINT SPECIAL MEETING MINUTES OF THE
CITY OF INDUSTRY CITY COUNCIL, SUCCESSOR
AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY, INDUSTRY PUBLIC
UTILITIES COMMISSION, AND INDUSTRY PUBLIC FACILITIES AUTHORITY

JUNE 21, 2018
PAGE 2

Direction was given to bring this item back with a full presentation for a final vote to adopt on the June 28, 2018 meeting, after getting approvals from all other boards. No vote was taken at this time.

5.2 CONSIDERATION OF A TRAFFIC MITIGATION AGREEMENT BETWEEN THE SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY, THE CITY OF INDUSTRY, AND THE CITY OF DIAMOND BAR FOR TRAFFIC MITIGATIONS IN THE CITY OF DIAMOND BAR THAT ARE REQUIRED FOR THE ENVIRONMENTAL IMPACT REPORT FOR THE GRAND CROSSING DEVELOPMENT (INDUSTRY EAST) AND THE INDUSTRY BUSINESS CENTER. (MP 99-31 #65)

Contract City Engineer Josh Nelson provided a staff report to the Council and was available to answer any questions.

MOTION BY COUNCIL MEMBER/BOARD MEMBER/COMMISSIONER RUGGLES, AND SECOND BY MAYOR PRO TEM/VICE CHAIR/COMMISSIONER MOSS TO APPROVE THE AGREEMENT. MOTION CARRIED 4-0, BY THE FOLLOWING VOTE:

AYES:	COUNCIL MEMBERS:	CRUZ, RUGGLES, MOSS, RADECKI
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	MARCUCCI
ABSTAIN:	COUNCIL MEMBERS:	NONE

5.3 CONSIDERATION OF A BUILD OVER AGREEMENT BETWEEN THE SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY AND COUNTY SANITATION DISTRICT NO. 21 OF LOS ANGELES COUNTY FOR TWO UTILITY CROSSINGS FOR THE INDUSTRY BUSINESS CENTER PROJECT.

Contract City Engineer Josh Nelson provided a staff report to the Council and was available to answer any questions.

MOTION BY MAYOR PRO TEM/VICE CHAIR/COMMISSIONER MOSS, AND SECOND BY COUNCIL MEMBER/BOARD MEMBER/COMMISSIONER TO APPROVE THE AGREEMENT. MOTION CARRIED 4-0, BY THE FOLLOWING VOTE:

AYES:	COUNCIL MEMBERS:	CRUZ, RUGGLES, MOSS, RADECKI
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	MARCUCCI
ABSTAIN:	COUNCIL MEMBERS:	NONE

JOINT SPECIAL MEETING MINUTES OF THE
CITY OF INDUSTRY CITY COUNCIL, SUCCESSOR
AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY, INDUSTRY PUBLIC
UTILITIES COMMISSION, AND INDUSTRY PUBLIC FACILITIES AUTHORITY

JUNE 21, 2018
PAGE 3

ADJOURNMENT

There being no further business, the Joint Special Meeting adjourned at 10:00 a.m.

MARK RADECKI
MAYOR/CHAIRMAN/PRESIDENT

DIANE M. SCHLICHTING
CITY CLERK/SECRETARY

SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY
REGULAR MEETING MINUTES
CITY OF INDUSTRY, CALIFORNIA
APRIL 25, 2019
PAGE 1

CALL TO ORDER

The Regular Meeting of the Successor Agency to the Industry Urban-Development Agency was called to order by Chairman Radecki at 8:30 a.m. in the City of Industry Council Chamber, 15651 East Stafford Street, California.

FLAG SALUTE

The flag salute was led by Chairman Radecki.

ROLL CALL

PRESENT: Mark Radecki, Chairman
Cory Moss, Vice Chair
Abraham Cruz, Board Member
Catherine Marcucci, Board Member
Newell Ruggles, Board Member

STAFF PRESENT: Troy Helling, Executive Director; Bing Hyun, Assistant City Manager; Jamie M. Casso, Legal Counsel; Joshua Nelson, Contract City Engineer; and Julie Robles, Assistant Secretary.

PUBLIC COMMENTS

There were no public comments.

CONSIDERATION OF THE REGISTER OF DEMANDS FOR APRIL 25, 2019

MOTION BY VICE CHAIR MOSS, AND SECOND BY CHAIRMAN RADECKI TO APPROVE THE REGISTER OF DEMANDS AND AUTHORIZE THE APPROPRIATE CITY OFFICIALS TO PAY THE BILLS. MOTION CARRIED 5-0, BY THE FOLLOWING VOTE:

AYES:	BOARD MEMBERS:	CRUZ, MARCUCCI, RUGGLES, VC/MOSS, C/RADECKI
NOES:	BOARD MEMBERS:	NONE
ABSENT:	BOARD MEMBERS:	NONE
ABSTAIN:	BOARD MEMBERS:	NONE

SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY
REGULAR MEETING MINUTES
CITY OF INDUSTRY, CALIFORNIA
APRIL 25, 2019
PAGE 2

**CONSIDERATION OF THE MINUTES OF MARCH 28, 2019 REGULAR MEETING AND
THE APRIL 11, 2019 SPECIAL MEETING**

MOTION BY BOARD MEMBER CRUZ, AND SECOND BY BOARD MEMBER RUGGLES
TO APPROVE AS SUBMITTED. MOTION CARRIED 5-0, BY THE FOLLOWING VOTE:

AYES:	BOARD MEMBERS:	CRUZ, MARCUCCI, RUGGLES, VC/MOSS, C/RADECKI
NOES:	BOARD MEMBERS:	NONE
ABSENT:	BOARD MEMBERS:	NONE
ABSTAIN:	BOARD MEMBERS:	NONE

ADJOURNMENT

There being no further business, the Successor Agency to the Industry Urban-
Development Agency adjourned at 8.32 a.m.

Mark D. Radecki, Chairman

Julie Robles, Assistant Secretary

SUCCESSOR AGENCY

ITEM NO. 5.4



SUCCESSOR AGENCY TO THE
**INDUSTRY URBAN - DEVELOPMENT
AGENCY**

MEMORANDUM

TO: Honorable Chairman and Members of the Successor Agency to the Industry Urban-Development Agency Board

FROM: Troy Helling, Executive Director *TH*

STAFF: Joshua Nelson, Contract Agency Engineer, CNC Engineering *gn*

DATE: May 23, 2019

SUBJECT: Consideration of Amendment No. 2 to License Agreement with OHL, USA, Inc. to extend the term for the Use of Assessor's Parcel Nos. 8719-007-928 and 8719-007-930, located at 248 N. Grand Avenue (MP 99-60 #13/MP 99-31 #16)

Background:

OHL, USA, Inc. ("Licensee") contacted the Successor Agency to the Industry-Urban Development Agency ("Agency") in late 2016 regarding the use of Assessor's Parcel Numbers 8719-007-928 and 8719-007-930, to temporarily stockpile soil and remove and relocate previously stockpiled soil for various construction activities associated with the Fairway Grade Separation. On or about January 26, 2017, the Agency Board approved a License Agreement ("Agreement") for said use.

The original Agreement was for a term of 10 months, terminating on November 30, 2017. However, under the terms of the Agreement, the Executive Director granted one, three-month extension, thereby extending the term to February 28, 2018. Thereafter, Amendment Number 1 to the Agreement provided the Licensee a one-year extension to the Agreement through February 28, 2019 because the Fairway Drive Grade Separation had been taking longer than expected.

Discussion:

OHL, USA, Inc. will be using approximately 1.5 acres (roughly 200' x 300') of land in an area where no buildings are proposed at this time. An extension is requested at this time to continue the storing of temporary stockpile soil through December 31, 2019.

Fiscal Impact:

There will be no cost to the Agency should they approve this extension.

Recommendation:

- 1) Staff recommends that the Successor Agency approve and execute Amendment No. 2.

Exhibit:

- A. Amendment No. 2 to License Agreement with OHL, USA, Inc. for the Use of Assessor's Parcel No's. 8719-007-928 and 8719-007-930 located at 248 N. Grand Avenue
-

TH/JN:jv

EXHIBIT A

Amendment No. 2 to License Agreement with OHL, USA, Inc. for the Use of
Assessor's Parcel No's. 8719-007-928 and 8719-007-930 located at 248 N.
Grand Avenue

[Attached]

**AMENDMENT NO. 2
TO LICENSE AGREEMENT**

This Amendment No. 2 to the License Agreement (“Agreement”), is made and entered into this 23rd day of May, 2019, (“Effective Date”) by and between the Successor Agency to the Industry-Urban Development Agency, a public body, corporate and politic (“Agency”) and OHL USA, Inc., dba Group OHL USA, Inc. a Delaware corporation (“Licensee”). The Agency and Licensee are hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, on or about January 26, 2017, the Agency approved the Agreement with Licensee, to enter the portion of the property generally described as a lot, Assessor’s Parcel No. 8719-007-928 and 8719-007-930, as set forth in Exhibit A, attached hereto and incorporated herein by reference (“Premises”); and

WHEREAS, the Agreement permits Licensee to enter the Premises to temporarily stockpile soil, and remove and relocate previously stockpiled soil associated with the Fairway Grade Separation Project; and

WHEREAS, under the Agreement, Licensee acknowledges that Licensee is entering onto the Premises at its sole risk and expense, and Licensor does not have any liability to Licensee under this Agreement.

WHEREAS, given delays associated with the Fairway Grade Separation Project, the Parties desire to amend the Agreement to allow Licensee to extend the term of the License Agreement for an additional year; and

WHEREAS, on or about February 22, 2018, Amendment No. 1 to the Agreement was entered into and executed between the Parties in order to extend the Term of the Agreement through February 28, 2019; and

WHEREAS, for the reasons set forth herein, the Agency and Licensee desire to enter into this Amendment No. 2, as set forth below.

NOW, THEREFORE, for valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

AMENDMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, it is agreed the aforesaid Agreement, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference, shall remain in full force and effect except as otherwise hereinafter provided.

Section 9. Term, Termination and Remedies. The first sentence of Section 9 shall be revised to read in its entirety as follows:

The License shall commence as of the Effective Date of this Agreement, and shall automatically terminate on **December 31, 2019**.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 2 to the Agreement as of the Effective Date.

“AGENCY”
SUCCESSOR AGENCY TO THE INDUSTRY
URBAN-DEVELOPMENT AGENCY

“LICENSEE”
OHL USA, Inc. dba Group OHL,
USA, Inc.

By: _____
Troy Helling, Executive Director

By: _____
Dermot Brennan, Vice President,
Western USA

Attest:

By: _____
Julie Gutierrez-Robles, Agency Secretary

APPROVED AS TO FORM

By: _____
James M. Casso, General Counsel

EXHIBIT A TO AMENDMENT NO. 1

License Agreement with OHL, USA, Inc. dated January 26, 2017

[Attached]

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“**Agreement**”), dated January 26, 2017, (“**Effective Date**”) is entered into by and between the Successor Agency to the Industry Urban-Development Agency, a public body, corporate and politic (“**Licensor/Agency**”), and OHL USA, Inc., dba Group OHL USA, Inc., a Delaware Corporation (“**Licensee**”) (Licensor and Licensee are individually referred to as “**Party**” and collectively referred to as the “**Parties**”).

RECITALS

WHEREAS, the Agency is the owner of certain property located at 284 N. Grand Avenue, City of Industry, CA 91765 and Licensee desires to enter the portion of the property generally described as a lot, **Assessor’s Parcel No. 8719-007-928 and 8719-007-930**, as set forth in Exhibit A, attached hereto and incorporated herein by reference (“**Premises**”).

WHEREAS, Licensee desires to enter the Premises to temporarily stockpile soil, and remove and relocate previously stockpiled soil; and

WHEREAS, Licensee acknowledges that Licensee is entering onto the Premises at its sole risk and expense, and Licensor does not have any liability to Licensee under this Agreement.

NOW, THEREFORE, for valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS

1. License to Enter the Premises. Licensor hereby grants to Licensee a non-exclusive license (the “**License**”) granting permission to enter upon the Premises as of the Effective Date of this Agreement, and to use the Premises as a temporary soil stockpile for various construction activities associated with the Fairway Grade Separation Project, and to relocate previously stockpiled soil (collectively, “**Permitted Use**”); provided, that Licensee’s use of the Premises shall not interfere with the operation of business activities, if any, then being conducted on the Premises and provided Licensee provides written notice to the Licensor at least five (5) days prior to Licensee first entering upon the Premises (said written notice shall state the purpose for the entry upon the Premises, and said entry shall not exceed the stated purpose). Prior to any initial entry pursuant to the License, Licensee shall provide to Licensor proof of insurance as set forth in Section 6 of this Agreement. Licensee shall not permit any other party, except the duly-authorized representatives, agents, employees and contractors (collectively “**Representatives**”) of Licensee to enter or use the Premises during the term of this License, without Licensor’s prior written consent, and in all events the sole reason for entry and use of the Premises shall be for the performance of Licensee’s Permitted Use.

2. Permitted Use. The Permitted Use is hereby further defined to include the storage and relocation of soil on the Premises. The relocation of soil shall be limited to removal from Area A to Area B, as depicted in Exhibit A. Licensee shall exercise due care in the performance of the Permitted Use and such use shall be exercised in a manner which complies with all applicable laws.

3. Maintenance of Premises. Prior to commencement of the relocation of the soil, Licensee shall install wooden planks across the surface of the location of the relocated stockpile. When the relocated stockpile is removed, Licensee shall not remove any soil below the wooden planks.

Licensee shall install dust control measures, including, but not limited to, covering of the stockpiles, and shall implement best practices on the Premises to ensure that the excavated materials do not have an impact on air quality. In no event shall any stockpile of excavated materials exceed a height of 20 feet, and all stockpiles shall be a minimum of 10 feet from the back of any sidewalk, or any other existing hardscape or landscaped area. Upon termination of the License, Licensee shall repair any damage done to the Premises by Licensee or its duly authorized Representatives, and shall restore the Premises to its condition as of the Effective Date of this Agreement, which shall include removal of the wooden planks and all stockpiled materials.

4. Government Regulations and Other Obligations of Licensee. As a condition precedent to commencement of the Permitted Use, if required, Licensee shall obtain at its sole cost and expense all governmental permits and authorizations of whatever nature required, if any ("Permits") by any and all governmental authorities having jurisdiction over the Premises for Licensee's exercise of the Permitted Use. Licensor shall use commercially reasonable efforts to cooperate with Licensee and to support any and all applications or request for said Permits submitted by Licensee or on Licensee's behalf. Licensee shall, in all activities undertaken pursuant to this Agreement, comply and cause its Representatives to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees.

5. Liens.

5.1 Licensee shall not cause or permit to be filed, recorded or enforced against the Premises, or any part thereof, any mechanics', material men's, contractors' or subcontractors' liens arising from the Permitted Use or any claim or action affecting the title to the Premises arising from the Permitted Use, and Licensee shall pay or cause to be paid, or otherwise removed or bonded over, the full amount of all such liens or claim within fifteen (15) days of receiving written notice thereof. In addition to and not in limitation of Licensor's other rights and remedies under this Agreement or under law, should Licensee fail within fifteen (15) business days of a written notice from Licensor to pay and discharge or bond over any lien arising out of Licensee's use of the Premises, then a material breach under this Agreement shall be deemed to have occurred which, at Licensor's election, shall entitle Licensor to terminate this License effective upon notice by Licensor to Licensee so stating.

5.2 If Licensee desires to contest in good faith the validity of any lien or any claim or demand that could result in a lien against the Premises or any portion thereof for which Licensor could become liable if not successfully resolved, as a condition to such contest, Licensee shall notify Licensor of Licensee's intent to contest the lien or claim and the grounds for such contest. Notwithstanding anything to the contrary set forth herein, Licensee shall pay and satisfy any adverse judgment that may be rendered thereon before the enforcement thereof against Licensor or the Premises.

6. Insurance. Prior to entering the Premises and until the termination of this Agreement, Licensee shall maintain at its sole expense insurance limits as stipulated in this section.

6.1 Minimum Scope and Limit of Insurance. Coverage shall be at least as broad as:

(a) Commercial General Liability (CGL); Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations,

property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

(b) Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Licensee has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000 per accident for bodily injury and property damage.

(c) Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

(d) Pollution Liability Insurance: Environmental Impairment Liability Insurance shall be written on a Contractor's Pollution Liability form or other form acceptable to the Agency providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than \$1,000,000 dollars per claim and in the aggregate. All activities contemplated in this agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the Premises to the final disposal location, including non-owned disposal sites.

6.2 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

(a) Additional Insured Status. The Licensor and Agency Representatives, (as defined in Section 7, below) are to be additional insureds on the CGL policy with respect to liability arising out of Licensee's use of the Premises. General liability coverage can be provided in the form of an endorsement to the Licensee's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

(b) Primary Coverage. For any claims related to this Agreement, the Licensee's insurance coverage shall be primary insurance as respects the Licensor/Agency Representatives. Any insurance or self-insurance maintained by the Licensor/Agency Representatives, shall be excess of the Licensee's insurance and shall not contribute with it.

(c) Contractors and Subcontractors. Licensee shall require and verify that all contractors and subcontractors maintain insurance meeting all the requirements stated herein, and Licensee shall ensure that Licensor/Agency Representatives are additional insureds on insurance required from contractors/subcontractors. For CGL coverage contractors and subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.

(d) Notice of Cancellation. Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the Agency.

(e) Waiver of Subrogation. Licensee hereby grants to Agency a waiver of any right to subrogation which any insurer of said Licensee may acquire against the Agency by virtue of the payment of any loss under such insurance. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation provided such endorsement is available on commercially reasonable terms, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the insurer.

(f) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Agency. The Agency may require the Licensee to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(g) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Agency.

(h) Deductibles. All such insurance shall have deductibility limits of not greater than \$50,000.00 unless otherwise approved by the Agency.

(i) Verification of Coverage. Licensee shall furnish the Agency with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required above. All certificates and endorsements are to be received and approved by the Agency before exercise of the Permitted use commences. However, failure to obtain the required documents prior to the exercise of the Permitted Use shall not waive the Licensee's obligation to provide them. The Agency reserves the right to require complete copies of all required insurance policies, including endorsements, required by these specifications, at any time.

(j) Occurrence Basis Coverage. All policies shall be written on an occurrence basis unless otherwise approved by the Agency.

7. Indemnification. From and after the execution of this Agreement, Licensee hereby agrees to indemnify, defend, protect and hold harmless, with counsel of the Licensor's choosing, the Agency and any and all predecessors, successors, assigns, agents, officials, employees, members, independent contractors, affiliates, principals, officers, directors, attorneys, accountants, representatives, staff, and council members of the Agency collectively, the "Agency Representatives", and each of them, from and against all claims, including any claims from any third party beneficiary to this Agreement, causes of action, liabilities, losses, damages, injuries, expenses, charges, penalties, or costs, of whatsoever character, nature and kind, (including attorney's fees and costs incurred by the indemnified Party with respect to legal counsel of its choice, and remediation of any Hazardous Materials deposited on the Premises by Licensee), whether to property or to person(s), and whether by direct or derivative action, known or unknown, suspected or unsuspected, latent or patent, existing or contingent (collectively "Losses and Liabilities"), related directly or indirectly to, or arising out of or in any way connected with any of the activities of Licensee, its agents, employees, licensees, lessees, representatives, invitees, contractors, subcontractors or independent contractors on the Premises. This indemnification requires Licensee to indemnify the Agency and any and all Agency Representatives from and against all Losses and Liabilities, including attorneys' fees, arising out of the use or release of any Hazardous Substances on the Premises by Licensee. Licensee's obligation to defend shall arise regardless of any claim or assertion that the Agency caused or contributed to the Losses and/or Liabilities, provided, however, that Licensee's liability under this Section 7 will be limited to the extent of any contributory negligence of Licensor.

8. Hazardous Materials means any chemical, material or substance now or hereafter defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," "toxic substances," "pollutant or contaminant," "imminently hazardous chemical substance or mixture," "hazardous air pollutant," "toxic pollutant," or words of similar import under any local, state or federal law or under the

regulations adopted or publications promulgated pursuant thereto applicable to the Property, including, without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq. (“CERCLA”); the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; and the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq. The term “Hazardous Materials” shall also include any of the following: any and all toxic or hazardous substances, materials or wastes listed in the United States Department of Transportation Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and in any and all amendments thereto in effect as of the date of the close of any escrow; oil, petroleum, petroleum products (including, without limitation, crude oil or any fraction thereof), natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, not otherwise designated as a hazardous substance under CERCLA; any substance which is toxic, explosive, corrosive, reactive, flammable, infectious or radioactive (including any source, special nuclear or by-product material as defined at 42 U.S.C. § 2012, et seq.), carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority; asbestos in any form; urea formaldehyde foam insulation; transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls; radon gas; or any other chemical, material or substance (i) which poses a hazard to the Premises, to adjacent properties, or to persons on or about the Premises, (ii) which causes the Premises to be in violation of any of the aforementioned laws or regulations, or (iii) the presence of which on or in the Premises requires investigation, reporting or remediation under any such laws or regulations.

9. Term, Termination and Remedies. The License shall commence as of the Effective Date of this Agreement, and shall automatically terminate on **November 30, 2017**. Notwithstanding the foregoing, upon written request by Licensee, the Executive Director, at his sole discretion, may grant one, three-month extension to this Agreement. Notwithstanding the foregoing, at any time, for any reason, the Licensor may, at its sole and absolute discretion, terminate this Agreement without cause, upon 30 days’ written notice to Licensee. Further, in the event Licensor sells or transfers the Premises during the term of this Agreement, this Agreement shall terminate upon seven (7) days written notice to Licensee. In addition, if Licensee shall be in breach of any of its obligations under this Agreement and shall fail to cure such breach within ten (10) business days of written notice from Licensor specifying the nature of any such breach, Licensor shall have the right to terminate this Agreement upon written notice to Licensee. Licensee acknowledges that this License is solely a license, and that Licensee has no rights as an owner, purchaser or tenant by virtue thereof. Upon termination of the Agreement, Licensee shall promptly vacate the Premises and comply with the provisions of Section 3 above. No termination or expiration of this License shall relieve Licensee of its obligations hereunder.

10. Inspection and Access to Premises. Licensor and any of its duly authorized representatives, employees, agents or independent contractors shall be entitled to enter the Premises, to show the Premises to potential purchasers, to inspect the premises, to inspect Licensee’s use of the Premises, and for any other purpose, at any time.

11. Assignability. This License cannot be assigned by Licensee whether voluntarily or by operation of law, and Licensee shall not permit any use of the Premises, or any part thereof during the Term of this License in violation of the provisions of this License, except with the consent of Licensor (which shall not be unreasonably withheld, conditioned or delayed), and any attempt to do so shall be null and void.

12. Cost of Enforcement. In the event it is necessary for either Party to employ an attorney or other person or commence an action to enforce or interpret any of the provisions of this License or for Licensor to remove Licensee from the Premises, the non-prevailing party agrees to pay to the prevailing party, in addition to such other relief as may be awarded by the court, Agency or other authority before which such suit or proceeding is commenced, all reasonable costs of enforcement in connection therewith including, but not limited to, reasonable attorneys' fees, expenses and costs of investigation.

13. Notices. All notices, consents, approvals, requests, demands and other communications provided for herein shall be in writing and shall be deemed to have been duly given upon the earlier of when personally delivered or served or twenty-four (24) hours after being deposited with FedEx or any other established overnight courier service to the intended party addressed as follows:

Licensor: Paul J. Philips
Executive Director
15625 East Stafford Street, Suite 100
City of Industry, CA 91744
Tel: (626) 333-2211
paul@cityofindustry.org

With a Copy to: James M. Casso, City Attorney
Casso & Sparks, LLP
13200 Crossroads Parkway North, Suite 345
City of Industry, CA 91746
Tel: (626) 269-2980
jcasso@cassosparks.com

Licensee: Tony Dagheti, Executive Vice President, Western USA
OHL, USA, Inc.
1920 Main Street, Suite 310
Irvine, CA 92614
Tel: (949) 242-4432

14. No Liability of Licensor. Licensee and Licensor acknowledge and agree that Licensee is entering into the Premises prior to the transfer of the Premises to Licensee and that Licensee does so at its sole risk and expense. The provisions hereof shall inure to the benefit of Licensor's and Licensee's successors and assigns including any Mortgagee.

15. Miscellaneous. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by the Parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver. The indemnifications under this Agreement, the obligations of Licensee hereunder to remove liens and Licensee's obligations hereunder with respect to vacating and repairing the Premises shall survive the expiration or termination of the License Term. This Agreement shall be

construed and enforced in accordance with, and governed by, the laws of the State of California. Any action brought concerning this Agreement shall be brought in the appropriate court for the County of Los Angeles, California. Each Party hereby irrevocably consents to the jurisdiction of said court. Licensee hereby expressly waives all provisions of law providing for a change of venue due to the fact that the Agency may be a party to such action, including, without limitation, the provisions of California Code of Civil Procedure Section 394. Licensee further waives and releases any right it may have to have any action concerning this Agreement transferred to Federal District Court due to any diversity of citizenship that may exist between Agency and Licensee. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions hereof. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument. Neither this instrument nor a short form memorandum or assignment hereof shall be filed or recorded in any public office without Licensor's or Licensee's prior written consent.

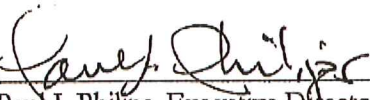
16. Authority. Each person executing this Agreement hereby represents and warrants (i) their authority to do so, and (ii) that such authority has been duly and validly conferred.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

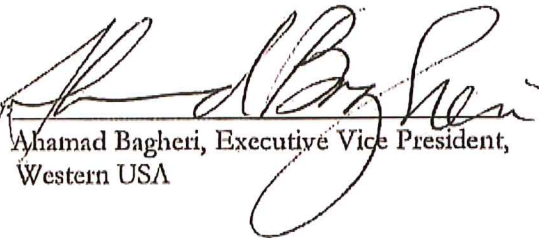
“LICENSOR”

SUCCESSOR AGENCY TO THE
INDUSTRY-URBAN DEVELOPMENT
AGENCY

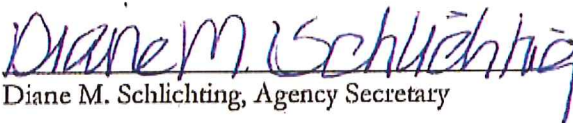
By: 
Paul J. Philips, Executive Director

“LICENSEE”

OHL, USA, Inc. dba Group OHL USA,
Inc.

By: 
Ahmad Bagheri, Executive Vice President,
Western USA

ATTEST:


Diane M. Schlichting, Agency Secretary

APPROVED AS TO FORM:

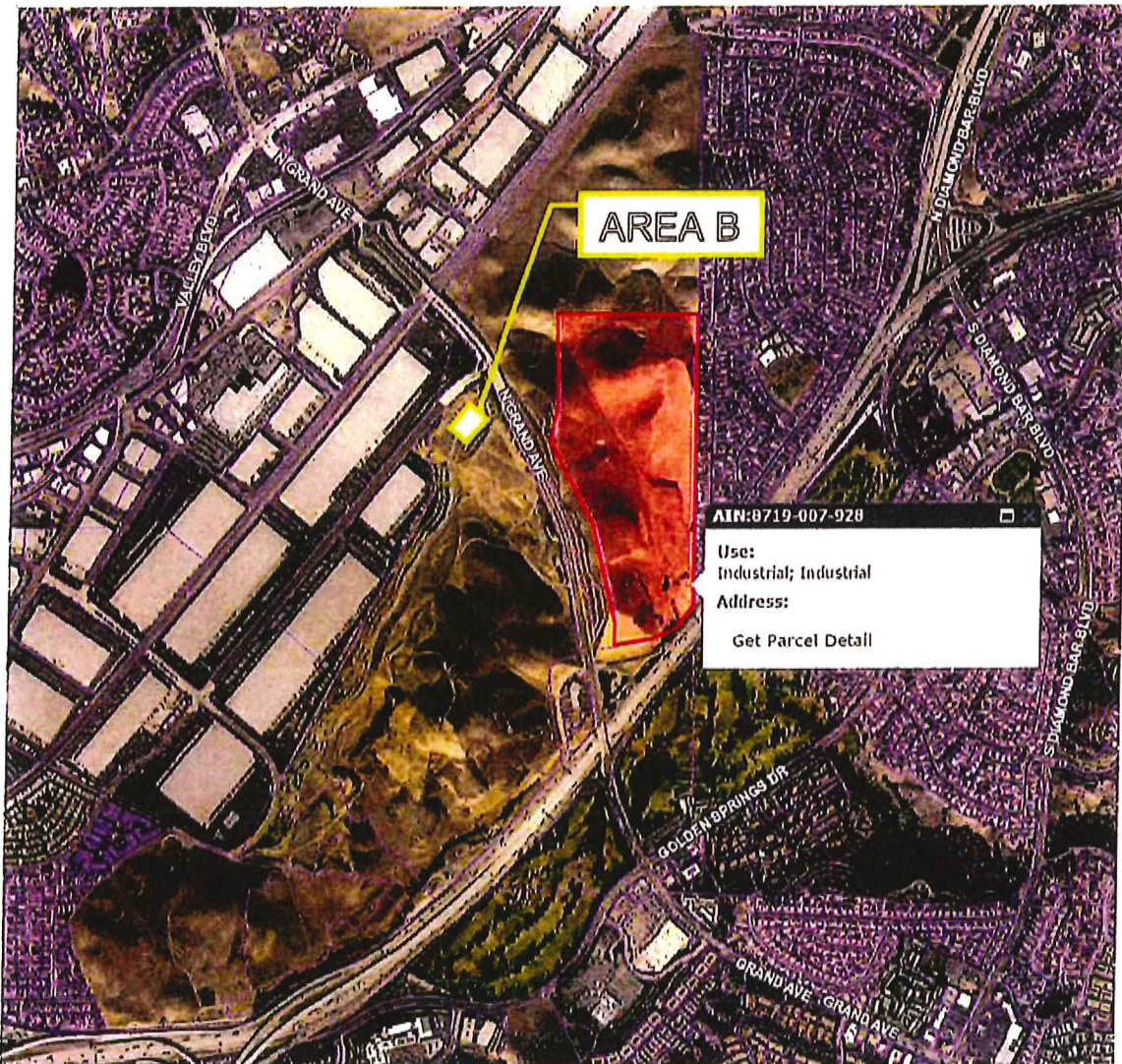

James M. Casso, General Counsel

EXHIBIT A

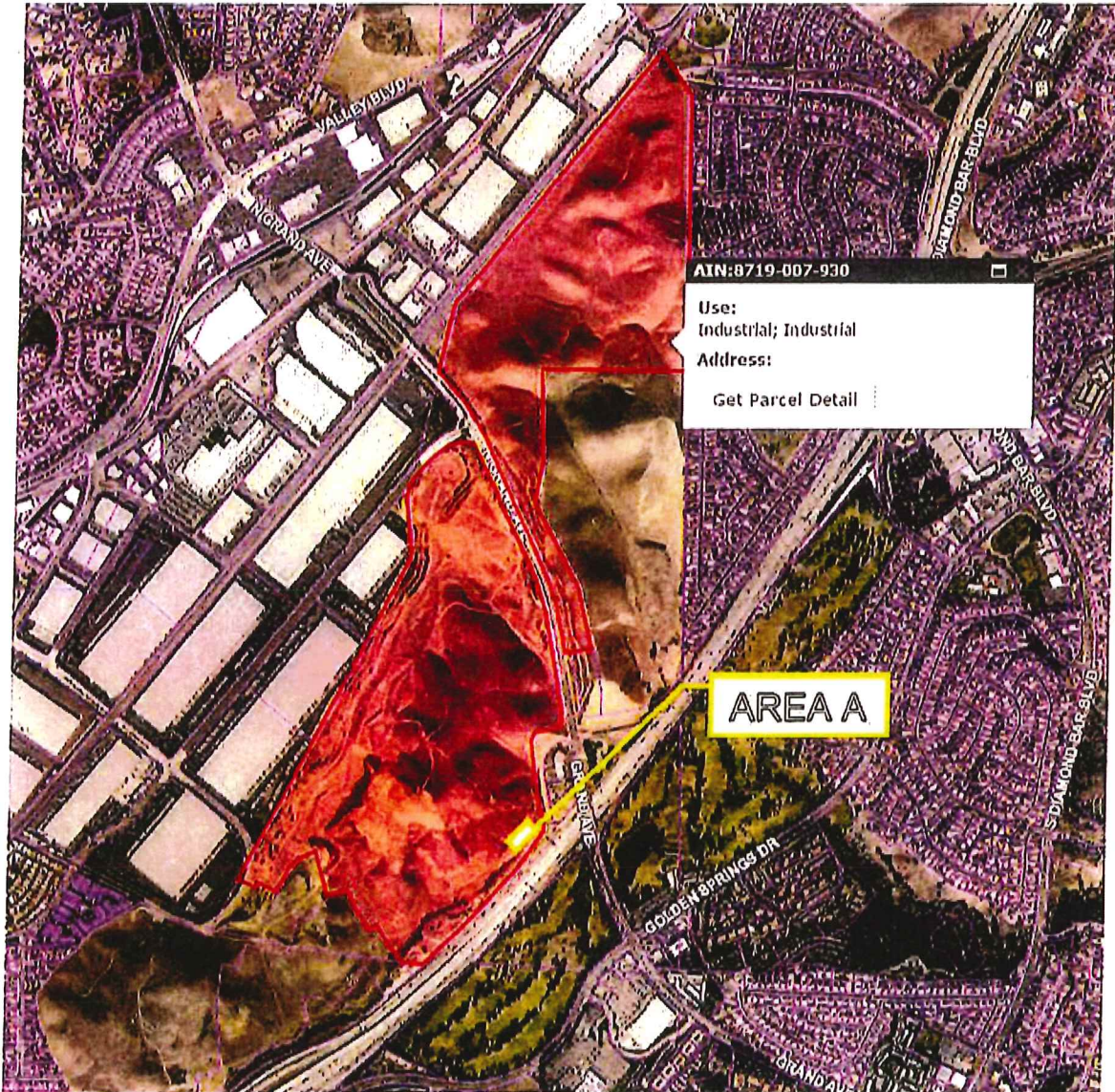
Legal Description

Assessor's Parcel Number (APN) No. 8719-007-928 and 8719-007-930 located at 248 N. Grand Avenue, City of Industry, CA 91765.

Location Map – APN No. 8719-007-928



Location Map – APN No. 8719-007-930





CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
01/23/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Northeast, Inc. New York NY Office 199 Water Street New York NY 10038-3551 USA	CONTACT NAME: PHONE (A/C, No, Ext): (866) 283-7122	FAX (A/C, No.): (800) 363-0105
	E-MAIL ADDRESS:	
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED OHL USA, Inc. dba Group OHL USA, Inc. 1920 Main Street, Suite 310 Irvine CA 92614-8216 USA	INSURER A: Indian Harbor Insurance Company	36940
	INSURER B: The Insurance Co of the State of PA	19429
	INSURER C: American Home Assurance Co.	19380
	INSURER D: National Union Fire Ins Co of Pittsburgh	19445
	INSURER E:	
	INSURER F:	

Holder Identifier :

COVERAGES CERTIFICATE NUMBER: 570065331878 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:			GL6051645 SIR applies per policy terms & conditions	12/31/2016	12/31/2017	EACH OCCURRENCE \$1,900,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,900,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COM/OP AGG \$4,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			3194531	12/31/2016	12/31/2017	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
D	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$10,000			BE088087010	12/31/2016	12/31/2017	EACH OCCURRENCE \$25,000,000 AGGREGATE \$25,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	14629416 WC CA 14629415 WC NY, TX	12/31/2016	12/31/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE-EA EMPLOYEE \$1,000,000 E.L. DISEASE-POLICY LIMIT \$1,000,000
A	Env Pollution			CE0742057002 SIR applies per policy terms & conditions	12/31/2016	12/31/2017	Per Occurrence \$1,000,000 Aggregate \$2,000,000

Certificate No : 570065331878

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Re: Fairway Drive Grade Separation Project, State Project No. TCIF-6303(041), ACE Contract No. 14-01.
 Alameda Corridor - East Construction Authority and their respective elected and appointed boards, officials, officers, agents, employees and volunteers; Union Pacific Railroad Company; San Gabriel Valley Council of Governments along with its individual members; City of Industry; the County of Los Angeles, City of Diamond Bar, State of California Department of Transportation (Caltrans) and Los Angeles County Metropolitan Transportation Authority (METRO) are included as Additional Insureds in accordance with the policy provisions of the General Liability and Auto Liability policies. The insurer will provide advice of cancellation via email to each such certificate holders within 30 days after the First Named Insured provides

CERTIFICATE HOLDER

CANCELLATION

Alameda Corridor - East Construction Authority, et al 4900 Rivergrade Rd., Suite A120 Irwindale CA 91706 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Aon Risk Services Northeast, Inc.</i>

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ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Northeast, Inc.		NAMED INSURED OHL USA, Inc. dba Group OHL USA, Inc.	
POLICY NUMBER See Certificate Number: 570065331878			
CARRIER See Certificate Number: 570065331878	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS
 THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
 FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER	
INSURER	
INSURER	
INSURER	

ADDITIONAL POLICIES If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
	WORKERS COMPENSATION						
B		N/A		14629417 WC FL	12/31/2016	12/31/2017	



ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Northeast, Inc.		NAMED INSURED OHL USA, Inc. dba Group OHL USA, Inc.	
POLICY NUMBER See Certificate Number: 570065331878			
CARRIER See Certificate Number: 570065331878	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Additional Description of Operations / Locations / Vehicles:
 such information to the Insurer.

SUCCESSOR AGENCY

ITEM NO. 5.5



SUCCESSOR AGENCY TO THE
**INDUSTRY URBAN - DEVELOPMENT
AGENCY**

TO: Honorable Chairman and Members of the Board of the Successor Agency to the Industry Urban-Development Agency

FROM: James M. Casso, Agency Counsel

DATE: May 17, 2019

SUBJECT: Consideration of Resolution approving a new lease for the construction of Building Nos. 11 and 12 and the Industry Business Center and making CEQA Findings

BACKGROUND/DISCUSSION: Under the provisions of ABX1 26 (the “Dissolution Act”), redevelopment agencies, including the Industry Urban-Development Agency (“Agency”), were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of winding down the business and fiscal affairs of the former redevelopment agencies.

Following dissolution, pursuant to the April 28, 2005 lease with the Industry East Land, LLC., now known as the Industry East Business Center, LLC., (“IEBC”) the Successor Agency was granted authority to make various infrastructure improvements to the Industry Business Center on Grand Avenue (the “IBC”). Since 2012, the Successor Agency has completed approximately 80% of the improvements. Final completion for the entire IBC will occur in about two years. In some areas of the IBC, however, the infrastructure improvements are completed and the parcels are ready for the IEBC to begin construction of its buildings.

The Dissolution Act, with few exceptions, does not allow successor agencies to enter into new agreements. Notwithstanding that fact, staff and the IEBC recognize the financial benefits for the taxing entities and job creation for area residents by entering into a new lease which would allow the IEBC to take possession of the parcel and begin construction of Building Nos. 11 and 12.

If approved, staff would present the new lease to the First District Consolidated Oversight Board, arguing that it will result in a financial windfall for the various taxing entities (IEBC’s payment of property taxes) and the creation of new jobs for area residents not only makes sense but also would accelerate the winding down of the Successor Agency’s affairs.

The attached Resolution sets forth the requisite findings pursuant to CEQA and it ensures that the proposed new lease, which awaits Oversight Board and Department of Finance approval, is in compliance with California law.

BUDGET IMPACT: The revenue generated from IEBC’s leasing of Building No. 2 will be 50% of the net rent paid for the facility.

RECOMMENDATION: Staff recommends that the Board adopt the attached Resolution, approving the new lease for the parcel on which Building Nos. 11 and 12 will be constructed.

Attachments:

Resolution

Lease Agreement

RESOLUTION NO. SA 2019-03

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE INDUSTRY URBAN DEVELOPMENT AGENCY (“SUCCESSOR AGENCY”) APPROVING A NEW LEASE AGREEMENT BY AND BETWEEN THE SUCCESSOR AGENCY AND THE INDUSTRY EAST BUSINESS CENTER, LLC, (“IEBC”) FOR A PORTION OF THE PROPERTY DESCRIBED IN THE UNRECORDED LEASE AGREEMENT DATED APRIL 28, 2005 BY AND BETWEEN THE SUCCESSOR AGENCY’S PREDECESSOR IN INTEREST, THE INDUSTRY URBAN-DEVELOPMENT AGENCY, AND THE IEBC’S PREDECESSOR IN INTEREST, INDUSTRY EAST LAND, LLC, AND MORE COMMONLY KNOWN AS BUILDING NOS. 11 AND 12, GENERALLY LOCATED AT GRAND AVENUE AND ITS INTERSECTION WITH STATE ROUTE 60

WHEREAS, on December 29, 2011, the California Supreme Court delivered its decision in *California Redevelopment Association v. Matosantos* (“*Matosantos*”), finding Assembly Bill X1 26 (the “Dissolution Act”) largely constitutional; and

WHEREAS, under the Dissolution Act and the California Supreme Court’s decision in *Matosantos*, all California redevelopment agencies, including the Industry Urban-Development Agency of the City of Industry (“Agency”), were dissolved on February 1, 2012, and successor agencies, including the Agency, were designated and vested with the responsibility of winding down the business and fiscal affairs of the former redevelopment agencies; and

WHEREAS, on September 22, 2011, the City Council of the City of Industry (the “City”) adopted Resolution No. 2011-20 accepting for the City the role of Successor Agency, in accordance with the provisions of Health & Safety Code Section 34177(j); and

WHEREAS, under certain approvals by the California Department of Finance (“Department”) and the Oversight Board to the Successor Agency to the Industry Urban-Development Agency (“Oversight Board”) the Successor Agency, pursuant to that unrecorded lease agreement dated April 28, 2005 (“Master Lease”) by and between the Agency and Industry East Land, LLC, now known as the Industry East Business Center, LLC, (“IEBC”) was authorized to make various infrastructure improvements to the property (approximately 600 acres) that is subject to the terms and conditions of the Master Lease (“Premises”).

WHEREAS, under the Master Lease, once the Successor Agency’s infrastructure improvements are fully completed, the IEBC would take possession of the Premises and be allowed to make its anticipated improvements to the Premises, including, but not limited to, the construction of buildings; and

WHEREAS, the Successor Agency has completed certain infrastructure improvements to the Premises, particularly to the future parcel designated for Buildings 11 and 12, such that the IEBC has informed the Successor Agency that it wishes to enter into a new lease for said parcel (the new lease is attached hereto as Exhibit “A”), allowing the IEBC to immediately begin construction of Buildings 11 and 12, generating revenue, i.e., possessory interest property taxes, for distribution to the Successor

Agency's various taxing entities and providing needed employment opportunities for area residents; and

WHEREAS, the Successor Agency desires to, rather than waiting approximately two more years to complete the remaining infrastructure improvements, enter into the new lease, allowing the IEBC to take possession of the parcel and to start construction of Buildings 11 and 12; and

WHEREAS, the proposed improvements set forth in the new lease were considered and included in the 2004 Environmental Impact Report ("EIR") prepared and certified pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code Section 21000, et seq.,) by the City of Industry. The new lease does not involve any additional or different land use entitlements than those that were set forth in the EIR and, as such, the Successor Agency does not believe that the new lease would be subjected to any additional environmental review or independent analysis as required by CEQA; and

WHEREAS, the Agency has duly considered all terms and conditions of the proposed new lease and believes that the redevelopment of the Property in accordance therewith is in the best interests of the Agency and the health, safety and welfare of its residents, maximizes value, is consistent with the provisions of the Dissolution Act, and is consistent with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, THE SUCCESSOR AGENCY DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by reference.

SECTION 2. All necessary public hearings and opportunities for public testimony and comment have been conducted in compliance with State law and the Municipal Code of the City of Industry.

SECTION 3. The proposed improvements set forth in the new lease were considered and set forth in the 2004 Environmental Impact Report ("EIR") prepared and certified pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code Section 21000, et seq.,) by the City of Industry. The new lease does not involve any additional or different land use entitlements than those that were set forth in the EIR and, as such, the Successor Agency does not believe that the new lease is subjected to any additional environmental review or independent analysis as required by CEQA.

SECTION 4. The Agency Board hereby approves the new lease, attached hereto as Exhibit A.

SECTION 5. The Executive Director is hereby authorized to take such further actions as may be necessary to carry out the obligations set forth in this Resolution, including presentation of the Resolution and new lease to the First District Consolidated Oversight Board and the Department of Finance as required under the Dissolution Act.

SECTION 6. The provisions of this Resolution are severable and if any provision, clause, sentence, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts thereof of the Resolution or their applicability to other persons or circumstances.

SECTION 7. Certification. The Agency Secretary shall certify to the passage and adoption of this Resolution and enter it into the respective book of original resolutions.

SECTION 18. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 23rd day of May 2019, by the following vote:

AYES: AGENCY BOARD MEMBERS:
NOES: AGENCY BOARD MEMBERS:
ABSENT: AGENCY BOARD MEMBERS:
ABSTAIN: AGENCY BOARD MEMBERS:

Mark D. Radecki, Chairperson

ATTEST:

Julie Gutierrez-Robles, Deputy Agency Secretary

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter referred to as "Agreement") entered into this 23rd day of May, 2019 by and between the SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY, a body corporate and politic (hereinafter referred to as "Lessor") and INDUSTRY EAST BUSINESS CENTER, LLC, a Delaware limited liability company authorized to do business in the State of California (hereinafter referred to as "Company"):

WITNESSETH:

WHEREAS, Lessor is the owner of certain real property located in the State of California described on Exhibit "A" attached hereto (hereinafter referred to as "Premises"); and

WHEREAS, by an unrecorded Lease Agreement dated April 28, 2005 (the "Lease"), Lessor's predecessor in interest, the Industry Urban-Development Agency leased the Premises and certain other real property located in the State of California (the "Larger Property") to Company's predecessor in interest, Industry East Land, LLC. Industry East Land, LLC assigned its interest in the Lease to Company by an unrecorded Assignment of Lease dated September 21, 2005. It was the intent of the parties that the Larger Property would be subdivided, financed and developed, in phases, over a number of years; and

WHEREAS, in order to facilitate the subdivision, financing and development of the Larger Property in phases, Article 4.8 of the April 28, 2005 Lease granted Company the right to have any portion of the Larger Property removed from the legal description of the April 28, 2005 Lease and made the subject of a separate lease between Lessor and Company for the remainder of the term of the April 28, 2005 Lease and on the same terms and conditions as the April 28, 2005 Lease; and

WHEREAS, Lessor and Company are removing the Premises described on Exhibit "A" from the legal description of the April 28, 2005 Lease and entering into this separate lease of the Premises pursuant to Article 4.8 of the April 28, 2005 Lease; and

WHEREAS the term of the Lease has not commenced pursuant to Article 1.2 of the Lease prior to this Agreement. The term of the leasehold interest under this Agreement shall commence upon the date specified in Section 1.2.1 herein.

WHEREAS, Company proposes to lease the Premises from Lessor and to develop thereon and operate and manage certain buildings and other improvements as permitted by this Agreement; and

WHEREAS, Company is engaged in the business of planning, constructing, maintaining, leasing financing and operating such projects; and

WHEREAS, on and subject to the terms and conditions contained in this Agreement, Lessor is willing to lease the Premises to Company for such purposes;

NOW, THEREFORE, for and in consideration of the agreements, covenants and conditions herein, Lessor and Company agree as follows:

ARTICLE I

1.1 DEFINITIONS

In addition to the terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

- 1.1.1 The term “Approved Budget,” whenever used herein, means any written budget prepared by Company and approved by the Lessor’s Designated Representative pursuant to the procedure set forth in Section 1.6 entitled BUDGET APPROVAL.
- 1.1.2 The term “Assignee,” whenever used herein, means the purchaser or any heir, successor, or assign of a lender subsequent to a sale or assignment as defined in Section 2.18 entitled FINANCING.
- 1.1.3 The term “Capital Improvement Expenditures,” whenever used herein, means any expenses associated with the Facilities (other than the costs and expenses of their initial construction) which are treated as capital expenditures under generally accepted accounting principles, consistently applied.
- 1.1.4 The term “Lessor’s Designated Representative (hereinafter referred to as ‘LDR’),” whenever used herein, means the Executive Director of Lessor, or a successor designee acting on behalf of the Lessor.
- 1.1.5 The term “Commence Construction,” whenever used herein, means commencing construction of the Facilities on the Premises by Company causing its construction contractor to obtain occupancy and control of the area and to begin actual site development and construction thereon.
- 1.1.6 The term “Facilities,” whenever used herein, means all the buildings, utilities, rail improvements, site development work, parking lots, roadways, landscaping and other improvements constructed by Company on the Premises in accordance with the terms and conditions of this Agreement.
- 1.1.7 The term “Company,” whenever used herein, means Industry East Business Center, LLC, a limited liability company authorized to do business in the State of California, which is entering into this Agreement as the developer and operator of the Facilities on the Premises as described herein.
- 1.1.8 The term “Lessor,” whenever used herein, means the Successor Agency to the Industry Urban-Development Agency, a body corporate and politic, and where this Agreement speaks of “Approval by Lessor,” or “Approved by Lessor,” such phrases mean approving action by the Successor Agency to the Industry Urban-Development Agency.
- 1.1.9 The term “CC&Rs,” whenever used herein, means any Covenants, Conditions and Restrictions developed by the Company and approved by the LDR for Sublessees and Tenants which will include, but not be limited to, specific guidelines for uses of the Premises.

- 1.1.10 The term “Debt Service,” whenever used herein, means the Company’s payment of principal, interest and any other sum due and owing (monthly or otherwise) pursuant to the terms and conditions of any Leasehold Mortgage for construction, interim and/or permanent financing of the Facilities, but excluding any penalties, late charges, default interest and other amounts (except principal and interest) payable solely as a result of a breach or default under such Leasehold Mortgage, unless such breach or default is caused in part by the acts or omissions of Lessor, including the failure of Lessor to make Capital Contributions as called for in this Agreement .
- 1.1.11 The term, “Commencement Date,” whenever used herein, means the date that the term of this Lease commences under the terms of Section 1.2.1 below.
- 1.1.12 The term “Environmental Laws,” whenever used herein, means any one or all of the laws and/or regulations of the Environmental Protection Agency or any other federal, state or local agencies regulating Hazardous Material, including, but not limited to the following as the same are amended from time to time:

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (42 U.S.C. Section 9601 et seq.)

RESOURCE CONSERVATION AND RECOVERY ACT (42 U.S.C. Section 6901 et seq.)

TOXIC SUBSTANCES CONTROL ACT, as amended (15 U.S.C. Section 2601 et seq.)

SAFE DRINKING WATER ACT (42 U.S.C. Section 300h et seq.)

CLEAN WATER ACT (33 U.S.C. Section 1251 et seq.)

CLEAN AIR ACT (42 U.S.C. Section 7401 et seq.)

and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the Federal, State or local government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment (including, but not limited to, the ambient air procedures and records detailing chlorofluorocarbons [CFC]), ambient air, ground water, surface water and land use, including sub-strata land.

- 1.1.13 The term “Hazardous Material,” whenever used herein, means the definitions of hazardous substance, hazardous material, toxic substance, regulated substance or solid waste as defined within the following:

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (42 U.S.C. Section 9601 et seq.)

RESOURCE CONSERVATION AND RECOVERY ACT (42 U.S.C. Section 6901 et seq.)

HAZARDOUS MATERIALS TRANSPORTATION ACT (49 U.S.C. Section 1801 et seq.) and all present or future regulations promulgated thereto.

DEPARTMENT OF TRANSPORTATION TABLE (49 C.F.R. Section 172.101) and amendments thereto

ENVIRONMENTAL PROTECTION AGENCY (40 C.F.R. Part 302 and amendments thereto)

All substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under any environmental law, whether such laws are Federal, State or local.

- 1.1.14 The term "Leasehold Mortgagee", wherever used herein, means any lender of Company holding the beneficial interest in any Leasehold Mortgage and which Leasehold Mortgagee is a bank, savings and loan, insurance company, pension trust, real estate investment trust, mortgage company, or other institutional lender unaffiliated with the Company.
- 1.1.15 The term "Leasehold Mortgage", wherever used herein means any mortgage or deed of trust which is in favor of a Leasehold Mortgagee encumbering the Company's interest in this Agreement, the leasehold estate created hereunder and/or the Facilities from time to time located on the Premises and which has been incurred for, and the proceeds of which are used for, the purpose of financing the construction of the Facilities and the payment of other Project Costs or refinancing an existing Leasehold Mortgage. The proceeds of any refinancing, to the extent not used to pay off the Leasehold Mortgage being refinanced, shall be used for the purpose of: (i) repairing, constructing or reconstructing the Facilities; (ii) held in reserve for such purposes; (iii) the payment of other Project Costs; (iv) used for the repayment of Equity Contributions and interest thereon or (v) used for such other purposes as Lessor and Company may, in writing, agree. No Leasehold Mortgage shall encumber any interest in any real property other than Company's leasehold interest under this Agreement and the Facilities.
- 1.1.16 The term "Management Fee," whenever used herein, means the payment, as a Project Cost, to Company or any property manager it selects for the administration and management of the Premises and the Facilities. Such fee shall be three percent (3%) of Total Revenue received by Company from Tenants and Sublessees each month during the term of this Agreement. The Management Fee shall be paid to Company or its property manager on a monthly or other basis selected by Company, as funds are available from Total Revenue to pay the Management Fee, before any payments of Rent or repayment of Equity Contributions.
- 1.1.17 The term "Maintenance and Operations expense," whenever used herein, means the expense for maintenance, operation, administration and repair of the Premises and the Facilities, including, but not limited to, repair, maintenance or replacement of the plumbing, heating, ventilating and air conditioning systems, electrical systems, lighting facilities, fire protection systems, utility installations, fixtures, walls, foundations, roof, ceilings, floors, structural systems, doors, glass, skylights, landscaping and irrigating systems, driveways, parking lots, fences, retaining walls, signs, sidewalks, and the cost of all janitorial service, trash disposal, water, gas, electricity, and other utilities, together with any taxes thereon.

- 1.1.18 The term "Net Revenue," whenever used herein, means the amount of cash available after deducting from Total Revenue in the following order of priority: (a) Debt Service; (b) all Project Costs incurred during such calendar year of the term of this Agreement; (c) reasonable reserves for future Maintenance and Operations expense, future Capital Improvement expense or any reserve required by any Leasehold Mortgagee and (d) the repayment of Equity Contributions and interest thereon.
- 1.1.19 The term "Participating Parties" or "Parties," whenever used herein, means Company as lessee and the Successor Agency to the Industry Urban-Development Agency as Lessor (hereinafter jointly referred to as "Parties"), their successors and assigns.
- 1.1.20 The term "Premises," whenever used herein, means that area described on Exhibit "A". Final legal descriptions of the Premises will be attached to the Memorandum of Lease described in Section 1.2.4.
- 1.1.21 Except as otherwise provided in this Agreement, the term "Project Cost," whenever used herein, means all necessary costs incurred by Company (excluding Rent) prior to or after the date hereof in connection with the subdividing, designing, constructing, owning, leasing, financing or managing the Premises or the Facilities and other improvements constructed on the Premises by Company, or its successors and assigns. Except as otherwise provided in this Agreement, Project Cost shall include (without duplication), but not be limited to, the following: (a) all architectural and engineering expense, (b) all plan check fees, building permit fees, school fees, drainage fees and all other governmental, railroad and utility fees, licenses and permit cost, (c) all costs of environmental impact reports, traffic studies, biological studies and all other reports and studies required by governmental agencies, railroads or utility companies, (d) all costs to subdivide and re-subdivide the Premises, (e) all costs incurred by Company in constructing the Facilities or other permitted improvements on the Premises, (f) all Capital Improvement Expense, (g) all Maintenance and Operations expense, (h) all Management Fees, (i) except as provided in Section 2.12.2.10, all costs incurred for uninsured losses, earthquake, flood or other casualty, or repairs or replacements to the Premises and the Facilities or other improvements and the unreimbursed portion of any insured losses, (j) except as provided in Article III, all costs of complying with Environmental Laws, (k) all insurance premiums for insurance required hereunder and property taxes, (l) all leasing commissions and all other marketing and advertising expense, (m) all legal and accounting fees, (n) all loan fees, points, appraisal fees and other costs associated with the obtaining of Leasehold Mortgages, (o) all interest on Leasehold Mortgages, (p) all costs incurred by Company to create a community facilities district or districts or other assessment or other public financing district or districts to finance the construction of street improvements, utilities or other public improvements upon the Premises and (q) all other expenses related to the use, maintenance, leasing, financing and operation of the Premises and the Facilities. Project Costs shall only include costs, expenses and other amounts to the extent the same are reasonable and competitive in amount. Without limiting the preceding sentence, any costs, expenses or other amounts specified in an Approved Budget or otherwise approved in writing by LDR shall be deemed a reasonable and competitive amount. Further, Project Cost shall not include any cost, expense or other amount which is included within any other cost, expense or amount which is permitted by this Agreement to be deducted from Total Revenue in calculating Net Revenue, the intention of the Parties being that no cost, expense or other amount which is so permitted to be deducted from Total Revenue be deducted therefrom more than once.

- 1.1.22 The term “Sublease,” whenever used herein, means the documents signed by a Sublessee or Tenant of Company for the leasing of a portion of the Premises or space in the Facilities.
- 1.1.23 The term “Sublessee” or “Tenant,” whenever used herein, means any individual, corporation, limited liability company, trust, business, firm or other entity that leases or otherwise occupies or uses all or any portion of the Premises or the Facilities under a lease, rental agreement or other arrangement with Company.
- 1.1.24 The term “Release,” whenever used herein, means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Hazardous Material in violation of Environmental Laws.
- 1.1.25 The term “Total Revenue,” whenever used herein, means the total amount of all rents, charges, fees and/or other income derived or received, directly or indirectly, by Company from the use, operation and/or leasing of all or part of the Premises or the Facilities, including, without limitation, all rents, charges, fees and/or other income and amounts received from Sublessees or Tenants of all or any part of the Premises or the Facilities during each full or partial calendar year of the term of this Agreement and the net proceeds received by Company as a result of a Total Taking, Partial Taking or Temporary Taking from an eminent domain proceeding referred to in Section 2.19. Insurance proceeds are excluded from Total Revenue as they are covered by other provisions of this Agreement.
- 1.1.26 The term “Equity Contribution” whenever used herein, means any funds provided by Company, Lessor or any Leasehold Mortgagee in accordance with the provisions of Section 1.7.1.1 or Section 1.7.1.2 hereof.
- 1.1.26 The term “Rent” whenever used herein, means fifty percent (50%) of Net Revenue during each calendar year of the term of this Agreement.

1.2 TERM AND CONDITIONS PRECEDENT

- 1.2.1 The term of this Agreement shall commence upon the expiration of 30 days following approval by the First District Consolidated Oversight Board and the California Department of Finance, if, and/or, as required by law.
- 1.2.2 The term of this Agreement will expire upon the earlier of: (a) sixty five (65) years from the recording of a Notice of Completion on the first building constructed by Company on the Premises or (b) sixty eight (68) years from the Commencement Date.
- 1.2.3 Lessor and Company agree to execute a memorandum of this Agreement evidencing the existence of this Agreement, the ownership of the Facilities by Company, the rights of Company in the Premises, the fact that this Agreement contains a right of first refusal to purchase the Premises and setting forth the Commencement Date and Termination Date of this Agreement. When the first Notice of Completion is recorded, Company and Lessor shall execute and record an amended memorandum of this Agreement setting forth the exact Termination Date.

1.2.4 Company will be entitled to receive, as a Project Cost, an ALTA leasehold policy of title insurance issued by a title company selected by Company, with liability in an amount reasonably determined by Company and insuring Company's interests hereunder. Such leasehold policy will be subject only to exceptions permitted by Company. By September 1, 2019, Lessor shall deliver a preliminary title reports covering the Premises, as well as copies of the underlying document listed as exceptions to title is such report, to Company. If Company objects to any exceptions, it will give written notice of such objections (the "Notice of Objections") to Lessor within such one hundred twenty (120) days after receipt of the preliminary report and the underlying documents. Company's failure to give a Notice of Objections within such One Hundred Twenty (120) day period shall be conclusively deemed to be Company's acceptance of all exceptions. Within thirty (30) days following receipt of a Notice of Objections, Lessor, at its option, may cure, or agree to cure prior to the commencement of the term, some or all of the exceptions that are the subject of the Notice of Objections. If at the end of such thirty (30) day period, Lessor has not cured, or agreed to cure prior to the commencement of the term, any or all of such exceptions, Company may elect by written notice given within fifteen (15) days thereafter to terminate this Lease (the "Termination Notice"). Company's failure to give the Termination Notice within such fifteen (15) day period shall be conclusively deemed to be Company's election to accept such leasehold policy subject to all then uncured exceptions. Upon any termination of this Agreement pursuant to the provisions of this Section, the parties shall be released from all further liabilities and obligations under this Agreement, except for such as have accrued prior to the date of such termination. Notwithstanding the foregoing, Lessor agrees to remove, prior to the commencement of the term of this Lease, all loans secured by deeds of trust or mortgages encumbering the Premises as well as any leases or rental agreements encumbering all or any portion of the Premises. Lessor agrees not to create or permit the creation of any additional exceptions to title, after the date of the preliminary title report, without the written consent of Company.

As Facilities are constructed on the Premises, Company shall be entitled to obtain, as a Project Cost, additional ALTA leasehold title insurance with liability in an amount reasonably determined by Company and insuring Company's interests and the interest of any Leasehold Mortgagee hereunder.

1.2.5 Any amendments to this Agreement will not be effective as against any Leasehold Mortgagee unless Company has obtained the written consent of such Leasehold Mortgagee.

1.3 PREMISES

1.3.1 Lessor does hereby demise and let unto Company and Company does hereby take from Lessor that certain real property (hereinafter referred to as "Premises") as follows:

The land described on Exhibit "A" which is attached hereto and made a part hereof, together with all improvements located thereon (which improvements are owned by Company) together with all appurtenances, rights, privileges and easements appertaining thereto.

1.3.2 Lessor shall cause the work described on Exhibit "B" to be performed in accordance with the provisions of Exhibit "B" which is attached hereto and made a part hereof. Lessor shall commence such work within thirty (30) days after the date of this

Agreement and shall complete such work as soon as reasonably possible, subject to extensions due to force majeure events as provided in Section 4.1. Lessor shall use commercially reasonable efforts to coordinate the timing of such work with Company's development of the Premises. All such work shall be at Lessor's sole cost and expense and shall not be considered an Equity Contribution by Lessor.

1.4 USE OF PREMISES

- 1.4.1 Upon performance of the agreements, provisions and conditions contained in this Agreement, Company will have the use of the Premises for the redevelopment of the Premises and construction and operation of Facilities and for any other business activities related thereto and for retail, warehouse, industrial, office and any other use permitted by applicable zoning regulations and for no other purposes, unless approved in writing by the LDR. So long as no default has occurred and is continuing hereunder, Lessor covenants peaceful and quiet enjoyment of the Premises by Company. Lessor covenants and warrants that the Premises are not now affected by any covenants, restrictions, easements or agreements which prohibit the construction, operation and maintenance upon the Premises of commercial structures with appurtenant parking, nor do the same prevent access to and from the Premises and the roadways adjoining the Premises.
- 1.4.2 Company acknowledges that the Rent payable to Lessor under this Agreement is directly dependent upon the generation by Company of Net Revenue, and that the failure by Company to use commercially reasonable efforts to maximize Net Revenue will have a direct and adverse effect upon Lessor's economic return under this Agreement. Therefore, as a material inducement to Lessor to enter into this Agreement, Company agrees that it will at all times construct, manage, lease and operate all Facilities in a manner and through the use of commercially reasonable efforts so as to maximize Net Revenue throughout the term of this Agreement.

1.5 DEVELOPMENT AND SUBLEASING

- 1.5.1 Company will develop the Premises and construct the Facilities substantially in accordance with plans and specifications prepared by Company in accordance with applicable governmental statutes, ordinances, rules and regulations, including those of the City of Industry and the Successor Agency to the Industry Urban-Development Agency.
- 1.5.2 Company may enter into subleases with Sublessees or Tenants on terms and conditions that are satisfactory to Company, provided such subleases are on sublease forms that have been approved by the LDR. LDR must approve or disapprove any sublease forms within 15 days of submittal by Company. Failure of the LDR to give written notice of disapproval, stating the specific objections to any such form, within the time specified shall be deemed approval.
- 1.5.2.1 Company may negotiate changes to such approved forms which are typically given to Sublessees or Tenants in similar transactions without the consent of Lessor. In the event there are substantive changes or exceptions to the standard forms of sublease arrangements which are not typically given to Sublessees or Tenants in similar transactions, the Company must obtain the written approval of LDR, which approval will not be unreasonably withheld. LDR must approve or disapprove any such requested change within 2 business days of submittal by Company.

Failure of the LDR to give written notice of disapproval, stating the specific reason for disapproving the requested change within the time specified shall be deemed approval.

- 1.5.2.2 All Subleases must be for purposes as permitted in Section 1.4, entitled USE OF PREMISES, of this Agreement and shall expressly provide that they are subject and subordinate to all provisions of this Agreement.
- 1.5.2.3 Except pursuant to Subleases as provided in this Section 1.5, Company shall not suffer or permit the use or occupancy of all or any portion of the Premises by any person or entity.
- 1.5.2.4 Rental interruption insurance or rental abatement insurance (as the case may be) shall be maintained (if available) by Company or Sublessee's or Tenants' providing for the payment of at least six (6) months' rent, taxes, insurance and maintenance expenses payable by Sublessees or Tenants under its Sublease.
- 1.5.3 If requested by Lessor, the Company will provide Lessor with a copy of any rules, regulations or other standards of operation developed by Company and distributed to Sublessees and Tenants.
- 1.5.4 In the event that the sublease of a portion of the Premises constitutes a change of ownership for property tax purposes, it is the desire of the Parties that such change in ownership and reappraisal of the subleased property be limited to the particular portion of the Premises which are the subject of such sublease and not be deemed a change of ownership for assessment purposes for any remaining portion of the Premises.

1.6 BUDGET APPROVAL

- 1.6.1 Prior to the construction of any new building on the Premises, Company shall submit to Lessor copies of a written construction budget for such new building. Each such budget will show all projected Project Costs related to the design, construction, financing and leasing of such new building.
 - 1.6.1.1 Within fifteen (15) days of receipt of the proposed budget, the LDR will review and approve or disapprove the proposed budget submitted by the Company. If the LDR does not respond in writing within fifteen (15) days, the budget shall be deemed to be the Approved Budget.
 - 1.6.1.1.1 If disapproved, the LDR will inform Company in writing of its disapproval describing the disapproved provisions of the proposed budget or requesting further clarification of the budget elements. Company will respond within fourteen (14) days with verification of the budget elements or with a modified written budget that is reasonably satisfactory to the LDR. The Participating Parties agree to negotiate in good faith to resolve any conflicting issues that may arise. If the LDR fails to timely respond, the proposed budget will be deemed approved and will become an Approved Budget.

1.6.1.1.1.1 If, however, the Participating Parties cannot agree upon the provisions of the proposed budget and/or the elements contained in the proposed budget, or, if following approval of the Approved Budget, disputes arise concerning the Approved Budget which the Parties are unable to resolve through good faith negotiation, a neutral third party with at least ten 10 years experience in real estate developments similar to those constructed or proposed to be constructed on the Premises will be selected by the LDR to arbitrate the disputed terms.

1.6.1.1.1.2 If, however, the Company does not accept the neutral third party selected by the LDR, Company will be allowed to select a second neutral party with similar experience. The two selected parties will then select a third neutral party with at least ten 10 years experience in real estate developments similar to those constructed or proposed to be constructed on the Premises who will arbitrate the disputed terms.

1.6.1.1.1.3 The LDR and Company agree to be bound by the decisions reached by the selected arbitrator(s). The Participating Parties will cause the arbitrator(s) to make a determination within fourteen (14) days following submittal.

1.6.1.1.1.4 The Participating Parties agree that each will bear its own costs and expenses incurred for attorney's fees and all other preparation and presentation costs for the arbitration process. If only one arbitrator is selected, the Participating Parties will equally share the cost of such arbitrator. If three arbitrators are used, each Party will bear the cost of the arbitrator selected by it and the Participating Parties will equally share the cost of any third arbitrator.

1.6.1.2 The agreed upon budget will be deemed the Approved Budget for the proposed building.

1.6.2 Company will be entitled to expend funds in accordance with the Approved Budget for the construction of the proposed building. The cost of constructing any such building shall be a Project Cost. In the event Company is over-budget on a particular line item, Company may reallocate excess funds from one line item to another line item to cover any short falls in any line item. Any expenses not covered by the Approved Budget which increase the total cost of constructing such building by more than ten percent (10%) are subject to the reasonable written approval of LDR. Any Equity Contribution required to cover any such additional Project Cost shall be the responsibility of Company.

1.7 RENTALS AND EQUITY CONTRIBUTIONS

Rentals due under this Agreement and Equity Contributions for the construction and operation of the Facilities will be as follows:

1.7.1 Equity Contributions.

- 1.7.1.1 The Parties anticipate that from time to time during the term of this Agreement, the Company will obtain financing for the development of the Premises and the Facilities and other Project Costs in accordance with the terms and conditions of Section 2.18 entitled FINANCING. Any funds required for the completion of the initial development of the Premises and construction of the Facilities, in excess of the financing obtained by Company, shall be provided by Company as an Equity Contribution.
- 1.7.1.2 Any additional capital required for the operation or maintenance of the Premises and the Facilities or other Project Costs following completion of construction of the Facilities on any separate legal parcel of the Premises and any capital required to repay any Leasehold Mortgages thereon, shall be contributed fifty percent (50%) by Company and fifty percent (50%) by Lessor within thirty (30) days of the receipt of demand by Company for such capital, which demand shall be accompanied by information and evidence, in reasonable detail, substantiating the amount and reasons for such demand. If any party fails to make such Equity Contribution, the other party may make such Equity Contribution for the delinquent party.
- 1.7.1.3 In the event of default by Company and the subsequent foreclosure and sale of the leasehold interest to another party, or in the event of a deed in lieu of foreclosure, the total unpaid balance of the Leasehold Mortgage at the date of the foreclosure sale or recording of the deed in lieu of foreclosure, including all costs of foreclosure, shall be considered an Equity Contribution of the Leasehold Mortgagee or purchaser at foreclosure, as the case may be, as of the date of such foreclosure sale or the date of recording the deed in lieu of foreclosure.
- 1.7.1.4 Any portion of Total Revenue remaining after payment by Company of Debt Service and all costs (except Rent) associated with the ownership, operation, financing, maintenance and leasing of the Premises and the Facilities, during each calendar year of the term of this Agreement will be applied to the Parties Equity Contributions until such time as all Equity Contributions are repaid in full together with interest thereon. All Equity Contributions made in accordance with the provisions of Section 1.7.1.1 and all Equity Contributions made in accordance with Section 1.7.1.3 shall be repaid in full prior to the repayment of any Equity Contributions made in accordance with Section 1.7.1.2. All Equity Contributions shall bear interest from the date of contribution until repaid at the lower of the annual rate of interest publicly announced from time to time by Bank of America, N.A. as its "prime" rate of interest plus three (3%) percent or the maximum rate allowed by law. The interest rate payable hereunder shall

fluctuate with any change in the “prime” rate, and such fluctuations in the interest rate shall be effective on the effective date of each and every change in the “prime” rate as, from time to time, announced by Bank of America, N.A. as its “prime” rate of interest. Should Bank of America, N.A. no longer exist or fail to announce a “prime” rate, the “prime” rate, for purposes of this Lease, shall be the “prime” rate published in The Wall Street Journal, or if The Wall Street Journal fails to publish a “prime” rate, the rate that most closely approximates the “prime” rate published in The Wall Street Journal or other similar financial publication.

1.7.1.5 The Participating Parties will acknowledge the date any equity contribution is paid in full by written notice from the Company and acknowledgment by the LDR.

1.7.2 Rent.

1.7.2.1 Fifty percent (50%) of all Net Revenue, if any, during each calendar year or partial calendar year during the term of this Agreement shall be paid to Lessor as Rent for the Premises.

1.7.3 Rent shall be paid to Lessor in monthly installments on or before the twenty-fifth (25th) day following the end of each calendar month. Such payments shall be accompanied by a written statement setting forth in detail the sources and amount of Total Revenue received for the preceding month and allowable deductions for the Net Revenue calculation. A check for the Lessor’s fifty percent (50%) share of Net Revenue will be submitted with such statement. Except as otherwise provided in this Agreement, all Rent shall be paid without deduction, offset or abatement.

1.7.4 Company will make all payments to the Lessor at 15625 East Stafford Street, Suite 200, City of Industry, California 91744 or to such other place as Lessor may direct Company in writing.

1.7.5 In addition to, and without limiting, any other right or remedy which Lessor may have under this Agreement or at law or in equity, in the event any required payment is not made by Company to Lessor as required and remains unpaid for a period of thirty (30) days or more, the Lessor will be entitled to, and Company will pay to the Lessor, interest at the lower of ten percent (10%) per annum or the maximum amount allowed by law on all amounts unpaid and which remain unpaid thirty (30) days past the due date.

1.7.6 On or prior to April 30, annually during the term of this Agreement and within one hundred twenty (120) days after the expiration of the term of this Agreement, Company will provide Lessor with a statement showing in detail the sources and amount of Total Revenue received for the entire preceding calendar year. Such statement shall be prepared by the Company’s chief financial officer in accordance with sound accounting principles and practices and shall contain a written opinion of such officer as to whether the Total Revenue calculations and distribution of Net Revenue and Rent has been made in accordance with the provisions of this Agreement. Should such statements show that the amount of Rent paid during the period of review was less than that which was due, such statement shall be accompanied by Company’s payment of the additional amount to Lessor. Should such statement show that Company paid Lessor more than was due, after review and verification by LDR, a credit will be issued to be applied against future

monthly installments of Rent, except that if such should be the case at the end of the last month of this Agreement, Lessor will refund the overpayment to Company.

1.8. RECORDS AND AUDIT

- 1.8.1 Throughout the term of this Agreement, Company shall keep and maintain, in accordance with sound accounting principles and practices, accurate and complete books, records and accounts of Total Revenue and all items constituting deductions for purposes of calculating Net Revenue. Within ten days of request by Lessor, Company agrees to provide for inspection and copying by the Lessor or its designated representatives, at a location in the metropolitan area of Los Angeles County, California, such books, records, and accounts for the then current and three (3) immediately preceding calendar years. Such inspection shall take place Monday through Friday, 9:00 AM to 5:00 PM, holidays excluded.
- 1.8.2 Lessor will, at any time, have the right to cause an audit of the Company's operation of the Premises and of Total Revenue and all items constituting deductions for purposes of calculating Net Revenue, for the then current or three (3) immediately preceding calendar years. Such audit shall be made by a Certified Public Accountant of Lessor's selection. If such audit discloses that the calculation of Net Revenue previously provided to Lessor by Company is understated (either intentionally or unintentionally) by a greater margin than one percent (1%) of Company's Total Revenue for the period of review, then Company will immediately pay to Lessor the cost of such audit; otherwise the cost of the audit will be paid by Lessor. In all events, Company shall pay to Lessor the additional payments shown to be payable to Lessor by Company.

1.9 IMPROVEMENTS, MAINTENANCE AND REPAIR BY LESSOR

- 1.9.1 Except as provided in Exhibit "B" and Section 3.1.2 dealing with contamination of the Premises, Lessor has no direct responsibility or obligation for any maintenance, repair or replacement of the Premises or improvements.

1.10 CONSTRUCTION OF IMPROVEMENTS BY COMPANY

- 1.10.1 Company will, construct and install the Facilities including, grading, fencing, paving, lighting, driveways, roads, railroad facilities, utilities, parking lots, drainage, buildings and other improvements.
- 1.10.2 In the event Company has not commenced the construction of Facilities or submitted a proposal for the construction of Facilities on a parcel of the Premises within 10 years after the Commencement Date, Lessor shall have the right to terminate this Agreement as to any such undeveloped parcel of the Premises. Lessor shall give Company and any Leasehold Mortgagee encumbering any such undeveloped parcel of the Premises ninety days prior written notice and the right to submit a proposal for the development of any such parcel or commence construction thereon before exercising its right to terminate. In the event a proposal for the development of such undeveloped parcel is submitted within said ninety days, Lessor shall not have said right to terminate. Lessor agrees not to exercise its right to terminate as to any such undeveloped parcel until any Leasehold

Mortgagee encumbering such parcel has been given its rights to cure or foreclose as set forth in Section 2.18.

- 1.10.3 All improvements or alterations by Company will be in accordance with all applicable governmental rules and regulations. Upon completion of any initial or additional improvements during the term hereof, Company will provide as-built drawings of same to the Lessor along with a certification of construction costs for all permanent improvements.
- 1.10.4 At any time during the term or any extension of this Agreement, Company may, as a Project Cost, add to or alter initially constructed Facilities, subject to all conditions set forth in 1.10.3 above. Any such addition or alteration will be performed in a workmanlike manner in accordance with all applicable governmental regulations and requirements and will not weaken or impair the structural strength or reduce the value of the Premises or improvements thereon.

1.11 MAINTENANCE AND REPAIR

- 1.11.1 Throughout the term of this Agreement, Company shall maintain, or cause to be maintained, as a Maintenance and Operations expense, the Premises and the Facilities in good condition and repair (including the making of any necessary replacements, both structural and nonstructural), ordinary wear and tear excepted, and in accordance with all applicable laws, rules, regulations and orders of all (i) federal, state, county, municipal, and other governmental agencies and bodies having jurisdiction, (ii) all insurance companies insuring all or any part of the Premises or the Facilities or both. Company's obligation shall include, but not be limited to, all structural and nonstructural portions of the Premises and the Facilities, all heating, ventilating and air conditioning systems and escalators, parking lots, driveways, driving lanes, sidewalks, walkways, common areas and landscaped areas.
- 1.11.2 If Company shall fail to perform any of its obligations under this Section 1.11, Lessor may, but shall not be obligated to, give Company written notice specifying such failure in reasonable detail. If Company does not remedy such failure, or does not commence to remedy such failure and thereafter diligently pursue such remedy to completion, within fifteen (15) days following receipt of such notice, Lessor may, but shall not be obligated to, remedy such failure. If Lessor remedies any such failure, all reasonable costs and expenses incurred by Lessor in connection therewith shall be paid to Lessor by Company within ten (10) days following written demand, which shall be accompanied by copies of receipts for all such expenses incurred. Following such payment, the amount paid may be included as a Maintenance and Operations expense.

1.12 APPROVALS TO BE REASONABLY GIVEN

It is understood and agreed that all provisions of this Agreement that require approval by the Lessor or the LDR will receive timely response and such approvals will not be unreasonably withheld. Unless another time limit is otherwise specified in this Agreement, any approval or disapproval must be given within twenty (20) days. If the Lessor or LDR does not respond in writing within twenty (20) days, the item for which Company requests approval shall be deemed approved. If disapproved, the LDR will inform Company in writing of its disapproval and state the reason for such disapproval. The Participating Parties agree to negotiate in good faith to resolve any conflicting issues that may arise. If, however, the Participating Parties cannot agree

upon the item that was disapproved, a neutral third party with at least ten 10 years experience in real estate developments similar to those constructed or proposed to be constructed on the Premises will be selected by the LDR to arbitrate the disputed issue. If, however, the Company does not accept the neutral third party selected by the LDR, Company will be allowed to select a second neutral party with similar experience. The two selected parties will then select a third neutral party with at least 10 years experience in real estate developments similar to those constructed or proposed to be constructed on the Premises who will arbitrate the disputed issue. The LDR and Company agree to be bound by the decisions reached by the selected arbitrator. The Participating Parties will cause the arbitrator to make a determination within fourteen (14) days following submittal. The Participating Parties agree that each party will bear its own costs and expenses incurred for attorney's fees, preparation and presentation costs for the arbitration process. The Participating Parties will share the cost of any third arbitrator.

Notwithstanding the foregoing, in the event of an emergency, the Company may take immediate, commercially reasonable action to prevent loss, injury or damage to persons or property or to preserve the Premises and the Facilities without the prior approval of Lessor and any costs reasonably incurred in connection therewith shall be a Project Cost.

ARTICLE II

2.1 ASSIGNMENT

2.1.1 Company will not assign this Agreement or its rights or duties hereunder or any estate created hereunder, in whole or in part, except with the prior written approval of Lessor, which approval will not be withheld unreasonably or delayed; provided, that it shall be reasonable for Lessor to withhold its approval if the assignee presented is not a proper and fit person or entity with financial resources and demonstrated business experience sufficient in Lessor's reasonable business judgment to be capable of performing the obligations hereunder which are the subject of the assignment. Further, any such assignment will be specifically subject to all provisions of this Agreement. Any assignment without the prior written approval of Lessor is Void.

2.1.1.1 Except as provided in Section 2.1.1.3, any voluntary or involuntary transfer of fifty percent (50%) or more of Company's or any permitted successor's or assign's voting common stock, or the transfer of fifty percent (50%) or more of the partnership or membership interest, or the acquisition or transfer of fifty percent (50%) or more of Company's ownership, or the transfer of substantially all of the assets of the Company or any such successor or assign will be deemed an assignment requiring the prior written approval of Lessor.

2.1.1.2 As a condition precedent to any assignment, Company shall provide Lessor reasonable prior written notice of the proposed assignment with such appropriate documentation and other information as Lessor shall reasonably request in order for Lessor to make its decision to grant or withhold approval. If the prior written approval of Lessor is given to any such assignment, the proposed assignee shall, in recordable form, expressly assume all of the terms, covenants and conditions of this Agreement which are the subject of the assignment. Any assignment will not release Company from its obligations under this Agreement arising from events occurring prior to the date of assignment,

but shall release Company from all obligations arising after the effective date of the assignment.

2.1.1.3 Any transfers by partners or members of Company or shareholders of partners or members of Company to each other or for estate purposes or upon death will not be considered an assignment hereunder.

2.1.2 The foregoing provisions relating to assignment shall not be applicable to a Leasehold Mortgage hypothecating or encumbering Company's interest in this Agreement and the leasehold estate created thereby and the Facilities located on the Premises and further shall not be applicable to any sale by judicial foreclosure or pursuant to a power of sale by any Leasehold Mortgagee or to any transfer in lieu of such sale, or to any sales or transfers by any Leasehold Mortgagee (or any affiliate, parent or subsidiary of any Leasehold Mortgagee that acquires title to the Company's interest in this Agreement and the leasehold estate created thereby and the Facilities as a result of a sale by judicial foreclosure or pursuant to a power of sale or any transfer in lieu of such sale), subsequent to a sale by judicial foreclosure or pursuant to a power of sale or subsequent to any transfer in lieu of such sale. Any further assignments shall be subject to the provisions of Section 2.1, 2.1.1.1, 2.1.1.2 and 2.1.1.3.

2.2 SUBLEASING

Company will not sublease, sublet or rent to, or permit any persons, firms or corporations to occupy any part of the Premises or the Facilities without having complied with the following:

2.2.1 Company may enter into any Subleases which comply with Section 1.5 entitled DEVELOPMENT AND SUBLEASING. A copy of any such executed Sublease will be provided to the LDR. Any arrangements for the leasing of space which are not in conformance with Section 1.5 entitled DEVELOPMENT AND SUBLEASING shall not be entered into without the prior written approval of the LDR.

2.3 ATTORNMENT

2.3.1 All Subleases entered into by the Company will be subject to all terms and conditions of this Agreement. If Company defaults under this Agreement, all Sublessees will recognize Lessor as the successor to the Company under their respective Subleases, and will render performance thereunder to Lessor as if the Sublease were executed directly between Lessor and the Sublessees; provided, however, Lessor agrees that so long as a Sublessee is not in default under its Sublease, Lessor will provide quiet enjoyment to such Sublessee and Lessor agrees to be bound by all of the terms and conditions of each such Sublease.

2.3.2 All Subleases entered into by the Company will contain the following provision:

If, by reason of a default on the part of Company in the performance of the terms and provisions of the underlying Agreement, the underlying Agreement and the leasehold estate of Company thereunder is terminated by summary proceedings or otherwise in accordance with the terms of the underlying Agreement, Sublessee will attorn to Lessor and recognize Lessor as lessor under this Sublease; provided, however, Lessor agrees that

so long as Sublessee is not in default, Lessor agrees to provide quiet enjoyment to Sublessee and to be bound by all the terms and conditions of this Sublease.

2.3.3 In the event this Agreement is terminated for any reason, all Sublessees will be liable to Lessor for their payment of rents and fees and will be subject to all the provisions and terms contained in their Subleases.

2.4 SUCCESSORS AND ASSIGNS

Subject to the provisions of this Article II, this Agreement shall inure to the benefit of and be binding upon the legal representatives, successors and assigns of the Parties.

2.5 CONTROL OF PERSONNEL

Company will, in and about the Premises, exercise reasonable control over the conduct, demeanor and appearance of its employees, agents and representatives and the conduct of its contractors and suppliers. The provisions of this Section 2.5 shall in no way limit the liability of the Company with respect to the negligence, acts or omissions of its employees, agents, representatives, contractors and suppliers, nor shall such provisions limit any obligations of indemnity on the part of the Company under this Agreement.

2.6 SIGNS

Company and its Sublessees and Tenants shall have the right to install, erect and operate signs upon the Premises so long as such signs are installed, erected, operated and maintained in compliance with all applicable laws and ordinances.

2.7 ENTRY AND INSPECTION OF PREMISES

2.7.1 Lessor, its authorized officers, employees, agents, contractors, subcontractors or other representatives will have the right to enter upon all portions of the Premises and the Facilities constituting public areas when the same are open to the public, and shall have the right to enter upon all other portions of the Premises and the Facilities during normal business hours, for the purpose of inspecting the Premises and the Facilities, determining whether Company is in compliance with the terms and provisions of this Agreement, and for fulfilling Lessor's obligations and exercising Lessor's rights hereunder; provided however, that such entry will be in such manner as to not unreasonably interfere with the operations or reasonable security requirements of Company or its Sublessees. Except in the event of an emergency, Lessor shall provide Company at least two (2) business days prior written notice of its intention to enter upon the non-public areas of the Premises or the Facilities for such purposes, and, if Company so elects, Lessor shall be accompanied by a representative of Company during such entry.

2.7.2 No such entry upon the Premises by or on behalf of Lessor will cause or constitute a termination of this Agreement nor be deemed to constitute an interference with the possession thereof nor constitute a revocation of or interference with any of Company's rights in respect thereof for exclusive use of the Premises.

2.7.3 The rights of entry for inspection and other purposes as contemplated by the parties to this Agreement, pursuant to this Section, are for the sole benefit of the parties. No benefit to any third party is contemplated or intended.

2.8 INTENTION OF PARTIES

This Agreement is intended solely for the benefit of Lessor and Company and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. Any work done or inspection of the Premises by Lessor is solely for the benefit of Lessor and Company.

2.9 LIENS

Subject to the rights to contest set forth in Section 2.10 entitled Taxes and Assessments, Company will cause to be removed any and all tax liens and liens arising out of or because of any construction or installation performed by or on behalf of Company or any of its contractors or subcontractors upon the Premises or arising out of or because of the performance of any work or labor to it or them at the Premises or the furnishing of any materials to it or them for use at the Premises. Should any such lien be made or filed, Company will bond against or discharge the same within thirty (30) days after written request by LDR. The cost of bonding against or discharging any liens relating to construction or installation of the Facilities shall be a Project Cost.

2.10 TAXES AND ASSESSMENTS

Throughout the term of this Agreement, Company shall pay before delinquency, as a Project Cost, all real and personal property taxes and assessments, including, without limitation, all city, county, school district and other taxes and general and special assessments, levied upon or assessed against the Premises, any Facilities now or hereafter located thereon, the leasehold estate, any personal property of Company located on or in the Premises or any Facilities, or arising in respect of the occupancy, use or possession of the Premises or the Facilities located thereon and which are assessed or become due during the term of this Agreement. All such taxes for the first and last years of the term hereof shall be equitably prorated between the parties. Company shall have the right, in Company's or Lessor's name, to contest the validity of any tax or assessment by appropriate proceedings timely instituted and diligently prosecuted. Lessor, if requested by Company, shall cooperate with Company in any such proceedings; provided, that all costs and expenses (including attorneys' fees and costs) incurred by Lessor in connection therewith shall be paid by Company as a Project Cost. Company shall not be responsible for any of Lessor's franchise, inheritance, income, succession, transfer or other tax levied on the Lessor's rights in and to the Premises or Lessor's right to receive income from the Premises or under this Agreement. Company will keep current municipal, state or local licenses or permits required for the conduct of its business.

2.11 INDEMNITY

During the term of this Agreement, Company agrees to indemnify and hold Lessor forever harmless from and against all claim, liability, loss, demand, judgments or other expense (including, but not limited to, defense costs, expenses and reasonable attorney fees) imposed upon Lessor by reason of injuries or death of persons (including wrongful death) and damages to property caused during and because of Company's use or occupancy of the Premises or any actions or non-actions of Company, its officers, employees, agents, or other representatives, including movement of vehicles, provided, however, that (without limiting Lessor's right to coverage under any applicable insurance policies) such indemnity will not apply as to any negligent or intentional act or omission of Lessor, its employees, agents or representatives.

During the term of this Agreement, Lessor agrees to indemnify and hold Company harmless from and against all claim, liability, loss, demand, judgments or other expense (including, but not limited to, defense costs, expenses and reasonable attorneys fees) imposed upon Company by reason of injuries or death of persons (including wrongful death) and damages to property caused by Lessors use or occupancy of the Premises or any actions or non-actions of Lessor, its officers, employees, agents, contractors or other representatives, including movement of vehicles, provided, however, that (without limiting Company's right to coverage under applicable insurance policies) such indemnity will not apply to any negligent or intentional act or omission of Company, its employees, agents or representatives.

2.12 INSURANCE AND BONDS

2.12.1 Bonds

2.12.1.1 No bonds will be required for any Facilities constructed by Commerce Construction Co. Otherwise, Company, as a Project Cost, will require its general contractor on any construction contract in excess of two million dollars to furnish bonds covering the faithful performance of the construction of the improvements or installation of equipment, payment of all obligations arising thereunder to take effect upon completion of the project. Bonds may be secured through the contractor's usual sources provided the surety is authorized and licensed to do business in the State of California. Company will be allowed to name any Leasehold Mortgagee as an additional obligee under any such bond.

2.12.1.2 Prior to execution of a construction contract with a contractor required to furnish bonds, and not later than ten (10) calendar days after notification of award, Company will require such contractor to furnish contract bonds to LDR as follows:

- a. Labor and material payment bond in the amount of one hundred percent (100%) of the contract price.
- b. Payment and performance bond in the amount of one hundred percent (100%) of the contract price.

LDR may, if considered appropriate in its sole judgment, waive the requirements of this Section 2.12.1.2 upon written request by Company.

2.12.1.3 The bonds referred to in Section 2.12.1.1 and 2.12.1.2 above will be written on payment and performance bond and labor and material payment bond forms generally used for similar projects in Southern California and approved by LDR.

2.12.1.4 Company will require its contractor to require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney.

2.12.2 Insurance

- 2.12.2.1 Before any construction contractor (including Commerce Construction Co.) Commences Construction of any Facilities or any equipment installation on or about the Premises, the construction contractor shall procure and maintain insurance for such construction and installation protecting both Company and Lessor, as well as the construction contractor. Such insurance will provide coverage and limits as are commercially reasonable in the industry. Such insurance will include, but is not limited to:
- General Liability on an "occurrence" basis only
 - Automobile Liability
 - Builder's Risk equal to the maximum contract cost of the project.
- 2.12.2.2 Company's (or its contractor's) insurance will be primary as respects Lessor and Company, their officers, employees and authorized agents. Any other coverage carried by or available to Lessor, its officers, employees and authorized agents will be excess over the insurance required of the Company or its contractor and shall not contribute with it.
- 2.12.2.3 Company and its contractors will maintain worker's compensation insurance in the amounts and form as required by California law. Certificates evidencing the valid, effective insurance policies will be provided to LDR.
- 2.12.2.4 Company will keep insured with responsible insurance underwriters the Facilities and any improvements from time to time constructed by it upon and within the Premises to the extent of not less than the full replacement value of such improvements from time to time (without deduction for depreciation) using an industry standard all risk form of protection. Company will use commercially reasonable efforts to cause its Sublessees or Tenants to keep insured with responsible insurance underwriters any improvements constructed by such Sublessees or Tenants to the same extent.
- 2.12.2.5 Company will obtain and keep in full force and effect a policy(s) of general liability insurance on an "occurrence" basis only and not "claims made." The coverage must be provided either on an ISO Commercial General Liability form, or an Accord Comprehensive General Liability form, or equivalent, approved by the LDR and Company. Any exceptions to coverages must be fully disclosed on the required Certificate. If other than these forms are submitted as evidence of compliance, complete copies of such policy forms will be submitted to LDR within ten (10) days after notice to Company. Policies must include, but need not be limited to, coverages for bodily injury, property damage, personal injury, Broad Form property damage, premises and operations, severability of interest, products and completed operations, contractual and independent contractors with no exclusions of coverage for liability resulting from the hazards of explosion, collapse, and underground property damage.

Company will maintain limits of no less than five million dollars (\$5,000,000) combined single limit per occurrence for bodily injury (including death), personal injury and property damage.

- 2.12.2.6 Company will furnish Automobile Liability coverage for claims for damage because of bodily injury or death of any person, or property damage arising out of the ownership, maintenance or use of any motor vehicles whether owned, hired or non-owned. Company will maintain limits of no less than five million dollars (\$5,000,000) combined single limit "per accident" for bodily injury and property damage.
- 2.12.2.7 All required insurance coverage as stated in Section 2.12.2 will be a Project Cost and evidenced by a current Certificate(s) of Insurance. Such Certificates will include, but will not be limited to, the following:
 - 2.12.2.7.1 All Certificates for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of California.
 - 2.12.2.7.2 Each insurance company's rating as shown in the latest Best's Key Rating Guide will be fully disclosed and entered on the required Certificates of Insurance. If the insurance company providing the coverage has a Best rating of less than A+, the adequacy of the insurance supplied by Company (or its contractor), including the rating and financial health of each insurance company providing coverage, is subject to the approval by the LDR. Such approval will not be unreasonably withheld.
 - 2.12.2.7.3 Company (or its contractor) will furnish renewal Certificates for the required insurance during the period of coverage required by this Agreement. Company (or its contractor) will furnish renewal Certificates for the same minimum coverages as required in this Agreement.
 - 2.12.2.7.4 Lessor, its officers and employees shall be covered as additional insureds with respect to liability arising out of the activities by or on behalf of the named insured in connection with this Agreement. All property insurance policies will contain a waiver of subrogation clause in favor of Lessor.
 - 2.12.2.7.5 Each insurance policy supplied by the Company (or its contractor) must be endorsed to provide that the amount and type of coverage afforded to the Lessor by the terms of this Agreement will not be suspended, voided, canceled or reduced in coverage or in limits except after thirty (30) days' prior written notice by mail to Company, Lessor and any Leasehold Mortgagee.
 - 2.12.2.7.6 Any deductible, as it relates to coverage provided under this Agreement, will be fully disclosed on the

Certificates of Insurance. Any deductible provided will be reasonable and customary for the type of risk.

- 2.12.2.7.7 If aggregate limits are imposed on the insurance coverage, then the amounts of such limits must be not less than five million dollars (\$5,000,000) per occurrence or per accident. All aggregates must be fully disclosed and the amount entered on the required certificate of insurance. Company's insurer must notify the LDR of any erosion of the aggregate limits. The "per occurrence" limits of insurance required herein must be maintained in full, irrespective of any erosion of aggregate. A modification of the aggregation limitation may be permitted if it is deemed necessary and approved by the LDR and Company.
- 2.12.2.8 If the Company fails to maintain any of the insurance coverages required herein, then the Lessor, after 10 days prior notice to Company, may purchase replacement insurance or pay the premiums that are due on existing policies in order that the required coverages may be maintained. The Company is responsible for any expenses paid by the Lessor to maintain such insurance and Lessor may collect the same from the Company.
- 2.12.2.9 The insurance requirements specified herein do not relieve the Company (or its contractor) of its responsibility or limit the amount of its liability to the Lessor or other persons and the Company is encouraged to purchase such additional insurance as it deems necessary.
- 2.12.2.10 Company (or its contractor) is responsible for and must remedy all damage or loss to any property, including property of Lessor, caused in whole or in part by the Company or its contractor, any subcontractor or anyone employed, directed or supervised by the Company; provided, however neither Company nor any Leasehold Mortgagee shall be liable for any uninsured or underinsured loss relating to the Premises or the Facilities, unless such loss is a result of Company's failure to obtain the insurance it is required to maintain under this Agreement, in which event Company shall be liable for such loss and such loss shall not be a Project Cost. Company is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with this Agreement.
- 2.12.2.11 Company and Lessor agree and acknowledge that any Leasehold Mortgagee shall be named as an additional insured under any insurance policy relating to the Premises, the Facilities or otherwise required under this Agreement. Company agrees to provide any Leasehold Mortgagee with appropriate certificates of insurance relating to all policies.
- 2.12.2.12 Company, at its option, may satisfy its obligations hereunder to insure within the coverage of any so-called blanket policy or policies of insurance which it now or hereafter may carry, by appropriate

amendment, rider, endorsement or otherwise; provided, however, that the interests of Lessor shall thereupon be as fully protected by such blanket policy or policies as they would be if this option to so insure by blanket policy were not permitted.

2.12.2.13 Waiver of Subrogation. Without affecting any other rights or remedies, Company and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable thereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Company, as the case may be, so long as the insurance is not invalidated thereby.

2.13 DAMAGE AND DESTRUCTION

In the event that any Facilities located on the Premises are damaged or destroyed, and the net proceeds of insurance are sufficient to cover the Company's estimated cost of rebuilding (or if Company failed to maintain insurance it is required to maintain under this Agreement and the proceeds of such insurance, had it been maintained, would have been sufficient to cover the Company's estimated cost of rebuilding), Company shall repair and rebuild the said Facilities, and this Agreement shall continue in full force and effect, and Company shall commence and continue such repair or rebuilding with reasonable diligence and shall complete such repair and rebuilding within a reasonable time after the same is commenced; provided, however, that any delay in the completion of the said repairs resulting from fire or other casualty, strikes, shortages of material or labor, governmental laws, rules and regulations, the elements or matters beyond the reasonable control of Company, shall extend such reasonable time within which Company may complete said repairs or rebuilding by the period of such delay. The net proceeds of any insurance, to the extent that such proceeds are received by Lessor or any Leasehold Mortgagee, less any expenses of recovery thereof (including attorneys' fees), shall be made available to Company to be applied to the cost and expense of repair or rebuilding the damage or destruction insured against, subject to reasonable conditions and payable on the usual architect's certificates, but Lessor or any Leasehold Mortgagee holding said insurance proceeds may withhold an amount reasonably necessary to insure completion of such repairs or rebuilding (not to exceed ten percent (10%) of such proceeds) until completion and the expiration of the period within which mechanics' or materialmen's liens may be filed and until receipt of satisfactory evidence that no liens exist.

In the event the Company maintains the insurance it is required to maintain under this Agreement and the proceeds of insurance are not sufficient to cover the Company's estimated cost of rebuilding, or in the event the damage or destruction occurs during the last 10 years of the lease term, Company will have the option to terminate this Agreement, subject to the rights of any Leasehold Mortgagee, which option will be exercisable by written notice to Lessor within forth five (45) days after the occurrence of such event. Company will only have such option to terminate this Agreement as to the specific legal parcel or parcels upon which the Facilities are damaged or destroyed. Any such termination by Company shall require the prior written consent of any Leasehold Mortgagee. In the event the Company elects to terminate this Agreement based upon such damage, destruction, or substantial loss, the Company will be liable for and will pay for all cleanup or demolition of the Premises necessary to make the Premises ready for repair,

replacement, restoration or rebuilding: (a) if the Company or its employees or agents caused such damage, destruction or substantial loss to occur, (b) to the extent of any insurance proceeds payable with respect to such damage, destruction or substantial loss, or (c) to the extent of any insurance proceeds which would have been payable with respect to such damage, destruction or substantial loss had Company maintained the insurance it is required to maintain under this Agreement. In the event Company does not exercise such option then Company will promptly repair, replace, restore or rebuild said improvements.

2.14 DEFAULT BY COMPANY

2.14.1 Default by Company

Subject to the provisions of Section 2.16 and Section 2.18, Company will be considered in default as Lessee under this Agreement in the event of any one or more of the following occurrences:

2.14.1.1 Company fails to pay the rent or any other money payments required by this Agreement when the same are due and the continuance of such failure for a period of thirty (30) days after written notice thereof from the LDR to Company or Company fails to maintain any insurance required to be maintained by it under this Agreement and such failure continues for a period of fifteen (15) days after written notice thereof from the LDR to Company.

2.14.1.2 Company fails to perform any other covenant contained in this Agreement and such failure continues for a period of sixty (60) days after written notice thereof from the LDR to Company; provided, however, that if a nonmonetary default cannot be cured with reasonable diligence within such sixty (60) day period, then Lessor shall not have the right to terminate this Agreement or pursue any other remedy against Company, as long as Company commences the curing of such default within said sixty (60) day period and thereafter proceeds with the curing of such default to completion with reasonable diligence, with allowance for delays due to the action or failure to act of governmental authorities, strikes, acts of God or other matters beyond the reasonable control of Company.

2.14.1.3 Company voluntarily abandons the Premises for a period of sixty (60) days following written notice from the LDR to Company.

2.14.2 Cure

Subject to the mortgagee protection provisions set forth in this Agreement, Company will be considered in default of this Agreement if Company fails to fulfill any of the terms, covenants, or conditions set forth in this Agreement following the expiration of the cure period and written notice set forth in Sections 2.14.1 and 2.14.3.

2.14.3 Termination For Default By Company

Subject to the lender protection provisions of Section 2.18, if default is made by Company as described in Section 2.14.1 hereinabove, and such default is not cured as

provided in Sections 2.14.1 and 2.14.2, Lessor shall provide Company with an additional written notice thereof and if such failure to cure continues for an additional period of sixth (60) days. Lessor shall be entitled to pursue any and all rights and remedies which it may have under this Agreement or at law or in equity, including, without limitation, the right to terminate this Agreement. All of such rights and remedies shall be cumulative and not alternative.

2.14.3.1 If Lessor elects to terminate this Agreement, it will in no way prejudice the right of action for rental arrearages owed by Company.

2.14.3.2 Redelivery and disposal of improvements will be as described in Section 2.17, entitled SURRENDER AT END OF TERM.

2.15 DEFAULT BY LESSOR

2.15.1 Default By Lessor

Lessor will be considered in default of this Agreement if Lessor fails to fulfill any of the terms, covenants or conditions set forth in this Agreement if such failure shall continue for a period of more than sixty (60) days after delivery by Company of a written notice of such default.

2.15.2 Cure

If the default cannot be cured with reasonable diligence within such Sixty (60) day period, then Company shall not have the right to terminate this Agreement or pursue any other remedy against Lessor, as long as Lessor commences the curing of such default within said sixty (60) day period and thereafter proceeds with the curing of such default to completion with reasonable diligence, with allowance for delays due to the action or failure to act of governmental authorities, strikes, acts of God or other matters beyond the reasonable control of Lessor.

2.15.3 Remedies

Subject to the mortgagee protection provisions set forth in this Agreement, if default is made by Lessor as described in Section 2.15.1 hereinabove, and is not cured as provided in Section 2.15.2 hereinabove, Company shall provide Lessor with an additional written notice thereof and if such failure to cure continues for an additional period of sixty (60) days, Company shall be entitled to pursue any and all rights and remedies which it may have under this Agreement or at law or in equity, including, without limitation, the right to terminate this Agreement. All of such rights and remedies shall be cumulative and not alternative. Redelivery and disposal of improvements will be as described in Section 2.17, entitled SURRENDER AT END OF TERM.

2.16 WAIVERS AND ACCEPTANCE OF FEES

2.16.1 No waiver of default by either party hereto of any of the terms, covenants or conditions hereof to be performed, kept or observed will be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, conditions herein contained to be performed, kept and observed.

- 2.16.2 No acceptance of fees or other money payments in whole or in part for any period or periods during or after default of any of the terms, conditions or covenants to be performed, kept or observed by the Company will be deemed a waiver on the part of the Lessor of any right or remedy which it may have under this Agreement or at law or in equity.
- 2.16.3 No acceptance of fees or other money payments in whole or in part for any period or periods during or after default of any of the terms, conditions or covenants to be performed, kept or observed by the Lessor will be deemed a waiver on the part of the Company of any right or remedy which it may have under this Agreement or at law or in equity.

2.17 SURRENDER AT END OF TERM

- 2.17.1 Subject to the mortgagee protection provisions set forth in Section 2.18 and subject to the rights of Sublessee's, Company covenants that at the termination of this Agreement, howsoever caused, it will quit and surrender the Company's right, title and interest in the Premises in good repair and condition, excepting reasonable wear and tear, acts of God, the public enemy or the action of the elements.
- 2.17.2 All Facilities located on the Premises at the expiration or sooner termination of the term of this Agreement, howsoever caused, shall, without payment or compensation of any kind to Company, then become Lessor's property, in fee simple, free and clear of all claims, liens and encumbrances to or against them by Company, any Leasehold Mortgagee, any Sublessee or Tenant, or any other third party claiming by or through Company. Subject to the mortgagee protection provisions set forth in Section 2.18 and subject to the rights of Sublessee's, upon termination of this Agreement howsoever caused, Company shall have the right to remove from the Premises, within sixty (60) days following the Termination Date, all equipment, trade fixtures and personal property belonging to Company or Sublessee's, provided Company or its Sublessees repair any damage caused by such removal.

For purposes of this Subsection 2.17.2, the words "equipment, trade fixtures and personal property" will include, but not be limited to, (i) signs (electrical or otherwise), (ii) all equipment used in connection with the conduct of Company's or its Sublessees business whether or not such equipment is attached to the Premises or the Facilities, (iii) any other mechanical device, and (iv) all other miscellaneous equipment, furnishings and fixtures installed on or placed on or about the Premises and used in connection with Company's or its Sublessees business thereon; provided, however, that such words shall not include elevators, escalators, plumbing systems, electrical systems, life safety systems, boilers, heating, ventilating and air conditioning systems, floor and wall coverings, ceiling lights, built-in shelving and cabinets, doors, windows, outside walls and fencing, and landscaping. All equipment, trade fixtures and personal property that is not removed within sixty (60) days following the Termination Date, shall become the property of Lessor.

- 2.17.3 Without limiting the provisions of this Section 2.17, Company agrees that upon the expiration or sooner termination of this Agreement, howsoever caused, it will execute, acknowledge and deliver to Lessor within thirty (30) days after demand from Lessor, all such documents and instruments as shall be reasonably necessary to evidence and

confirm the transfer of ownership of the Facilities from Company to Lessor, "as-is" in their existing condition without any further consideration required from Lessor.

2.18 FINANCING

2.18.1 Notwithstanding anything to the contrary contained in this Agreement, Company will have the right at such time or times as Company desires and without Lessor's consent, to hypothecate Company's interest in all or part of this Agreement, the Premises and the Facilities with one or more Leasehold Mortgages. Such Leasehold Mortgages may contain such terms and conditions as are acceptable to Company and Company will have the right, without the consent of Lessor, at any time during the term hereof to execute and deliver to any or all of its Leasehold Mortgagees any documents which will operate as collateral security for any loan or loans made, even if such document or documents result in a form or type of conveyance or assignment of the leasehold interest demised hereunder. It is hereby agreed that Company or any such Leasehold Mortgagees will have the right to immediately record such document or document(s) with an appropriate public official or officials. Company agrees that copies of all such documents of conveyance or assignment as contained in this Section 2.18 will be provided to the LDR forthwith. Lessor agrees to cooperate in executing any documents reasonably requested of Lessor by Company or the Leasehold Mortgagee in connection with any such Leasehold Mortgage; PROVIDED, HOWEVER, UNDER NO CIRCUMSTANCES SHALL LESSOR BE OBLIGATED TO SUBORDINATE ITS FEE INTEREST IN THE PREMISES TO ANY LEASEHOLD MORTGAGE, AND, NOTWITHSTANDING ANY TERM OR PROVISION OF ANY SUCH LEASEHOLD MORTGAGE OR THIS AGREEMENT TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL ANY SUCH LEASEHOLD MORTGAGE CONSTITUTE AN INDEBTEDNESS OR OBLIGATION OF LESSOR NOR SHALL LESSOR BE LIABLE IN ANY WAY FOR THE PAYMENT OF ANY PORTION OF THE INDEBTEDNESS EVIDENCED BY SUCH LEASEHOLD MORTGAGE OR FOR THE PAYMENT OR PERFORMANCE OF ANY OTHER OBLIGATION THEREUNDER OR SECURED THEREBY.

2.18.2 Lessor will deliver to any such Leasehold Mortgagee written notice of any default of Company under the terms of this Agreement and said notice will specify the nature of the default. Before terminating this Agreement, Lessor will allow such Leasehold Mortgagee to cure or commence to cure any default of Company in accordance with the provisions of this Agreement. The time period to cure any default of Company will commence when said notice is delivered to Leasehold Mortgagee and Leasehold Mortgagee shall have the same lengths of time to cure the specified default as are permitted Company in Section 2.14. In the event Company fails to timely cure a default after receipt of written notice and expiration of any applicable cure period, Lessor agrees to provide any Leasehold Mortgagee with a second written notice and provide such Leasehold Mortgagee with an additional thirty (30) day cure period. Lessor will not have the right to exercise any remedies under this Agreement so long as a Leasehold Mortgagee is diligently prosecuting to complete a cure of any default. If such default is of a nature which is incapable of being cured by Leasehold Mortgagee, Lessor agrees not to exercise its remedies arising from such default if (i) Leasehold Mortgagee notifies Lessor in writing within such thirty (30) day cure period that Leasehold Mortgagee intends to foreclose its mortgage and Leasehold Mortgagee commences and diligently pursues such foreclosure; and (ii) Leasehold Mortgagee makes all payments due by Company under this Agreement through the date of foreclosure.

2.18.3 Any default by the Company in the payment of money as required under the terms of this Agreement may be cured by the Leasehold Mortgagee in accordance with the terms of Sections 2.14 and 2.18.2 of this Agreement, and Lessor will accept any such payment or cure from such Leasehold Mortgagee during the term of the Leasehold Mortgage.

2.18.3.1 Should the Company default under the terms of this Agreement and should the default be such that it cannot be cured by the payment of money, Lessor will accept payments of rent from such Leasehold Mortgagee and this Agreement will not terminate, but will remain in full force and effect, pending Leasehold Mortgagee's cure of such default within the time periods described herein or resort to foreclosure or sale proceedings under its deed of trust or other security instruments.

2.18.4 If any default has been cured by a Leasehold Mortgagee or Assignee, Lessor agrees that upon completion of any foreclosure proceedings or sale under the deed of trust or other security instrument securing the loan, or upon delivery of a deed in lieu of foreclosure, the Leasehold Mortgagee or purchaser at such sale or any heir, successor, or assign of Leasehold Mortgagee (Assignee) subsequent to such sale will be recognized by Lessor as the lessee under the terms of this Agreement for all purposes for the remaining term hereof. The leasehold interest of the Leasehold Mortgagee or such Assignee will not be adversely affected or terminated by reason of any nonmonetary default occurring prior to the completion of such proceedings or sale, provided such default has been promptly remedied (to the extent it is capable of being remedied by Leasehold Mortgagee), or if such default requires possession to cure, provided such Leasehold Mortgagee, Assignee or purchaser promptly commences to cure upon taking possession of the Premises.

2.18.5 Such Leasehold Mortgagee will not become personally liable under the terms and obligations of this Agreement unless and until it assumes the obligations and is recognized by Lessor as lessee under this Agreement and will be liable only so long as such Leasehold Mortgagee or Assignee maintains ownership of the leasehold interest or estate and recourse to such Leasehold Mortgagee or Assignee shall be limited solely to Leasehold Mortgagee's or Assignee's interest in the Premises.

2.18.6 At any time during the term of this Lease, within ten (10) days after a written request by the Company or any Leasehold Mortgagee, Lessor, through Lessor's Designated Representative, will execute, acknowledge and deliver to the Company or such person or entity as the Company designates, a certificate stating:

- (a) that this Agreement is the only Agreement between Lessor and Company concerning the Premises and is unmodified and in full force and effect in accordance with its terms (or if there have been modifications, that this Agreement is in force and effect as modified, and identifying the modification agreements, or if this Agreement is not in full force and effect, that it is not);
- (b) the commencement and expiration dates of this Agreement and the date to which rental has been paid to Lessor under this Agreement;
- (c) whether or not, to the knowledge of the Lessor, there is an existing default by Company in the payment of Rent or any other sum of money under this Agreement, and whether or not there is any other existing default by either party

under this Agreement with respect to which a notice of default has been served, and if there is such a default specifying its nature and extent;

- (d) whether or not, to the knowledge of Lessor, there are any set-offs, defenses or counter-claims against enforcement of the obligations to be performed by Lessor or Company under this Agreement; and,
- (e) such other reasonable information relating to this Agreement that a Leasehold Mortgagee or assignee may request.

2.18.7 All notices of default required to be delivered to a Leasehold Mortgagee under this Agreement will be sent to any Leasehold Mortgagee by overnight courier service or certified mail, return receipt requested. No such notice shall be valid or effective as against the Leasehold Mortgagee until and unless actually received by the Leasehold Mortgagee as evidenced by the courier service's delivery records or the return receipt.

2.18.8 In the event this Agreement is terminated for any reason prior to the end of the term (it being the intent that the Agreement will remain in full force and effect if Leasehold Mortgagee performs), Lessor shall enter into a new Agreement with Leasehold Mortgagee holding a first priority interest covering the Premises, provided that the Leasehold Mortgagee (i) requests such new Agreement by written notice to Lessor within sixty (60) days after termination, and (ii) cures all prior defaults of Company that are capable of being cured by Leasehold Mortgagee. The new Agreement shall be for the remainder of the term, effective at the date of such termination, at the same rent and on the same covenants, agreements, conditions, provisions, restrictions and limitations contained in this Agreement. The new Agreement shall have the same title priority as this Agreement and shall be subject only to the exceptions to title having priority over this Agreement or such additional exceptions to which such Leasehold Mortgagee has consented in writing. In the event the Lessor and such Leasehold Mortgagee enter into any such new Agreement, title to all the Facilities located upon the Premises as of the date of such new Agreement shall automatically vest in such Leasehold Mortgagee. If requested by such Leasehold Mortgagee, Lessor agrees to execute and deliver to Leasehold Mortgagee within 10 days after request therefore, a quitclaim deed in recordable form conveying title to such Facilities to such Leasehold Mortgagee. Lessor also agrees to assign to such Leasehold Mortgagee all Subleases with Tenants whose Subleases attach to Lessor upon the termination of this Agreement.

2.18.9 Lessor shall cooperate in amending this Agreement from time to time to add any provision which may reasonably be requested by any Leasehold Mortgagee or proposed lender for the purpose of implementing the mortgagee protection provisions contained in this Agreement and allowing such Leasehold Mortgagee reasonable means to protect or preserve the lien of its loan and the value of its security. Lessor agrees to execute and deliver (and to acknowledge if necessary for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect or change the term of this Agreement or the Rent or other amounts payable to Lessor under this Agreement, subordinate the fee interest of Lessor in the real property underlying the Premises, nor otherwise in any material respect adversely affect any rights of Lessor under this Agreement.

2.18.10 The bankruptcy or insolvency of Company will not operate or permit the Lessor to terminate this Agreement as long as all Rent or other monetary payments required to be

paid by Company continue to be paid and other required obligations are performed in accordance with the terms of this Agreement.

- 2.18.11 To the extent any of the terms of this Agreement are inconsistent with the terms of this Section regarding mortgagee protection provisions, the mortgagee protection provisions will control.
- 2.18.12 Every Leasehold Mortgage shall contain a provision that copies of all notices of default by Company thereunder must be sent to Lessor. In the event of any default by Company under any Leasehold Mortgage, the Lessor reserves the right to make any payments due to the Leasehold Mortgagee before the Leasehold Mortgagee resorts to any foreclosure or sale proceedings under its deed of trust or other security instrument.
- 2.18.12.1 Following any foreclosure or deed in lieu of foreclosure the leasehold estate created by this Agreement and the Facilities may be transferred or assigned as provided in Section 2.1.2.
- 2.18.13 Any mortgage placed by the Lessor on the fee title to the Premises shall be subordinate to this Agreement (and any replacement to this Agreement), any separate lease entered into in accordance with Section 4.8 and all Subleases.
- 2.18.14 Prior to any termination of this Agreement by Lessor, any Leasehold Mortgagee shall be allowed sufficient time to complete any foreclosure action, including time for delays due to official restraint (including by law, process or injunction issued by a court), so long as such Leasehold Mortgagee is making payments required by this Agreement which can be reasonably determined prior to acquiring the Company's interest under this Agreement. Leasehold Mortgagee shall have the right to terminate foreclosure proceedings at any time if Company has cured all defaults under any loan from Leasehold Mortgagee. However, no such termination of foreclosure proceedings shall prevent Lessor from pursuing, or continuing to pursue, its rights and remedies under this Agreement against Company for any uncured defaults under this Agreement.
- 2.18.15 So long as any Leasehold Mortgage is in effect, there shall be no merger of the leasehold estate created by this Agreement into the fee simple estate in the Premises without the prior written consent of the Leasehold Mortgagee.
- 2.18.16 Any Leasehold Mortgagee shall have the right to participate in any settlement or adjustment of losses under insurance policies maintained by Company under this Agreement. Such Leasehold Mortgagee shall be named as a loss payee or additional insured, as applicable, in accordance with any loan documents executed by Company, under the insurance policies required under this Agreement. Company shall use commercially reasonable efforts to obtain provisions in Leasehold Mortgages providing that any proceeds of insurance shall first be used for the purposes provided for in this Agreement before any portion thereof is applied to repay any indebtedness under such Leasehold Mortgage.

2.19 EMINENT DOMAIN

- 2.19.1 In the event of any acquisition of or damage to all or any part of the Premises or any interest therein by eminent domain, whether by condemnation proceeding or transfer in avoidance of an exercise of the power of eminent domain or otherwise during the term

of this Agreement, the rights and obligations of the parties with respect to such appropriation shall be as provided in this Section. As used herein:

- a. "Taking" shall mean any taking or damage, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance in lieu of an exercise of eminent domain or while condemnation proceedings are pending. The taking shall be deemed to take place on the earlier of (i) the date actual physical possession is taken by the condemnor or (ii) the date on which the title passes to the condemnor.
- b. "Total Taking" shall mean the taking of fee title to all of the Premises or so much of the Premises that the portions of the Premises not so taken are, in the reasonable judgment of Company, not reasonably suited for the uses of the Premises that have been previously made by Company. A Temporary Taking, defined below, may be treated as a Total Taking if it meets the test set forth above.
- c. "Partial Taking" shall mean any taking of fee title that is not a Total Taking.
- d. "Temporary Taking" shall mean the taking for temporary use of all or any portion of the Premises for a period ending on or before the expiration of the term.
- e. "Award" shall mean all compensation paid for the taking whether pursuant to a judgment or by agreement or otherwise.
- f. "Notice of Intended Taking" shall mean any notice or notification on which a reasonably prudent man would rely and which he would interpret as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal and shall include without limitation the service of a condemnation summons and complaint on either Lessor or Company or the receipt by either Lessor or Company from a condemning agency or entity of a written notice of intent to take containing a description or map of the taking reasonably defining the extent thereof.

2.19.2 Upon receipt of any of the following by either Party hereto, such Party shall promptly deliver a copy thereof, endorsed with the date received, to the other and any Leasehold Mortgagee which has given its name and address to such Party for such purpose.

- a. Notice of Intended Taking;
- b. Service of any legal process relating to the condemnation of all or any part of the Premises;
- c. Notice in connection with any proceedings or negotiations with respect to any such condemnation; and
- d. Notice of intent or willingness to make or negotiate a private purchase, sale or other transfer in lieu of condemnation.

- 2.19.3 Lessor, Company and any Leasehold Mortgagee that would be affected by such taking, shall each have the right to represent its respective interest in each proceeding or negotiation with respect to any taking or intended taking and to make full proof of its claims. No agreements, settlement, sale or transfer to or with the condemning authority shall be made without the prior written consent of Lessor, Company and Leasehold Mortgagee, which consent shall not be unreasonably withheld. Each of the parties hereto agrees to execute and deliver to the other any instruments that may be required to effectuate or facilitate any of the provisions of this Section where such execution or delivery will not adversely affect the right of such party to receive just compensation for any loss sustained in such negotiation or proceeding.
- 2.19.4 In the event of a Total Taking, this Agreement and all interests, rights, liabilities and obligations of the Parties hereunder shall terminate as of the date of Taking, except for liabilities and obligations arising out of events occurring prior to the date of termination.

In the event of a Taking of fee title to less than all of the Premises which Company reasonably believes to be a Total Taking, Company may, by written notice to Lessor approved by all Leasehold Mortgagees, within one hundred twenty (120) days after Company receives Notice of Intended Taking thereof, elect to treat such taking as a Total Taking. If Company fails to make such timely election, such Taking shall be deemed to be a Partial Taking for all intents and purposes.

Any taking determined to be a Total Taking in accordance with the foregoing paragraph shall be treated as a Total Taking if (i) Company delivers possession of the Premises to Lessor within one hundred twenty (120) days after Company shall have delivered written notice to Lessor electing to treat such taking as a Total Taking and (ii) Company has complied with all of the provisions hereof relating to the apportionment of the awards.

In a Total Taking, all sums, including damages and interest, awarded for the fee or the leasehold or both shall be distributed in the following order of priority:

- a. First, to Leasehold Mortgagees to the extent of the then balance due on all Leasehold Mortgages;
- b. Second, to Lessor an amount equal to the then present value of the reversionary interest of Lessor in the real property underlying the Premises at the Expiration of this Agreement;
- c. Third, subject to Section 1.1.25, the balance of the Award to Company.

All sums awarded for the leasehold or the fee shall (i) be delivered to Lessor and Company (or to Leasehold Mortgagee), respectively, if such award has been apportioned between Lessor and Company by such condemning authority, or (ii) deposited promptly with Leasehold Mortgagee (or in the event that there is no lender of record, with an escrow agent selected by Company in the reasonable exercise of its discretion), if only a single award is made, and distributed and disbursed as set forth above. Sums being held by the escrow agent pending disbursement shall be deposited in a federally insured interest bearing account and, upon distribution, each party having a right to any of the sums being disbursed shall be entitled to receive the interest attributable to its share of said sums.

2.19.5 In the event of a Partial Taking, this Agreement shall remain in full force and effect as to the portion of the Premises remaining.

On a Partial Taking, all sums, including damages and interest, awarded for the fee or the leasehold or both shall be distributed in the following order of priority:

- a. First, to Company an amount equal to the cost of making all repairs and restorations to any Facilities on the Premises affected by such taking to the extent necessary to restore the same to a complete architectural and economically viable or functioning units (to the extent permitted, however, taking into consideration the amount of land remaining after such taking or purchase);
- b. Second, to any Leasehold Mortgagee to the extent that the security if its Leasehold Mortgage has been impaired as a result of the Partial Taking or as required by its loan documents, whichever is greater;
- c. Third, to Lessor an amount equal to the then present value of the reversionary interest of Lessor in the real property underlying the Premises at the Expiration of this Agreement in that portion of the real property underlying the Premises that is taken in such Partial taking;
- d. Fourth, subject to Section 1.1.25, the balance of the Award to Company.

All sums awarded for the leasehold or the fee shall (i) be delivered to Lessor and Company (or to Leasehold Mortgagee), respectively, if such award has been apportioned between Lessor and Company by such condemning authority, or (ii) deposited promptly with Leasehold Mortgagee (or in the event that there is no lender of record, with an escrow agent selected by Company in the reasonable exercise of its discretion), if only a single award is made, and distributed and disbursed as set forth above. Sums being held by the escrow agent pending disbursement shall be deposited in a federally insured interest bearing account and, upon disbursement, each party having a right to any of the sums being disbursed shall be entitled to receive the interest attributable to its share of said sums.

2.19.6 In the event of a Temporary Taking, this Agreement shall remain in full force and effect, neither the rents reserved hereunder nor the term hereof shall be reduced or affected in any way, and, subject to Section 1.1.25, Company shall be entitled to any award for the use or estate taken, subject to the requirements of any Leasehold Mortgagee.

2.19.7 Unless the respective values are determined by the court in the eminent domain proceeding, the values of the interests for which Lessor and Company are entitled to compensation in the event of a Total or Partial Taking shall be determined by the mutual written agreement of Lessor and Company. If Lessor and Company are unable to agree on the value of said interests within thirty (30) days after the deposit of the sums awarded with the escrow agent, then within thirty (30) days after the expiration of that period, each such party shall submit its good faith estimate of the value of said interests as of the date of the taking. If the higher of said estimates is not more than 105% of the lower of such estimates, the value shall be the average of the submitted estimates. If otherwise, then within ten (10) days the question shall be submitted to arbitration pursuant to the rules of the American Arbitration Association.

ARTICLE III

3.1 ENVIRONMENTAL POLICY

3.1.1 Violation Of Environmental Laws

During the term of this Agreement, Company will not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released on, under or about the Premises, or transported to and from the Premises, by Company, its Sublessees and Tenants, or their respective agents, employees, contractors, invitees or a third party in violation of the Environmental Laws.

3.1.1.1 LDR will have access to the Premises to inspect same to insure that Company is using the Premises in accordance with Environmental Laws.

3.1.1.2 Company, at the LDR's reasonable request, as a Project Cost, will conduct such testing and analysis as necessary to ascertain whether Company is using the Premises in compliance with environmental requirements. Any such tests will be conducted by qualified independent experts chosen by Company and subject to LDR's reasonable written approval. Copies of such reports from any such testing will be provided to LDR.

3.1.1.3 Company will promptly provide copies of all notices, reports, claims, demands or actions concerning any environmental concern or release or threatened release of Hazardous Materials to Lessor.

3.1.2 Contamination Of Premises

3.1.2.1 If the illegal use of any Hazardous Material on, under or about the Premises by Company, its agents, employees or contractors results in any contamination of the Premises, in violation of an Environmental Law, Company will promptly take all actions as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises. Company will take all steps necessary to remedy and remove any such Hazardous Materials as are necessary to protect the public health and safety and the environment from actual harm and to bring the Premises into compliance with all environmental requirements. If any such contamination is a result of the gross negligence of Company or its employees or if Company or its employees intentionally contaminate the Premises, all costs incurred to bring the Premises into compliance with environmental laws shall be at Company's cost and expense and not as a Project Cost. If any such contamination is a result of the actions of agents, contractors, third parties or the actions of Company that were not intended to contaminate the Premises, all costs incurred to bring the Premises into compliance with environmental laws shall be a Project Cost.

3.1.2.2 Lessor will be solely responsible for any environmental condition existing on or about the Premises prior to the commencement of the term of this Agreement or any environmental conditions caused by Lessor, its agents, employees, contractors or invitees during the term. Lessor will promptly take all actions, at

its cost and expense, as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises. Lessor will take all steps necessary to remedy and remove any such Hazardous Materials as are necessary to protect the public health and safety and the environment from actual harm and to bring the Premises into compliance with all environmental requirements.

3.1.2.3 If the illegal use of any Hazardous Material on, under or about the Premises by Sublessees and Tenants, their respective agents, employees, contractors, servants or invitees results in any contamination of the Premises, in violation of an Environmental Law, Company will promptly take all actions, as a Project Cost, as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises. Company will take all steps necessary to remedy and remove any such Hazardous Materials as are necessary to protect the public health and safety and the environment from actual harm and to bring the Premises into compliance with all environmental requirements. All amounts recovered (whether by way of settlement of a claim, judgment, indemnity or otherwise) by Company from any such Sublessee, Tenant, agent, employee, contractor, servant or invitee in connection with the foregoing matters shall be included in Total Revenue for the full or partial calendar year of the term of this Agreement in which recovered (Company's reasonable costs of recovery shall be deducted as a Project Cost), or if recovered following the expiration or termination of the term of this Agreement, fifty percent (50%) of such recovery (after deducting from such recovery the Company's reasonable costs of recovery not theretofore included in Project Costs) shall be promptly paid over to Lessor.

3.1.3 Compliance With All Governmental Authorities

During the term of this Agreement, Company will promptly make all submissions required of Company and comply with all requirements of the appropriate governmental authority under all Environmental Laws. During the term of this Agreement, Lessor will promptly make all submissions required of Lessor to, and comply with, all requirements of the appropriate governmental authority under all Environmental Laws.

3.1.3.1 Should any governmental agency having authority over such matters determine that a site characterization, site assessment, and/or cleanup plan be prepared or that a cleanup should be undertaken because of any spills or discharges of hazardous materials at the Premises by Company, its agents, employees or contractors which occur during the term of this Agreement, then Company shall prepare and submit the required plans and financial assurances, and carry out the approved plans. If any such spills or discharges are a result of the gross negligence of Company or its employees or if Company or its employees intentionally spilled or discharged hazardous materials at the Premises, all costs incurred to prepare and submit the required plans and carry out the approved plans shall be at Company's cost and expense and not as a Project Cost. If any such spills or discharges are a result of the actions of agents, contractors, third parties or the actions of Company that were not intended to spill or discharge hazardous materials at the Premises, all costs incurred to prepare and submit the required plans and carry out the approved plans shall be a Project Cost.

- 3.1.3.2 Company hereby agrees to indemnify Lessor from all costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal or restoration work required by any Federal, State or local governmental agency or political subdivision because of an environmental condition on, under or about the Premises that is caused by Company, its Sublessees, their agents, employees, contractors or invitees. If any such environmental condition is a result of the gross negligence of Company or its employees or if Company or its employees intentionally caused such environmental condition, all costs incurred to bring the Premises into compliance with environmental laws shall be at Company's cost and expense and not as a Project Cost. If any such environmental condition is a result of the actions of Sublessees, agents, contractors, third parties or the actions of Company that were not intended to contaminate the Premises, all costs incurred to bring the Premises into compliance with environmental laws shall be a Project Cost. Lessor hereby agrees to indemnify Company from all costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal or restoration work required by any Federal, State or local governmental agency or political subdivision because of an environmental condition on, under or about the Premises that existed prior to the Commencement Date of this Agreement or was caused by Lessor, its agents, employees, contractors or invitees during the term.
- 3.1.3.3 Should any governmental agency having authority over such matters determine that a site characterization, site assessment, and/or cleanup plan be prepared or that a cleanup should be undertaken because of any spills or discharges of hazardous materials at the Premises by Sublessees and Tenants, and their respective agents, employees, contractors or invitees which occur during the term of this Agreement, then Company shall (as a Project Cost) prepare and submit the required plans and financial assurances, and carry out the approved plans. Company will promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises, or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to such environmental contamination. All amounts recovered (whether by way of settlement of a claim, judgment, indemnity or otherwise) by Company from any such Sublessee, Tenant, agent, employee, contractor, servant or invitee in connection with the foregoing matters shall be included in Total Revenue for the full or partial calendar year of the term of this Agreement in which recovered (Company's reasonable costs of recovery shall be deducted as a Project Cost), or if recovered following the expiration or termination of the term of this Agreement, fifty percent (50%) of such recovery (after deducting from such recovery the Company's reasonable costs of recovery not theretofore included in Project Costs) shall be promptly paid over to Lessor.

ARTICLE IV

4.1 FORCE MAJEURE

Neither Lessor, Company or any Leasehold Mortgagee will be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations hereunder if, while and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of governmental authority, unusual weather

conditions, floods, riots, rebellion or sabotage. However, the provisions of this Section will not apply to, nor excuse any failure by Company to pay Rents, fees or any other money payments required under the provisions, covenants or agreements contained in this Agreement.

4.2 QUIET ENJOYMENT

Lessor agrees that, on payment of the Rents and fees and performance of the covenants, conditions and agreements on the part of Company to be performed hereunder, Company will have the right to peaceably occupy and enjoy the Premises.

4.3 NOTICES

All notices, requests, consents and approvals under this Agreement will be given only by personal delivery, certified mail return receipt requested, overnight courier service or facsimile. The same shall be deemed to have been given: (i) if personally delivered, upon receipt, (ii) if by certified mail, upon the date indicated on the return receipt, (iii) if by overnight courier service, upon the date delivered as shown by the records of the courier, and (iv) if by facsimile, at the time of electronic confirmation of successful transmission.

Notices intended for the Lessor will be addressed to:

Successor Agency to the Industry Urban-Development Agency
15625 East Stafford Street, Suite 200
City of Industry, California 91744
Attn: Executive Director
Facsimile: (626) 961-6795

or to such other address as may be designated by the Lessor by written notice to Company.

Notices intended for the Company will be addressed to:

Industry East Land, LLC
c/o Majestic Realty Co.
13191 Crossroads Parkway North
City of Industry, California 91746
Attn: Edward P. Roski, Jr.
Facsimile: (562) 692-1553

or to such other address as may be designated by the Company by written notice to Lessor.

4.4 HEADINGS, TITLES OR CAPTIONS

Article, section or paragraph headings, titles or captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or extent of any provision of this Agreement.

4.5 INVALID PROVISIONS

It is expressly understood and agreed by and between the parties hereto that in the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition or provision will in no way affect any

other covenant, condition or provision herein contained; provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice either Lessor or Company in their respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

4.6 STATE OF CALIFORNIA LAW AND VENUE

This Agreement will be interpreted under and governed by the internal laws of the State of California, without regard to principles of conflicts of law. Venue shall be County of Los Angeles.

4.7 ENTIRE AGREEMENT

This document represents the entire agreement between the parties hereto and it cannot be effectively modified or canceled by mutual agreement or in any manner, nor may any term or provisions of this Agreement be waived, except by an instrument in writing approved by Lessor and executed by duly authorized officials, officers or agents of the Parties.

4.8 SUBDIVISION OF THE PREMISES AND RIGHT TO SEPARATE LEASES

- 4.8.1 The parties hereto acknowledge and agree that the Premises will be developed by Company with Facilities, in phases, over a number of years. During the term of this Agreement, Company may, from time to time, as a Project Cost, to subdivide the Premises to create such separate legal parcels as Company reasonably deems desirable for the development of the Premises and to cause subdivision maps covering the Premises, or any portion thereof, to be prepared and processed through the appropriate governmental agencies, executed by Company and Lessor, and filed for record in accordance with all laws and ordinances applicable thereto. Subject to the foregoing, at any time, and from time to time during the term of this Agreement, Lessor agrees to, within 15 days after the written request of Company, execute and deliver such instruments as may be appropriate, necessary, or required for: (i) the grant or dedication of any easement, right of way or other property right to any public entity or service corporation for ingress, egress, road or utility purposes and reasonably required for the subdivision or development of the Premises, or (ii) the obtaining of governmental approvals, consents, zoning changes, conditional uses, variances, subdivision maps or the like, or for the purpose of providing adequate utility services to the Premises, or permitting Company to construct the Facilities or other improvements on the Premises or make any alteration or addition to the Facilities.
- 4.8.2 The parties further acknowledge and agree that as a result of such phased development, Company will be obtaining construction, interim and permanent financing for the development of various portions of the Premises and the Facilities at different times during the Term of this Agreement. In order to facilitate such phased development and to facilitate separate financing for various phases thereof, the parties hereby agree that the Company shall have the right, at any time, and from time to time, during the term of this Agreement, or any extension thereof, to have any portion of the Premises removed from the legal description of the Premises and to have the Lessor and Company enter into a new separate lease covering the portion of the Premises so removed from this Agreement.
- 4.8.2.1 All such new leases shall be for the remainder of the Term of this Agreement and shall be on the same terms and conditions as this Agreement, including, without limitation, the right of first refusal as set forth herein. If requested by Company, Lessor agrees to grant any easements reasonably required for access, road or utility purposes between the

Premises remaining subject to this Agreement and the portion of the Premises which becomes subject to any such new lease.

- 4.8.2.2 At any time Company desires a separate lease, Company shall prepare an amendment to this Agreement deleting the portion of the Premises to be covered by the separate lease and shall also prepare such separate lease and submit both documents to Lessor for execution. Lessor agrees to execute such amendment and separate lease within twenty (20) days after Company submits such documents. Concurrently with the execution of each such amendment and separate lease, the Parties shall execute a memorandum in recordable form evidencing the existence of such separate lease, the portion of the Premises subject to such separate lease, the effective date and termination date of such separate lease and the fact that there is a right of first refusal to purchase the Premises. Concurrently with the execution of such amendment and separate lease, the parties shall also execute a memorandum in recordable form evidencing the existence of such amendment to this Agreement. Any such separate lease shall have the same title priority as this Agreement and shall be subject only to the exceptions to title having priority over this Agreement or such additional exceptions to which Company has consented in writing. In the event the parties enter into any such separate lease, title to all Facilities located upon the Premises subject to such separate lease shall automatically vest in Company as of the effective date of such separate lease. If requested by Company, Lessor agrees to execute and deliver to Company within 10 days after request therefore, a quitclaim deed in recordable form conveying title to such Facilities on the premises subject to the separate lease to Company. Lessor also agrees to assign to Company all Subleases with Tenants whose Subleases attach to Lessor upon the termination of this Agreement and creation of such separate lease.
- 4.8.2.3 The creation of a separate lease of a particular parcel that was included in the initial conveyance, pursuant to this Article 4.8 is intended to merely continue the initial grant. The amendment of this Lease to delete separately leased premises and the creation of any separate lease is not intended to: (1) expand the rights or interests created by the initial conveyance; (2) constitute a "creation" of a taxable possessory interest; (3) constitute a "renewal" or "extension" of a taxable possessory interest; and/or (4) grant any additional property or authorize uses not already permitted by this Lease.

4.9 RIGHT OF FIRST REFUSAL TO PURCHASE

At all times during the term of this Agreement and any extensions or renewals thereof, should Lessor receive a bona fide offer from any third party to purchase all or any portion of the Premises, which offer Lessor desires to accept, Lessor shall, before accepting such offer, provide Company with a full and complete copy of such offer and shall first offer in writing to sell the portion of the Premises which is the subject of such offer to Company on the same terms and conditions as set forth in said offer. Upon receipt of any such notice and copy of such offer from Lessor, Company shall have thirty (30) days thereafter within which to accept the same. Should Company fail to accept any such offer within said thirty (30) day period, Lessor shall be free to sell said portion of the Premises to the original offeror upon the same terms and conditions offered to Company without further notice to Company. Should Lessor after having made such offer to Company as above described, fail to sell said portion of the Premises upon the same terms and conditions offered to Company, Lessor shall give Company notice and the first right to purchase in the manner set forth above of any further or different offers received by Lessor for the purchase of said portion of the Premises and shall first offer to sell the same to Company upon the same terms and conditions before accepting any such further or different offer. The right of first refusal

set forth herein is a continuing right of first refusal to purchase and shall apply to all subsequent bona fide offers from third parties after a sale by Lessor, or its successors, to a party other than Company.

4.10 UTILITIES

To the extent not paid by Sublessees, Company shall, as a Project Cost, pay for all water, gas, heat, light, power, telephone service, trash disposal and other utilities and services supplied to the Premises and the Facilities located thereon, together with any taxes thereon.

4.11 OWNERSHIP OF IMPROVEMENTS

All improvements constructed on the Premises by Company (including, without limitation, the Facilities) at any time and from time to time, will be owned by Company during the term of this Agreement. If requested by Company, any Leasehold Mortgagee or title insurance company, Lessor agrees to execute and deliver to Company within ten 10 days after request therefor, a quitclaim deed in recordable form conveying or confirming title to all such improvements in Company. All such buildings and improvements constructed upon the Premises by Company are and shall remain real property and may not be severed from this Agreement or the leasehold estate created hereby.

4.12 LEASING COMMISSIONS

In the event Company retains the services of Majestic Realty Co. or any affiliate of Company to Sublease the Premises and the Facilities, the leasing commissions paid to Majestic Realty Co. or any such affiliate, as a Project Cost, shall not exceed the scheduled commissions for similar services charged by the major brokerage companies operating in the County of Los Angeles, California.

4.13 COVENANTS FOR NON-DISCRIMINATION

The Company covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry in the use and occupancy of the Premises, nor shall the Company itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the use or occupancy of the Premises.

4.13.1 The Company shall refrain from restricting the rental or lease of the Premises on the basis of race, color, creed, religion, sex, marital status, handicap, national origin or ancestry of any person. All such leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, handicap, ancestry or national origin in the leasing, subleasing, transferring, use,

occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased.”

2. In contracts: “There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, handicap, ancestry or national origin, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants or vendees of the premises.”

4.13.2 The covenants established in this Section shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Lessor, its successors and assigns, the City of Industry and any successor in interest to the fee ownership of the Premises or any part thereof. The covenants, contained in this Section shall remain in effect for the term of this Agreement.

4.14 **PUBLIC FINANCING**

The parties hereby agree and acknowledge that, in order to assist with the financing of construction of Streets A, B, C, D and Grand Crossing Parkway and the storm drain system, sanitary sewer, domestic, fire and reclaimed water systems, and dry utilities located within the public rights of way of Streets A, B, C, D and Grand Crossing Parkway, the parties may initiate proceedings to form one or more community facilities or other assessment or public financing districts which may encompass all or certain portions of the Premises. The parties hereby agree to cooperate in good faith with each other to (i) initiate such formation proceedings, (ii) form one or more community facilities or other assessment or financing districts over all or any portion of the Premises, and (iii) cause such public financing district or districts to issue bonds to assist with the financing of construction of Streets A, B, C, D and Grand Crossing Parkway and the storm drain system, sanitary sewer, domestic, fire and reclaimed water systems, and dry utilities located within the public rights of way of Streets A, B, C, D and Grand Crossing Parkway. Company and Lessor hereby agree that the Premises or any portion thereof, as determined by the parties, shall be included within the boundaries of said public financing district or districts. In addition, the parties hereto hereby agree to cooperate with each other and, if necessary, the City of Industry to promptly execute all other documents and take all other actions reasonably requested by Lessor and/or Company in connection with any and all actions and approvals required to be taken in the ordinary course of formation of such community facilities or other assessment or public financing district over all or any portion of the Premises or any actions related thereto in accordance with the terms of the Mello-Roos Community Facilities Act of 1982, as amended, Rule 15c2-12 promulgated by the Securities and Exchange Commission, or any other California law governing formation of such public financing districts. The parties hereby agree and acknowledge that, in order to assist with the annual maintenance of the landscaping and irrigation systems installed upon the slopes manufactured during the grading of the Project, the parties may initiate proceedings to form one or more maintenance districts which may encompass all or certain portions of the Premises. The parties hereby agree to cooperate in good faith with each other to (i) initiate such formation proceedings, and (ii) form one or more

maintenance districts over all or any portion of the Premises. Company and Lessor hereby agree that the Premises or any portion thereof, as determined by the parties, shall be included within the boundaries of said district or districts. In addition, the parties hereto hereby agree to cooperate with each other and, if necessary, the City of Industry to promptly execute all other documents and take all other actions reasonably requested by Lessor and/or Company in connection with any and all actions and approvals required to be taken in the ordinary course of formation of such district over all or any portion of the Premises or any actions related thereto in accordance with the terms of any applicable Federal or California law governing the formation and operation of such districts.

IN WITNESS WHEREOF, Lessor and Company have executed these presents the day and year first above written.

ATTEST:

SUCCESSOR AGENCY TO THE INDUSTRY
URBAN-DEVELOPMENT AGENCY

BY: _____
Its: _____

BY: _____
Its: _____

INDUSTRY EAST BUSINESS CENTER, LLC, a
Delaware Limited Liability Company

BY: Majestic Realty Co., a California corporation, its
Manager

APPROVED AS TO FORM:
Casso & Sparks, LLP

By: _____
Its: _____

By: _____

By: _____
Its: _____

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 8 OF PARCEL MAP NO. 353, IN THE CITY OF INDUSTRY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, FILED IN BOOK _____ PAGES ____ THROUGH ____, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT "B"

SCOPE OF SUCCESSOR AGENCY IMPROVEMENTS

SCOPE OF AGENCY IMPROVEMENTS

The Agency will, at its cost and expense (unless a public financing district is formed to assist with the financing of a portion of such costs in accordance with Section 4.14 of the Lease Agreement), design and construct the public improvements, located within the public rights of way, reasonably necessary to adequately serve the Project and to provide the mitigation required for the Project to satisfy the requirements of the California Environmental Quality Act ("CEQA") and the approved Environmental Impact Report ("EIR") for the Industry Business Center. Said public improvements shall include:

A. Roads

Design and construct streets and all utilities and infrastructure for the following project roadways. (See attached Site Development Plan.)

Street improvements will include curb, gutter, and road pavement design and grades and sidewalks. Street lighting, traffic signals, pavement striping, traffic control signage, landscape and irrigation for roadway medians are also included.

Street A – from Grand Ave west to Grand Crossing Parkway and from Grand Avenue east to Street "B", including special intersection design at Grand Avenue, all street improvements, utilities and infrastructure.

Street B – From Street "A" to Grand Avenue and intersection modifications at Grand Avenue all street improvements, utilities and infrastructure.

Street C – From Street "B" to Street "D", all street improvements, utilities and infrastructure.

Street D – From Street "C" to the end of the cul de sac, all street improvements, utilities, and infrastructure.

Grand Crossing Parkway – From Grand Avenue west to the project boundary, including special intersection design at Grand Avenue, all street improvements, utilities and infrastructure.

Grand Avenue – Modify to accommodate project traffic and project related turn movements. All street improvements, utilities and infrastructure.

B. Master Hydrology

Prepare a master hydrology report and construct the required improvements for the project site based on full buildout of Project as depicted in the EIR. The hydrology report will require approval from the Los Angeles County Food Control District for storm drain connections to San Jose Creek.

C. Storm Drain System

Design and construct a storm drainage system to convey water from the planned public streets described above. The storm drainage system will be designed to carry storm water flows from the planned development areas and adjacent property. Lateral stubs will be extended to the street right of way for each development lot. (See attached Storm Drain System.)

D. Sanitary Sewer:

Design and construct sanitary sewer main lines within the project roadways and easements where necessary, to serve each lot within the project development. Plans will include main line connections to existing trunk sewers. (See attached Sewer System.)

E. Water

Design and construct potable water lines within Grand Crossing Parkway, Street A, Street B, Street C and Street D. Lines will connect to the existing systems in Grand Avenue, and Baker Parkway. Service laterals to each lot will be provided, however meter vaults and back flow preventors will not be set. The location of such meter vaults and back flow preventors shall be established by the Company. (See attached Water System).

Install Fire Hydrants as required.

F. Reclaimed Water

Design and construct reclaimed water lines within Grand Avenue, Grand Crossing Parkway, Street A, Street B, Street C and Street D and any other reclaimed lines required for the Project. Design and construct water reservoir described in EIR.

Grand Crossing Parkway, Street A, Street B, Street C and Street D water lines will connect to the existing systems in Grand Avenue and Baker Parkway. Services laterals to each lot will be provided, however meter vaults and back flow preventors will not be set. The location of such meter vaults and back flow preventors will be established by the Company. (See attached Reclaimed Water System.)

G. Dry Utilities

Design and construct ducts, vaults, junction boxes and related substructure elements for Electrical, Telephone (including fiber optics), and main line Gas systems. Line and ducts will be stubbed to the right of way line to provide service to each lot. Such work shall be coordinated with utility companies. (See attached Gas Lines.)

H. Grading

Design and construct mass grading at elevations predetermined by Company and Agency, to remove or reduce existing hill areas and to remove and stabilize landslide areas within the Project. Export material will be transported and placed as compacted fill within the street rights of way for the construction of public improvements, or for slopes and creation of the development planning areas described in the EIR. Any excess material will be exported from the Project. The existing utility lines crossing such hill areas will be relocated and any required wetlands mitigation will be undertaken.

I. Former Valley Land Development Company Landfill

Provide the mitigation required for the Project to satisfy the requirements of the California Environmental Quality Act ("CEQA") and the approved Environmental Impact Report ("EIR") for the Industry Business Center relating to the Valley Land Development Company landfill.

J. Slope Landscaping

Design and construct the landscaping and irrigation systems required for the Project to satisfy the requirements of the California Environmental Quality Act ("CEQA") and the approved Environmental Impact Report ("EIR") for the Industry Business Center relating to the re-vegetation and landscaping of the slopes manufactured during the grading described in Item H above.

K. Additional Work

Any additional public improvements required to satisfy the CEQA mitigation requirements for the Project.

SUCCESSOR AGENCY

ITEM NO. 5.6



SUCCESSOR AGENCY TO THE
**INDUSTRY URBAN - DEVELOPMENT
AGENCY**

TO: Honorable Chairman and Members of the Board of the Successor Agency to the Industry Urban-Development Agency

FROM: James M. Casso, Agency Counsel

DATE: May 17, 2019

SUBJECT: Consideration of Resolution approving a new lease for the construction of Building No. 2 and the Industry Business Center and making CEQA Findings

BACKGROUND/DISCUSSION: Under the provisions of ABX1 26 (the “Dissolution Act”), redevelopment agencies, including the Industry Urban-Development Agency (“Agency”), were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of winding down the business and fiscal affairs of the former redevelopment agencies.

Following dissolution, pursuant to the April 28, 2005 lease with the Industry East Land, LLC., now known as the Industry East Business Center, LLC., (“IEBC”) the Successor Agency was granted authority to make various infrastructure improvements to the Industry Business Center on Grand Avenue (the “IBC”). Since 2012, the Successor Agency has completed approximately 80% of the improvements. Final completion for the entire IBC will occur in about two years. In some areas of the IBC, however, the infrastructure improvements are completed and the parcels are ready for the IEBC to begin construction of its buildings.

The Dissolution Act, with few exceptions, does not allow successor agencies to enter into new agreements. Notwithstanding that fact, staff and the IEBC recognize the financial benefits for the taxing entities and job creation for area residents by entering into a new lease which would allow the IEBC to take possession of the parcel and begin construction of Building No. 2.

If approved, staff would present the new lease to the First District Consolidated Oversight Board, arguing that it will result in a financial windfall for the various taxing entities (IEBC’s payment of property taxes) and the creation of new jobs for area residents not only makes sense but also would accelerate the winding down of the Successor Agency’s affairs.

The attached Resolution sets forth the requisite findings pursuant to CEQA and it ensures that the proposed new lease, which awaits Oversight Board and Department of Finance approval, is in compliance with California law.

BUDGET IMPACT: The revenue generated from IEBC’s leasing of Building No. 2 will be 50% of the net rent paid for the facility.

RECOMMENDATION: Staff recommends that the Board adopt the attached Resolution, approving the new lease for the parcel on which Building No. 2 will be constructed.

Attachments:

Resolution
Lease Agreement

RESOLUTION NO. SA 2019-04

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE INDUSTRY URBAN DEVELOPMENT AGENCY (“SUCCESSOR AGENCY”) APPROVING A NEW LEASE AGREEMENT BY AND BETWEEN THE SUCCESSOR AGENCY AND THE INDUSTRY EAST BUSINESS CENTER, LLC, (“IEBC”) FOR A PORTION OF THE PROPERTY DESCRIBED IN THE UNRECORDED LEASE AGREEMENT DATED APRIL 28, 2005 BY AND BETWEEN THE SUCCESSOR AGENCY’S PREDECESSOR IN INTEREST, THE INDUSTRY URBAN-DEVELOPMENT AGENCY, AND THE IEBC’S PREDECESSOR IN INTEREST, INDUSTRY EAST LAND, LLC, AND MORE COMMONLY KNOWN AS BUILDING NO. 2, GENERALLY LOCATED AT GRAND AVENUE AND ITS INTERSECTION WITH STATE ROUTE 60

WHEREAS, on December 29, 2011, the California Supreme Court delivered its decision in *California Redevelopment Association v. Matosantos* (“*Matosantos*”), finding Assembly Bill X1 26 (the “Dissolution Act”) largely constitutional; and

WHEREAS, under the Dissolution Act and the California Supreme Court’s decision in *Matosantos*, all California redevelopment agencies, including the Industry Urban-Development Agency of the City of Industry (“Agency”), were dissolved on February 1, 2012, and successor agencies, including the Agency, were designated and vested with the responsibility of winding down the business and fiscal affairs of the former redevelopment agencies; and

WHEREAS, on September 22, 2011, the City Council of the City of Industry (the “City”) adopted Resolution No. 2011-20 accepting for the City the role of Successor Agency, in accordance with the provisions of Health & Safety Code Section 34177(j); and

WHEREAS, under certain approvals by the California Department of Finance (“Department”) and the Oversight Board to the Successor Agency to the Industry Urban-Development Agency (“Oversight Board”) the Successor Agency, pursuant to that unrecorded lease agreement dated April 28, 2005 (“Master Lease”) by and between the Agency and Industry East Land, LLC, now known as the Industry East Business Center, LLC, (“IEBC”) was authorized to make various infrastructure improvements to the property (approximately 600 acres) that is subject to the terms and conditions of the Master Lease (“Premises”).

WHEREAS, under the Master Lease, once the Successor Agency’s infrastructure improvements are fully completed, the IEBC would take possession of the Premises and be allowed to make its anticipated improvements to the Premises, including, but not limited to, the construction of buildings; and

WHEREAS, the Successor Agency has completed certain infrastructure improvements to the Premises, particularly to the future parcel designated for Building 2, such that the IEBC has informed the Successor Agency that it wishes to enter into a new lease for said parcel (the new lease is attached hereto as Exhibit “A”), allowing the IEBC to immediately begin construction of Building 2, generating revenue, i.e., possessory interest property taxes, for distribution to the Successor Agency’s various taxing entities and providing needed employment opportunities for area residents; and

WHEREAS, the Successor Agency desires to, rather than waiting approximately two more years to complete the remaining infrastructure improvements, enter into the new lease, allowing the IEBC to take possession of the parcel and to start construction of Building 2; and

WHEREAS, the proposed improvements set forth in the new lease were considered and included in the 2004 Environmental Impact Report (“EIR”) prepared and certified pursuant to the California Environmental Quality Act (“CEQA”) (Public Resources Code Section 21000, et seq.,) by the City of Industry. The new lease does not involve any additional or different land use entitlements than those that were set forth in the EIR and, as such, the Successor Agency does not believe that the new lease would be subjected to any additional environmental review or independent analysis as required by CEQA; and

WHEREAS, the Agency has duly considered all terms and conditions of the proposed new lease and believes that the redevelopment of the Property in accordance therewith is in the best interests of the Agency and the health, safety and welfare of its residents, maximizes value, is consistent with the provisions of the Dissolution Act, and is consistent with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, THE SUCCESSOR AGENCY DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by reference.

SECTION 2. All necessary public hearings and opportunities for public testimony and comment have been conducted in compliance with State law and the Municipal Code of the City of Industry.

SECTION 3. The proposed improvements set forth in the new lease were considered and set forth in the 2004 Environmental Impact Report (“EIR”) prepared and certified pursuant to the California Environmental Quality Act (“CEQA”) (Public Resources Code Section 21000, et seq.,) by the City of Industry. The new lease does not involve any additional or different land use entitlements than those that were set forth in the EIR and, as such, the Successor Agency does not believe that the new lease is subjected to any additional environmental review or independent analysis as required by CEQA.

SECTION 4. The Agency Board hereby approves the new lease, attached hereto as Exhibit A.

SECTION 5. The Executive Director is hereby authorized to take such further actions as may be necessary to carry out the obligations set forth in this Resolution, including presentation of the Resolution and new lease to the First District Consolidated Oversight Board and the Department of Finance as required under the Dissolution Act.

SECTION 6. The provisions of this Resolution are severable and if any provision, clause, sentence, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts thereof of the Resolution or their applicability to other persons or circumstances.

SECTION 7. Certification. The Agency Secretary shall certify to the passage and adoption of this Resolution and enter it into the respective book of original resolutions.

SECTION 18. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 23rd day of May 2019, by the following vote:

AYES: AGENCY BOARD MEMBERS:
NOES: AGENCY BOARD MEMBERS:
ABSENT: AGENCY BOARD MEMBERS:
ABSTAIN: AGENCY BOARD MEMBERS:

Mark D. Radecki, Chairperson

ATTEST:

Julie Gutierrez-Robles, Deputy Agency Secretary

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter referred to as "Agreement") entered into this 23rd day of May, 2019 by and between the SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY, a body corporate and politic (hereinafter referred to as "Lessor") and INDUSTRY EAST BUSINESS CENTER, LLC, a Delaware limited liability company authorized to do business in the State of California (hereinafter referred to as "Company"):

WITNESSETH:

WHEREAS, Lessor is the owner of certain real property located in the State of California described on Exhibit "A" attached hereto (hereinafter referred to as "Premises"); and

WHEREAS, by an unrecorded Lease Agreement dated April 28, 2005 (the "Lease"), Lessor's predecessor in interest, the Industry Urban-Development Agency leased the Premises and certain other real property located in the State of California (the "Larger Property") to Company's predecessor in interest, Industry East Land, LLC. Industry East Land, LLC assigned its interest in the Lease to Company by an unrecorded Assignment of Lease dated September 21, 2005. It was the intent of the parties that the Larger Property would be subdivided, financed and developed, in phases, over a number of years; and

WHEREAS, in order to facilitate the subdivision, financing and development of the Larger Property in phases, Article 4.8 of the April 28, 2005 Lease granted Company the right to have any portion of the Larger Property removed from the legal description of the April 28, 2005 Lease and made the subject of a separate lease between Lessor and Company for the remainder of the term of the April 28, 2005 Lease and on the same terms and conditions as the April 28, 2005 Lease; and

WHEREAS, Lessor and Company are removing the Premises described on Exhibit "A" from the legal description of the April 28, 2005 Lease and entering into this separate lease of the Premises pursuant to Article 4.8 of the April 28, 2005 Lease; and

WHEREAS the term of the Lease has not commenced pursuant to Article 1.2 of the Lease prior to this Agreement. The term of the leasehold interest under this Agreement shall commence upon the date specified in Section 1.2.1 herein.

WHEREAS, Company proposes to lease the Premises from Lessor and to develop thereon and operate and manage certain buildings and other improvements as permitted by this Agreement; and

WHEREAS, Company is engaged in the business of planning, constructing, maintaining, leasing financing and operating such projects; and

WHEREAS, on and subject to the terms and conditions contained in this Agreement, Lessor is willing to lease the Premises to Company for such purposes;

NOW, THEREFORE, for and in consideration of the agreements, covenants and conditions herein, Lessor and Company agree as follows:

ARTICLE I

1.1 DEFINITIONS

In addition to the terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

- 1.1.1 The term “Approved Budget,” whenever used herein, means any written budget prepared by Company and approved by the Lessor’s Designated Representative pursuant to the procedure set forth in Section 1.6 entitled BUDGET APPROVAL.
- 1.1.2 The term “Assignee,” whenever used herein, means the purchaser or any heir, successor, or assign of a lender subsequent to a sale or assignment as defined in Section 2.18 entitled FINANCING.
- 1.1.3 The term “Capital Improvement Expenditures,” whenever used herein, means any expenses associated with the Facilities (other than the costs and expenses of their initial construction) which are treated as capital expenditures under generally accepted accounting principles, consistently applied.
- 1.1.4 The term “Lessor’s Designated Representative (hereinafter referred to as ‘LDR’),” whenever used herein, means the Executive Director of Lessor, or a successor designee acting on behalf of the Lessor.
- 1.1.5 The term “Commence Construction,” whenever used herein, means commencing construction of the Facilities on the Premises by Company causing its construction contractor to obtain occupancy and control of the area and to begin actual site development and construction thereon.
- 1.1.6 The term “Facilities,” whenever used herein, means all the buildings, utilities, rail improvements, site development work, parking lots, roadways, landscaping and other improvements constructed by Company on the Premises in accordance with the terms and conditions of this Agreement.
- 1.1.7 The term “Company,” whenever used herein, means Industry East Business Center, LLC, a limited liability company authorized to do business in the State of California, which is entering into this Agreement as the developer and operator of the Facilities on the Premises as described herein.
- 1.1.8 The term “Lessor,” whenever used herein, means the Successor Agency to the Industry Urban-Development Agency, a body corporate and politic, and where this Agreement speaks of “Approval by Lessor,” or “Approved by Lessor,” such phrases mean approving action by the Successor Agency to the Industry Urban-Development Agency.
- 1.1.9 The term “CC&Rs,” whenever used herein, means any Covenants, Conditions and Restrictions developed by the Company and approved by the LDR for Sublessees and Tenants which will include, but not be limited to, specific guidelines for uses of the Premises.
- 1.1.10 The term “Debt Service,” whenever used herein, means the Company’s payment of principal, interest and any other sum due and owing (monthly or otherwise) pursuant to the terms and conditions of any Leasehold Mortgage for construction, interim and/or permanent financing of the Facilities, but excluding any penalties, late charges, default interest and other amounts (except principal and interest) payable solely as a result of a

breach or default under such Leasehold Mortgage, unless such breach or default is caused in part by the acts or omissions of Lessor, including the failure of Lessor to make Capital Contributions as called for in this Agreement .

- 1.1.11 The term, "Commencement Date," whenever used herein, means the date that the term of this Lease commences under the terms of Section 1.2.1 below.
- 1.1.12 The term "Environmental Laws," whenever used herein, means any one or all of the laws and/or regulations of the Environmental Protection Agency or any other federal, state or local agencies regulating Hazardous Material, including, but not limited to the following as the same are amended from time to time:

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (42 U.S.C. Section 9601 et seq.)

RESOURCE CONSERVATION AND RECOVERY ACT (42 U.S.C. Section 6901 et seq.)

TOXIC SUBSTANCES CONTROL ACT, as amended (15 U.S.C. Section 2601 et seq.)

SAFE DRINKING WATER ACT (42 U.S.C. Section 300h et seq.)

CLEAN WATER ACT (33 U.S.C. Section 1251 et seq.)

CLEAN AIR ACT (42 U.S.C. Section 7401 et seq.)

and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the Federal, State or local government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment (including, but not limited to, the ambient air procedures and records detailing chlorofluorocarbons [CFC]), ambient air, ground water, surface water and land use, including sub-strata land.

- 1.1.13 The term "Hazardous Material," whenever used herein, means the definitions of hazardous substance, hazardous material, toxic substance, regulated substance or solid waste as defined within the following:

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (42 U.S.C. Section 9601 et seq.)

RESOURCE CONSERVATION AND RECOVERY ACT (42 U.S.C. Section 6901 et seq.)

HAZARDOUS MATERIALS TRANSPORTATION ACT (49 U.S.C. Section 1801 et seq.) and all present or future regulations promulgated thereto.

DEPARTMENT OF TRANSPORTATION TABLE (49 C.F.R. Section 172.101) and amendments thereto

ENVIRONMENTAL PROTECTION AGENCY (40 C.F.R. Part 302 and amendments thereto)

All substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under any environmental law, whether such laws are Federal, State or local.

- 1.1.14 The term "Leasehold Mortgage", wherever used herein, means any lender of Company holding the beneficial interest in any Leasehold Mortgage and which Leasehold Mortgagee is a bank, savings and loan, insurance company, pension trust, real estate investment trust, mortgage company, or other institutional lender unaffiliated with the Company.
- 1.1.15 The term "Leasehold Mortgage", wherever used herein means any mortgage or deed of trust which is in favor of a Leasehold Mortgagee encumbering the Company's interest in this Agreement, the leasehold estate created hereunder and/or the Facilities from time to time located on the Premises and which has been incurred for, and the proceeds of which are used for, the purpose of financing the construction of the Facilities and the payment of other Project Costs or refinancing an existing Leasehold Mortgage. The proceeds of any refinancing, to the extent not used to pay off the Leasehold Mortgage being refinanced, shall be used for the purpose of: (i) repairing, constructing or reconstructing the Facilities; (ii) held in reserve for such purposes; (iii) the payment of other Project Costs; (iv) used for the repayment of Equity Contributions and interest thereon or (v) used for such other purposes as Lessor and Company may, in writing, agree. No Leasehold Mortgage shall encumber any interest in any real property other than Company's leasehold interest under this Agreement and the Facilities.
- 1.1.16 The term "Management Fee," whenever used herein, means the payment, as a Project Cost, to Company or any property manager it selects for the administration and management of the Premises and the Facilities. Such fee shall be three percent (3%) of Total Revenue received by Company from Tenants and Sublessees each month during the term of this Agreement. The Management Fee shall be paid to Company or its property manager on a monthly or other basis selected by Company, as funds are available from Total Revenue to pay the Management Fee, before any payments of Rent or repayment of Equity Contributions.
- 1.1.17 The term "Maintenance and Operations expense," whenever used herein, means the expense for maintenance, operation, administration and repair of the Premises and the Facilities, including, but not limited to, repair, maintenance or replacement of the plumbing, heating, ventilating and air conditioning systems, electrical systems, lighting facilities, fire protection systems, utility installations, fixtures, walls, foundations, roof, ceilings, floors, structural systems, doors, glass, skylights, landscaping and irrigating systems, driveways, parking lots, fences, retaining walls, signs, sidewalks, and the cost of all janitorial service, trash disposal, water, gas, electricity, and other utilities, together with any taxes thereon.
- 1.1.18 The term "Net Revenue," whenever used herein, means the amount of cash available after deducting from Total Revenue in the following order of priority: (a) Debt Service; (b) all Project Costs incurred during such calendar year of the term of this Agreement; (c) reasonable reserves for future Maintenance and Operations expense, future Capital

Improvement expense or any reserve required by any Leasehold Mortgagee and (d) the repayment of Equity Contributions and interest thereon.

- 1.1.19 The term "Participating Parties" or "Parties," whenever used herein, means Company as lessee and the Successor Agency to the Industry Urban-Development Agency as Lessor (hereinafter jointly referred to as "Parties"), their successors and assigns.
- 1.1.20 The term "Premises," whenever used herein, means that area described on Exhibit "A". Final legal descriptions of the Premises will be attached to the Memorandum of Lease described in Section 1.2.4.
- 1.1.21 Except as otherwise provided in this Agreement, the term "Project Cost," whenever used herein, means all necessary costs incurred by Company (excluding Rent) prior to or after the date hereof in connection with the subdividing, designing, constructing, owning, leasing, financing or managing the Premises or the Facilities and other improvements constructed on the Premises by Company, or its successors and assigns. Except as otherwise provided in this Agreement, Project Cost shall include (without duplication), but not be limited to, the following: (a) all architectural and engineering expense, (b) all plan check fees, building permit fees, school fees, drainage fees and all other governmental, railroad and utility fees, licenses and permit cost, (c) all costs of environmental impact reports, traffic studies, biological studies and all other reports and studies required by governmental agencies, railroads or utility companies, (d) all costs to subdivide and re-subdivide the Premises, (e) all costs incurred by Company in constructing the Facilities or other permitted improvements on the Premises, (f) all Capital Improvement Expense, (g) all Maintenance and Operations expense, (h) all Management Fees, (i) except as provided in Section 2.12.2.10, all costs incurred for uninsured losses, earthquake, flood or other casualty, or repairs or replacements to the Premises and the Facilities or other improvements and the unreimbursed portion of any insured losses, (j) except as provided in Article III, all costs of complying with Environmental Laws, (k) all insurance premiums for insurance required hereunder and property taxes, (l) all leasing commissions and all other marketing and advertising expense, (m) all legal and accounting fees, (n) all loan fees, points, appraisal fees and other costs associated with the obtaining of Leasehold Mortgages, (o) all interest on Leasehold Mortgages, (p) all costs incurred by Company to create a community facilities district or districts or other assessment or other public financing district or districts to finance the construction of street improvements, utilities or other public improvements upon the Premises and (q) all other expenses related to the use, maintenance, leasing, financing and operation of the Premises and the Facilities. Project Costs shall only include costs, expenses and other amounts to the extent the same are reasonable and competitive in amount. Without limiting the preceding sentence, any costs, expenses or other amounts specified in an Approved Budget or otherwise approved in writing by LDR shall be deemed a reasonable and competitive amount. Further, Project Cost shall not include any cost, expense or other amount which is included within any other cost, expense or amount which is permitted by this Agreement to be deducted from Total Revenue in calculating Net Revenue, the intention of the Parties being that no cost, expense or other amount which is so permitted to be deducted from Total Revenue be deducted therefrom more than once.
- 1.1.22 The term "Sublease," whenever used herein, means the documents signed by a Sublessee or Tenant of Company for the leasing of a portion of the Premises or space in the Facilities.

- 1.1.23 The term “Sublessee” or “Tenant,” whenever used herein, means any individual, corporation, limited liability company, trust, business, firm or other entity that leases or otherwise occupies or uses all or any portion of the Premises or the Facilities under a lease, rental agreement or other arrangement with Company.
- 1.1.24 The term “Release,” whenever used herein, means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Hazardous Material in violation of Environmental Laws.
- 1.1.25 The term “Total Revenue,” whenever used herein, means the total amount of all rents, charges, fees and/or other income derived or received, directly or indirectly, by Company from the use, operation and/or leasing of all or part of the Premises or the Facilities, including, without limitation, all rents, charges, fees and/or other income and amounts received from Sublessees or Tenants of all or any part of the Premises or the Facilities during each full or partial calendar year of the term of this Agreement and the net proceeds received by Company as a result of a Total Taking, Partial Taking or Temporary Taking from an eminent domain proceeding referred to in Section 2.19. Insurance proceeds are excluded from Total Revenue as they are covered by other provisions of this Agreement.
- 1.1.26 The term “Equity Contribution” whenever used herein, means any funds provided by Company, Lessor or any Leasehold Mortgagee in accordance with the provisions of Section 1.7.1.1 or Section 1.7.1.2 hereof.
- 1.1.26 The term “Rent” whenever used herein, means fifty percent (50%) of Net Revenue during each calendar year of the term of this Agreement.

1.2 TERM AND CONDITIONS PRECEDENT

- 1.2.1 The term of this Agreement shall commence upon the expiration of 30 days following approval by the First District Consolidated Oversight Board and the California Department of Finance, if, and/or, as required by law.
- 1.2.2 The term of this Agreement will expire upon the earlier of: (a) sixty five (65) years from the recording of a Notice of Completion on the first building constructed by Company on the Premises or (b) sixty eight (68) years from the Commencement Date.
- 1.2.3 Lessor and Company agree to execute a memorandum of this Agreement evidencing the existence of this Agreement, the ownership of the Facilities by Company, the rights of Company in the Premises, the fact that this Agreement contains a right of first refusal to purchase the Premises and setting forth the Commencement Date and Termination Date of this Agreement. When the first Notice of Completion is recorded, Company and Lessor shall execute and record an amended memorandum of this Agreement setting forth the exact Termination Date.
- 1.2.4 Company will be entitled to receive, as a Project Cost, an ALTA leasehold policy of title insurance issued by a title company selected by Company, with liability in an amount reasonably determined by Company and insuring Company’s interests hereunder. Such leasehold policy will be subject only to exceptions permitted by Company. By September 1, 2019, Lessor shall deliver a preliminary title reports covering the Premises,

as well as copies of the underlying document listed as exceptions to title is such report, to Company. If Company objects to any exceptions, it will give written notice of such objections (the "Notice of Objections") to Lessor within such one hundred twenty (120) days after receipt of the preliminary report and the underlying documents. Company's failure to give a Notice of Objections within such One Hundred Twenty (120) day period shall be conclusively deemed to be Company's acceptance of all exceptions. Within thirty (30) days following receipt of a Notice of Objections, Lessor, at its option, may cure, or agree to cure prior to the commencement of the term, some or all of the exceptions that are the subject of the Notice of Objections. If at the end of such thirty (30) day period, Lessor has not cured, or agreed to cure prior to the commencement of the term, any or all of such exceptions, Company may elect by written notice given within fifteen (15) days thereafter to terminate this Lease (the "Termination Notice"). Company's failure to give the Termination Notice within such fifteen (15) day period shall be conclusively deemed to be Company's election to accept such leasehold policy subject to all then uncured exceptions. Upon any termination of this Agreement pursuant to the provisions of this Section, the parties shall be released from all further liabilities and obligations under this Agreement, except for such as have accrued prior to the date of such termination. Notwithstanding the foregoing, Lessor agrees to remove, prior to the commencement of the term of this Lease, all loans secured by deeds of trust or mortgages encumbering the Premises as well as any leases or rental agreements encumbering all or any portion of the Premises. Lessor agrees not to create or permit the creation of any additional exceptions to title, after the date of the preliminary title report, without the written consent of Company.

As Facilities are constructed on the Premises, Company shall be entitled to obtain, as a Project Cost, additional ALTA leasehold title insurance with liability in an amount reasonably determined by Company and insuring Company's interests and the interest of any Leasehold Mortgagee hereunder.

- 1.2.5 Any amendments to this Agreement will not be effective as against any Leasehold Mortgagee unless Company has obtained the written consent of such Leasehold Mortgagee.

1.3 PREMISES

- 1.3.1 Lessor does hereby demise and let unto Company and Company does hereby take from Lessor that certain real property (hereinafter referred to as "Premises") as follows:

The land described on Exhibit "A" which is attached hereto and made a part hereof, together with all improvements located thereon (which improvements are owned by Company) together with all appurtenances, rights, privileges and easements appertaining thereto.

- 1.3.2 Lessor shall cause the work described on Exhibit "B" to be performed in accordance with the provisions of Exhibit "B" which is attached hereto and made a part hereof. Lessor shall commence such work within thirty (30) days after the date of this Agreement and shall complete such work as soon as reasonably possible, subject to extensions due to force majeure events as provided in Section 4.1. Lessor shall use commercially reasonable efforts to coordinate the timing of such work with Company's development of the Premises. All such work shall be at Lessor's sole cost and expense and shall not be considered an Equity Contribution by Lessor.

1.4 USE OF PREMISES

- 1.4.1 Upon performance of the agreements, provisions and conditions contained in this Agreement, Company will have the use of the Premises for the redevelopment of the Premises and construction and operation of Facilities and for any other business activities related thereto and for retail, warehouse, industrial, office and any other use permitted by applicable zoning regulations and for no other purposes, unless approved in writing by the LDR. So long as no default has occurred and is continuing hereunder, Lessor covenants peaceful and quiet enjoyment of the Premises by Company. Lessor covenants and warrants that the Premises are not now affected by any covenants, restrictions, easements or agreements which prohibit the construction, operation and maintenance upon the Premises of commercial structures with appurtenant parking, nor do the same prevent access to and from the Premises and the roadways adjoining the Premises.
- 1.4.2 Company acknowledges that the Rent payable to Lessor under this Agreement is directly dependent upon the generation by Company of Net Revenue, and that the failure by Company to use commercially reasonable efforts to maximize Net Revenue will have a direct and adverse effect upon Lessor's economic return under this Agreement. Therefore, as a material inducement to Lessor to enter into this Agreement, Company agrees that it will at all times construct, manage, lease and operate all Facilities in a manner and through the use of commercially reasonable efforts so as to maximize Net Revenue throughout the term of this Agreement.

1.5 DEVELOPMENT AND SUBLEASING

- 1.5.1 Company will develop the Premises and construct the Facilities substantially in accordance with plans and specifications prepared by Company in accordance with applicable governmental statutes, ordinances, rules and regulations, including those of the City of Industry and the Successor Agency to the Industry Urban-Development Agency.
- 1.5.2 Company may enter into subleases with Sublessees or Tenants on terms and conditions that are satisfactory to Company, provided such subleases are on sublease forms that have been approved by the LDR. LDR must approve or disapprove any sublease forms within 15 days of submittal by Company. Failure of the LDR to give written notice of disapproval, stating the specific objections to any such form, within the time specified shall be deemed approval.
- 1.5.2.1 Company may negotiate changes to such approved forms which are typically given to Sublessees or Tenants in similar transactions without the consent of Lessor. In the event there are substantive changes or exceptions to the standard forms of sublease arrangements which are not typically given to Sublessees or Tenants in similar transactions, the Company must obtain the written approval of LDR, which approval will not be unreasonably withheld. LDR must approve or disapprove any such requested change within 2 business days of submittal by Company. Failure of the LDR to give written notice of disapproval, stating the specific reason for disapproving the requested change within the time specified shall be deemed approval.

- 1.5.2.2 All Subleases must be for purposes as permitted in Section 1.4, entitled USE OF PREMISES, of this Agreement and shall expressly provide that they are subject and subordinate to all provisions of this Agreement.
- 1.5.2.3 Except pursuant to Subleases as provided in this Section 1.5, Company shall not suffer or permit the use or occupancy of all or any portion of the Premises by any person or entity.
- 1.5.2.4 Rental interruption insurance or rental abatement insurance (as the case may be) shall be maintained (if available) by Company or Sublessee's or Tenants' providing for the payment of at least six (6) months' rent, taxes, insurance and maintenance expenses payable by Sublessees or Tenants under its Sublease.
- 1.5.3 If requested by Lessor, the Company will provide Lessor with a copy of any rules, regulations or other standards of operation developed by Company and distributed to Sublessees and Tenants.
- 1.5.4 In the event that the sublease of a portion of the Premises constitutes a change of ownership for property tax purposes, it is the desire of the Parties that such change in ownership and reappraisal of the subleased property be limited to the particular portion of the Premises which are the subject of such sublease and not be deemed a change of ownership for assessment purposes for any remaining portion of the Premises.

1.6 BUDGET APPROVAL

- 1.6.1 Prior to the construction of any new building on the Premises, Company shall submit to Lessor copies of a written construction budget for such new building. Each such budget will show all projected Project Costs related to the design, construction, financing and leasing of such new building.
 - 1.6.1.1 Within fifteen (15) days of receipt of the proposed budget, the LDR will review and approve or disapprove the proposed budget submitted by the Company. If the LDR does not respond in writing within fifteen (15) days, the budget shall be deemed to be the Approved Budget.
 - 1.6.1.1.1 If disapproved, the LDR will inform Company in writing of its disapproval describing the disapproved provisions of the proposed budget or requesting further clarification of the budget elements. Company will respond within fourteen (14) days with verification of the budget elements or with a modified written budget that is reasonably satisfactory to the LDR. The Participating Parties agree to negotiate in good faith to resolve any conflicting issues that may arise. If the LDR fails to timely respond, the proposed budget will be deemed approved and will become an Approved Budget.
 - 1.6.1.1.1.1 If, however, the Participating Parties cannot agree upon the provisions of the proposed budget and/or the elements contained in the proposed budget, or, if following approval of the Approved Budget, disputes arise concerning the

Approved Budget which the Parties are unable to resolve through good faith negotiation, a neutral third party with at least ten 10 years experience in real estate developments similar to those constructed or proposed to be constructed on the Premises will be selected by the LDR to arbitrate the disputed terms.

1.6.1.1.1.2 If, however, the Company does not accept the neutral third party selected by the LDR, Company will be allowed to select a second neutral party with similar experience. The two selected parties will then select a third neutral party with at least ten 10 years experience in real estate developments similar to those constructed or proposed to be constructed on the Premises who will arbitrate the disputed terms.

1.6.1.1.1.3 The LDR and Company agree to be bound by the decisions reached by the selected arbitrator(s). The Participating Parties will cause the arbitrator(s) to make a determination within fourteen (14) days following submittal.

1.6.1.1.1.4 The Participating Parties agree that each will bear its own costs and expenses incurred for attorney's fees and all other preparation and presentation costs for the arbitration process. If only one arbitrator is selected, the Participating Parties will equally share the cost of such arbitrator. If three arbitrators are used, each Party will bear the cost of the arbitrator selected by it and the Participating Parties will equally share the cost of any third arbitrator.

1.6.1.2 The agreed upon budget will be deemed the Approved Budget for the proposed building.

1.6.2 Company will be entitled to expend funds in accordance with the Approved Budget for the construction of the proposed building. The cost of constructing any such building shall be a Project Cost. In the event Company is over-budget on a particular line item, Company may reallocate excess funds from one line item to another line item to cover any short falls in any line item. Any expenses not covered by the Approved Budget which increase the total cost of constructing such building by more than ten percent (10%) are subject to the reasonable written approval of LDR. Any Equity Contribution required to cover any such additional Project Cost shall be the responsibility of Company.

1.7 RENTALS AND EQUITY CONTRIBUTIONS

Rentals due under this Agreement and Equity Contributions for the construction and operation of the Facilities will be as follows:

1.7.1 Equity Contributions.

- 1.7.1.1 The Parties anticipate that from time to time during the term of this Agreement, the Company will obtain financing for the development of the Premises and the Facilities and other Project Costs in accordance with the terms and conditions of Section 2.18 entitled FINANCING. Any funds required for the completion of the initial development of the Premises and construction of the Facilities, in excess of the financing obtained by Company, shall be provided by Company as an Equity Contribution.
- 1.7.1.2 Any additional capital required for the operation or maintenance of the Premises and the Facilities or other Project Costs following completion of construction of the Facilities on any separate legal parcel of the Premises and any capital required to repay any Leasehold Mortgages thereon, shall be contributed fifty percent (50%) by Company and fifty percent (50%) by Lessor within thirty (30) days of the receipt of demand by Company for such capital, which demand shall be accompanied by information and evidence, in reasonable detail, substantiating the amount and reasons for such demand. If any party fails to make such Equity Contribution, the other party may make such Equity Contribution for the delinquent party.
- 1.7.1.3 In the event of default by Company and the subsequent foreclosure and sale of the leasehold interest to another party, or in the event of a deed in lieu of foreclosure, the total unpaid balance of the Leasehold Mortgage at the date of the foreclosure sale or recording of the deed in lieu of foreclosure, including all costs of foreclosure, shall be considered an Equity Contribution of the Leasehold Mortgagee or purchaser at foreclosure, as the case may be, as of the date of such foreclosure sale or the date of recording the deed in lieu of foreclosure.
- 1.7.1.4 Any portion of Total Revenue remaining after payment by Company of Debt Service and all costs (except Rent) associated with the ownership, operation, financing, maintenance and leasing of the Premises and the Facilities, during each calendar year of the term of this Agreement will be applied to the Parties Equity Contributions until such time as all Equity Contributions are repaid in full together with interest thereon. All Equity Contributions made in accordance with the provisions of Section 1.7.1.1 and all Equity Contributions made in accordance with Section 1.7.1.3 shall be repaid in full prior to the repayment of any Equity Contributions made in accordance with Section 1.7.1.2. All Equity Contributions shall bear interest from the date of contribution until repaid at the lower of the annual rate of interest publicly announced from time to time by Bank of America, N.A. as its "prime" rate of interest plus three (3%) percent or the maximum rate allowed by law. The interest rate payable hereunder shall fluctuate with any change in the "prime" rate, and such fluctuations in the interest rate shall be effective on the effective date of each and every change in the "prime" rate as, from time to time, announced by Bank of America, N.A. as its "prime" rate of interest. Should Bank of America, N.A. no longer exist or fail to announce a "prime" rate, the "prime" rate, for purposes of this Lease, shall be the "prime" rate published in The Wall Street Journal, or if The Wall Street Journal fails to publish a "prime" rate, the rate that most closely approximates the

“prime” rate published in The Wall Street Journal or other similar financial publication.

1.7.1.5 The Participating Parties will acknowledge the date any equity contribution is paid in full by written notice from the Company and acknowledgment by the LDR.

1.7.2 Rent.

1.7.2.1 Fifty percent (50%) of all Net Revenue, if any, during each calendar year or partial calendar year during the term of this Agreement shall be paid to Lessor as Rent for the Premises.

1.7.3 Rent shall be paid to Lessor in monthly installments on or before the twenty-fifth (25th) day following the end of each calendar month. Such payments shall be accompanied by a written statement setting forth in detail the sources and amount of Total Revenue received for the preceding month and allowable deductions for the Net Revenue calculation. A check for the Lessor’s fifty percent (50%) share of Net Revenue will be submitted with such statement. Except as otherwise provided in this Agreement, all Rent shall be paid without deduction, offset or abatement.

1.7.4 Company will make all payments to the Lessor at 15625 East Stafford Street, Suite 200, City of Industry, California 91744 or to such other place as Lessor may direct Company in writing.

1.7.5 In addition to, and without limiting, any other right or remedy which Lessor may have under this Agreement or at law or in equity, in the event any required payment is not made by Company to Lessor as required and remains unpaid for a period of thirty (30) days or more, the Lessor will be entitled to, and Company will pay to the Lessor, interest at the lower of ten percent (10%) per annum or the maximum amount allowed by law on all amounts unpaid and which remain unpaid thirty (30) days past the due date.

1.7.6 On or prior to April 30, annually during the term of this Agreement and within one hundred twenty (120) days after the expiration of the term of this Agreement, Company will provide Lessor with a statement showing in detail the sources and amount of Total Revenue received for the entire preceding calendar year. Such statement shall be prepared by the Company’s chief financial officer in accordance with sound accounting principles and practices and shall contain a written opinion of such officer as to whether the Total Revenue calculations and distribution of Net Revenue and Rent has been made in accordance with the provisions of this Agreement. Should such statements show that the amount of Rent paid during the period of review was less than that which was due, such statement shall be accompanied by Company’s payment of the additional amount to Lessor. Should such statement show that Company paid Lessor more than was due, after review and verification by LDR, a credit will be issued to be applied against future monthly installments of Rent, except that if such should be the case at the end of the last month of this Agreement, Lessor will refund the overpayment to Company.

1.8. RECORDS AND AUDIT

1.8.1 Throughout the term of this Agreement, Company shall keep and maintain, in accordance with sound accounting principles and practices, accurate and complete books, records and

accounts of Total Revenue and all items constituting deductions for purposes of calculating Net Revenue. Within ten days of request by Lessor, Company agrees to provide for inspection and copying by the Lessor or its designated representatives, at a location in the metropolitan area of Los Angeles County, California, such books, records, and accounts for the then current and three (3) immediately preceding calendar years. Such inspection shall take place Monday through Friday, 9:00 AM to 5:00 PM, holidays excluded.

- 1.8.2 Lessor will, at any time, have the right to cause an audit of the Company's operation of the Premises and of Total Revenue and all items constituting deductions for purposes of calculating Net Revenue, for the then current or three (3) immediately preceding calendar years. Such audit shall be made by a Certified Public Accountant of Lessor's selection. If such audit discloses that the calculation of Net Revenue previously provided to Lessor by Company is understated (either intentionally or unintentionally) by a greater margin than one percent (1%) of Company's Total Revenue for the period of review, then Company will immediately pay to Lessor the cost of such audit; otherwise the cost of the audit will be paid by Lessor. In all events, Company shall pay to Lessor the additional payments shown to be payable to Lessor by Company.

1.9 IMPROVEMENTS, MAINTENANCE AND REPAIR BY LESSOR

- 1.9.1 Except as provided in Exhibit "B" and Section 3.1.2 dealing with contamination of the Premises, Lessor has no direct responsibility or obligation for any maintenance, repair or replacement of the Premises or improvements.

1.10 CONSTRUCTION OF IMPROVEMENTS BY COMPANY

- 1.10.1 Company will, construct and install the Facilities including, grading, fencing, paving, lighting, driveways, roads, railroad facilities, utilities, parking lots, drainage, buildings and other improvements.
- 1.10.2 In the event Company has not commenced the construction of Facilities or submitted a proposal for the construction of Facilities on a parcel of the Premises within 10 years after the Commencement Date, Lessor shall have the right to terminate this Agreement as to any such undeveloped parcel of the Premises. Lessor shall give Company and any Leasehold Mortgagee encumbering any such undeveloped parcel of the Premises ninety days prior written notice and the right to submit a proposal for the development of any such parcel or commence construction thereon before exercising its right to terminate. In the event a proposal for the development of such undeveloped parcel is submitted within said ninety days, Lessor shall not have said right to terminate. Lessor agrees not to exercise its right to terminate as to any such undeveloped parcel until any Leasehold Mortgagee encumbering such parcel has been given its rights to cure or foreclose as set forth in Section 2.18.
- 1.10.3 All improvements or alterations by Company will be in accordance with all applicable governmental rules and regulations. Upon completion of any initial or additional improvements during the term hereof, Company will provide as-built drawings of same to the Lessor along with a certification of construction costs for all permanent improvements.

1.10.4 At any time during the term or any extension of this Agreement, Company may, as a Project Cost, add to or alter initially constructed Facilities, subject to all conditions set forth in 1.10.3 above. Any such addition or alteration will be performed in a workmanlike manner in accordance with all applicable governmental regulations and requirements and will not weaken or impair the structural strength or reduce the value of the Premises or improvements thereon.

1.11 MAINTENANCE AND REPAIR

1.11.1 Throughout the term of this Agreement, Company shall maintain, or cause to be maintained, as a Maintenance and Operations expense, the Premises and the Facilities in good condition and repair (including the making of any necessary replacements, both structural and nonstructural), ordinary wear and tear excepted, and in accordance with all applicable laws, rules, regulations and orders of all (i) federal, state, county, municipal, and other governmental agencies and bodies having jurisdiction, (ii) all insurance companies insuring all or any part of the Premises or the Facilities or both. Company's obligation shall include, but not be limited to, all structural and nonstructural portions of the Premises and the Facilities, all heating, ventilating and air conditioning systems and escalators, parking lots, driveways, driving lanes, sidewalks, walkways, common areas and landscaped areas.

1.11.2 If Company shall fail to perform any of its obligations under this Section 1.11, Lessor may, but shall not be obligated to, give Company written notice specifying such failure in reasonable detail. If Company does not remedy such failure, or does not commence to remedy such failure and thereafter diligently pursue such remedy to completion, within fifteen (15) days following receipt of such notice, Lessor may, but shall not be obligated to, remedy such failure. If Lessor remedies any such failure, all reasonable costs and expenses incurred by Lessor in connection therewith shall be paid to Lessor by Company within ten (10) days following written demand, which shall be accompanied by copies of receipts for all such expenses incurred. Following such payment, the amount paid may be included as a Maintenance and Operations expense.

1.12 APPROVALS TO BE REASONABLY GIVEN

It is understood and agreed that all provisions of this Agreement that require approval by the Lessor or the LDR will receive timely response and such approvals will not be unreasonably withheld. Unless another time limit is otherwise specified in this Agreement, any approval or disapproval must be given within twenty (20) days. If the Lessor or LDR does not respond in writing within twenty (20) days, the item for which Company requests approval shall be deemed approved. If disapproved, the LDR will inform Company in writing of its disapproval and state the reason for such disapproval. The Participating Parties agree to negotiate in good faith to resolve any conflicting issues that may arise. If, however, the Participating Parties cannot agree upon the item that was disapproved, a neutral third party with at least ten (10) years experience in real estate developments similar to those constructed or proposed to be constructed on the Premises will be selected by the LDR to arbitrate the disputed issue. If, however, the Company does not accept the neutral third party selected by the LDR, Company will be allowed to select a second neutral party with similar experience. The two selected parties will then select a third neutral party with at least ten (10) years experience in real estate developments similar to those constructed or proposed to be constructed on the Premises who will arbitrate the disputed issue. The LDR and Company agree to be bound by the decisions reached by the selected arbitrator. The Participating Parties will cause the arbitrator to make a determination within fourteen (14)

days following submittal. The Participating Parties agree that each party will bear its own costs and expenses incurred for attorney's fees, preparation and presentation costs for the arbitration process. The Participating Parties will share the cost of any third arbitrator.

Notwithstanding the foregoing, in the event of an emergency, the Company may take immediate, commercially reasonable action to prevent loss, injury or damage to persons or property or to preserve the Premises and the Facilities without the prior approval of Lessor and any costs reasonably incurred in connection therewith shall be a Project Cost.

ARTICLE II

2.1 ASSIGNMENT

2.1.1 Company will not assign this Agreement or its rights or duties hereunder or any estate created hereunder, in whole or in part, except with the prior written approval of Lessor, which approval will not be withheld unreasonably or delayed; provided, that it shall be reasonable for Lessor to withhold its approval if the assignee presented is not a proper and fit person or entity with financial resources and demonstrated business experience sufficient in Lessor's reasonable business judgment to be capable of performing the obligations hereunder which are the subject of the assignment. Further, any such assignment will be specifically subject to all provisions of this Agreement. Any assignment without the prior written approval of Lessor is Void.

2.1.1.1 Except as provided in Section 2.1.1.3, any voluntary or involuntary transfer of fifty percent (50%) or more of Company's or any permitted successor's or assign's voting common stock, or the transfer of fifty percent (50%) or more of the partnership or membership interest, or the acquisition or transfer of fifty percent (50%) or more of Company's ownership, or the transfer of substantially all of the assets of the Company or any such successor or assign will be deemed an assignment requiring the prior written approval of Lessor.

2.1.1.2 As a condition precedent to any assignment, Company shall provide Lessor reasonable prior written notice of the proposed assignment with such appropriate documentation and other information as Lessor shall reasonably request in order for Lessor to make its decision to grant or withhold approval. If the prior written approval of Lessor is given to any such assignment, the proposed assignee shall, in recordable form, expressly assume all of the terms, covenants and conditions of this Agreement which are the subject of the assignment. Any assignment will not release Company from its obligations under this Agreement arising from events occurring prior to the date of assignment, but shall release Company from all obligations arising after the effective date of the assignment.

2.1.1.3 Any transfers by partners or members of Company or shareholders of partners or members of Company to each other or for estate purposes or upon death will not be considered an assignment hereunder.

2.1.2 The foregoing provisions relating to assignment shall not be applicable to a Leasehold

Mortgage hypothecating or encumbering Company's interest in this Agreement and the leasehold estate created thereby and the Facilities located on the Premises and further shall not be applicable to any sale by judicial foreclosure or pursuant to a power of sale by any Leasehold Mortgagee or to any transfer in lieu of such sale, or to any sales or transfers by any Leasehold Mortgagee (or any affiliate, parent or subsidiary of any Leasehold Mortgagee that acquires title to the Company's interest in this Agreement and the leasehold estate created thereby and the Facilities as a result of a sale by judicial foreclosure or pursuant to a power of sale or any transfer in lieu of such sale), subsequent to a sale by judicial foreclosure or pursuant to a power of sale or subsequent to any transfer in lieu of such sale. Any further assignments shall be subject to the provisions of Section 2.1, 2.1.1.1, 2.1.1.2 and 2.1.1.3.

2.2 SUBLEASING

Company will not sublease, sublet or rent to, or permit any persons, firms or corporations to occupy any part of the Premises or the Facilities without having complied with the following:

2.2.1 Company may enter into any Subleases which comply with Section 1.5 entitled DEVELOPMENT AND SUBLEASING. A copy of any such executed Sublease will be provided to the LDR. Any arrangements for the leasing of space which are not in conformance with Section 1.5 entitled DEVELOPMENT AND SUBLEASING shall not be entered into without the prior written approval of the LDR.

2.3 ATTORNMENT

2.3.1 All Subleases entered into by the Company will be subject to all terms and conditions of this Agreement. If Company defaults under this Agreement, all Sublessees will recognize Lessor as the successor to the Company under their respective Subleases, and will render performance thereunder to Lessor as if the Sublease were executed directly between Lessor and the Sublessees; provided, however, Lessor agrees that so long as a Sublessee is not in default under its Sublease, Lessor will provide quiet enjoyment to such Sublessee and Lessor agrees to be bound by all of the terms and conditions of each such Sublease.

2.3.2 All Subleases entered into by the Company will contain the following provision:

If, by reason of a default on the part of Company in the performance of the terms and provisions of the underlying Agreement, the underlying Agreement and the leasehold estate of Company thereunder is terminated by summary proceedings or otherwise in accordance with the terms of the underlying Agreement, Sublessee will attorn to Lessor and recognize Lessor as lessor under this Sublease; provided, however, Lessor agrees that so long as Sublessee is not in default, Lessor agrees to provide quiet enjoyment to Sublessee and to be bound by all the terms and conditions of this Sublease.

2.3.3 In the event this Agreement is terminated for any reason, all Sublessees will be liable to Lessor for their payment of rents and fees and will be subject to all the provisions and terms contained in their Subleases.

2.4 SUCCESSORS AND ASSIGNS

Subject to the provisions of this Article II, this Agreement shall inure to the benefit of and be binding upon the legal representatives, successors and assigns of the Parties.

2.5 CONTROL OF PERSONNEL

Company will, in and about the Premises, exercise reasonable control over the conduct, demeanor and appearance of its employees, agents and representatives and the conduct of its contractors and suppliers. The provisions of this Section 2.5 shall in no way limit the liability of the Company with respect to the negligence, acts or omissions of its employees, agents, representatives, contractors and suppliers, nor shall such provisions limit any obligations of indemnity on the part of the Company under this Agreement.

2.6 SIGNS

Company and its Sublessees and Tenants shall have the right to install, erect and operate signs upon the Premises so long as such signs are installed, erected, operated and maintained in compliance with all applicable laws and ordinances.

2.7 ENTRY AND INSPECTION OF PREMISES

2.7.1 Lessor, its authorized officers, employees, agents, contractors, subcontractors or other representatives will have the right to enter upon all portions of the Premises and the Facilities constituting public areas when the same are open to the public, and shall have the right to enter upon all other portions of the Premises and the Facilities during normal business hours, for the purpose of inspecting the Premises and the Facilities, determining whether Company is in compliance with the terms and provisions of this Agreement, and for fulfilling Lessor's obligations and exercising Lessor's rights hereunder; provided however, that such entry will be in such manner as to not unreasonably interfere with the operations or reasonable security requirements of Company or its Sublessees. Except in the event of an emergency, Lessor shall provide Company at least two (2) business days prior written notice of its intention to enter upon the non-public areas of the Premises or the Facilities for such purposes, and, if Company so elects, Lessor shall be accompanied by a representative of Company during such entry.

2.7.2 No such entry upon the Premises by or on behalf of Lessor will cause or constitute a termination of this Agreement nor be deemed to constitute an interference with the possession thereof nor constitute a revocation of or interference with any of Company's rights in respect thereof for exclusive use of the Premises.

2.7.3 The rights of entry for inspection and other purposes as contemplated by the parties to this Agreement, pursuant to this Section, are for the sole benefit of the parties. No benefit to any third party is contemplated or intended.

2.8 INTENTION OF PARTIES

This Agreement is intended solely for the benefit of Lessor and Company and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. Any work done or inspection of the Premises by Lessor is solely for the benefit of Lessor and Company.

2.9 LIENS

Subject to the rights to contest set forth in Section 2.10 entitled Taxes and Assessments, Company will cause to be removed any and all tax liens and liens arising out of or because of any construction or installation performed by or on behalf of Company or any of its contractors or subcontractors upon the Premises or arising out of or because of the performance of any work or labor to it or them at the Premises or the furnishing of any materials to it or them for use at the Premises. Should any such lien be made or filed, Company will bond against or discharge the same within thirty (30) days after written request by LDR. The cost of bonding against or discharging any liens relating to construction or installation of the Facilities shall be a Project Cost.

2.10 TAXES AND ASSESSMENTS

Throughout the term of this Agreement, Company shall pay before delinquency, as a Project Cost, all real and personal property taxes and assessments, including, without limitation, all city, county, school district and other taxes and general and special assessments, levied upon or assessed against the Premises, any Facilities now or hereafter located thereon, the leasehold estate, any personal property of Company located on or in the Premises or any Facilities, or arising in respect of the occupancy, use or possession of the Premises or the Facilities located thereon and which are assessed or become due during the term of this Agreement. All such taxes for the first and last years of the term hereof shall be equitably prorated between the parties. Company shall have the right, in Company's or Lessor's name, to contest the validity of any tax or assessment by appropriate proceedings timely instituted and diligently prosecuted. Lessor, if requested by Company, shall cooperate with Company in any such proceedings; provided, that all costs and expenses (including attorneys' fees and costs) incurred by Lessor in connection therewith shall be paid by Company as a Project Cost. Company shall not be responsible for any of Lessor's franchise, inheritance, income, succession, transfer or other tax levied on the Lessor's rights in and to the Premises or Lessor's right to receive income from the Premises or under this Agreement. Company will keep current municipal, state or local licenses or permits required for the conduct of its business.

2.11 INDEMNITY

During the term of this Agreement, Company agrees to indemnify and hold Lessor forever harmless from and against all claim, liability, loss, demand, judgments or other expense (including, but not limited to, defense costs, expenses and reasonable attorney fees) imposed upon Lessor by reason of injuries or death of persons (including wrongful death) and damages to property caused during and because of Company's use or occupancy of the Premises or any actions or non-actions of Company, its officers, employees, agents, or other representatives, including movement of vehicles, provided, however, that (without limiting Lessor's right to coverage under any applicable insurance policies) such indemnity will not apply as to any negligent or intentional act or omission of Lessor, its employees, agents or representatives.

During the term of this Agreement, Lessor agrees to indemnify and hold Company harmless from and against all claim, liability, loss, demand, judgments or other expense (including, but not limited to, defense costs, expenses and reasonable attorneys fees) imposed upon Company by reason of injuries or death of persons (including wrongful death) and damages to property caused by Lessors use or occupancy of the Premises or any actions or non-actions of Lessor, its officers, employees, agents, contractors or other representatives, including movement of vehicles, provided, however, that (without limiting Company's right to coverage under applicable insurance policies) such indemnity will not apply to any negligent or intentional act or omission of Company, its employees, agents or representatives.

2.12 INSURANCE AND BONDS

2.12.1 Bonds

2.12.1.1 No bonds will be required for any Facilities constructed by Commerce Construction Co. Otherwise, Company, as a Project Cost, will require its general contractor on any construction contract in excess of two million dollars to furnish bonds covering the faithful performance of the construction of the improvements or installation of equipment, payment of all obligations arising thereunder to take effect upon completion of the project. Bonds may be secured through the contractor's usual sources provided the surety is authorized and licensed to do business in the State of California. Company will be allowed to name any Leasehold Mortgagee as an additional obligee under any such bond.

2.12.1.2 Prior to execution of a construction contract with a contractor required to furnish bonds, and not later than ten (10) calendar days after notification of award, Company will require such contractor to furnish contract bonds to LDR as follows:

- a. Labor and material payment bond in the amount of one hundred percent (100%) of the contract price.
- b. Payment and performance bond in the amount of one hundred percent (100%) of the contract price.

LDR may, if considered appropriate in its sole judgment, waive the requirements of this Section 2.12.1.2 upon written request by Company.

2.12.1.3 The bonds referred to in Section 2.12.1.1 and 2.12.1.2 above will be written on payment and performance bond and labor and material payment bond forms generally used for similar projects in Southern California and approved by LDR.

2.12.1.4 Company will require its contractor to require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney.

2.12.2 Insurance

2.12.2.1 Before any construction contractor (including Commerce Construction Co.) Commences Construction of any Facilities or any equipment installation on or about the Premises, the construction contractor shall procure and maintain insurance for such construction and installation protecting both Company and Lessor, as well as the construction contractor. Such insurance will provide coverage and limits as are commercially reasonable in the industry. Such insurance will include, but is not limited to:

General Liability on an "occurrence" basis only

Automobile Liability

Builder's Risk equal to the maximum contract cost of the project.

- 2.12.2.2 Company's (or its contractor's) insurance will be primary as respects Lessor and Company, their officers, employees and authorized agents. Any other coverage carried by or available to Lessor, its officers, employees and authorized agents will be excess over the insurance required of the Company or its contractor and shall not contribute with it.
- 2.12.2.3 Company and its contractors will maintain worker's compensation insurance in the amounts and form as required by California law. Certificates evidencing the valid, effective insurance policies will be provided to LDR.
- 2.12.2.4 Company will keep insured with responsible insurance underwriters the Facilities and any improvements from time to time constructed by it upon and within the Premises to the extent of not less than the full replacement value of such improvements from time to time (without deduction for depreciation) using an industry standard all risk form of protection. Company will use commercially reasonable efforts to cause its Sublessees or Tenants to keep insured with responsible insurance underwriters any improvements constructed by such Sublessees or Tenants to the same extent.
- 2.12.2.5 Company will obtain and keep in full force and effect a policy(s) of general liability insurance on an "occurrence" basis only and not "claims made." The coverage must be provided either on an ISO Commercial General Liability form, or an Accord Comprehensive General Liability form, or equivalent, approved by the LDR and Company. Any exceptions to coverages must be fully disclosed on the required Certificate. If other than these forms are submitted as evidence of compliance, complete copies of such policy forms will be submitted to LDR within ten (10) days after notice to Company. Policies must include, but need not be limited to, coverages for bodily injury, property damage, personal injury, Broad Form property damage, premises and operations, severability of interest, products and completed operations, contractual and independent contractors with no exclusions of coverage for liability resulting from the hazards of explosion, collapse, and underground property damage.
- Company will maintain limits of no less than five million dollars (\$5,000,000) combined single limit per occurrence for bodily injury (including death), personal injury and property damage.
- 2.12.2.6 Company will furnish Automobile Liability coverage for claims for damage because of bodily injury or death of any person, or property damage arising out of the ownership, maintenance or use of any motor vehicles whether owned, hired or non-owned. Company will maintain limits of no less than five million dollars (\$5,000,000) combined single limit "per accident" for bodily injury and property damage.

- 2.12.2.7 All required insurance coverage as stated in Section 2.12.2 will be a Project Cost and evidenced by a current Certificate(s) of Insurance. Such Certificates will include, but will not be limited to, the following:
- 2.12.2.7.1 All Certificates for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of California.
 - 2.12.2.7.2 Each insurance company's rating as shown in the latest Best's Key Rating Guide will be fully disclosed and entered on the required Certificates of Insurance. If the insurance company providing the coverage has a Best rating of less than A+, the adequacy of the insurance supplied by Company (or its contractor), including the rating and financial health of each insurance company providing coverage, is subject to the approval by the LDR. Such approval will not be unreasonably withheld.
 - 2.12.2.7.3 Company (or its contractor) will furnish renewal Certificates for the required insurance during the period of coverage required by this Agreement. Company (or its contractor) will furnish renewal Certificates for the same minimum coverages as required in this Agreement.
 - 2.12.2.7.4 Lessor, its officers and employees shall be covered as additional insureds with respect to liability arising out of the activities by or on behalf of the named insured in connection with this Agreement. All property insurance policies will contain a waiver of subrogation clause in favor of Lessor.
 - 2.12.2.7.5 Each insurance policy supplied by the Company (or its contractor) must be endorsed to provide that the amount and type of coverage afforded to the Lessor by the terms of this Agreement will not be suspended, voided, canceled or reduced in coverage or in limits except after thirty (30) days' prior written notice by mail to Company, Lessor and any Leasehold Mortgagee.
 - 2.12.2.7.6 Any deductible, as it relates to coverage provided under this Agreement, will be fully disclosed on the Certificates of Insurance. Any deductible provided will be reasonable and customary for the type of risk.
 - 2.12.2.7.7 If aggregate limits are imposed on the insurance coverage, then the amounts of such limits must be not less than five million dollars (\$5,000,000) per occurrence or per accident. All aggregates must be fully disclosed and the amount entered on the required certificate of insurance. Company's insurer must notify the LDR of any erosion of the aggregate limits. The "per occurrence" limits of insurance required herein must be

maintained in full, irrespective of any erosion of aggregate. A modification of the aggregation limitation may be permitted if it is deemed necessary and approved by the LDR and Company.

- 2.12.2.8 If the Company fails to maintain any of the insurance coverages required herein, then the Lessor, after 10 days prior notice to Company, may purchase replacement insurance or pay the premiums that are due on existing policies in order that the required coverages may be maintained. The Company is responsible for any expenses paid by the Lessor to maintain such insurance and Lessor may collect the same from the Company.
- 2.12.2.9 The insurance requirements specified herein do not relieve the Company (or its contractor) of its responsibility or limit the amount of its liability to the Lessor or other persons and the Company is encouraged to purchase such additional insurance as it deems necessary.
- 2.12.2.10 Company (or its contractor) is responsible for and must remedy all damage or loss to any property, including property of Lessor, caused in whole or in part by the Company or its contractor, any subcontractor or anyone employed, directed or supervised by the Company; provided, however neither Company nor any Leasehold Mortgagee shall be liable for any uninsured or underinsured loss relating to the Premises or the Facilities, unless such loss is a result of Company's failure to obtain the insurance it is required to maintain under this Agreement, in which event Company shall be liable for such loss and such loss shall not be a Project Cost. Company is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with this Agreement.
- 2.12.2.11 Company and Lessor agree and acknowledge that any Leasehold Mortgagee shall be named as an additional insured under any insurance policy relating to the Premises, the Facilities or otherwise required under this Agreement. Company agrees to provide any Leasehold Mortgagee with appropriate certificates of insurance relating to all policies.
- 2.12.2.12 Company, at its option, may satisfy its obligations hereunder to insure within the coverage of any so-called blanket policy or policies of insurance which it now or hereafter may carry, by appropriate amendment, rider, endorsement or otherwise; provided, however, that the interests of Lessor shall thereupon be as fully protected by such blanket policy or policies as they would be if this option to so insure by blanket policy were not permitted.
- 2.12.2.13 Waiver of Subrogation. Without affecting any other rights or remedies, Company and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is

not limited by the amount of insurance carried or required, or by any deductibles applicable thereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Company, as the case may be, so long as the insurance is not invalidated thereby.

2.13 DAMAGE AND DESTRUCTION

In the event that any Facilities located on the Premises are damaged or destroyed, and the net proceeds of insurance are sufficient to cover the Company's estimated cost of rebuilding (or if Company failed to maintain insurance it is required to maintain under this Agreement and the proceeds of such insurance, had it been maintained, would have been sufficient to cover the Company's estimated cost of rebuilding), Company shall repair and rebuild the said Facilities, and this Agreement shall continue in full force and effect, and Company shall commence and continue such repair or rebuilding with reasonable diligence and shall complete such repair and rebuilding within a reasonable time after the same is commenced; provided, however, that any delay in the completion of the said repairs resulting from fire or other casualty, strikes, shortages of material or labor, governmental laws, rules and regulations, the elements or matters beyond the reasonable control of Company, shall extend such reasonable time within which Company may complete said repairs or rebuilding by the period of such delay. The net proceeds of any insurance, to the extent that such proceeds are received by Lessor or any Leasehold Mortgagee, less any expenses of recovery thereof (including attorneys' fees), shall be made available to Company to be applied to the cost and expense of repair or rebuilding the damage or destruction insured against, subject to reasonable conditions and payable on the usual architect's certificates, but Lessor or any Leasehold Mortgagee holding said insurance proceeds may withhold an amount reasonably necessary to insure completion of such repairs or rebuilding (not to exceed ten percent (10%) of such proceeds) until completion and the expiration of the period within which mechanics' or materialmen's liens may be filed and until receipt of satisfactory evidence that no liens exist.

In the event the Company maintains the insurance it is required to maintain under this Agreement and the proceeds of insurance are not sufficient to cover the Company's estimated cost of rebuilding, or in the event the damage or destruction occurs during the last 10 years of the lease term, Company will have the option to terminate this Agreement, subject to the rights of any Leasehold Mortgagee, which option will be exercisable by written notice to Lessor within forth five (45) days after the occurrence of such event. Company will only have such option to terminate this Agreement as to the specific legal parcel or parcels upon which the Facilities are damaged or destroyed. Any such termination by Company shall require the prior written consent of any Leasehold Mortgagee. In the event the Company elects to terminate this Agreement based upon such damage, destruction, or substantial loss, the Company will be liable for and will pay for all cleanup or demolition of the Premises necessary to make the Premises ready for repair, replacement, restoration or rebuilding: (a) if the Company or its employees or agents caused such damage, destruction or substantial loss to occur, (b) to the extent of any insurance proceeds payable with respect to such damage, destruction or substantial loss, or (c) to the extent of any insurance proceeds which would have been payable with respect to such damage, destruction or substantial loss had Company maintained the insurance it is required to maintain under this Agreement. In the event Company does not exercise such option then Company will promptly repair, replace, restore or rebuild said improvements.

2.14 DEFAULT BY COMPANY

2.14.1 Default by Company

Subject to the provisions of Section 2.16 and Section 2.18, Company will be considered in default as Lessee under this Agreement in the event of any one or more of the following occurrences:

2.14.1.1 Company fails to pay the rent or any other money payments required by this Agreement when the same are due and the continuance of such failure for a period of thirty (30) days after written notice thereof from the LDR to Company or Company fails to maintain any insurance required to be maintained by it under this Agreement and such failure continues for a period of fifteen (15) days after written notice thereof from the LDR to Company.

2.14.1.2 Company fails to perform any other covenant contained in this Agreement and such failure continues for a period of sixty (60) days after written notice thereof from the LDR to Company; provided, however, that if a nonmonetary default cannot be cured with reasonable diligence within such sixty (60) day period, then Lessor shall not have the right to terminate this Agreement or pursue any other remedy against Company, as long as Company commences the curing of such default within said sixty (60) day period and thereafter proceeds with the curing of such default to completion with reasonable diligence, with allowance for delays due to the action or failure to act of governmental authorities, strikes, acts of God or other matters beyond the reasonable control of Company.

2.14.1.3 Company voluntarily abandons the Premises for a period of sixty (60) days following written notice from the LDR to Company.

2.14.2 Cure

Subject to the mortgagee protection provisions set forth in this Agreement, Company will be considered in default of this Agreement if Company fails to fulfill any of the terms, covenants, or conditions set forth in this Agreement following the expiration of the cure period and written notice set forth in Sections 2.14.1 and 2.14.3.

2.14.3 Termination For Default By Company

Subject to the lender protection provisions of Section 2.18, if default is made by Company as described in Section 2.14.1 hereinabove, and such default is not cured as provided in Sections 2.14.1 and 2.14.2, Lessor shall provide Company with an additional written notice thereof and if such failure to cure continues for an additional period of sixth (60) days. Lessor shall be entitled to pursue any and all rights and remedies which it may have under this Agreement or at law or in equity, including, without limitation, the right to terminate this Agreement. All of such rights and remedies shall be cumulative and not alternative.

2.14.3.1 If Lessor elects to terminate this Agreement, it will in no way prejudice the right of action for rental arrearages owed by Company.

2.14.3.2 Redelivery and disposal of improvements will be as described in Section 2.17, entitled SURRENDER AT END OF TERM.

2.15 DEFAULT BY LESSOR

2.15.1 Default By Lessor

Lessor will be considered in default of this Agreement if Lessor fails to fulfill any of the terms, covenants or conditions set forth in this Agreement if such failure shall continue for a period of more than sixty (60) days after delivery by Company of a written notice of such default.

2.15.2 Cure

If the default cannot be cured with reasonable diligence within such Sixty (60) day period, then Company shall not have the right to terminate this Agreement or pursue any other remedy against Lessor, as long as Lessor commences the curing of such default within said sixty (60) day period and thereafter proceeds with the curing of such default to completion with reasonable diligence, with allowance for delays due to the action or failure to act of governmental authorities, strikes, acts of God or other matters beyond the reasonable control of Lessor.

2.15.3 Remedies

Subject to the mortgagee protection provisions set forth in this Agreement, if default is made by Lessor as described in Section 2.15.1 hereinabove, and is not cured as provided in Section 2.15.2 hereinabove, Company shall provide Lessor with an additional written notice thereof and if such failure to cure continues for an additional period of sixty (60) days, Company shall be entitled to pursue any and all rights and remedies which it may have under this Agreement or at law or in equity, including, without limitation, the right to terminate this Agreement. All of such rights and remedies shall be cumulative and not alternative. Redelivery and disposal of improvements will be as described in Section 2.17, entitled SURRENDER AT END OF TERM.

2.16 WAIVERS AND ACCEPTANCE OF FEES

2.16.1 No waiver of default by either party hereto of any of the terms, covenants or conditions hereof to be performed, kept or observed will be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, conditions herein contained to be performed, kept and observed.

2.16.2 No acceptance of fees or other money payments in whole or in part for any period or periods during or after default of any of the terms, conditions or covenants to be performed, kept or observed by the Company will be deemed a waiver on the part of the Lessor of any right or remedy which it may have under this Agreement or at law or in equity.

2.16.3 No acceptance of fees or other money payments in whole or in part for any period or periods during or after default of any of the terms, conditions or covenants to be performed, kept or observed by the Lessor will be deemed a waiver on the part of the Company of any right or remedy which it may have under this Agreement or at law or in equity.

2.17 SURRENDER AT END OF TERM

- 2.17.1 Subject to the mortgagee protection provisions set forth in Section 2.18 and subject to the rights of Sublessee's, Company covenants that at the termination of this Agreement, howsoever caused, it will quit and surrender the Company's right, title and interest in the Premises in good repair and condition, excepting reasonable wear and tear, acts of God, the public enemy or the action of the elements.
- 2.17.2 All Facilities located on the Premises at the expiration or sooner termination of the term of this Agreement, howsoever caused, shall, without payment or compensation of any kind to Company, then become Lessor's property, in fee simple, free and clear of all claims, liens and encumbrances to or against them by Company, any Leasehold Mortgagee, any Sublessee or Tenant, or any other third party claiming by or through Company. Subject to the mortgagee protection provisions set forth in Section 2.18 and subject to the rights of Sublessee's, upon termination of this Agreement howsoever caused, Company shall have the right to remove from the Premises, within sixty (60) days following the Termination Date, all equipment, trade fixtures and personal property belonging to Company or Sublessee's, provided Company or its Sublessees repair any damage caused by such removal.

For purposes of this Subsection 2.17.2, the words "equipment, trade fixtures and personal property" will include, but not be limited to, (i) signs (electrical or otherwise), (ii) all equipment used in connection with the conduct of Company's or its Sublessees business whether or not such equipment is attached to the Premises or the Facilities, (iii) any other mechanical device, and (iv) all other miscellaneous equipment, furnishings and fixtures installed on or placed on or about the Premises and used in connection with Company's or its Sublessees business thereon; provided, however, that such words shall not include elevators, escalators, plumbing systems, electrical systems, life safety systems, boilers, heating, ventilating and air conditioning systems, floor and wall coverings, ceiling lights, built-in shelving and cabinets, doors, windows, outside walls and fencing, and landscaping. All equipment, trade fixtures and personal property that is not removed within sixty (60) days following the Termination Date, shall become the property of Lessor.

- 2.17.3 Without limiting the provisions of this Section 2.17, Company agrees that upon the expiration or sooner termination of this Agreement, howsoever caused, it will execute, acknowledge and deliver to Lessor within thirty (30) days after demand from Lessor, all such documents and instruments as shall be reasonably necessary to evidence and confirm the transfer of ownership of the Facilities from Company to Lessor, "as-is" in their existing condition without any further consideration required from Lessor.

2.18 FINANCING

- 2.18.1 Notwithstanding anything to the contrary contained in this Agreement, Company will have the right at such time or times as Company desires and without Lessor's consent, to hypothecate Company's interest in all or part of this Agreement, the Premises and the Facilities with one or more Leasehold Mortgages. Such Leasehold Mortgages may contain such terms and conditions as are acceptable to Company and Company will have the right, without the consent of Lessor, at any time during the term hereof to execute and deliver to any or all of its Leasehold Mortgagees any documents which will operate as

collateral security for any loan or loans made, even if such document or documents result in a form or type of conveyance or assignment of the leasehold interest demised hereunder. It is hereby agreed that Company or any such Leasehold Mortgagees will have the right to immediately record such document or document(s) with an appropriate public official or officials. Company agrees that copies of all such documents of conveyance or assignment as contained in this Section 2.18 will be provided to the LDR forthwith. Lessor agrees to cooperate in executing any documents reasonably requested of Lessor by Company or the Leasehold Mortgagee in connection with any such Leasehold Mortgage; PROVIDED, HOWEVER, UNDER NO CIRCUMSTANCES SHALL LESSOR BE OBLIGATED TO SUBORDINATE ITS FEE INTEREST IN THE PREMISES TO ANY LEASEHOLD MORTGAGE, AND, NOTWITHSTANDING ANY TERM OR PROVISION OF ANY SUCH LEASEHOLD MORTGAGE OR THIS AGREEMENT TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL ANY SUCH LEASEHOLD MORTGAGE CONSTITUTE AN INDEBTEDNESS OR OBLIGATION OF LESSOR NOR SHALL LESSOR BE LIABLE IN ANY WAY FOR THE PAYMENT OF ANY PORTION OF THE INDEBTEDNESS EVIDENCED BY SUCH LEASEHOLD MORTGAGE OR FOR THE PAYMENT OR PERFORMANCE OF ANY OTHER OBLIGATION THEREUNDER OR SECURED THEREBY.

2.18.2 Lessor will deliver to any such Leasehold Mortgagee written notice of any default of Company under the terms of this Agreement and said notice will specify the nature of the default. Before terminating this Agreement, Lessor will allow such Leasehold Mortgagee to cure or commence to cure any default of Company in accordance with the provisions of this Agreement. The time period to cure any default of Company will commence when said notice is delivered to Leasehold Mortgagee and Leasehold Mortgagee shall have the same lengths of time to cure the specified default as are permitted Company in Section 2.14. In the event Company fails to timely cure a default after receipt of written notice and expiration of any applicable cure period, Lessor agrees to provide any Leasehold Mortgagee with a second written notice and provide such Leasehold Mortgagee with an additional thirty (30) day cure period. Lessor will not have the right to exercise any remedies under this Agreement so long as a Leasehold Mortgagee is diligently prosecuting to complete a cure of any default. If such default is of a nature which is incapable of being cured by Leasehold Mortgagee, Lessor agrees not to exercise its remedies arising from such default if (i) Leasehold Mortgagee notifies Lessor in writing within such thirty (30) day cure period that Leasehold Mortgagee intends to foreclose its mortgage and Leasehold Mortgagee commences and diligently pursues such foreclosure; and (ii) Leasehold Mortgagee makes all payments due by Company under this Agreement through the date of foreclosure.

2.18.3 Any default by the Company in the payment of money as required under the terms of this Agreement may be cured by the Leasehold Mortgagee in accordance with the terms of Sections 2.14 and 2.18.2 of this Agreement, and Lessor will accept any such payment or cure from such Leasehold Mortgagee during the term of the Leasehold Mortgage.

2.18.3.1 Should the Company default under the terms of this Agreement and should the default be such that it cannot be cured by the payment of money, Lessor will accept payments of rent from such Leasehold Mortgagee and this Agreement will not terminate, but will remain in full force and effect, pending Leasehold Mortgagee's cure of such default within the time periods described herein or resort to foreclosure or sale proceedings under its deed of trust or other security instruments.

- 2.18.4 If any default has been cured by a Leasehold Mortgagee or Assignee, Lessor agrees that upon completion of any foreclosure proceedings or sale under the deed of trust or other security instrument securing the loan, or upon delivery of a deed in lieu of foreclosure, the Leasehold Mortgagee or purchaser at such sale or any heir, successor, or assign of Leasehold Mortgagee (Assignee) subsequent to such sale will be recognized by Lessor as the lessee under the terms of this Agreement for all purposes for the remaining term hereof. The leasehold interest of the Leasehold Mortgagee or such Assignee will not be adversely affected or terminated by reason of any nonmonetary default occurring prior to the completion of such proceedings or sale, provided such default has been promptly remedied (to the extent it is capable of being remedied by Leasehold Mortgagee), or if such default requires possession to cure, provided such Leasehold Mortgagee, Assignee or purchaser promptly commences to cure upon taking possession of the Premises.
- 2.18.5 Such Leasehold Mortgagee will not become personally liable under the terms and obligations of this Agreement unless and until it assumes the obligations and is recognized by Lessor as lessee under this Agreement and will be liable only so long as such Leasehold Mortgagee or Assignee maintains ownership of the leasehold interest or estate and recourse to such Leasehold Mortgagee or Assignee shall be limited solely to Leasehold Mortgagee's or Assignee's interest in the Premises.
- 2.18.6 At any time during the term of this Lease, within ten (10) days after a written request by the Company or any Leasehold Mortgagee, Lessor, through Lessor's Designated Representative, will execute, acknowledge and deliver to the Company or such person or entity as the Company designates, a certificate stating:
- (a) that this Agreement is the only Agreement between Lessor and Company concerning the Premises and is unmodified and in full force and effect in accordance with its terms (or if there have been modifications, that this Agreement is in force and effect as modified, and identifying the modification agreements, or if this Agreement is not in full force and effect, that it is not);
 - (b) the commencement and expiration dates of this Agreement and the date to which rental has been paid to Lessor under this Agreement;
 - (c) whether or not, to the knowledge of the Lessor, there is an existing default by Company in the payment of Rent or any other sum of money under this Agreement, and whether or not there is any other existing default by either party under this Agreement with respect to which a notice of default has been served, and if there is such a default specifying its nature and extent;
 - (d) whether or not, to the knowledge of Lessor, there are any set-offs, defenses or counter-claims against enforcement of the obligations to be performed by Lessor or Company under this Agreement; and,
 - (e) such other reasonable information relating to this Agreement that a Leasehold Mortgagee or assignee may request.
- 2.18.7 All notices of default required to be delivered to a Leasehold Mortgagee under this Agreement will be sent to any Leasehold Mortgagee by overnight courier service or certified mail, return receipt requested. No such notice shall be valid or effective as

against the Leasehold Mortgagee until and unless actually received by the Leasehold Mortgagee as evidenced by the courier service's delivery records or the return receipt.

- 2.18.8 In the event this Agreement is terminated for any reason prior to the end of the term (it being the intent that the Agreement will remain in full force and effect if Leasehold Mortgagee performs), Lessor shall enter into a new Agreement with Leasehold Mortgagee holding a first priority interest covering the Premises, provided that the Leasehold Mortgagee (i) requests such new Agreement by written notice to Lessor within sixty (60) days after termination, and (ii) cures all prior defaults of Company that are capable of being cured by Leasehold Mortgagee. The new Agreement shall be for the remainder of the term, effective at the date of such termination, at the same rent and on the same covenants, agreements, conditions, provisions, restrictions and limitations contained in this Agreement. The new Agreement shall have the same title priority as this Agreement and shall be subject only to the exceptions to title having priority over this Agreement or such additional exceptions to which such Leasehold Mortgagee has consented in writing. In the event the Lessor and such Leasehold Mortgagee enter into any such new Agreement, title to all the Facilities located upon the Premises as of the date of such new Agreement shall automatically vest in such Leasehold Mortgagee. If requested by such Leasehold Mortgagee, Lessor agrees to execute and deliver to Leasehold Mortgagee within 10 days after request therefore, a quitclaim deed in recordable form conveying title to such Facilities to such Leasehold Mortgagee. Lessor also agrees to assign to such Leasehold Mortgagee all Subleases with Tenants whose Subleases attach to Lessor upon the termination of this Agreement.
- 2.18.9 Lessor shall cooperate in amending this Agreement from time to time to add any provision which may reasonably be requested by any Leasehold Mortgagee or proposed lender for the purpose of implementing the mortgagee protection provisions contained in this Agreement and allowing such Leasehold Mortgagee reasonable means to protect or preserve the lien of its loan and the value of its security. Lessor agrees to execute and deliver (and to acknowledge if necessary for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect or change the term of this Agreement or the Rent or other amounts payable to Lessor under this Agreement, subordinate the fee interest of Lessor in the real property underlying the Premises, nor otherwise in any material respect adversely affect any rights of Lessor under this Agreement.
- 2.18.10 The bankruptcy or insolvency of Company will not operate or permit the Lessor to terminate this Agreement as long as all Rent or other monetary payments required to be paid by Company continue to be paid and other required obligations are performed in accordance with the terms of this Agreement.
- 2.18.11 To the extent any of the terms of this Agreement are inconsistent with the terms of this Section regarding mortgagee protection provisions, the mortgagee protection provisions will control.
- 2.18.12 Every Leasehold Mortgage shall contain a provision that copies of all notices of default by Company thereunder must be sent to Lessor. In the event of any default by Company under any Leasehold Mortgage, the Lessor reserves the right to make any payments due to the Leasehold Mortgagee before the Leasehold Mortgagee resorts to any foreclosure or sale proceedings under its deed of trust or other security instrument.

- 2.18.12.1 Following any foreclosure or deed in lieu of foreclosure the leasehold estate created by this Agreement and the Facilities may be transferred or assigned as provided in Section 2.1.2.
- 2.18.13 Any mortgage placed by the Lessor on the fee title to the Premises shall be subordinate to this Agreement (and any replacement to this Agreement), any separate lease entered into in accordance with Section 4.8 and all Subleases.
- 2.18.14 Prior to any termination of this Agreement by Lessor, any Leasehold Mortgagee shall be allowed sufficient time to complete any foreclosure action, including time for delays due to official restraint (including by law, process or injunction issued by a court), so long as such Leasehold Mortgagee is making payments required by this Agreement which can be reasonably determined prior to acquiring the Company's interest under this Agreement. Leasehold Mortgagee shall have the right to terminate foreclosure proceedings at any time if Company has cured all defaults under any loan from Leasehold Mortgagee. However, no such termination of foreclosure proceedings shall prevent Lessor from pursuing, or continuing to pursue, its rights and remedies under this Agreement against Company for any uncured defaults under this Agreement.
- 2.18.15 So long as any Leasehold Mortgage is in effect, there shall be no merger of the leasehold estate created by this Agreement into the fee simple estate in the Premises without the prior written consent of the Leasehold Mortgagee.
- 2.18.16 Any Leasehold Mortgagee shall have the right to participate in any settlement or adjustment of losses under insurance policies maintained by Company under this Agreement. Such Leasehold Mortgagee shall be named as a loss payee or additional insured, as applicable, in accordance with any loan documents executed by Company, under the insurance policies required under this Agreement. Company shall use commercially reasonable efforts to obtain provisions in Leasehold Mortgages providing that any proceeds of insurance shall first be used for the purposes provided for in this Agreement before any portion thereof is applied to repay any indebtedness under such Leasehold Mortgage.

2.19 EMINENT DOMAIN

2.19.1 In the event of any acquisition of or damage to all or any part of the Premises or any interest therein by eminent domain, whether by condemnation proceeding or transfer in avoidance of an exercise of the power of eminent domain or otherwise during the term of this Agreement, the rights and obligations of the parties with respect to such appropriation shall be as provided in this Section. As used herein:

- a. "Taking" shall mean any taking or damage, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance in lieu of an exercise of eminent domain or while condemnation proceedings are pending. The taking shall be deemed to take place on the earlier of (i) the date actual physical possession is taken by the condemnor or (ii) the date on which the title passes to the condemnor.
- b. "Total Taking" shall mean the taking of fee title to all of the Premises or so much

of the Premises that the portions of the Premises not so taken are, in the reasonable judgment of Company, not reasonably suited for the uses of the Premises that have been previously made by Company. A Temporary Taking, defined below, may be treated as a Total Taking if it meets the test set forth above.

- c. "Partial Taking" shall mean any taking of fee title that is not a Total Taking.
- d. "Temporary Taking" shall mean the taking for temporary use of all or any portion of the Premises for a period ending on or before the expiration of the term.
- e. "Award" shall mean all compensation paid for the taking whether pursuant to a judgment or by agreement or otherwise.
- f. "Notice of Intended Taking" shall mean any notice or notification on which a reasonably prudent man would rely and which he would interpret as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal and shall include without limitation the service of a condemnation summons and complaint on either Lessor or Company or the receipt by either Lessor or Company from a condemning agency or entity of a written notice of intent to take containing a description or map of the taking reasonably defining the extent thereof.

2.19.2 Upon receipt of any of the following by either Party hereto, such Party shall promptly deliver a copy thereof, endorsed with the date received, to the other and any Leasehold Mortgagee which has given its name and address to such Party for such purpose.

- a. Notice of Intended Taking;
- b. Service of any legal process relating to the condemnation of all or any part of the Premises;
- c. Notice in connection with any proceedings or negotiations with respect to any such condemnation; and
- d. Notice of intent or willingness to make or negotiate a private purchase, sale or other transfer in lieu of condemnation.

2.19.3 Lessor, Company and any Leasehold Mortgagee that would be affected by such taking, shall each have the right to represent its respective interest in each proceeding or negotiation with respect to any taking or intended taking and to make full proof of its claims. No agreements, settlement, sale or transfer to or with the condemning authority shall be made without the prior written consent of Lessor, Company and Leasehold Mortgagee, which consent shall not be unreasonably withheld. Each of the parties hereto agrees to execute and deliver to the other any instruments that may be required to effectuate or facilitate any of the provisions of this Section where such execution or delivery will not adversely affect the right of such party to receive just compensation for any loss sustained in such negotiation or proceeding.

2.19.4 In the event of a Total Taking, this Agreement and all interests, rights, liabilities and obligations of the Parties hereunder shall terminate as of the date of Taking, except for liabilities and obligations arising out of events occurring prior to the date of termination.

In the event of a Taking of fee title to less than all of the Premises which Company reasonably believes to be a Total Taking, Company may, by written notice to Lessor approved by all Leasehold Mortgagees, within one hundred twenty (120) days after Company receives Notice of Intended Taking thereof, elect to treat such taking as a Total Taking. If Company fails to make such timely election, such Taking shall be deemed to be a Partial Taking for all intents and purposes.

Any taking determined to be a Total Taking in accordance with the foregoing paragraph shall be treated as a Total Taking if (i) Company delivers possession of the Premises to Lessor within one hundred twenty (120) days after Company shall have delivered written notice to Lessor electing to treat such taking as a Total Taking and (ii) Company has complied with all of the provisions hereof relating to the apportionment of the awards.

In a Total Taking, all sums, including damages and interest, awarded for the fee or the leasehold or both shall be distributed in the following order of priority:

- a. First, to Leasehold Mortgagees to the extent of the then balance due on all Leasehold Mortgages;
- b. Second, to Lessor an amount equal to the then present value of the reversionary interest of Lessor in the real property underlying the Premises at the Expiration of this Agreement;
- c. Third, subject to Section 1.1.25, the balance of the Award to Company.

All sums awarded for the leasehold or the fee shall (i) be delivered to Lessor and Company (or to Leasehold Mortgagee), respectively, if such award has been apportioned between Lessor and Company by such condemning authority, or (ii) deposited promptly with Leasehold Mortgagee (or in the event that there is no lender of record, with an escrow agent selected by Company in the reasonable exercise of its discretion), if only a single award is made, and distributed and disbursed as set forth above. Sums being held by the escrow agent pending disbursement shall be deposited in a federally insured interest bearing account and, upon distribution, each party having a right to any of the sums being disbursed shall be entitled to receive the interest attributable to its share of said sums.

2.19.5 In the event of a Partial Taking, this Agreement shall remain in full force and effect as to the portion of the Premises remaining.

On a Partial Taking, all sums, including damages and interest, awarded for the fee or the leasehold or both shall be distributed in the following order of priority:

- a. First, to Company an amount equal to the cost of making all repairs and restorations to any Facilities on the Premises affected by such taking to the extent necessary to restore the same to a complete architectural and economically viable or functioning units (to the extent permitted, however, taking into consideration the amount of land remaining after such taking or purchase);
- b. Second, to any Leasehold Mortgagee to the extent that the security if its Leasehold Mortgage has been impaired as a result of the Partial Taking or as

required by its loan documents, whichever is greater;

- c. Third, to Lessor an amount equal to the then present value of the reversionary interest of Lessor in the real property underlying the Premises at the Expiration of this Agreement in that portion of the real property underlying the Premises that is taken in such Partial taking;
- d. Fourth, subject to Section 1.1.25, the balance of the Award to Company.

All sums awarded for the leasehold or the fee shall (i) be delivered to Lessor and Company (or to Leasehold Mortgagee), respectively, if such award has been apportioned between Lessor and Company by such condemning authority, or (ii) deposited promptly with Leasehold Mortgagee (or in the event that there is no lender of record, with an escrow agent selected by Company in the reasonable exercise of its discretion), if only a single award is made, and distributed and disbursed as set forth above. Sums being held by the escrow agent pending disbursement shall be deposited in a federally insured interest bearing account and, upon disbursement, each party having a right to any of the sums being disbursed shall be entitled to receive the interest attributable to its share of said sums.

2.19.6 In the event of a Temporary Taking, this Agreement shall remain in full force and effect, neither the rents reserved hereunder nor the term hereof shall be reduced or affected in any way, and, subject to Section 1.1.25, Company shall be entitled to any award for the use or estate taken, subject to the requirements of any Leasehold Mortgagee.

2.19.7 Unless the respective values are determined by the court in the eminent domain proceeding, the values of the interests for which Lessor and Company are entitled to compensation in the event of a Total or Partial Taking shall be determined by the mutual written agreement of Lessor and Company. If Lessor and Company are unable to agree on the value of said interests within thirty (30) days after the deposit of the sums awarded with the escrow agent, then within thirty (30) days after the expiration of that period, each such party shall submit its good faith estimate of the value of said interests as of the date of the taking. If the higher of said estimates is not more than 105% of the lower of such estimates, the value shall be the average of the submitted estimates. If otherwise, then within ten (10) days the question shall be submitted to arbitration pursuant to the rules of the American Arbitration Association.

ARTICLE III

3.1 ENVIRONMENTAL POLICY

3.1.1 Violation Of Environmental Laws

During the term of this Agreement, Company will not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released on, under or about the Premises, or transported to and from the Premises, by Company, its Sublessees and Tenants, or their respective agents, employees, contractors, invitees or a third party in violation of the Environmental Laws.

3.1.1.1 LDR will have access to the Premises to inspect same to insure that

Company is using the Premises in accordance with Environmental Laws.

3.1.1.2 Company, at the LDR's reasonable request, as a Project Cost, will conduct such testing and analysis as necessary to ascertain whether Company is using the Premises in compliance with environmental requirements. Any such tests will be conducted by qualified independent experts chosen by Company and subject to LDR's reasonable written approval. Copies of such reports from any such testing will be provided to LDR.

3.1.1.3 Company will promptly provide copies of all notices, reports, claims, demands or actions concerning any environmental concern or release or threatened release of Hazardous Materials to Lessor.

3.1.2 Contamination Of Premises

3.1.2.1 If the illegal use of any Hazardous Material on, under or about the Premises by Company, its agents, employees or contractors results in any contamination of the Premises, in violation of an Environmental Law, Company will promptly take all actions as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises. Company will take all steps necessary to remedy and remove any such Hazardous Materials as are necessary to protect the public health and safety and the environment from actual harm and to bring the Premises into compliance with all environmental requirements. If any such contamination is a result of the gross negligence of Company or its employees or if Company or its employees intentionally contaminate the Premises, all costs incurred to bring the Premises into compliance with environmental laws shall be at Company's cost and expense and not as a Project Cost. If any such contamination is a result of the actions of agents, contractors, third parties or the actions of Company that were not intended to contaminate the Premises, all costs incurred to bring the Premises into compliance with environmental laws shall be a Project Cost.

3.1.2.2 Lessor will be solely responsible for any environmental condition existing on or about the Premises prior to the commencement of the term of this Agreement or any environmental conditions caused by Lessor, its agents, employees, contractors or invitees during the term. Lessor will promptly take all actions, at its cost and expense, as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises. Lessor will take all steps necessary to remedy and remove any such Hazardous Materials as are necessary to protect the public health and safety and the environment from actual harm and to bring the Premises into compliance with all environmental requirements.

3.1.2.3 If the illegal use of any Hazardous Material on, under or about the Premises by Sublessees and Tenants, their respective agents, employees, contractors, servants or invitees results in any contamination of the Premises, in violation of an Environmental Law, Company will promptly take all actions, as a Project Cost, as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises. Company will take

all steps necessary to remedy and remove any such Hazardous Materials as are necessary to protect the public health and safety and the environment from actual harm and to bring the Premises into compliance with all environmental requirements. All amounts recovered (whether by way of settlement of a claim, judgment, indemnity or otherwise) by Company from any such Sublessee, Tenant, agent, employee, contractor, servant or invitee in connection with the foregoing matters shall be included in Total Revenue for the full or partial calendar year of the term of this Agreement in which recovered (Company's reasonable costs of recovery shall be deducted as a Project Cost), or if recovered following the expiration or termination of the term of this Agreement, fifty percent (50%) of such recovery (after deducting from such recovery the Company's reasonable costs of recovery not theretofore included in Project Costs) shall be promptly paid over to Lessor.

3.1.3 Compliance With All Governmental Authorities

During the term of this Agreement, Company will promptly make all submissions required of Company and comply with all requirements of the appropriate governmental authority under all Environmental Laws. During the term of this Agreement, Lessor will promptly make all submissions required of Lessor to, and comply with, all requirements of the appropriate governmental authority under all Environmental Laws.

3.1.3.1 Should any governmental agency having authority over such matters determine that a site characterization, site assessment, and/or cleanup plan be prepared or that a cleanup should be undertaken because of any spills or discharges of hazardous materials at the Premises by Company, its agents, employees or contractors which occur during the term of this Agreement, then Company shall prepare and submit the required plans and financial assurances, and carry out the approved plans. If any such spills or discharges are a result of the gross negligence of Company or its employees or if Company or its employees intentionally spilled or discharged hazardous materials at the Premises, all costs incurred to prepare and submit the required plans and carry out the approved plans shall be at Company's cost and expense and not as a Project Cost. If any such spills or discharges are a result of the actions of agents, contractors, third parties or the actions of Company that were not intended to spill or discharge hazardous materials at the Premises, all costs incurred to prepare and submit the required plans and carry out the approved plans shall be a Project Cost.

3.1.3.2 Company hereby agrees to indemnify Lessor from all costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal or restoration work required by any Federal, State or local governmental agency or political subdivision because of an environmental condition on, under or about the Premises that is caused by Company, its Sublessees, their agents, employees, contractors or invitees. If any such environmental condition is a result of the gross negligence of Company or its employees or if Company or its employees intentionally caused such environmental condition, all costs incurred to bring the Premises into compliance with environmental laws shall be at Company's cost and expense and not as a Project Cost. If any such environmental condition is a result of the actions of Sublessees, agents, contractors, third parties or the actions of Company that were not intended to contaminate the Premises, all costs incurred to bring the Premises into

compliance with environmental laws shall be a Project Cost. Lessor hereby agrees to indemnify Company from all costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal or restoration work required by any Federal, State or local governmental agency or political subdivision because of an environmental condition on, under or about the Premises that existed prior to the Commencement Date of this Agreement or was caused by Lessor, its agents, employees, contractors or invitees during the term.

3.1.3.3 Should any governmental agency having authority over such matters determine that a site characterization, site assessment, and/or cleanup plan be prepared or that a cleanup should be undertaken because of any spills or discharges of hazardous materials at the Premises by Sublessees and Tenants, and their respective agents, employees, contractors or invitees which occur during the term of this Agreement, then Company shall (as a Project Cost) prepare and submit the required plans and financial assurances, and carry out the approved plans. Company will promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises, or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to such environmental contamination. All amounts recovered (whether by way of settlement of a claim, judgment, indemnity or otherwise) by Company from any such Sublessee, Tenant, agent, employee, contractor, servant or invitee in connection with the foregoing matters shall be included in Total Revenue for the full or partial calendar year of the term of this Agreement in which recovered (Company's reasonable costs of recovery shall be deducted as a Project Cost), or if recovered following the expiration or termination of the term of this Agreement, fifty percent (50%) of such recovery (after deducting from such recovery the Company's reasonable costs of recovery not theretofore included in Project Costs) shall be promptly paid over to Lessor.

ARTICLE IV

4.1 FORCE MAJEURE

Neither Lessor, Company or any Leasehold Mortgagee will be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations hereunder if, while and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of governmental authority, unusual weather conditions, floods, riots, rebellion or sabotage. However, the provisions of this Section will not apply to, nor excuse any failure by Company to pay Rents, fees or any other money payments required under the provisions, covenants or agreements contained in this Agreement.

4.2 QUIET ENJOYMENT

Lessor agrees that, on payment of the Rents and fees and performance of the covenants, conditions and agreements on the part of Company to be performed hereunder, Company will have the right to peaceably occupy and enjoy the Premises.

4.3 NOTICES

All notices, requests, consents and approvals under this Agreement will be given only by personal delivery, certified mail return receipt requested, overnight courier service or facsimile. The same shall be deemed to have been given: (i) if personally delivered, upon receipt, (ii) if by certified mail, upon the date indicated on the return receipt, (iii) if by overnight courier service, upon the date delivered as shown by the records of the courier, and (iv) if by facsimile, at the time of electronic confirmation of successful transmission.

Notices intended for the Lessor will be addressed to:

Successor Agency to The Industry Urban-Development Agency
15625 East Stafford Street, Suite 200
City of Industry, California 91744
Attn: Executive Director
Facsimile: (626) 961-6795

or to such other address as may be designated by the Lessor by written notice to Company.

Notices intended for the Company will be addressed to:

Industry East Land, LLC
c/o Majestic Realty Co.
13191 Crossroads Parkway North
City of Industry, California 91746
Attn: Edward P. Roski, Jr.
Facsimile: (562) 692-1553

or to such other address as may be designated by the Company by written notice to Lessor.

4.4 HEADINGS, TITLES OR CAPTIONS

Article, section or paragraph headings, titles or captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or extent of any provision of this Agreement.

4.5 INVALID PROVISIONS

It is expressly understood and agreed by and between the parties hereto that in the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition or provision will in no way affect any other covenant, condition or provision herein contained; provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice either Lessor or Company in their respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

4.6 STATE OF CALIFORNIA LAW

This Agreement will be interpreted under and governed by the internal laws of the State of California, without regard to principles of conflicts of law.

4.7 ENTIRE AGREEMENT

This document represents the entire agreement between the parties hereto and it cannot be effectively modified or canceled by mutual agreement or in any manner, nor may any term or provisions of this Agreement be waived, except by an instrument in writing approved by Lessor and executed by duly authorized officials, officers or agents of the Parties.

4.8 **SUBDIVISION OF THE PREMISES AND RIGHT TO SEPARATE LEASES**

4.8.1 The parties hereto acknowledge and agree that the Premises will be developed by Company with Facilities, in phases, over a number of years. During the term of this Agreement, Company may, from time to time, as a Project Cost, to subdivide the Premises to create such separate legal parcels as Company reasonably deems desirable for the development of the Premises and to cause subdivision maps covering the Premises, or any portion thereof, to be prepared and processed through the appropriate governmental agencies, executed by Company and Lessor, and filed for record in accordance with all laws and ordinances applicable thereto. Subject to the foregoing, at any time, and from time to time during the term of this Agreement, Lessor agrees to, within 15 days after the written request of Company, execute and deliver such instruments as may be appropriate, necessary, or required for: (i) the grant or dedication of any easement, right of way or other property right to any public entity or service corporation for ingress, egress, road or utility purposes and reasonably required for the subdivision or development of the Premises, or (ii) the obtaining of governmental approvals, consents, zoning changes, conditional uses, variances, subdivision maps or the like, or for the purpose of providing adequate utility services to the Premises, or permitting Company to construct the Facilities or other improvements on the Premises or make any alteration or addition to the Facilities.

4.8.2 The parties further acknowledge and agree that as a result of such phased development, Company will be obtaining construction, interim and permanent financing for the development of various portions of the Premises and the Facilities at different times during the Term of this Agreement. In order to facilitate such phased development and to facilitate separate financing for various phases thereof, the parties hereby agree that the Company shall have the right, at any time, and from time to time, during the term of this Agreement, or any extension thereof, to have any portion of the Premises removed from the legal description of the Premises and to have the Lessor and Company enter into a new separate lease covering the portion of the Premises so removed from this Agreement.

4.8.2.1 All such new leases shall be for the remainder of the Term of this Agreement and shall be on the same terms and conditions as this Agreement, including, without limitation, the right of first refusal as set forth herein. If requested by Company, Lessor agrees to grant any easements reasonably required for access, road or utility purposes between the Premises remaining subject to this Agreement and the portion of the Premises which becomes subject to any such new lease.

4.8.2.2 At any time Company desires a separate lease, Company shall prepare an amendment to this Agreement deleting the portion of the Premises to be covered by the separate lease and shall also prepare such separate lease and submit both documents to Lessor for execution. Lessor agrees to execute such amendment and separate lease within twenty (20) days after Company submits such documents. Concurrently with the execution of each such amendment and separate lease, the Parties shall execute a memorandum in recordable form evidencing the existence of such separate lease, the portion of the Premises subject to such separate lease, the effective date and termination date of such separate lease and the fact that there is a right of first refusal to purchase the Premises. Concurrently with the execution of such amendment and separate lease, the parties shall

also execute a memorandum in recordable form evidencing the existence of such amendment to this Agreement. Any such separate lease shall have the same title priority as this Agreement and shall be subject only to the exceptions to title having priority over this Agreement or such additional exceptions to which Company has consented in writing. In the event the parties enter into any such separate lease, title to all Facilities located upon the Premises subject to such separate lease shall automatically vest in Company as of the effective date of such separate lease. If requested by Company, Lessor agrees to execute and deliver to Company within 10 days after request therefore, a quitclaim deed in recordable form conveying title to such Facilities on the premises subject to the separate lease to Company. Lessor also agrees to assign to Company all Subleases with Tenants whose Subleases attach to Lessor upon the termination of this Agreement and creation of such separate lease.

4.8.2.3 The creation of a separate lease of a particular parcel that was included in the initial conveyance, pursuant to this Article 4.8 is intended to merely continue the initial grant. The amendment of this Lease to delete separately leased premises and the creation of any separate lease is not intended to: (1) expand the rights or interests created by the initial conveyance; (2) constitute a "creation" of a taxable possessory interest; (3) constitute a "renewal" or "extension" of a taxable possessory interest; and/or (4) grant any additional property or authorize uses not already permitted by this Lease.

4.9 RIGHT OF FIRST REFUSAL TO PURCHASE

At all times during the term of this Agreement and any extensions or renewals thereof, should Lessor receive a bona fide offer from any third party to purchase all or any portion of the Premises, which offer Lessor desires to accept, Lessor shall, before accepting such offer, provide Company with a full and complete copy of such offer and shall first offer in writing to sell the portion of the Premises which is the subject of such offer to Company on the same terms and conditions as set forth in said offer. Upon receipt of any such notice and copy of such offer from Lessor, Company shall have thirty (30) days thereafter within which to accept the same. Should Company fail to accept any such offer within said thirty (30) day period, Lessor shall be free to sell said portion of the Premises to the original offeror upon the same terms and conditions offered to Company without further notice to Company. Should Lessor after having made such offer to Company as above described, fail to sell said portion of the Premises upon the same terms and conditions offered to Company, Lessor shall give Company notice and the first right to purchase in the manner set forth above of any further or different offers received by Lessor for the purchase of said portion of the Premises and shall first offer to sell the same to Company upon the same terms and conditions before accepting any such further or different offer. The right of first refusal set forth herein is a continuing right of first refusal to purchase and shall apply to all subsequent bona fide offers from third parties after a sale by Lessor, or its successors, to a party other than Company.

4.10 UTILITIES

To the extent not paid by Sublessees, Company shall, as a Project Cost, pay for all water, gas, heat, light, power, telephone service, trash disposal and other utilities and services supplied to the Premises and the Facilities located thereon, together with any taxes thereon.

4.11 OWNERSHIP OF IMPROVEMENTS

All improvements constructed on the Premises by Company (including, without limitation, the Facilities) at any time and from time to time, will be owned by Company during the term of this Agreement. If requested by Company, any Leasehold Mortgagee or title insurance company, Lessor agrees to execute and deliver to Company within ten 10 days after request therefor, a quitclaim deed in recordable form conveying or confirming title to all such improvements in Company. All such buildings and improvements constructed upon the Premises by Company are and shall remain real property and may not be severed from this Agreement or the leasehold estate created hereby.

4.12 LEASING COMMISSIONS

In the event Company retains the services of Majestic Realty Co. or any affiliate of Company to Sublease the Premises and the Facilities, the leasing commissions paid to Majestic Realty Co. or any such affiliate, as a Project Cost, shall not exceed the scheduled commissions for similar services charged by the major brokerage companies operating in the County of Los Angeles, California.

4.13 COVENANTS FOR NON-DISCRIMINATION

The Company covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry in the use and occupancy of the Premises, nor shall the Company itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the use or occupancy of the Premises.

4.13.1 The Company shall refrain from restricting the rental or lease of the Premises on the basis of race, color, creed, religion, sex, marital status, handicap, national origin or ancestry of any person. All such leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, handicap, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased."

2. In contracts: "There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, handicap, ancestry or national origin, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with

reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants or vendees of the premises.”

4.13.2 The covenants established in this Section shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Lessor, its successors and assigns, the City of Industry and any successor in interest to the fee ownership of the Premises or any part thereof. The covenants, contained in this Section shall remain in effect for the term of this Agreement.

4.14 PUBLIC FINANCING

The parties hereby agree and acknowledge that, in order to assist with the financing of construction of Streets A, B, C, D and Grand Crossing Parkway and the storm drain system, sanitary sewer, domestic, fire and reclaimed water systems, and dry utilities located within the public rights of way of Streets A, B, C, D and Grand Crossing Parkway, the parties may initiate proceedings to form one or more community facilities or other assessment or public financing districts which may encompass all or certain portions of the Premises. The parties hereby agree to cooperate in good faith with each other to (i) initiate such formation proceedings, (ii) form one or more community facilities or other assessment or financing districts over all or any portion of the Premises, and (iii) cause such public financing district or districts to issue bonds to assist with the financing of construction of Streets A, B, C, D and Grand Crossing Parkway and the storm drain system, sanitary sewer, domestic, fire and reclaimed water systems, and dry utilities located within the public rights of way of Streets A, B, C, D and Grand Crossing Parkway. Company and Lessor hereby agree that the Premises or any portion thereof, as determined by the parties, shall be included within the boundaries of said public financing district or districts. In addition, the parties hereto hereby agree to cooperate with each other and, if necessary, the City of Industry to promptly execute all other documents and take all other actions reasonably requested by Lessor and/or Company in connection with any and all actions and approvals required to be taken in the ordinary course of formation of such community facilities or other assessment or public financing district over all or any portion of the Premises or any actions related thereto in accordance with the terms of the Mello-Roos Community Facilities Act of 1982, as amended, Rule 15c2-12 promulgated by the Securities and Exchange Commission, or any other California law governing formation of such public financing districts. The parties hereby agree and acknowledge that, in order to assist with the annual maintenance of the landscaping and irrigation systems installed upon the slopes manufactured during the grading of the Project, the parties may initiate proceedings to form one or more maintenance districts which may encompass all or certain portions of the Premises. The parties hereby agree to cooperate in good faith with each other to (i) initiate such formation proceedings, and (ii) form one or more maintenance districts over all or any portion of the Premises. Company and Lessor hereby agree that the Premises or any portion thereof, as determined by the parties, shall be included within the boundaries of said district or districts. In addition, the parties hereto hereby agree to cooperate with each other and, if necessary, the City of Industry to promptly execute all other documents and take all other actions reasonably requested by Lessor and/or Company in connection with any and all actions and approvals required to be taken in the ordinary course of formation of such district over all or any portion of the Premises or any actions related thereto in accordance with the terms of any applicable Federal or California law governing the formation and operation of such districts.

IN WITNESS WHEREOF, Lessor and Company have executed these presents the day and year first above written.

ATTEST:

SUCCESSOR AGENCY TO THE INDUSTRY
URBAN-DEVELOPMENT AGENCY

BY: _____
Its: _____

BY: _____
Its: _____

INDUSTRY EAST BUSINESS CENTER, LLC, a
Delaware Limited Liability Company

BY: Majestic Realty Co., a California corporation, its
Manager

APPROVED AS TO FORM:
Casso & Sparks, LLP

By: _____

Its: _____

By: _____

By: _____

Its: _____

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 3 OF PARCEL MAP NO. 352, IN THE CITY OF INDUSTRY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, FILED IN BOOK 401 PAGES 29 THROUGH 48, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT “B”

SCOPE OF SUCCESSOR AGENCY IMPROVEMENTS

SCOPE OF AGENCY IMPROVEMENTS

The Agency will, at its cost and expense (unless a public financing district is formed to assist with the financing of a portion of such costs in accordance with Section 4.14 of the Lease Agreement), design and construct the public improvements, located within the public rights of way, reasonably necessary to adequately serve the Project and to provide the mitigation required for the Project to satisfy the requirements of the California Environmental Quality Act (“CEQA”) and the approved Environmental Impact Report (“EIR”) for the Industry Business Center. Said public improvements shall include:

A. Roads

Design and construct streets and all utilities and infrastructure for the following project roadways. (See attached Site Development Plan.)

Street improvements will include curb, gutter, and road pavement design and grades and sidewalks. Street lighting, traffic signals, pavement striping, traffic control signage, landscape and irrigation for roadway medians are also included.

Street A – from Grand Ave west to Grand Crossing Parkway and from Grand Avenue east to Street “B”, including special intersection design at Grand Avenue, all street improvements, utilities and infrastructure.

Street B – From Street “A” to Grand Avenue and intersection modifications at Grand Avenue all street improvements, utilities and infrastructure.

Street C – From Street “B” to Street “D”, all street improvements, utilities and infrastructure.

Street D – From Street “C” to the end of the cul de sac, all street improvements, utilities, and infrastructure.

Grand Crossing Parkway – From Grand Avenue west to the project boundary, including special intersection design at Grand Avenue, all street improvements, utilities and infrastructure.

Grand Avenue – Modify to accommodate project traffic and project related turn movements. All street improvements, utilities and infrastructure.

B. Master Hydrology

Prepare a master hydrology report and construct the required improvements for the project site based on full buildout of Project as depicted in the EIR. The hydrology report will require approval from the Los Angeles County Food Control District for storm drain connections to San Jose Creek.

C. Storm Drain System

Design and construct a storm drainage system to convey water from the planned public streets described above. The storm drainage system will be designed to carry storm water flows from the planned development areas and adjacent property. Lateral stubs will be extended to the street right of way for each development lot. (See attached Storm Drain System.)

D. Sanitary Sewer:

Design and construct sanitary sewer main lines within the project roadways and easements where necessary, to serve each lot within the project development. Plans will include main line connections to existing trunk sewers. (See attached Sewer System.)

E. Water

Design and construct potable water lines within Grand Crossing Parkway, Street A, Street B, Street C and Street D. Lines will connect to the existing systems in Grand Avenue, and Baker Parkway. Service laterals to each lot will be provided, however meter vaults and back flow preventors will not be set. The location of such meter vaults and back flow preventers shall be established by the Company. (See attached Water System).

Install Fire Hydrants as required.

F. Reclaimed Water

Design and construct reclaimed water lines within Grand Avenue, Grand Crossing Parkway, Street A, Street B, Street C and Street D and any other reclaimed lines required for the Project. Design and construct water reservoir described in EIR.

Grand Crossing Parkway, Street A, Street B, Street C and Street D water lines will connect to the existing systems in Grand Avenue and Baker Parkway. Services laterals to each lot will be provided, however meter vaults and back flow preventers will not be set. The location of such meter vaults and back flow preventers will be established by the Company. (See attached Reclaimed Water System.)

G. Dry Utilities

Design and construct ducts, vaults, junction boxes and related substructure elements for Electrical, Telephone (including fiber optics), and main line Gas systems. Line and ducts will stubbed to the right of way line to provide service to each lot. Such work shall be coordinated with utility companies. (See attached Gas Lines.)

H. Grading

Design and construct mass grading at elevations predetermined by Company and Agency, to remove or reduce existing hill areas and to remove and stabilize landslide areas within the Project. Export material will be transported and placed as compacted fill within the street rights of way for the construction of public improvements, or for slopes and creation of the development planning areas described in the EIR. Any excess material will be exported from the Project. The existing utility lines crossing such hill areas will be relocated and any required wetlands mitigation will be undertaken.

I. Former Valley Land Development Company Landfill

Provide the mitigation required for the Project to satisfy the requirements of the California Environmental Quality Act ("CEQA") and the approved Environmental Impact Report ("EIR") for the Industry Business Center relating to the Valley Land Development Company landfill.

J. Slope Landscaping

Design and construct the landscaping and irrigation systems required for the Project to satisfy the requirements of the California Environmental Quality Act ("CEQA") and the approved Environmental Impact Report ("EIR") for the Industry Business Center relating to the re-vegetation and landscaping of the slopes manufactured during the grading described in Item H above.

K. Additional Work

Any additional public improvements required to satisfy the CEQA mitigation requirements for the Project.