



**CITY OF IRWINDALE
PLANNING COMMISSION STAFF REPORT**
COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION



Date: July 21, 2021 **Agenda Item No. 3-C**

To: Honorable Chair and Members of the Planning Commission

From: Marilyn Simpson, AICP, Community Development Director

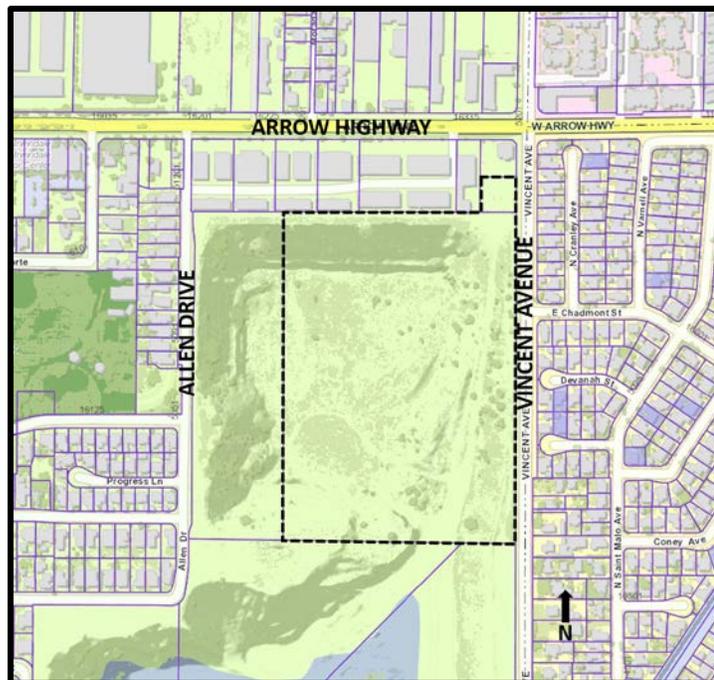
Project Planner: Brandi Jones, Senior Planner

Project: General Plan Amendment No. 02-2017
Site Plan & Design Review (DA) No. 04-2017
Speculative 545,735 Square-Foot Concrete Tilt-Up Building

Applicant: Mark Gabay, Five Points, LLC

Property Owner: Mark Gabay, Five Points, LLC

Project Location: 5175 Vincent Avenue (APNS: 8417-034-015, 8417-034-016)



Staff Recommendation: That the Planning Commission: 1) Adopt Resolution No. 803(21) recommending that the City Council certify the FEIR, adopt the Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program (MMRP); 2) adopt Resolution No. 804(21) recommending that the City Council approve General Plan Amendment No. 02-2017; and 3) adopt Resolution No. 805(21) recommending that the City Council approve Site Plan and Design Review (DA) No. 04-2017 subject to the proposed Conditions of Approval for the single or three (3) building alternative.

REQUEST

The Applicant is requesting a General Plan Amendment (Map) to change the designation of a portion of the subject property from Residential to Industrial/Business Park and a Site Plan and Design Review (DA) for the construction of a ±545,735 square-foot concrete tilt-up building and associated parking.

BACKGROUND/HISTORY

Mining of the 26.05-acre site began in the 1930s and was completed in the 1970s. The City's portion of the site was subsequently used to dispose of silt, clay, and sand wash product (fines) from an onsite aggregate processing facility. The City acquired the northern portion of the pit in the late 1980s from Los Angeles County. The City then began backfilling the Proposed Project site with a variety of construction debris (e.g., soil, concrete, asphalt, rebar, bricks, and cinder blocks) and other inert materials.

On October 10, 2007, Windrow Earth Transport (Dispatch) was awarded the contract to perform remediation of the site. On November 6, 2008, the Planning Commission approved Conditional Use Permit No. 9-08 and adopted Mitigated Negative Declaration (MND) No. 4-08 for the remediation and filling of the former Manning Pit. On October 1, 2009, the Planning Commission approved Modification No. 4-09 to Conditional Use Permit No. 9-08 and adopted an amendment to the MND to modify hours of operation. Operations began approximately May 2010 and was completed on April 11, 2019.

Purchase and Sale

On December 13, 2013, the City, Dispatch and the Developer entered into an Exclusive Negotiating Agreement (ENA). The ENA stated that the subject property was to be developed to include light industrial and/or commercial development. On October 28, 2015, the City and the developer entered into an agreement for the purchase, sale and development of the subject property. The following excerpts are from the approved Purchase and Sale Agreement (PSA) and Resolution No. 2015-70-2799:

“G. In accordance with Irwindale Charter Section 607(j) and Irwindale Municipal Code Section 3.44.160, the City Council has considered the sale of the Site pursuant to this Agreement for the full, appraised fair market value and, per Resolution No. 2015-70-2799 approved concurrently with this Agreement, found that the sale is appropriate to further

the City Council's goals of providing for economic development of underutilized and blighted property in the City.”

“H. The City Council found that the proposed Project will result in a significant economic opportunity. The Site will be revitalized from an extreme blighted condition, including the excavation of contaminated soils and back-filling of clean fill for abandoned mining pits. The City Council finds and determines that the Project is likely to result in employment of City residents, substantial increases in tax revenues to the City, and provide other amenities. City acknowledges the public benefit of such results and wishes to encourage expansion of job opportunities in the City. This Agreement is in accord with applicable state and federal laws. and is in the vital and best interests of the community, will serve the health, safety, and general welfare of the City of Irwindale, and their citizens, will serve to strengthen the City's land use and social structure, and alleviate economic and physical blight within the City.”

“10.8 Use of the Site & Project: CC&Rs.

The Buyer covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction and thereafter, that the Buyer and such successors and such assigns shall devote the Site to the uses specified therefore in the Project Scope of Development (Exhibit "B") or any plans as may be approved in writing by the City. Buyer agrees to use, devote, and maintain the Site for (i) light industrial and commercial improvements on approximately two-thirds (2/3) of the easterly portion of the Site, including attendant streets, lighting, landscaping and other public improvements, and (ii) aesthetic landscaping in the residential buffer to be maintained in such a manner as to effectively and attractively screen the residential area from visual, noise and dust impacts associated with the Project. Buyer shall maintain all landscaping in the Residential Buffer at its sole cost and expense in a manner so as to allow for an attractive, seamless and efficient tie to the residential area and pursuant to the Covenants, Conditions & Restrictions ("CC&Rs") in a form materially similar to that attached hereto as Exhibit "D".”

“Scope of Development from Resolution No. 2015-70-2799 stated:

Any proposed future project shall be consistent with the City's General Plan and Zoning Code. The "Project" to be developed on the Site, when submitted at a future date, shall be light industrial and/or commercial in nature and shall include improvements to enhance the aesthetics of the surrounding neighborhood and protect the residential uses; improvements shall include but not be limited to, attendant streets, lighting, landscaping, decorative perimeter walls, and other public improvements. The Project shall include a landscaped "buffer area" ("Residential Buffer") to separate the Project's industrial components from the residential areas. Since a project has yet to be identified and submitted for review, project impacts cannot be identified at this time. Therefore, any proposed future project on this property shall comply with the requirements of the California Environmental Quality Act through the preparation of an Initial Study that may

result in the preparation of a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report."

GENERAL PLAN AND ZONING

The site is designated in the General Plan as Industrial/Business Park and Residential. The property is currently zoned M-2 (Heavy Manufacturing). The following zones and uses surround the site:

Direction	Existing Land Use	Zoning District
North	Industrial Business Park/Restaurant	M-2, Heavy Manufacturing
South	Los Angeles County pit	M-2, Heavy Manufacturing
East	Single Family Residential	LA County Regional Planning A-1
West	Vacant Land	M-2, Heavy Manufacturing

PROJECT DESCRIPTION

The proposed project is for the construction of a ±545,735 square-foot speculative concrete tilt-up building and associated passenger vehicle and truck parking. The building consists of ±10,000 square feet of office (5,000 square feet ground floor/5,000 square feet mezzanine) and ±535,735 of warehouse. An alternative design comprised of ±544,483 has also been analyzed per CEQA requirements. At this time, there is no prospective user.

Community Meeting

On August 9, 2018, the Planning Division hosted a community meeting at the Irwindale Community Center. The purpose of the meeting was to provide an opportunity to review and comment on the proposal, ask questions and understand the process. Representatives from Five Points, LLC and City staff attended. The meeting was well attended and the primary areas of concern were current issues with dust, trucks and the potential impact of the proposal. Staff answered questions and made themselves available for assistance after the meeting via email and phone.

Tribal Consultation

A formal consultation was held on December 6, 2018 with the representatives for the Gabrieleno Band of Mission Indians - Kizh Nation. The results of this consultation are summarized in the DEIR. As a result of this consultation, mitigation for impacts to tribal cultural resources that have been included in the EIR.

Scoping Meeting

A Scoping meeting was held on February 20, 2020 to gather information for the scope of the environmental document to be prepared, at which time, attendees voiced comments regarding the project to the environmental consultant. After additional community and external agency input, the project's environmental review shifted from an MND to an EIR.

Public Outreach

The developer scheduled a non-City sponsored community meeting on July 15, 2021 at Family Christian Church. Prior to the meeting, their team distributed 1500 flyers to nearby Irwindale and County of Los Angeles neighborhoods and followed up with door-to-door direct contact.

General Plan Amendment

The map which was used to determine the General Plan designation of the site was taken from the 2008 General Plan and the property boundaries are ambiguous. Staff believes the ±6.93 acres designated as Residential is a simple map error due to the age and sophistication of the original software and method of reproduction used.

Site Plan and Design Review

Pursuant to the provisions of Chapter 17.70 (Site Plan and Design Review) of the Irwindale Municipal Code (IMC), “No person shall construct any building or structure or make structural and physical improvements, additions, extensions and/or exterior alterations, and no permit shall be issued for such construction until the site plan and design review has been submitted to, reviewed by, and approved in accordance with this chapter. The property may only be developed, used and maintained in accordance with the approved site plan and design review.”

Lot Line Adjustment

The subject property is comprised of two (2) individual parcels that will be combined into one through the administrative lot line adjustment process.

Development Standards

Development Standard	Minimum Requirement	Project Proposal (Single Building)	Alternate Proposal (Three Buildings)
Front Yard Setback	20'-0"	167'-0" – 205'-0"	20'-0"
Side Yard Setback	0'-0"	75'-8" – 93'-9"	82'-0" – 110'-0"
Rear Yard Setback	N/A	155'-0" – 196'-4"	44'-10"
Floor Area Ratio (F.A.R.)	1:1.0	.48:1.0	.48:1.0
Building Height¹	N/A	51'-0"	TBD
Landscaping	10%	10%	10%
Parking	183/303	199	396
Truck/Trailer Parking	N/A	181	96

¹ Per IMC subsection 17.08.085 “Building Height” means the vertical distance from the finished grade of the lot to the highest average point of the building or structure.

Building Design/Design Guidelines

The proposed project is a single-story building located on the former Manning Pit. The proposed tilt-up building incorporates many of the desired design elements from the Commercial and Industrial Design Guidelines. The layout, landscaping and design of the site also incorporated encouraged design principles. For example, the use of an authentic period style compatible with City context, new buildings that draw upon the fundamental characteristics of existing buildings in the City, façade depth of plans and variations on all sides, including varied rooflines, berms, meandering sidewalks and multi-layered landscaping.

The large building incorporates tower elements as focal points and breaks up the expansive exterior walls with architectural projections and details around the windows. The vertical and horizontal reveals, arched parapets and multi-color palette also work to add depth and character to the building. The design is similar to many of the recently approved developments, which have been designed to closely adhere to the guidelines, while maintaining function and aesthetic uniqueness.

Alternative Option – Multiple Building

Part of an EIR analysis requires the consideration of alternatives to the proposed project. Under the multiple building alternative, the Project site would be developed with three (3) separate industrial warehouse buildings: Building 1 (121,397 sf with 111 parking stalls); Building 2 (121,373 sf with 91 parking stalls); and Building 3 (301,713 sf with 194 parking stalls). As shown in Figure 5.0-1, Buildings 1 and 2 would be located along Vincent Avenue (on the eastern half of the site), and Building 3 would be located on the western half of the site. Buildings 1 and 2 would each contain two 5,000 sf office areas, and Building 3 would contain four 5,000 sf office areas. Automobile parking among the three buildings would not be shared and would be dedicated to each building. However, the trailer parking for the trucks would be shared. Overall, the multiple building alternative would include development of up to 544,483 sf of industrial uses (a reduction of 1,252 sf compared to the Project). The same architectural treatments, consistent with the Commercial and Industrial Design Guidelines, would be incorporated into these buildings. This alternative has been fully analyzed in the EIR.

Operation

The prospective use is currently unknown but there are many potential uses that are permitted by right due to the current zoning designation. However, certain uses would not be allowed or would be subject to a Conditional Use Permit. These uses would require Planning Commission approval and be subject to a set of Conditions of Approval and a signed Affidavit of Acceptance from the property owner and tenant acknowledging and agreeing to abide by the imposed conditions. Some uses, such as fulfillment centers, parcel hubs and cold storage have been expressly prohibited for this site without further future environmental analysis. The overwhelming majority of industrial development in the City is speculative.

Landscaping, Project Fencing and Screening

Approximately 112,749 square feet (10%) of the project site is proposed to be landscaped in compliance with the “City of Irwindale Commercial and Industrial Design Guidelines” and the Zoning Code requirements for parking area landscaping. The proposed landscape plan is comprised of a combination of parking lot shade trees, shrubs, and groundcover. The proposed overhead trellis acts as an architectural feature which simultaneously supports vertical landscaping and provides additional visual screening of the trailer court and roll-up doors. This trellis sits atop of the proposed 8’-0” screen wall and the remaining three (3) property lines are enclosed by 8’-0”, black tube steel. A 10’-0” wide area of land along the southern property line will be deeded back to the owner upon approval of the project. This area measures 8,874 square feet and will function as an easement with public access. There is also an 11’-4” wide landscaped buffer along western property line, which is shared with the future residential development.

Access and Circulation

Ingress and egress to the site are provided via a two (2) driveways, both fronting onto Vincent Avenue. The proposed building is setback approximately 150’-0” feet from vehicle ingress to accommodate projected queuing, thus avoid overflow onto Vincent Avenue.

Parking

IMC Subsection 17.64.030.P(2) “Offices not providing customer service on the premises” requires a minimum one (1) parking space for each two (2) employees on the maximum (most workers) working shift or one (1) space for each 350 square feet of gross floor area, whichever is the greater and IMC Subsection 17.64.030(V) “Warehouse and storage buildings” requires one (1) parking space for each 1,000 square feet of the first 20,000 square feet of gross floor area, one (1) space for each 2,000 square feet for the next 20,000 square feet of gross floor area and one (1) space for each 4,000 square feet for all floor area over 40,000 square feet of gross floor area.

Based on the proposed square footage, the project requires 183 stalls and 199 standard-sized stalls are being proposed. In addition to providing parking for passenger vehicles, there are 18 bicycle parking stalls and space for 181 trailer stalls. The current IMC does not have a minimum stall size for trailers; however, the proposed stalls measure 10’-0 x 53’-0. All parking is surface parking; there are no proposed parking structures or subterranean lots.

Building Height

There is no established maximum allowable height standard in the M-2 (Heavy Manufacturing) zone. The proposed tilt-up will be 51’-0”. The following examples are building heights of approved projects over the past five (5) years:

- 16203 – 16233 Arrow Highway – 35’-0”
- 5010 Azusa Canyon Road – 44’-0”
- 13131 Los Angeles Street – 53’-5”
- 12761 Schabarum Avenue – 59’-0”
- 1200, 1220, 1270 Arrow Highway – 60’-0”

- 1500 Duarte Road – 74'-6"

Signage

IMC Section 17.56.050 "Signs" provides the maximum allowable sign area for freestanding and wall signs. Based on the approximate square footage of the medical office building, the allowable amount of wall signage would equate to ±5,457 square feet. Freestanding signs would be limited to 150 square feet regardless of building size. Like other recently approved, large-scale projects, staff incorporates a Condition of Approval that requires the applicant to prepare a comprehensive sign program. The sign program includes but is not be limited to sign type, square footage allowances, placement, illumination, quantity, colors and materials.

ENVIRONMENTAL REVIEW

An Environmental Impact Report (EIR) has been prepared to analyze environmental impacts, discuss feasible alternatives and recommend mitigation measures related to implementation of the proposed project. The California Environmental Quality Act (CEQA) requires that local government agencies consider the environmental consequences before taking action on projects over which they have discretionary approval authority. An EIR analyzes potential environmental consequences in order to inform the public and support informed decisions by local and state governmental agency decision makers. An EIR is the most comprehensive form of environmental documentation under CEQA and the CEQA Guidelines; it is intended to provide an objective, factually supported analysis and full disclosure of the environmental consequences of a proposed project with the potential to result in significant, adverse environmental impacts. Certification of an EIR will enable the applicant/developer to pursue their development goal to construct an industrial warehouse building.

The Draft Environmental Impact Report (DEIR) was circulated for public review for the required 45 days from February 17, 2021 to May 2, 2021. A copy of the DEIR was circulated through the State Clearinghouse (SCH# 2018121056), posted on the City's website, and was available at the Irwindale Public Library and Deputy City Clerk's Office. The Notice of Availability was posted with the Registrar-Recorder/County Clerk. (A copy of the DEIR, FEIR and Mitigation Monitoring and Reporting Program is posted on the City's website at <https://www.irwindaleca.gov/400/5175-Vincent-Avenue>, and the FEIR is included herein as Exhibit F. All technical appendices are also available on the website.

The environmental consultant has analyzed the project under 21 environmental study areas, prepared two (2) project alternatives, offered a series of mitigation measures, and identified one (1) significant and unavoidable environmental impacts area.

The EIR analyzed the environmental impacts to the following study areas: 1) air quality, 2) cultural resources, 3) energy, 4) greenhouse gas emissions, 5) hazards and hazardous materials, 6) hydrology and water quality, 7) land use planning, 8) noise, 9) transportation, 10) tribal cultural resources, 11) utilities and service systems, 12) aesthetics, 13) agriculture and forestry resources, 14) biological resources, 15) geology and soils, 16)

mineral resources, 17) population and housing, 18) public services, 19) recreation, 20) wildfire, and 21) mandatory findings of significance. Impacts related to agriculture and forestry resources, biological resources, mineral resources, population and housing, public services, recreation, and wildfire were determined to be less than significant. Impacts related to aesthetics, geology and soils, hydrology and water quality, greenhouse gas emissions, transportation, energy, hazards and hazardous materials and mandatory findings of significance were determined to be significant, but less than significant after incorporation of mitigation measures.

The EIR analysis determined that the proposed project, with implementation of mitigation measures, would result in significant and unavoidable environmental impacts in the area of air quality; and because of this, the EIR will require the City Council to approve a Statement of Overriding Considerations.

Each EIR is required to consider alternatives to the proposed project that are capable of eliminating significant adverse environmental effects or reducing them to less than significant levels, even if these alternatives would impede, to some degree, the attainment of the proposed project objectives.

Three alternatives to the proposed Project were developed based on input from City staff, the public during the NOP review period, and the technical analysis performed to identify the environmental effects of the proposed Project. The alternatives analyzed in this EIR include the following three alternatives in addition to the proposed Project (Section 5.2).

- **No Project (No Build) Alternative:** Under this alternative, development of the Project site would not occur, and the Project site would remain in its current existing condition.
- **Multiple Building Alternative:** Under this alternative, the proposed Project would be developed with the same type of use as described in the Project Description, but the warehouse building would be split into three smaller warehouse buildings as detailed above.
- **Maximum FAR Alternative:** Under this alternative, the proposed Project would be developed using the maximum floor-area-ratio (FAR).

The EIR provides a description of the potential environmental impacts of the proposed project scenario and recommends mitigation measures to reduce impacts to a less than significant level, where possible. After implementation of mitigation measures, most of the potentially significant impacts associated with the proposed project would be reduced to less than significant levels. However, the EIR analysis determined that the proposed project, with implementation of mitigation measures, would result in significant environmental impact in the areas of air quality; and because of this, the EIR will require the City Council to approve a Statement of Overriding Considerations.

This EIR identifies one (1) significant and unavoidable adverse impact, as defined by CEQA that would result from implementation of the proposed project. Unavoidable adverse impacts may be considered significant on a project-specific basis, cumulatively significant, and/or potentially significant. The significant impacts of the project that have not been reduced to a level of insignificance will have been substantially reduced in their impacts by the imposition of mitigation measures. Staff will be recommending that the Planning Commission recommend that the City Council find that the significant unavoidable adverse impacts of the industrial warehouse project are clearly outweighed by the economic, social, technological, and other benefits of the project, as set forth in the Statement of Facts and Findings and Statement of Overriding Considerations that will be provided to the City Council. The project benefits include additional employment opportunities to the community, development of an industrial warehouse building on a site that is consistent with the policies of the General Plan and zoning, and is accessible to regional markets, and conforms to the City's design guidelines in an effort to promote quality urban design. The impacts that were found in the EIR to be significant and unavoidable are related to:

- Air Quality

Although the EIR identifies certain significant environmental effects that will result if the project is implemented, all significant effects that can feasibly be avoided or mitigated will be by the imposition of conditions and/or mitigation measures. Based on current State Law, unavoidable air quality impacts are common with many projects such as the proposed industrial warehouse project.

The Notice of Availability related to the Draft EIR was released by the City for public comment on February 17, 2021 and concluded on May 2, 2021. A total of eleven (11) letters were received. These comments were provided by: Sanitation District of Los Angeles County, Edward and Margaret Curren, County of Los Angeles Public Health, Golden State Environmental Justice Alliance, Frederick S. Barbosa and Rebecca A. Barbosa, SWAPE, James Trenkamp and Charlotte Santos, John Chico, Los Angeles County Sanitation Districts, California Air Resources Board (CARB) and State of California Department of Justice (DOJ). The comment letter from the DOJ was not included in the Response to Comments and not a part of the FEIR because it was received May 25, 2021, almost two (2) months after the closing of the comment period. The letter was still fully analyzed and has been included as an attachment. The remaining comment letters and responses to comments have been included in the FEIR.

ANALYSIS

General Plan Analysis

In order to adopt a General Plan Amendment, the amendment must be in the public interest. Staff recommends that the Planning Commission make the following findings:

1. The recommendation of approval of the proposed General Plan Amendment for property located at 5175 Vincent Avenue, specifically APN 8417-034-016, will resolve

the inconsistency between M-2 “Heavy Manufacturing” zoning designation on a portion of the lot and the Residential General Plan land use designation. Therefore, the proposed General Plan Amendment is consistent with Section California Government Code Section 65358(a) (Amendments), “If it deems it to be in the public interest, the legislative body may amend all or part of an adopted general plan.”

2. The site is adequate in size, shape, topography, location, and other factors to accommodate an industrial development in that the subject property is approximately ±26.05 acres.
3. Adequate street access is available via Vincent Avenue.
4. Adequate utilities and public services are or will be available to serve the proposed development.
5. The use, as described herein, will be compatible with the existing and intended character of the area, in that the site is located in an area zoned with industrial, residential and outdoor uses and is surrounded by uses of similar and greater intensity. Therefore, the proposed use is compatible with the surrounding uses.
6. The proposed use, as described herein, will not be materially detrimental to the public welfare or injurious to the adjacent properties in that the development of an industrial building will continue to be industrial and consistent with abutting uses.

Site Plan & Design Review Analysis

Before any Site Plan and Design Review is approved, the applicant must show, to the satisfaction of the Planning Commission and the City Council, the existence of the following findings of fact. Staff has determined that the findings can be made based on the analysis below:

1. The proposed project is in conformance with the general plan, zoning ordinance, and other ordinances and regulations of the City.

The subject site is zoned M-2 (Heavy Manufacturing) and has a General Plan land use designation of Industrial/Business Park and Residential. A General Plan Amendment (Map) is proposed to change the designation of a small portion of the subject property from Residential to Industrial/Business Park. The proposed construction of a new building exceeding 10,000 square feet is subject to a Site Plan and Design Review (DA). The prospective use is currently unknown but there are many potential uses that are permitted by right due to the current zoning designation but that certain uses would be not be allowed or would be subject to a Conditional Use Permit.

2. The proposed project is in conformance with any redevelopment plan and regulations of the community redevelopment agency and any executed owner's participation agreement or disposition and development agreement.

This finding is no longer applicable, as Irwindale Community Redevelopment Agency no longer exists. There are also no owner's participation agreement or disposition and development agreement involved.

3. The following are so arranged as to avoid traffic congestion, to ensure the public health, safety, and general welfare, and to prevent adverse effect on surrounding properties:

- a) Facilities and improvements,

The proposed building is setback approximately 150'-0" feet from vehicle ingress to accommodate projected queuing, thus avoid overflow onto Vincent Avenue. All structures and infrastructure improvements will be constructed to current code and completed prior to Certificate of Occupancy.

- b) Pedestrian and vehicular ingress, egress, and internal circulation,

There is no proposed through-site access. The site is bordered by industrial buildings to the north, a County-owned pit to the south, unincorporated residential to the east and a vacant lot the west. Vincent Avenue serves as the only vehicular access to the site.

- c) Setbacks,

The project has been designed to comply with the required minimum setbacks for the M-2 (Heavy Manufacturing) zone.

- d) Height of buildings,

There is no maximum building height restriction within the M-2 (Heavy Manufacturing) zone. Nonetheless, the proposed building has been designed to complement the massing and height of the existing buildings in the area, as well as, take advantage of the prominence of the location to serve as an attractive gateway statement.

- e) Signs,

Based on the approximate square footage of the medical office building, the allowable amount of wall signage would equate to ±5,457 square feet. Freestanding signs would be limited to 150 square feet regardless of building size. Like other recently approved, large-scale projects, staff incorporates a Condition of Approval that requires the applicant to prepare a comprehensive sign program. The sign program includes but is not limited to sign type, square footage allowances, placement, illumination, quantity, colors and materials.

- f) Mechanical and utility service equipment,

Site has been designed to attractively screen all rooftop and surface level mechanical equipment and storage area.

- g) Landscaping,
The landscaping requirement has been met through considered choices of plantings appropriate to the location, building type, and building scale.
- h) Grading,
Project has been designed to take advantage of the existing topography, thus reducing grading activities on site.
- i) Lighting,
All lighting is designed to complement the structures and oriented to properly illuminate the site as not to create “dark pockets” that could support nefarious activities or spill onto other properties, creating a nuisance.
- j) Parking,
IMC Subsection 17.64.030.P(2) “Offices not providing customer service on the premises” requires a minimum one (1) parking space for each two (2) employees on the maximum (most workers) working shift or one (1) space for each 350 square feet of gross floor area, whichever is the greater and IMC Subsection 17.64.030(V) “Warehouse and storage buildings” requires one (1) parking space for each 1,000 square feet of the first 20,000 square feet of gross floor area, one (1) space for each 2,000 square feet for the next 20,000 square feet of gross floor area and one (1) space for each 4,000 square feet for all floor area over 40,000 square feet of gross floor area. Based on the proposed square footage, the project requires 183 stalls and 199 standard-sized stalls are being proposed. In addition to providing parking for passenger vehicles, there are 18 bicycle parking stalls and space for 181 trailer stalls. The current IMC does not have a minimum stall size for trailers; however, the proposed stalls measure 10'-0 x 53'-0. All parking is surface parking; there are no proposed parking structures or subterranean lots.
- k) Drainage,
A Water Quality Management Plan (WQMP) has been prepared to address hydrology and drainage.
- l) Intensity of land use.
The project is located on a flat, primarily rectangular lot. Mining of the site began in the 1930s and was completed in the 1970s. The City then began backfilling the site with a variety of construction debris (e.g., soil, concrete, asphalt, rebar, bricks, and cinder blocks) and other inert materials. The last entitlement, approved by the Planning Commission on October 1, 2009, was for the remediation and filling of the pit. Operations began approximately May 2010 and were completed on April 11, 2019. The proposed industrial warehouse building is consistent with the

General Plan designation of Industrial/Business Park and Zoning designation of M-2 (Heavy Manufacturing), as well as adjacent industrial land uses.

4. The proposed development is consistent with applicable city design guidelines and historic design themes, and provides for appropriate exterior building design and appearance consistent and complementary to present and proposed buildings and structures in the vicinity of the subject project while still providing for a variety of designs, forms and treatments.

The proposed tilt-up building incorporates many of the desired design elements from the Commercial and Industrial Design Guidelines including but not limited façade elements, roofs and parapets, materials and colors. The layout, landscaping and design of the site also incorporated encouraged design principles. For example, the use of an authentic period style compatible with City context, new buildings that draw upon the fundamental characteristics of existing buildings in the City, façade depth of plans and variations on all sides, including varied rooflines, berms, meandering sidewalks and multi-layered landscaping.

CONCLUSION

That the Planning Commission take the following action:

1. Adopt Resolution No. 803(21) recommending that the City Council certify the FEIR, adopt the Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program (MMRP);
2. Adopt Resolution No. (804(21) recommending that the City Council approve General Plan Amendment No. 02-2017; and
3. Adopt Resolution No. 805(21) recommending that the City Council approve Site Plan and Design Review (DA) No. 04-2017 subject to the proposed Conditions of Approval for the single or three (3) building alternative.

Alternative Actions:

4. Request that staff prepare a resolution of denial based on recommended Findings of Fact to be brought back at the next regularly scheduled Planning Commission meeting for adoption; OR
5. Request that the applicant revise the project and continue the hearing to a date certain.

ATTACHMENTS

- Exhibit A: Resolution No. 803(21)
Exhibit B: Resolution No. 804(21)
Exhibit C: Resolution No. 805(21) with Conditions of Approval
Exhibit D: Project Plans and General Plan Map
Exhibit E: Draft Environmental Impact Report (DEIR) – Electronic Files via:

- Exhibit F: <https://www.irwindaleca.gov/400/5175-Vincent-Avenue>
Final Environmental Impact Report (FEIR), Findings of Fact & Statement of
Overriding Consideration – Hard Copy and Electronic Files via: Portable
Data Drive
- Exhibit G: Technical Appendices – Electronic Files via:
<https://www.irwindaleca.gov/400/5175-Vincent-Avenue>
- Exhibit H: State of California Department of Justice Letter, received May 25, 2021
- Exhibit I: San Gabriel Valley Economic Partnership Letter, received June 14, 2021
- Exhibit J: Shepherd's Pantry Letter, received June 14, 2021
- Exhibit K: Irwindale Chamber of Commerce Letter, received July 1, 2021
- Exhibit L: Irwindale Lions Club, received July 14, 2021
- Exhibit M: Purchase and Sale Agreement
- Exhibit N: Resolution No. 2015-70-2799

EXHIBIT "A"

RESOLUTION NO. 803(21)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF IRWINDALE RECOMMENDING THAT THE CITY COUNCIL (1) ADOPT THE FINDINGS REQUIRED BY CEQA GUIDELINES, SECTION 15091; (2) CERTIFY THE FINAL ENVIRONMENTAL IMPACT REPORT, STATE CLEARING HOUSE (SCH# 2018121056) TO CHANGE THE DESIGNATION OF A PORTION OF THE SUBJECT PROPERTY FROM RESIDENTIAL TO INDUSTRIAL/BUSINESS PARK AND FOR THE CONSTRUCTION OF A NEW ±545,735 SQUARE-FOOT, SPECULATIVE INDUSTRIAL CONCRETE TILT-UP BUILDING LOCATED AT 5175 VINCENT AVENUE (APNS 8417-034-015 AND 8417-034-016), (3) ADOPT THE PROPOSED MITIGATION MONITORING AND REPORTING PROGRAM, AND (4) ADOPT A STATEMENT OF OVERRIDING CONSIDERATIONS, PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. RECITALS.

- (i) Mark Gabay, 9034 W. Sunset Boulevard, West Hollywood, CA 90069, on behalf of Five Points, LLC, has made a request for a General Plan Amendment (Map) to change the designation of a portion of the subject property from Residential to Industrial/Business Park and a Site Plan and Design Review (DA) for the construction of a ±545,735 speculative, concrete tilt-up building.
- (ii) The Subject Property is located at 5175 Vincent Avenue (APNs 8417-034-015 and 8417-034-016), on a total of ±26.05 acres. The Subject Property is currently zoned M-2 (Heavy Manufacturing). Hereinafter in this Resolution, the subject Site Plan and Design Review shall be referred to as the "Application."
- (i) As a result the following entitlements are being considered for approval for the project:
 - Environmental Impact Report (SCH #2018121056)
 - General Plan Amendment No. 02-2017
 - Site Plan and Design Review (DA) No. 04-2017
- (iii) On August 9, 2018, the Planning Division hosted a community meeting at the Irwindale Community Center. The purpose of the meeting was to provide an opportunity to review and comment on the proposal, ask questions and understand the process.
- (iv) Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, as amended, and the City of Irwindale environmental guidelines, the City, as the Lead Agency, prepared

a Mitigated Negative Declaration (MND). The MND was circulated for public review for the required 30 days from December 20, 2018 through January 22, 2019. A copy of the MND was circulated through the State Clearinghouse (SCH# 2018121056), posted on the City's website (<https://www.irwindaleca.gov/400/5175-Vincent-Avenue>) and was available at the Community Development Department, City Hall and the Irwindale Public Library. A copy of the MND and Mitigation Monitoring and Reporting Program was posted on the City's website.

- (v) The public review period for the MND ended on January 22, 2019.
- (vi) On January 30, 2019, the Planning Commission conducted a duly noticed special public hearing on the project at which time it received input from staff, the Assistant City Attorney, and the Applicant, heard public testimony, and discussed the Proposed Project; and continued the items to a date uncertain.
- (vii) On February 20, 2020, a Scoping Meeting was held to gather information for the scope of the environmental document to be prepared, at which time, attendees voiced comments regarding the project to the environmental consultant. After additional community and external agency input, the project's environmental review shifted from an MND to an EIR.
- (viii) Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, as amended, and the City of Irwindale environmental guidelines, the City, as the Lead Agency, has analyzed the project and prepared and a Draft Environmental Impact Report (DEIR). The DEIR was circulated for public review for the required 45 days from February 17, 2021 to May 2, 2021. A copy of the DEIR was circulated through the State Clearinghouse (SCH# 2018121056), posted on the City's website, and was available at the Irwindale Public Library and Deputy City Clerk's Office. The Notice of Availability was posted with the Registrar-Recorder/County Clerk. (A copy of the DEIR, FEIR and Mitigation Monitoring and Reporting Program is posted on the City's website at <https://www.irwindaleca.gov/400/5175-Vincent-Avenue>, and the FEIR is included herein as Exhibit F. All technical appendices are also available on the website.
- (ix) On July 21, 2021, the Planning Commission conducted a duly noticed public hearing on the General Plan Amendment, Site Plan and Design Review (DA), and the FEIR (SCH# 2018121056) at which time, the Planning Commission opened the public hearing, took testimony on the Applications, at which time they received input from Staff, City Attorney, the Applicant and heard public testimony, discussed the Proposed Project; and closed the public hearing.

- (x) All legal prerequisites to the adoption of this Resolution have occurred.

B. RESOLUTION.

NOW, THEREFORE, BE IT RESOLVED THAT THE PLANNING COMMISSION of the City of Irwindale, having reviewed and considered the information in the MND and supporting documents and materials, does hereby find, determine, resolve and order as follows:

1. PLANNING COMMISSION RECORD

The proceedings and all evidence introduced before the Planning Commission at its public hearing on the FEIR held on July 21, 2021, are hereby incorporated into the record of this proceeding. These documents, along with any documents submitted to the decision-makers, including all documents specified under applicable State law shall comprise the entire record of proceedings for any claims under CEQA.

2. FEIR CONTENTS

The FEIR consists of the following:

- a. Draft EIR (SCH# 2018121056) to change the designation of a portion of the subject property from Residential to Industrial/Business Park and the construction of a ±545,735 square-foot, speculative light industrial building
- b. Draft EIR Technical Appendices
- c. Comments on the Draft EIR and the Lead Agency's Responses to Comments
- d. Additions, Corrections, and revisions to the Draft EIR

(All hereafter collectively referred to as "FEIR")

3. ACCOMPANYING DOCUMENTS TO FEIR

Documents that shall accompany the FEIR are:

- a. Mitigation Monitoring and Reporting Program; and
- b. Findings of Fact; and
- c. Statement of Overriding Considerations

4. CERTIFICATION OF COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT

The Planning Commission does hereby find that the FEIR (Exhibit "F" to this Resolution), the Findings of Fact and the Statement of Overriding Considerations to this Resolution, a copy of which is posted on the City's website, and on file with the office of the City Clerk and the Irwindale Public Library), and the Mitigation Monitoring

and Reporting Program to this Resolution, a copy of which is posted on the City's website, and on file with the office of the City Clerk and the Irwindale Public Library) have been prepared in accordance with requirements of CEQA, the CEQA Guidelines and the Environmental Guidelines of the City of Irwindale.

5. CEQA FINDINGS OF FACT, MITIGATION MONITORING AND REPORTING PROGRAM AND STATEMENT OF OVERRIDING CONSIDERATIONS

- a. *Recommendation to Adopt Findings of Fact.* The Planning Commission hereby recommends to the City Council that it approve, accept as its own, incorporate as if set forth in full herein, and make each and every one of the findings contained in the Findings of Fact, Exhibit (Exhibit "F") of this Resolution.
- b. *Recommendation to Certify Final Environmental Impact Report.* The Planning Commission hereby recommends to the City Council that it certify that (1) the FEIR has been completed in compliance with CEQA; (2) that it has reviewed and considered the information contained in the FEIR prior to approving the project; and (3) that the FEIR reflects the City Council's independent judgment and analysis.
- c. *Recommendation on Mitigation Monitoring and Reporting Program.* As more fully identified and set forth in FEIR and in the Findings of Fact for this Project, which is Exhibit (Exhibit "F") to this Resolution, a copy of which is posted on the City's website, and on file with the office of the City Clerk and the Irwindale Public Library, the Planning Commission hereby recommends to the City Council that it find that the mitigation measures described and specifically identified in the above referenced documents are feasible and shall become binding upon the entity (such as the project proponent or the City) assigned thereby to implement the particular mitigation measures as identified in the Mitigation Monitoring and Reporting Program.
- d. *Recommendation to Adopt Statement of Overriding Considerations.* Even after the adoption of all feasible mitigation measures and, certain significant or potentially significant environmental effects caused by the Project directly, or cumulatively, will remain. Therefore, the Planning Commission hereby recommends that the City Council issue and adopt a Statement of Overriding Considerations in the form set forth in the Electronic Exhibit, a copy of which is on file in the office of the City Clerk, identifying the specific economic, legal, social, technological and other considerations that render the unavoidable significant adverse environmental effects acceptable, either in its current form or as may be modified or amended by the City Council.

BE IT FURTHER RESOLVED THAT a copy of this resolution be transmitted to the City Council and to the Applicant.

The Secretary shall:

- a. Certify the adoption of this Resolution; and
- b. Forthwith transmit a certified copy of this Resolution, by mail, to the Applicant at the address of record set forth in the Application.

ADOPTED AND APPROVED this 21st day of July 2021.

Chair

ATTEST:

Secretary

I, Marilyn Simpson, Community Development Director, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the Planning Commission of the City of Irwindale held on the 21st day of July, 2021 by the following vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

Secretary

EXHIBIT “B”

RESOLUTION NO. 804(21)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF IRWINDALE RECOMMENDING THAT THE CITY COUNCIL APPROVE GENERAL PLAN AMENDMENT NO. 04-2017 TO CHANGE THE GENERAL PLAN LAND USE DESIGNATION FOR A PORTION OF THE SITE FROM RESIDENTIAL TO INDUSTRIAL/BUSINESS PARK FOR PROPERTY LOCATED AT 5175 VINCENT AVENUE, IRWINDALE, CA 91706 (APN: 8417-034-016) IN THE M-2 (HEAVY MANUFACTURING) AND MAKING CERTAIN FINDINGS OF FACT.

A. RECITALS.

- (i) Mark Gabay, 9034 W. Sunset Boulevard, West Hollywood, CA 90069, on behalf of Five Points, LLC, has made a request for a General Plan Amendment to change the General Plan land use designation for ±6.93 acres from Residential to Industrial/Business Park.
- (ii) The Subject Property is located at 5175 Vincent Avenue (APN 8417-034-016), on a ±26.05 acre site. The Subject Property is currently zoned M-2 (Heavy Manufacturing). Hereinafter in this Resolution, the subject General Plan Amendment (Map) shall be referred to as the “Application.”
- (iii) On August 9, 2018, the Planning Division hosted a community meeting at the Irwindale Community Center. The purpose of the meeting was to provide an opportunity to review and comment on the proposal, ask questions and understand the process.
- (iv) Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, as amended, and the City of Irwindale environmental guidelines, the City, as the Lead Agency, prepared a Mitigated Negative Declaration (MND). The MND was circulated for public review for the required 30 days from December 20, 2018 through January 22, 2019. A copy of the MND was circulated through the State Clearinghouse (SCH# 2018121056), posted on the City’s website (<https://www.irwindaleca.gov/400/5175-Vincent-Avenue>) and was available at the Community Development Department, City Hall and the Irwindale Public Library. A copy of the MND and Mitigation Monitoring and Reporting Program was posted on the City’s website.
- (v) The public review period for the MND ended on January 22, 2019.
- (vi) On January 30, 2019, the Planning Commission conducted a duly noticed special public hearing on the project at which time it received input from staff, the Assistant City Attorney, and the Applicant, heard public

testimony, and discussed the Proposed Project; and continued the items to a date uncertain.

- (vii) On February 20, 2020, a Scoping meeting was held to gather information for the scope of the environmental document to be prepared, at which time, attendees voiced comments regarding the project to the environmental consultant. After additional community and external agency input, the project's environmental review shifted from an MND to an EIR.
- (viii) Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, as amended, and the City of Irwindale environmental guidelines, the City, as the Lead Agency, has analyzed the project and prepared and a Draft Environmental Impact Report (DEIR). The DEIR was circulated for public review for the required 45 days from February 17, 2021 to May 2, 2021. A copy of the DEIR was circulated through the State Clearinghouse (SCH# 2018121056), posted on the City's website, and was available at the Irwindale Public Library and Deputy City Clerk's Office. The Notice of Availability was posted with the Registrar-Recorder/County Clerk. (A copy of the DEIR, FEIR and Mitigation Monitoring and Reporting Program is posted on the City's website at <https://www.irwindaleca.gov/400/5175-Vincent-Avenue>, and the FEIR is included herein as Exhibit F. All technical appendices are also available on the website.
- (ix) On July 21, 2021, the Irwindale Planning Commission conducted a duly noticed public hearing, as required by law, on the Application, closed the public hearing and recommended that the Irwindale City Council approve the Site Plan and Design Review (DA), subject to the approval of a Resolution, which details the specific Conditions under which the Application was approved.
- (x) This application is being processed concurrently with Site Plan and Design Review (DA) No. 04-2017.
- (xi) All legal prerequisites to the adoption of this Resolution have occurred.

B. RESOLUTION.

NOW, THEREFORE, it is hereby found, determined and resolved by the Planning Commission of the City of Irwindale as follows:

1. The Planning Commission hereby specifically finds that all of the facts set forth in the Recitals, Part A, of this Resolution are true and correct.

2. Based upon substantial evidence presented to this Planning Commission during the public hearing conducted with regard to this Application, including written staff reports and verbal testimony, and evidence in the City's record for the project, this Planning Commission hereby specifically finds as follows with respect to the request for an amendment General Plan Land Use Designation:

- a. The proposed change in land use designation from Residential to Industrial/Business Park is being proposed to clean up the ambiguity of the property boundaries in conjunction with the General Plan designation boundaries. The map which was used to determine the General Plan designation of the site was taken from the 2008 General Plan and the property boundaries are ambiguous. Staff believes the acreage designated as Residential is a simple map error due to the age and sophistication of the original software and method of reproduction used. Therefore, the proposed general plan amendment is consistent with Section California Government Code Section 65358(a) (Amendments), "If it deems it to be in the public interest, the legislative body may amend all or part of an adopted general plan."
- b. The proposed General Plan Amendment is internally consistent with all other provisions of the General Plan. The Community Development Element of the General Plan promotes several policies that support the adoption of the amendment and associated entitlements. Community Development Element Policy 1 strives to preserve the overall mix of land uses and development in the community. Community Development Element Policy 3 seeks to ensure that the type, location, and intensity of all new development and intensified developments adhere to the requirements specified in its particular land use category. Community Development Element Policy 5 promotes the comprehensive development consistent with the General Plan as opposed to piecemeal and incremental planning.
- c. The proposed General Plan Amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City. The purpose of the proposed General Plan Amendment is to create consistency between the M-2 (Heavy Manufacturing) zoning designation with the Industrial/Business Park land use designation. The existing acres that are currently designated with a Residential land use are inconsistent with Industrial/Business Park land use of the majority of the subject property.
- d. The affected properties are physically suitable in terms of design, location, operating characteristics, shape, size, topography, and the provision of public and emergency vehicle access, and public services and utilities and is served by highways and streets adequate in width and improvement to carry the kind and quantity of traffic the proposed use would likely generate, to ensure that the proposed use(s) and/or development will not endanger, jeopardize, or otherwise constitute a hazard to the property or improvements in the vicinity in which the

property is located. The Project and adjacent environs were studied for physical suitability as part of the preparation Final Environmental Impact Report.

3. Based upon the substantial evidence and conclusions set forth herein above and upon other oral evidence presented at the public hearing, and subject to, and reliance upon, the City Council adopting the FEIR, certified by the City of Irwindale as the Lead Agency, this Planning Commission hereby recommends that the City Council adopt General Plan Amendment No. 02-2017, which amends the Land Use Plan Map (attached Exhibit "A") from Residential to Industrial/Business Park.

BE IT FURTHER RESOLVED THAT a copy of this resolution be transmitted to the City Council and to the Applicant.

The Secretary shall:

- (i) Certify to the adoption of this Resolution; and
- (ii) Forthwith transmit a certified copy of this Resolution, by mail, to the Applicant at the address of record set forth in the Application.

ADOPTED AND APPROVED this 21st day of July 2021.

Chair

ATTEST:

Secretary

I, Marilyn Simpson, Community Development Director of the City of Irwindale, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the Planning Commission of the City of Irwindale held on the 21st day of July 2021, by the following vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSENT: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:

Secretary

EXHIBIT "C"

RESOLUTION NO. 805(21)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF IRWINDALE RECOMMENDING THAT THE CITY COUNCIL APPROVE SITE PLAN AND DESIGN REVIEW (DA) NO. 04-2017 FOR THE CONSTRUCTION OF A ±545,735 SQUARE-FOOT CONCRETE TILT-UP BUILDING AND ASSOCIATED PARKING ON PROPERTY LOCATED AT 5175 VINCENT AVENUE, IRWINDALE, CA 91706 (APNS: 8417-034-015 AND 8417-034-016) IN THE M-2 (HEAVY MANUFACTURING) AND MAKING CERTAIN FINDINGS OF FACT.

A. RECITALS.

- (i) Mark Gabay, 9034 W. Sunset Boulevard, West Hollywood, CA 90069, on behalf of Five Points, LLC, has made a request for a Site Plan and Design Review (DA) for the construction of a ±545,735 speculative, concrete tilt-up building.
- (ii) The Subject Property is located at 5175 Vincent Avenue (APNs 8417-034-015 and 8417-034-016), on a total of ±26.05 acres. The Subject Property is currently zoned M-2 (Heavy Manufacturing). Hereinafter in this Resolution, the subject Site Plan and Design Review shall be referred to as the "Application."
- (iii) On August 9, 2018, the Planning Division hosted a community meeting at the Irwindale Community Center. The purpose of the meeting was to provide an opportunity to review and comment on the proposal, ask questions and understand the process.
- (iv) Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, as amended, and the City of Irwindale environmental guidelines, the City, as the Lead Agency, prepared a Mitigated Negative Declaration (MND). The MND was circulated for public review for the required 30 days from December 20, 2018 through January 22, 2019. A copy of the MND was circulated through the State Clearinghouse (SCH# 2018121056), posted on the City's website (<https://www.irwindaleca.gov/400/5175-Vincent-Avenue>) and was available at the Community Development Department, City Hall and the Irwindale Public Library. A copy of the MND and Mitigation Monitoring and Reporting Program was posted on the City's website.
- (v) The public review period for the MND ended on January 22, 2019.
- (vi) On January 30, 2019, the Planning Commission conducted a duly noticed special public hearing on the project at which time it received input from

staff, the Assistant City Attorney, and the Applicant, heard public testimony, and discussed the Proposed Project; and continued the items to a date uncertain.

- (vii) On February 20, 2020, a Scoping meeting was held to gather information for the scope of the environmental document to be prepared, at which time, attendees voiced comments regarding the project to the environmental consultant. After additional community and external agency input, the project's environmental review shifted from an MND to an EIR.
- (viii) Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, as amended, and the City of Irwindale environmental guidelines, the City, as the Lead Agency, has analyzed the project and prepared and a Draft Environmental Impact Report (DEIR). The DEIR was circulated for public review for the required 45 days from February 17, 2021 to May 2, 2021. A copy of the DEIR was circulated through the State Clearinghouse (SCH# 2018121056), posted on the City's website, and was available at the Irwindale Public Library and Deputy City Clerk's Office. The Notice of Availability was posted with the Registrar-Recorder/County Clerk. (A copy of the DEIR, FEIR and Mitigation Monitoring and Reporting Program is posted on the City's website at <https://www.irwindaleca.gov/400/5175-Vincent-Avenue>, and the FEIR is included herein as Exhibit F. All technical appendices are also available on the website.
- (ix) On July 21, 2021, the Irwindale Planning Commission conducted a duly noticed public hearing, as required by law, on the Application, closed the public hearing and recommended that the Irwindale City Council approve the Site Plan and Design Review (DA), subject to the approval of a Resolution, which details the specific Conditions under which the Application was approved.
- (x) This application is being processed concurrently with General Plan Amendment No. 02-2017.
- (xi) All legal prerequisites to the adoption of this Resolution have occurred.

B. RESOLUTION.

NOW, THEREFORE, it is hereby found, determined and resolved by the Planning Commission of the City of Irwindale as follows:

1. The Planning Commission hereby specifically finds that all of the facts set forth in Recitals, Part A, of this Resolution are true and correct.

2. Based upon substantial evidence presented to this Planning Commission during the public hearing conducted with regard to the Application, including written staff reports, verbal testimony, site plans and Conditions of Approval attached hereto as Exhibit "C," this Planning Commission hereby specifically finds as follows:

- A. The proposed project is in conformance with the General Plan, Zoning Ordinance, and other ordinances and regulations of the City.

The subject site is zoned M-2 (Heavy Manufacturing) and has a General Plan land use designation of Industrial/Business Park and Residential. A General Plan Amendment (Map) is proposed to change the designation of a small portion of the subject property from Residential to Industrial/Business Park. The proposed construction of a new building exceeding 10,000 square feet is subject to a Site Plan and Design Review (DA). The prospective use is currently unknown but there are many potential uses that are permitted by right due to the current zoning designation but that certain uses would be not be allowed or would be subject to a Conditional Use Permit.

- B. The proposed project is in conformance with any redevelopment plan and regulations of the community redevelopment agency and any executed owner's participation agreement or disposition and development agreement

This finding is no longer applicable, as Irwindale Community Redevelopment Agency no longer exists. There are also no owner's participation agreement or disposition and development agreement involved.

- C. The following are so arranged as to avoid traffic congestion, to ensure the public health, safety, and general welfare, and to prevent adverse effect on surrounding properties:

- i. Facilities and improvements,
The proposed building is setback approximately 150'-0" feet from vehicle ingress to accommodate projected queuing, thus avoid overflow onto Vincent Avenue. All structures and infrastructure improvements will be constructed to current code and completed prior to Certificate of Occupancy.
- ii. Pedestrian and vehicular ingress, egress, and internal circulation,
There is no proposed through-site access. The site is bordered by industrial buildings to the north, a County-owned pit to the south, unincorporated residential to the east and a vacant lot the west. Vincent Avenue serves as the only vehicular access to the site.
- iii. Setbacks,
The project has been designed to comply with the required minimum setbacks for the M-2 (Heavy Manufacturing) zone.

- iv. Height of buildings,
There is no maximum building height restriction within the M-2 (Heavy Manufacturing) zone. Nonetheless, the proposed building has been designed to complement the massing and height of the existing buildings in the area, as well as, take advantage of the prominence of the location to serve as an attractive gateway statement.
- v. Signs,
Based on the approximate square footage of the medical office building, the allowable amount of wall signage would equate to $\pm 5,457$ square feet. Freestanding signs would be limited to 150 square feet regardless of building size. Like other recently approved, large-scale projects, staff incorporates a Condition of Approval that requires the applicant to prepare a comprehensive sign program. The sign program includes but is not be limited to sign type, square footage allowances, placement, illumination, quantity, colors and materials.
- vi. Mechanical and utility service equipment,
Site has been designed to attractively screen all rooftop and surface level mechanical equipment and storage area.
- vii. Landscaping,
The landscaping requirement has been met through considered choices of plantings appropriate to the location, building type, and building scale.
- viii. Grading,
Project has been designed to take advantage of the existing topography, thus reducing grading activities on site.
- ix. Lighting,
All lighting is designed to complement the structures and oriented to properly illuminate the site as not to create "dark pockets" that could support nefarious activities or spill onto other properties, creating a nuisance.
- x. Parking,
IMC Subsection 17.64.030.P(2) "Offices not providing customer service on the premises" requires a minimum one (1) parking space for each two (2) employees on the maximum (most workers) working shift or one (1) space for each 350 square feet of gross floor area, whichever is the greater and IMC Subsection 17.64.030(V) "Warehouse and storage buildings" requires one (1) parking space for each 1,000 square feet of the first 20,000 square feet of gross floor area, one (1) space for each 2,000 square feet for the next 20,000 square feet of gross floor area and one (1) space for each 4,000 square feet for all floor area over 40,000 square feet of gross floor area Based on the proposed square footage, the project requires 183 stalls and 199 standard-sized stalls are being

proposed. In addition to providing parking for passenger vehicles, there are 18 bicycle parking stalls and space for 181 trailer stalls. The current IMC does not have a minimum stall size for trailers; however, the proposed stalls measure 10'-0 x 53'-0. All parking is surface parking; there are no proposed parking structures or subterranean lots.

xi. Drainage,
A Water Quality Management Plan (WQMP) has been prepared to address hydrology and drainage.

xii. Intensity of land use.
The project is located on a flat, primarily rectangular lot. Mining of the site began in the 1930s and was completed in the 1970s. The City then began backfilling the site with a variety of construction debris (e.g., soil, concrete, asphalt, rebar, bricks, and cinder blocks) and other inert materials. The last entitlement, approved by the Planning Commission on October 1, 2009, was for the remediation and filling of the pit. Operations began approximately May 2010 and were completed on April 11, 2019. The proposed industrial warehouse building is consistent with the General Plan designation of Industrial/Business Park and Zoning designation of M-2 (Heavy Manufacturing), as well as adjacent industrial land uses.

D. The proposed development is consistent with applicable city design guidelines and historic design themes, and provides for appropriate exterior building design and appearance consistent and complementary to present and proposed buildings and structures in the vicinity of the subject project while still providing for a variety of designs, forms and treatments.

The proposed tilt-up building incorporates many of the desired design elements from the Commercial and Industrial Design Guidelines including but not limited to façade elements, roofs and parapets, materials and colors. The layout, landscaping and design of the site also incorporated encouraged design principles. For example, the use of an authentic period style compatible with City context, new buildings that draw upon the fundamental characteristics of existing buildings in the City, façade depth of plans and variations on all sides, including varied rooflines, berms, meandering sidewalks and multi-layered landscaping.

3. The City, as the Lead Agency, has analyzed the project and prepared and an Environmental Impact Report (EIR). The EIR was circulated for public review for the required 45 days from February 17, 2021 to May 2, 2021. A copy of the EIR was circulated through the State Clearinghouse (SCH# 2018121056), posted on the City's website, and was available at the Irwindale Public Library and Deputy City Clerk's Office. The Notice of Availability was posted with the Registrar-Recorder/County Clerk. (A copy of the DEIR, FEIR and Mitigation Monitoring and Reporting Program is posted on the City's website at <https://www.irwindaleca.gov/400/5175-Vincent-Avenue>, and the FEIR is included herein as Exhibit F. All technical appendices are also available on the website.

4. Based upon the substantial evidence and conclusions set forth herein above, this Planning Commission recommends approval of the application for Site Plan and Design Review (DA) by the City Council subject to, and reliance upon, the adoption of the FEIR by the City Council, including the corresponding Findings of Fact, Statement of Overriding Consideration, and Mitigation Monitoring and Reporting Program. The recommendation for approval is subject to the conditions set forth in Exhibit "C" attached hereto and by this reference incorporated herein, which conditions are deemed necessary to protect the public health, safety and general welfare and are reasonable and proper in accordance with the intent and purposes of Title 17 of the Irwindale Municipal Code. s

5. The Secretary shall:

- a. Certify to the adoption of this Resolution; and
- b. Forthwith transmit a certified copy of this Resolution, by certified mail, to the Applicant at the address of record set forth in the Application.

ADOPTED AND APPROVED this 21st day of July 2021.

Chair

ATTEST:

Secretary

I, Marilyn Simpson, AICP, Community Development Director of the City of Irwindale, do hereby certify that the foregoing Resolution was adopted at a special meeting of the Planning Commission of the City of Irwindale held on the 21st day of July 2021, by the following vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSENT: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:

Secretary

PLANNING COMMISSION RESOLUTION NO. 805(21)

Site Plan and Design Review No. 04-2017 Speculative, concrete tilt-up building 5175 Vincent Avenue

A. GENERAL

1. The use and development authorized by this Site Plan and Design Review (DA), allow for the construction of a ±545,735 square-foot speculative, concrete tilt-up building substantially in conformance with the plans dated July 15, 2021.
2. A building permit shall be obtained within twelve (12) months from the date of approval. Thereafter, if the activities have been abandoned for ninety (90) or more days, the Site Plan and Design Review Permit approval shall expire and become null and void, unless a written request for extension is received by the Community Development Director at least thirty (30) days prior to such expiration or abandonment. Upon receipt of written request for extension, the Community Development Director may grant an extension of this Site Plan and Design Review Permit approval for a period not to exceed one (1) year from the original date of expiration, or may refer such request to the City Council for determination.
3. The Applicant shall agree and consent, in writing, to each and every condition of permit approval set forth herein within twenty (20) days from the adoption of this Resolution by the City Council approving the Site Plan and Design Review (DA).
4. Prior to the issuance of a business license and/or occupancy permit and/or final inspection by the Community Development Department for the speculative building, all applicable conditions of approval (except those involving construction permits) shall be completed to the reasonable satisfaction of the City.
5. The Applicant shall defend, indemnify and hold harmless the City of Irwindale, its agents, officers, or employees from any claims, damages, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void or annul, any approval of the City, its advisory agencies, appeal boards, or legislative body to Site Plan and Design Review Permit No. 04-2017. The City will promptly notify the permittee of any such claim, action, or proceeding against the City and will cooperate fully in the defense.
6. The Applicant agrees to allow City inspectors access to the site to reasonably inspect the site during normal working hours to assure compliance with these conditions and other codes. Any and all fees required to be paid to any public agency shall be paid prior to obtaining any permits for this project.

7. The Applicant shall maintain and use the project location and facility thereon in full compliance with all codes, standards, policies and regulations imposed by the City, County, State, or Federal agencies with jurisdiction over the facility.
8. It shall be required that the subject location and its contents, including but not limited to, structures, fences or garden/block walls, and vehicles are maintained free and clear of any graffiti. The Applicant shall be held responsible for the immediate removal of any and all graffiti found on-site within 48 hours of its application.
9. The premises will be secured with appropriate security lighting, to obtain a minimum of 1-foot candles over the entire site. A photometric lighting plan shall be submitted, subject to the review and approval of the Community Development Department and the Police Department.
10. Security lighting fixtures are to be shielded and shall not project above the fascia or roof line of the buildings. The shields shall be painted to match the surface to which they are attached. Security lighting fixtures shall not be substituted for parking lot or walkway lighting fixtures.
11. In accordance with the provisions of Government Code Section 66020(d)(1), the imposition of fees, dedications, reservations, or exactions for this project are subject to protest by the applicant at the time of approval or conditional approval of the project, or within 90 days after the date of imposition of the fees, dedications, reservations, or exactions imposed on the project.
12. Prior to occupancy of the project, all users of the facility shall comply with the City of Irwindale M-2 (Heavy Manufacturing) zoning standards and regulations through the business license and zoning compliance process.

B. COMMUNITY DEVELOPMENT DEPARTMENT

1. The use and improvements authorized by this Site Plan and Design Review (DA), shall conform to the plans as finally approved by the City (dated July 15, 2021) as conditioned herein, and any appreciable modification of the plans or mode of operation, as determined by the Community Development Director, shall require the prior approval of the Planning Commission pursuant to the amendment of the Site Plan and Design Review Permit.
2. This project shall be subject to the City of Irwindale's utility tax.
3. The signed Final Conditions of Approval shall be photocopied and included as a sheet in the plans submitted to the Building Division for plan check.

4. A Lot Line Adjustment shall be required to remove or adjust the shared property line between APN 8417-034-015 and APN 8417-034-016. The Lot Line Adjustment shall be recorded prior to the issuance of a Certificate of Occupancy.
5. The following uses shall be prohibited. Should any of the following uses be proposed, environmental review shall be required prior to any tenant improvements to the building.
 - a. Cold storage
 - b. Fulfillment center
 - c. Parcel hub
6. Project landscaping shall comply with Irwindale Municipal Code Chapter 15.30, "Water Efficient Landscape Standards and Guidelines."
7. Landscaping shall be drought resistant low water with drip irrigation, low flow bubblers and water efficient rotor heads where applicable. Native plants shall be used where feasible. Landscaping shall be provided as shown on the approved Conceptual Landscape and as modified pursuant to City Building Plan Check review of Precise Landscape and Irrigation plans.
8. Landscape and irrigation plans shall be prepared by a licensed landscape architect, and are subject to the approval of the Community Development Director and the City Engineer. Vision clearance shall be maintained at all vehicle entrances and exits.
9. A complete, permanent, automatic irrigation system shall be provided for all landscaped areas.
10. A six (6) inch horizontal concrete curb shall surround all landscaped planters.
11. The following invasive plants shall not be used in landscaping:
 - *Carpobrotus edulis* (ice plant)
 - *Hedera helix*, *H. Hibernica*, *H. canariensis* (English ivy, Irish ivy, Algerian ivy)
 - *Vinca Major* (periwinkle)
 - *Pennisetum setaceum* and all cultivars and varieties (fountain grass)
 - *Cortaderia selloana*, *C. jubata* and all cultivars and varieties (pampas grass)
 - *Retama monosperma*, *Genista monspessulana*, *Cytisus striatus*, *Cytisus scoparius*, and *Spartium junceum* (broom – bridal, French, Portuguese, Scotch, Spanish)
 - *Acacia Cyclops* (acacia or western coastal wattle)
 - *Myoporum laetum* (myoporum)
 - *Washingtonia robusta* and *Phoenix canariensis* (Mexican fan palm and Canary Island date palm)
 - *Schinus terevinthifolius* (Brazilian pepper)
 - *Eucalyptus globules*, *E. camaldulensis* (eucalyptus, blue gum, and red gum)

12. A minimum of 10% ($\pm 112,749$ square feet) the total lot area shall be landscaped.
13. All plant material, including trees, shall be maintained in good condition and replaced in the event they die or become diseased.
14. Any event not held during typical hours of operation shall be subject the Community Development Department review.
15. Applicant shall obtain approval and permits from the Planning and Building Divisions for all project signage prior to construction of any signs on the project site.
16. Drive aisles shall remain open and unobstructed for vehicular circulation.
17. All building design and construction, including the type, texture, color, and durability of the exterior building materials shall comply with the City's Commercial and Industrial Design Guidelines.
18. Trash enclosures (6'-0" high min.) with solid metal self-closing and self-latching gates shall be provided. The enclosures shall be covered and built with decorative materials to match the type, texture, and color of the materials used in the construction of the buildings. Gates shall remain closed at all times when the trash receptacles are not in use.
19. All utility equipment such as backflow units and transformers shall be screened with evergreen screen shrubs or similar planting materials as allowed.
20. All rooftop mechanical equipment, including heating and air conditioning units, antennas, and other electronic devices, shall be completely and decoratively screened from view from all public rights of way and adjacent properties and shall be integrated into the design and construction of the buildings¹. All rooftop equipment and screening shall be shown on the plans and elevations, and shall be consistent with the building design and construction materials in texture and color. Such rooftop equipment screening shall be subject to the review and approval of the Community Development Department.
21. All rooftop wireless telecommunications antennas operated by third parties are subject to the provisions of Chapter 17.90 of the Irwindale Municipal Code shall require a separate permit in accordance with the provisions of the Municipal Code.
22. The street numbers for the development shall be painted on the rooftop of each building in such a manner that it is clearly visible to public safety personnel and shall be a minimum five (5) feet in length painted with minimum one (1) foot wide

¹ Photovoltaic equipment is exempt from this requirement.

brush strokes. Rooftop numbers shall be shown on the plans submitted for plan check.

23. A lighting plan shall be submitted for approval by the Community Development Director describing lighting fixtures for building exterior lighting. Lighting fixtures shall be designed to shield light and/or direct light in a downward direction to minimize light spillover to adjacent residential areas. A minimum of 1-foot candle shall be provided.
24. Applicant shall obtain approval and permits from the Community Development Department and Building Division for all project signage prior to construction of any signs on the project site.
25. A temporary chain link fence with green screening, or acoustical fencing assembly as specified in the EIR, shall be installed and maintained around the perimeter of the site at all times during construction.
26. Any masonry walls, tube steel fences, and driveway gates shall be decorative and consistent with the building design and the Commercial and Industrial Design Guidelines. The design of the walls and gates shall be subject to the review and approval of the Community Development Department. No chain link fencing shall be allowed for permanent perimeter fencing applications.
27. Applicant shall at all times comply with the Irwindale Municipal Code Noise Standards (as may be amended) as measured at the Site boundary. Additionally, if noise impacts exceed the applicable noise standard contained in the Irwindale Municipal Code, Applicant shall take necessary actions and implement procedures to bring the operations into compliance with this Code.
28. Applicant/developer shall post "No Overnight/Unauthorized Parking" signs on the property to prevent unauthorized parking on the site.
29. Construction activity shall take place no earlier than 7:00 AM on each day and no later than 7:00 PM on each day, Monday thru Saturday. No construction activities of any kind shall be performed on Sundays.
30. All construction related activity shall comply with the noise standards as set forth in IMC Section 9.28.030.
31. All truck loading and unloading shall occur on the site. No loading, unloading or truck idling shall be permitted to take place on the street for any business located on the site.

C. FIRE DEPARTMENT

1. Projects associated with a land development permit such as a tract or parcel map, conditional use permit, zone change or other such permits, shall submit plans to the Land Development Unit (LDU) for review and approval prior to submitting to Fire Prevention Engineering for building plan review. To contact LDU please call (323) 890-4243 or submit to our office located at 5823 Rickenbacker Road, Commerce, CA 90040.
2. Submit two sets of architectural plans to the Fire Prevention Engineering Office located at 5823 Rickenbacker Road, Commerce, CA 90040. Plan sets shall contain a minimum of a site plan, floor plan(s), elevations, door and window schedules, wall details, and appropriate section details. Please provide architectural sheets only. No civil, electrical, mechanical, plumbing, etc.
3. Indicate on plans the project address, assessor's parcel number, type of construction, occupancy classification, area of each floor level and building area increase modifications in accordance with the Building Code.
4. Provide a minimum unobstructed width of 26 feet, clear to the sky, Fire Department vehicular access to within 150 feet of all portions of exterior walls. Dead-end access roadways greater than 150 feet in length, shall be provided with an approved fire apparatus turnaround. The access width shall be increased to 28 feet when proposed buildings, or portions of buildings, are more than 3 stories, or more than 30 feet in height. A 32 foot centerline turning radius is required at each change of direction in vehicle travel regardless of the required width. Fire Code Appendix C
5. On the site plan, show the location of all existing public fire hydrants within 300 feet of all property lines and call out the hydrant size and dimensions to property lines. Additionally, show all existing on-site fire hydrants.
6. The required fire flow for public fire hydrants at this location is 4000 gallons per minute at 20 psi for duration of 4 hours over and above daily domestic demand in accordance with Fire Code Appendix B and Table B105.2.
7. Complete and return the original "Fire Flow Availability" Form No. 196.
8. Indicate on the site plan the location of high voltage transmission lines near the property. Structures proposed to be constructed adjacent to high voltage transmission lines, within 100 feet of the drip line, shall be subject to additional review by the Fire Marshal with regard to Fire Department operational procedures. Based on the Fire Marshal review additional building construction requirements may be imposed on the project in accordance with Regulation #27.
9. Indicate existing or proposed photovoltaic systems on the building rooftop or within the Fire Department access route. PV systems shall be in compliance with the Fire Code Section 605 and Regulation #27.

10. Additional Requirements, including the installation of additional fire hydrants, may be imposed, in accordance with applicable codes, regulations, standards and policies after the above information is reviewed. Fire Department requirements are based on the information provided on the plans submitted for review.
11. Per the plans, it appears that additional public fire hydrant(s) will be required on Vincent Ave and Arrow Highway. On the site plan, show the location of all existing public fire hydrants within 300 feet of all property lines and call out the hydrant size and dimensions to property lines.
12. The parapets shall not exceed 48 inches high on all sides of the building.
13. It appears that the building will be used for the storage of high piled combustible storage (HPS). The building design will need to meet the requirements for HPS per the Fire Code Chapter 32, which includes access doors each 100 feet, and smoke and heat venting.

D. PUBLIC WORKS/ENGINEERING

STREETS

1. All off-site improvements within the Public Right-of-Way shall be performed in accordance with City Standards to the satisfaction of the Director of Engineering. Construction plans shall be reviewed and approved by the Director of Engineering.
2. The owner and/or developer shall resurface Vincent Avenue, along the project frontage, to the City boundary. All improvements shall be constructed in accordance with City standards to the satisfaction of the Director of Engineering. Construction plans shall be reviewed and approved by the Director of Engineering.
3. The owner and/or developer shall design, install and construct a meandering sidewalk (5 feet wide minimum), landscaped parkway (5 feet wide minimum), street trees and irrigation along Vincent Avenue at the project frontage. Irrigation for public street trees and landscaping shall be connected to the on-site private water meter. Maintenance agreements shall be executed and recorded for the private maintenance and repairs of street trees and irrigation on Vincent Avenue. All improvements shall be constructed in accordance with City standards to the satisfaction of the Public Services Director. Construction plans shall be reviewed and approved by the Public Services Director.
4. Roadway and pedestrian access easements shall be granted to the City along the project frontage on Vincent Avenue to provide 10 feet of public right-of-way from back of curb.

5. The owner and/or developer shall remove and reconstruct all damaged or deficient sidewalk, driveways, curb and gutter as directed by the Director of Engineering.
6. The owner/developer shall design and construct ADA accessible driveway approaches and remove all existing driveways and parkway drains along Vincent Avenue. All improvements shall be constructed in accordance with City standards to the satisfaction of the Director of Engineering.
7. The owner and/or developer shall install new street lights on Vincent Avenue along the project frontage per City of Irwindale and County of Los Angeles Street Lighting Design Standards to the satisfaction of the Director of Engineering. Construction plans shall be reviewed and approved by the Director of Engineering.
8. The owner and/or developer shall reimburse the City for the actual cost for the installation, replacement or modification of street name signs, traffic control signs, striping and pavement markings required in conjunction with the development.
9. Common driveways shall not be allowed, unless approved by the Director of Engineering. Proposed driveways shall be located clear of existing fire hydrants, street lights, water meters, etc.

UTILITIES

10. Storm drains, catch basins, connector pipes, and appurtenances for the site specific storm drain system shall be designed and constructed in accordance with Los Angeles County standards and the Director of Engineering's requirements. The owner/developer shall submit grading and drainage plans to the Director of Engineering for review and approval. The grading and drainage plans shall be prepared by a licensed civil engineer and comply with Los Angeles County grading permit requirements. A hydrology study shall be included with the drainage plan.
11. The owner/developer shall pay for the entire cost for the design, engineering construction and inspection of any upgrade to the water main and connections as required by the serving water company for the proposed development.
12. The owner/developer shall obtain a Storm Drain Connection Permit for the connection to the existing storm drain system.
13. Fire hydrants shall be installed as required by the Fire Department. Existing public fire hydrants adjacent to the site, if any, shall be upgraded if required by the Director of Engineering.
14. Sanitary sewers shall be constructed in accordance with City specifications to serve the subject development. The plans for the sanitary sewers shall be approved by the Director of Engineering. A sewer study shall be submitted along with the sanitary sewer plans.

15. The owner/developer shall design and construct a public storm drain along the southerly boundary of the adjacent 10-acre City-owned property to the west and connect to existing public utilities on Allen Drive. The new storm drain shall be designed with sufficient capacity to serve the project site and the adjacent 10-acre City-owned site. All improvements shall be constructed in accordance with City standards to the satisfaction of the Director of Engineering. Construction plans shall be reviewed and approved by the Director of Engineering. A public utility easement granted to the City shall be executed and recorded. The owner/developer shall bear the full cost of design, construction, construction management, inspection and associated costs. The owner/developer shall contribute \$33,000 annually, for six years, to the City for the maintenance and operation of the new public storm drain. This annual contribution shall be subject to yearly CPI adjustments.
16. The owner/developer shall design and construct a public sanitary sewer line and connect to existing public sanitary sewers on Allen Drive or Vincent Avenue. The new sanitary sewer shall be designed with sufficient capacity to serve the project site and the future development of the adjacent 10-acre City-owned site. All improvements shall be constructed in accordance with City standards to the satisfaction of the Director of Engineering. Construction plans shall be reviewed and approved by the Director of Engineering. A public utility easement granted to the City shall be executed and recorded. The owner/developer shall bear the full cost of design, construction, construction management, inspection and associated costs. The owner/developer shall contribute \$5,000 annually, for ten years, to the City for the maintenance and operation of the new public sanitary sewer. This annual contribution shall be subject to yearly CPI adjustments.
17. A 10-foot wide public utility and pedestrian access easement shall be dedicated to the City along the southerly property line of the project site. A minimum 5-foot wide walkway shall be constructed within this easement and shall be accessible from Vincent Avenue and the adjacent 10-acre City-owned site. All improvements shall be constructed in accordance with the City standards to the satisfaction of the Director of Engineering. Construction plans shall be reviewed and approved by the Director of Engineering.
18. Prior to the issuance of building permits, the owner/developer shall provide a will-serve letter from the water utility provider to the City.

TRAFFIC

19. In accordance with Mitigation Measure 3.8-1 of the project EIR, the project employer shall be required to provide general commute benefits to employees, which may include financial subsidies or pre-tax deductions for transit, carpooling, and vanpooling activities. All employees shall be eligible for alternative

transportation benefits. These programs shall be subject to on-going and consistent monitoring and reporting by City staff.

20. In accordance with the Mitigation Measures outlined in the project Traffic Impact Analysis, prior to the issuance of building permits, the owner/developer shall make the applicable fair share payments to the City of Irwindale, Caltrans, City of Azusa or County of Los Angeles for the following improvements.
21. Fair share payments for each improvement shall be submitted to the lead agency which will construct the improvement(s). Fair share payments shall be based on engineer's cost estimates approved by the Director of Engineering. Proof of payment for all applicable fair share fees shall be submitted to the City of Irwindale.
 - Mitigation Measure #1: I-605 Freeway SB On-Ramp/ Live Oak Avenue
 - *Construct an additional left-turn lane at the westbound approach.*
 - *Construct a receiving lane on the southern leg.*
 - *Modify the existing traffic signal to accommodate the new lane configuration.*
 - Mitigation Measure #2A-2D: I-605 Freeway NB Ramps/Live Oak Avenue
 - *Install a traffic signal.*
 - *Construct an additional right-turn lane at the northbound approach.*
 - *Construct an additional right-turn lane at the southbound approach.*
 - *Re-stripe to create an additional through lane at the westbound approach.*
 - Mitigation Measure #7A-7B: Arrow Highway/Live Oak Avenue
 - *Re-stripe to create an additional through lane at the eastbound approach.*
 - *Re-stripe to create an additional through lane at the westbound approach.*
 - Mitigation Measure #9A-9B: Azusa Canyon Road/Arrow Highway
 - *Re-stripe to create a shared through/right-turn lane at the eastbound approach.*
 - *Re-stripe to create a shared through-right-turn lane at the westbound approach.*
 - *Modify the existing traffic signal to accommodate the new lane configuration.*
 - Mitigation Measure #17: Vincent Avenue/Gladstone Street
 - *Re-stripe to create a shared left-turn/through/right-turn lane at the northbound approach.*
 - *Modify the existing traffic signal to accommodate the new lane configuration.*
 - Mitigation Measure #18: Vincent/Arrow Highway
 - *Re-stripe to create a shared through/right-turn lane at the eastbound approach.*
 - *Modify the existing traffic signal to accommodate the new lane configuration.*
 - Mitigation Measure #34A-34B: Alameda Avenue/I-210 WB Ramps/1st Street
 - *Restripe the westbound approach to consist of two left turn lanes, one through lane, and one right turn lane*

- *Modify signalization as necessary to accommodate east-west protected signal phasing, including necessary signal poles, mast arms, and signal heads.*

22. In accordance with the Circulation Recommendations presented in the project Traffic Impact Analysis, prior to the issuance of certificates of occupancy, the owner/developer shall construct the following improvements:

- *Vincent Avenue along the project site frontage shall be constructed at its ultimate half-section width, including landscaping and parkway improvements, in conjunction with development or as required by the City of Irwindale.*
- *Sufficient parking spaces shall be provided to meet City of Irwindale parking code requirements in order to service on-site parking demand.*
- *Sight distance at project access driveways shall comply with applicable City of Irwindale/Caltrans sight distance standards. The final grading, landscaping, and street improvement plans shall demonstrate that sight distance standards are met. Such plans must be reviewed by the City and approved as consistent with this measure prior to issue of grading permits.*
- *On-site traffic signing and striping shall be implemented in conjunction with detailed construction plans for the project. On-site traffic control plans shall comply with the California Manual of Uniform Traffic Control Devices (latest edition).*
- *The City of Irwindale shall periodically review traffic operations in the project vicinity once the project is constructed to assure that the traffic operations are satisfactory.*

All improvements shall be constructed in accordance with City standards to the satisfaction of the Director of Engineering. Construction plans shall be reviewed and approved by the Director of Engineering.

23. The existing traffic signal at the intersection of Arrow Highway and Vincent Avenue shall be modified to include protected left turn phases for all approaches. All improvements shall be constructed in accordance with City standards to the satisfaction of the Director of Engineering. Construction plans shall be reviewed and approved by the Director of Engineering. The owner and/or developer shall pay to the City the full cost of design, engineering, construction, construction management, inspection, and associated costs for the improvements. The City will design and cause construction of the improvements.

24. Prior to the issuance of building permits, the owner/developer shall make a fair share payment of \$112,052 to the City towards a feasibility study and/or PSR to

the evaluate potential regional impacts and improvements on the I-210, between the I-605 and Azusa Avenue.

FEES

25. That the owner/developer shall comply with all requirements of the County Sanitation District, make application for and pay the sewer maintenance fee.
26. That the owner/developer shall pay the connection fee upon application for storm water connection to the County of Los Angeles system.

MISCELLANEOUS

27. The owner/developer shall execute and record CC&Rs for the private maintenance of the south boundary slope located between the project site and the adjacent Los Angeles County-owned site to the south.
28. The owner/developer, under the direction of a certified land surveyor and at no cost to the City, shall install all required property boundary monuments, centerline ties and City monuments subject to the Director of Engineering's approval.
29. The owner and/or developer shall design and construct a City park/recreational area on the adjacent 10-acre City-owned site. The new recreational area shall include a meandering footpath, landscaping, trees, river rock, park benches and tables, irrigation, lighting and other landscape design features. Landscape irrigation shall be connected to a separate City water meter. The existing perimeter block wall along the westerly property line shall be modified as directed by the Director of Engineering. All improvements shall be constructed in accordance with City standards to the satisfaction of the Director of Engineering. Construction plans shall be reviewed and approved by the Director of Engineering. The owner/developer shall bear the full cost of design, construction, construction management, inspection and associated costs.
30. The owner/developer shall construct an 8-foot (measured from the higher finished grade elevation) perimeter decorative block wall along the westerly property line of the project site.
31. The owner/developer shall comply with the National Pollutant Discharge Elimination System (NPDES) program and shall require the general contractor to implement storm water/urban runoff pollution prevention controls and Best Management Practices (BMPs) on all construction sites in accordance with the City Code. The owner/developer will also be required to submit a Certification for the project and may be required to prepare a Storm Water Pollution Prevention Plan (SWPPP). Projects over five acres in size will be required to file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB). The

owner/developer can obtain the current application packet by contacting the SWRCB, Construction Storm Water Unit, at (866) 563-3107 or by downloading the forms from their website at: www.waterboards.ca.gov/water_issues/programs/stormwater/construction.shtml. The project shall also conform to the City's Ordinance regarding the requirements for the submittal of a Standard Urban Storm Water Mitigation Plan ("SUSMP"), and the requirements of Low Impact Development ("LID"). The SUSMP includes a requirement to implement Post Construction BMPs to infiltrate the first 3/4" of runoff from all storm events and to control peak-flow discharges.

32. The owner/developer shall contribute \$30,000 annually to the City's storm water maintenance program for the ongoing maintenance of the Kincaid Storm Water Basin facility. This annual contribution shall be subject to yearly CPI adjustments.
33. Unless exempted by the Los Angeles Regional Water Quality Control Board, a Covenant and Restriction ensuring the provisions of the approved SWPPP shall also be required.

BUILDING AND SAFETY

34. Complete Construction Documents include but not limited to Grading, Drainage, Soil Investigation, Architectural, Structural, Electrical, Mechanical, Plumbing, Landscaping...etc., shall be submitted to Irwindale Building & Safety Department for Plan check and Approval Process prior to any Permit Issuance. All Construction Documents shall be prepared by a California Licensed Engineer specialized on the submitted documents based on the current Codes adopted by City of Irwindale.
35. Grading, Drainage, Building and all other trade permits shall be obtained from Irwindale Building and Safety Division by a California licensed contractor(s). All construction shall be in compliance with the current Irwindale Building & Municipal Codes.
36. Other agencies' (Fire, Sanitation...etc.) approvals are required prior to any permit issuance. An agency referral sheet shall be provided to the applicant at the time of submittal to Building & Safety.
37. The Owner/Developer/Applicant is the sole responsible party for all required Plan Check and Permit fees, as well as any other agencies' fees.

Exhibit “E”

Draft EIR

<https://www.irwindaleca.gov/400/5175-Vincent-Avenue>

Exhibit “G”

Technical Appendices

<https://www.irwindaleca.gov/400/5175-Vincent-Avenue>

EXHIBIT "H"



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May 25, 2021

Ms. Brandi Jones
Senior Planner
City of Irwindale, Planning Division
5050 North Irwindale Avenue
Irwindale, CA 91706

RE: Comments on the Draft Environmental Impact Report for the 5175 Vincent Avenue Project (SCH #2018121056)

Dear Ms. Jones:

Thank you for the opportunity to provide comments on the City of Irwindale's Draft Environmental Impact Report (DEIR) for the 5175 Vincent Avenue Project (the Project). The Project would site a 545,000 square-foot warehouse with about 580 daily truck trips adjacent to residents in one of the most heavily-polluted areas in the state. The DEIR found that the Project would have significant and unavoidable impacts to air quality. While our discussions with the City and De Novo Consulting Group have yielded improvements to the DEIR, the DEIR still does not include critical, feasible measures to mitigate the Project's impacts. We respectfully urge the City to adopt all feasible mitigation measures as required by the California Environmental Quality Act, including consideration of the multi-building alternative analyzed in the DEIR.¹

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I. THE PROJECT WOULD SITE A LARGE WAREHOUSE ON A RESIDENTIAL STREET IN A HIGHLY-POLLUTED LOW INCOME MINORITY COMMUNITY.

The Project consists of an approximately 545,000 square-foot high-cube warehouse with 181 truck docks and 199 standard parking stalls.² The DEIR predicts that the Project would

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¹ The Attorney General submits these comments pursuant to his independent power and duty to protect the environment and natural resources of the State. (See Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.).

² DEIR at 2.0-6 to -7.

generate 580 truck trips and 2,128 passenger car trips daily.³ The Project site totals 26.05 acres across two vacant parcels.⁴ While all of the site is zoned Heavy Manufacturing and much of the site is already designated Industrial/Business Park by the City's General Plan, a seven-acre portion of one of the parcels, comprising just over a quarter of the total Project area, is currently designated Residential under Irwindale's General Plan.⁵ The Project would therefore re-designate that parcel Industrial/Business Park.⁶

The Project is located on Vincent Avenue at the boundary of southeastern Irwindale and Vincent, an unincorporated community in Los Angeles County.⁷ Vincent Avenue is a busy residential street with single-family homes across from the Project.⁸ Additional single-family homes are to the west, along with Irwindale Park, Irwindale City Hall, and a public library.⁹ Alice M. Ellington Elementary School is less than 1,000 feet to the east. The Project design places the truck docks on the western and eastern edges of the site, facing these sensitive receptors. North of the site is a largely industrial area.¹⁰ The land directly south is a vacant, former quarry site, with more single-family homes further south.¹¹

The surrounding community, which is overwhelmingly Hispanic, is already highly burdened by pollution. According to CalEnviroScreen 4.0, CalEPA's screening tool that ranks each census tract in the state for pollution and socioeconomic vulnerability,¹² the Project's census tract ranks worse than 85% of the rest of the state overall. The Project's census tract is also in the 100th percentile for pollution burden, meaning it is among the most polluted areas in

³ DEIR, Appendix D, at 21 Table 2.

⁴ DEIR at 2.0-5.

⁵ *Id.*

⁶ *Id.* The Project's re-designation of land designated for residential use without accompanying re-designation of other parcels to ensure no net loss in residential capacity may violate the Housing Crisis Act of 2019. *See* Gov. Code § 66300(b)(1)(A) (prohibiting changing a general plan residential land use designation to a use that "lessen[s] the intensity of housing"); Gov. Code § 66300(i)(1) (creating an exemption for actions that "concurrently change[] the [restrictions] applicable to other parcels ... to ensure that there is no net loss in residential capacity").

⁷ *Id.* at 2.0-13 Fig. 2.0-2.

⁸ *Id.* at 2.0-15 Fig. 2.0-3.

⁹ *Id.* at 2.0-13 Fig. 2.0-2.

¹⁰ *Id.* at 2.0-15 Fig. 2.0-3.

¹¹ *Id.* at 2.0-21 Fig. 2.0-6.

¹² CalEnviroScreen 4.0, available at <https://oehha.ca.gov/calenviroscreen/report/draft-calenviroscreen-40> (as of May 3, 2021). CalEnviroScreen is a tool created by the Office of Environmental Health Hazard Assessment that uses environmental, health, and socioeconomic information to produce scores and rank every census tract in the state. A census tract with a high score is one that experiences a much higher pollution burden than a census tract with a low score. Office of Environmental Health Hazard Assessment, CalEnviroScreen 4.0 Report (February 2021), available at <https://oehha.ca.gov/media/downloads/calenviroscreen/document/calenviroscreen40reportd12021.pdf>.

2

cont'd

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the entire state. Irwindale residents, including some directly west of the Project site, live alongside extensive industry. The residents of neighboring Vincent likewise bear a higher pollution burden than 82% of the rest of the state, according to CalEnviroScreen.

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cont'd

II. THE DEIR FAILS TO JUSTIFY ITS REJECTION OF THE MULTI-BUILDING ALTERNATIVE.

CEQA requires an EIR to identify alternatives to the proposed project.¹³ “Evaluation of project alternatives and mitigation measures is the core of an EIR.”¹⁴ Discussion of alternatives allow governmental agencies to consider alternatives to proposed actions affecting the environment.¹⁵ To that end, the EIR must “describe a range of reasonable alternatives . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.”¹⁶

The DEIR includes an alternative—the multi-building alternative—that would substantially reduce the Project’s environmental impacts while still meeting the Project’s stated objectives. The multi-building alternative is an alternative site design consisting of three warehouse buildings instead of a single, larger building.¹⁷ This site design would place all of the dock doors at the interior of the site, facing away from sensitive receptors.¹⁸ It would also involve a longer interior driveway, lessening the risk that trucks could queue on Vincent Avenue.¹⁹

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The DEIR recognized that these alternative design features would reduce air quality and noise impacts on sensitive receptors.²⁰ The noise contour analysis, reproduced as Figures A and B at the end of this letter, is particularly illustrative. In the primary design, noise from dock doors radiates outward toward residents, but in the multi-building alternative, noise from onsite operations is mostly contained within the Project site.²¹

As analyzed in the table below, the multi-building alternative would also meet the Project’s objectives:²²

¹³ Pub. Resources Code § 21002.1, subd. (a).

¹⁴ *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 937 (alterations omitted).

¹⁵ *Laurel Heights Improvement Ass’n. v. Regents of Univ. of California* (1988) 47 Cal. 3d 376, 400 (en banc) (citing Pub. Resources Code § 21001, subd. (g)).

¹⁶ CEQA Guidelines § 15126.6, subd. (a).

¹⁷ DEIR at 5.0-4.

¹⁸ *Id.* at 5.0-23 Fig. 5.0-1. See Section III.A. below for discussion of this issue.

¹⁹ *Id.* See Section III.A. below for discussion of this issue.

²⁰ *Id.* at 5.0-10 to -11, -13 to -14.

²¹ *Compare id.* at 3.7-25 Fig. 3.7-3, *with id.* at 5.0-33 Fig. 5.0-4.

²² *Id.* at 5.0-1 to -2.

Objective	Analysis
Quantified Development	The multi-building alternative would develop the Project site with total warehouse space only 1,252 square feet smaller than the Project. ²³
Economic Contribution	As it includes essentially the same square footage as the Project, the multi-building alternative would likely provide a similar amount of total jobs and development investment. By having three buildings instead of one, the multi-building alternative could have multiple tenants, giving the City more robust protection against a downturn in any one tenant's business.
Employment Opportunities	See above. Employment opportunities would likely be similar.
Public Facilities and Services	The multi-building alternative and Project contain no noted differences in public facilities and services.
Marketable High Cube Warehouse	The multi-building alternative and Project would both involve construction of marketable high-cube warehouse facilities that could attract a variety of end users.
End User Restrictions	The multi-building alternative and Project would have the same end user restrictions.
Buffer Surrounding Uses	The multi-building alternative would buffer surrounding uses better than the Project because its design would direct the environmental impacts toward the interior of the site and away from sensitive receptors. The multi-building alternative unnecessarily includes a smaller vegetative buffer than the Project. ²⁴ There is little reason the multi-building alternative cannot be revised to include a similar vegetative buffer to the Project, as the square footage lost would be small in comparison to the benefits for surrounding uses.
Redevelopment of the Manning Pit	Both the multi-building alternative and Project would redevelop the former Manning Pit site.

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The multi-building alternative would therefore be environmentally superior while also meeting the Project's objectives.

²³ *Id.* at 5.0-4.

²⁴ *Id.* at 5.0-25 Fig. 5.0-2a.

The DEIR identifies the multi-building alternative as the environmentally-superior alternative, but it asserts that the alternative would not meet the Project's objectives.²⁵ The DEIR's entire analysis of the multi-building alternative's ability to meet the Project's objectives is limited to a single sentence with no explanation: "However, the Multiple Building Alternative would not fully meet all of the Project objectives." This is insufficient. The DEIR should explain which Project objectives the multi-building alternative would not meet (if any), and why. In so doing, the City "may not give a project's purpose an artificially narrow definition" to limit the scope of acceptable alternatives.²⁶

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Ultimately, if the City decides to approve a warehouse at this location, it should consider the multi-building alternative or another design that locates dock doors away from sensitive receptors. In that event, the City should ensure that the alternative site design includes other mitigation measures mentioned in the following section.

III. THE DEIR DOES NOT INCLUDE ALL FEASIBLE MITIGATION MEASURES.

An EIR must describe and adopt all feasible mitigation measures that minimize the significant environmental impacts of a project.²⁷ "Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified."²⁸ The lead agency is expected to develop mitigation measures in an open process and consider measures proposed by other interested agencies and the public.²⁹ Shortly after the DEIR was released, the Attorney General's Office published a document entitled "Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act," to help lead agencies comply with these requirements.³⁰ We provided this document to the City as part of our engagement prior to submitting this comment letter.

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Primarily due to the substantial emissions generated by the Project's vehicle traffic, the DEIR found significant and unavoidable air quality impacts.³¹ Specifically, the DEIR determined that the Project's operational nitrogen oxide emissions would exceed the significance threshold established by the local air district.³² Nitrogen oxide is a primary precursor to smog formation and a significant factor in the development of respiratory problems like asthma, bronchitis, and lung irritation.³³ Nonetheless, the DEIR fails to incorporate feasible mitigation to reduce sensitive receptors' exposure to the Project's emissions.

²⁵ *Id.* at 5.0-21.

²⁶ *N. Coast Rivers All. v. Kawamura* (2015) 243 Cal. App. 4th 647, 668.

²⁷ Pub. Resources Code, § 21002; CEQA Guidelines, § 15126.4(a)(1).

²⁸ CEQA Guidelines, § 15126.4(a)(1)(B).

²⁹ *Communities for a Better Environment v. City of Richmond*, (2010) 184 Cal.App.4th 70, 93.

³⁰ <https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/warehouse-best-practices.pdf> ("Warehouse Best Practices document").

³¹ DEIR at 3.2-24 to -31, -41 to -45.

³² *Id.* at 3.2-28.

³³ California Air Resources Board, Nitrogen Dioxide & Health, <https://ww2.arb.ca.gov/resources/nitrogen-dioxide-and-health> (NOx).

A. The Project's Site Design Exacerbates its Environmental Impacts on Nearby Residents.

Most fundamentally, the Project's site design maximizes nearby sensitive receptors' exposure to the Project's environmental impacts. As the Warehouse Best Practices document explains,

The most important consideration when planning a logistics facility is its location. Warehouses located in residential neighborhoods or near other sensitive receptors expose community residents and those using or visiting sensitive receptor sites to the air pollution, noise, traffic, and other environmental impacts they generate. Therefore, placing facilities away from sensitive receptors significantly reduces their environmental and quality of life harms on local communities.³⁴

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This Project is located adjacent to residences to the east and nearby residences, City Hall, a library, and a park to the west.³⁵ We also understand that the City intends to designate the currently-vacant strip of land between the Project and the sensitive receptors to the west for further residential development in its pending Housing Element update. The Project would therefore cause a severe land use conflict between the proposed industrial warehouse and adjacent sensitive receptors.³⁶

In these cases, the Warehouse Best Practices document recommends several feasible measures to mitigate the land use conflict. First, projects should "[l]ocat[e] warehouse dock doors and other onsite areas with significant truck traffic and noise away from sensitive receptors."³⁷ Second, projects should "[p]rovid[e] adequate areas for on-site parking, on-site queuing, and truck check-in that prevent trucks and other vehicles from parking or idling on public streets."³⁸ Third, projects should "[p]lac[e] facility entry and exit points from the public

³⁴ Warehouse Best Practices document, at 4-5.

³⁵ DEIR at 2.0-13 Fig. 2.0-2, 2.0-15 Fig. 2.0-3.

³⁶ Note that the land use conflict presented by this Project and its site design is far greater than in the three other warehouse projects the City has approved in recent years (The Park @ Live Oak Specific Plan, 13131 Los Angeles Street Industrial Project, and Irwindale Industrial Center Project)—projects on which the Attorney General's Office declined to comment. The Park @ Live Oak Specific Plan DEIR, https://files.ceqanet.opr.ca.gov/216361-2/attachment/tJxSyKoC7IWnQRtoCm9u-yzfEiYXhVTZGZWHDFzRdpbTtKF9y89Pq4F5_XmQonkDhQZ6VxkiNi9Hea4U0, at 2-4 Fig. 2-3; 13131 Los Angeles Street Industrial Project DEIR, https://files.ceqanet.opr.ca.gov/254608-3/attachment/eZqHV6bPniK2vW0BenM79UOBZfuWt_b1WIXz7kpwak1EudZzmSpRHPWbtB1YSzXpKtACxnl7sGjKfxQ0, at 2-7 Fig. 2.0-3; Irwindale Industrial Center Project Initial Study, https://files.ceqanet.opr.ca.gov/255475-2/attachment/0db_x4P2jEeIpnGG0i0NzcBwbFoO53O71FallEkAqHvXN6DI3S6YVn6c1CuNBFw-ISSt2NVB_piQ_Mt0, at Fig. 2.0-3.

³⁷ *Id.* at 5.

³⁸ *Id.*

street away from sensitive receptors.”³⁹ Fourth, projects should “[c]reat[e] physical, structural, and/or vegetative buffers that adequately prevent or substantially reduce pollutant dispersal between warehouses and any areas where sensitive receptors are likely to be present.”⁴⁰ Individually and collectively, these measures would reduce the Project’s land use conflict with sensitive receptors by directing the Project’s environmental impacts away from homes and other uses that are most sensitive to the air emissions, noise, and other impacts caused by trucking and loading activities. These measures are also common for warehouse projects in the Los Angeles and Inland Empire regions.⁴¹

The Project fails to incorporate these best practices. The Project’s dock doors and internal roads are located on the west and east sides, the same sides where sensitive receptors are located.⁴² The Project also provides minimal space for trucks to queue and check in, particularly on the Project’s east side, where the Vincent Avenue entry points are situated close to the dock doors.⁴³ When multiple trucks arrive at the same time, trucks may queue and idle on Vincent Avenue, in front of homes. Even if trucks do not queue on Vincent Avenue, Vincent Avenue is the only entry or exit point from the Project, ensuring that all 580 daily truck trips—or nearly one truck every other minute, 24 hours a day—pass by these homes.⁴⁴ Finally, while the Project does include physical and vegetative buffers, they are relatively small given the Project’s proximity to sensitive receptors.⁴⁵

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³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *See, e.g.*, Riverside County Good Neighbor Policy for Logistics and Warehouse/Distribution Uses, <https://www.rivcocob.org/wp-content/uploads/2020/01/Good-Neighbor-Policy-F-3-Final-Adopted.pdf>, at 3.2, 3.3, 3.5, 3.7; Agua Mansa Commerce Park Specific Plan DEIR, https://files.ceqanet.opr.ca.gov/4286-2/attachment/CYVKIx3k3GGLV5H134HOMoEK5yCPyRk1jc7ttwqoRnSaCyNhMxzwv7f-Z6_ONiMw38BCWhFfEBSFQIP0, at 3.0-11 Fig. 3-5; Slover Distribution Center DEIR, <http://www.sbcounty.gov/uploads/lus/environmental/00%20Draft%20EIR.pdf>, at 3.0-17 Ex. 3.0-6; Sierra Avenue and Casa Grande Avenue Warehouse Project DEIR, https://files.ceqanet.opr.ca.gov/252740-5/attachment/knzDQFe8BS8Q2q1J3yAlSUnvVkHI4SDIpnfYi2_QFeL5RDArOk0KYjg-Wb413A7N4uYnz8H8krFc-pnf0, at 3.0-37 Fig. 3-9; Bridgepoint South Bay II Initial Study, https://files.ceqanet.opr.ca.gov/255728-2/attachment/61-xIHd6ivC7ADYMNCEBcXN6lOu0wKhr6N6AvsdGX9TJsc_cflxg1AnBvWuhusObXyaY5biUAiu9xTeR0, at 21 Fig. 4. While the Attorney General’s Office submitted comment letters on some of these projects, each of these projects nonetheless included the aforementioned best practices for shielding nearby sensitive receptors from truck docks and related impacts, demonstrating the degree to which those practices are basic elements of any warehouse site plan in the region.

⁴² DEIR at 2.0-19 Fig. 2.0-5.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Compare, e.g., id.* at 3.1-13 Fig. 3.1-1b, with Agua Mansa Commerce Park Specific Plan, <https://files.ceqanet.opr.ca.gov/4286-2/attachment/kukfxJsZdLS2U->

The Project should be revised to incorporate the basic, feasible design measures discussed above, which would reduce the Project's significant air quality impacts.

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B. The DEIR Omits Necessary Measures to Ensure Truck Traffic Does Not Travel on Residential Streets.

The DEIR also fails to sufficiently mitigate the impacts of trucks traveling to and from the Project. The DEIR stated that the Project would generate 580 daily truck trips. As the DEIR acknowledged,⁴⁶ heavy trucks emit diesel particulate matter, nitrogen oxide, and other air pollution.⁴⁷ In addition, the Warehouse Best Practices document explains that “[t]ruck traffic can present substantial safety issues. Collisions with heavy-duty trucks are especially dangerous for passenger cars, motorcycles, bicycles, and pedestrians. These concerns can be even greater if truck traffic passes through residential areas, school zones, or other places where pedestrians are common and extra caution is warranted.”⁴⁸

The DEIR's analysis showed that the Project could create significant conflicts between trucks and sensitive receptors. The DEIR's traffic modeling predicted that nearly half of all trucks visiting the Project would traverse residential streets and a quarter of all trucks would travel on residential streets where trucks are currently not permitted.⁴⁹ As illustrated by Figure 12 of the DEIR's Appendix D (at page 23), fifteen percent of trucks are projected to travel south on Vincent Avenue until reaching Interstate-10, and another ten percent are projected to cut north on Vernon Avenue from Gladstone Street. Those two paths are not along truck routes in the Cities of Azusa and West Covina, respectively.⁵⁰ Thus, without additional mitigation, the Project presents significant risk that a large volume of trucks will travel off truck routes and through residential areas.⁵¹

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The Warehouse Best Practices document recommends the following measures to mitigate these impacts:

- Designing, clearly marking, and enforcing truck routes that keep trucks out of residential neighborhoods and away from other sensitive receptors.⁵²

[XYrV1Jx2PhRmvmZNixwaKCdmYJOI33Hci8D6efK1jusiNh8-uu_1giGt-JkS4RbQP40](#), at 4-35 to -45.

⁴⁶ *Id.* at 3.2-85.

⁴⁷ Warehouse Best Practices document at 2.

⁴⁸ *Id.* at 9-10.

⁴⁹ DEIR, Appendix D, at 23 Fig. 12.

⁵⁰ Azusa Municipal Code § 74-277; West Covina Municipal Code § 22-141.

⁵¹ Even if the DEIR's traffic modeling did not account for truck routes when predicting where trucks would travel, it still determined that traveling off truck routes would be the most convenient way for many trucks to access the Project. This demonstrates that additional measures are needed to mitigate this risk.

⁵² Warehouse Best Practices document at 10.

- Installing signs in residential areas noting that truck and employee parking is prohibited.⁵³
- Restricting the turns trucks can make entering and exiting the facility to route trucks away from sensitive receptors.⁵⁴
- Posting signs at every truck exit driveway providing directional information to the truck route.⁵⁵

As applied to this Project, the City should consider routing all traffic west on Arrow Highway or north on Irwindale Avenue, routes through industrial areas from which trucks can access major highways. The City should also post signs at Project exit points detailing the truck routes to highways and directing trucks to those routes. If trucks cannot be diverted away from residential areas entirely, the City should require the project applicant to provide signage along those routes clearly marking the truck routes and prohibiting parking and idling. In addition, as a condition of approval, the City should require end user contracts (e.g., a lease) to include a provision making the end user liable to the City for specified fines if the City determines trucks from the Project are regularly violating truck route ordinances in Irwindale or nearby jurisdictions. These feasible measures would mitigate the Project's significant air quality impacts and reduce the risk that trucks visiting the Project violate truck route ordinances.

IV. WE UNDERSTAND THAT THE DEIR HAS BEEN REVISED TO ENSURE MITIGATION IS SUFFICIENTLY SPECIFIC AND ENFORCEABLE.

CEQA requires mitigation measures in an EIR to be enforceable.⁵⁶ The DEIR released on February 17, 2021, includes several mitigation measures that are so vague as to be unenforceable. We understand that the City is working to revise the DEIR's mitigation measures to resolve this concern. Examples of the DEIR's unenforceable language are below:

- Measure 3.1-1 requires preparation of a lighting plan "to minimize light spillage onto adjacent properties to the greatest extent feasible," but it does not describe any specific measures to accomplish this goal.⁵⁷
- Measure 3.2-1 states that "warehouse shall be constructed with the appropriate infrastructure to facilitate sufficient electric charging for trucks," but it does not define what or how much infrastructure is "appropriate" or "sufficient."⁵⁸
- Measure 3.2-2 refers generally to "providing the necessary infrastructure (e.g. electrical hookups) to support zero and near-zero equipment and tools" and "the necessary infrastructure to support zero and near-zero emission technology vehicles and equipment that will be operating on-site," but does not specify the type of zero- or near-zero-emission equipment, tools, or vehicles that will operate on-site, what sort of infrastructure

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 8.

⁵⁶ Pub. Res. Code § 21081.6(b); CEQA Guidelines, § 15126.4(a)(2).

⁵⁷ DEIR at ES-5.

⁵⁸ *Id.*

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will be provided to support them, or how much is “necessary.”⁵⁹

- Measure 3.4-1 requires the Project to “[m]aximize use of solar energy, including solar panels” and “[i]ninstall the maximum possible number of solar energy arrays on the building roof and/or on the Project site.” However, it does not define “maximum possible” nor does it set a floor on the wattage the Project’s solar panels must generate. Similarly, the same measure requires the Project to “[m]aximize the planting of trees in landscaping and parking lots,” but again sets no standards by which to judge whether tree planting has been maximized.⁶⁰

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Without more specific or concrete requirements, it is not clear how the City and its residents could enforce these measures. As noted above, we understand that the City is working to resolve this concern in the final EIR it is preparing. We appreciate the City’s and De Novo Planning Group’s efforts to improve the DEIR and look forward to confirming these revisions in the final EIR.

V. CONCLUSION

CEQA promotes public health and thoughtful governance by requiring mitigation of a project’s significant environmental impacts and consideration of alternatives before project approval. The need for mitigation in this Project is particularly acute given the severity of the land use conflict this Project would create. While we appreciate the City’s and De Novo Planning Group’s efforts to improve the DEIR, the Project still fails to incorporate critical, feasible mitigation measures. The City should consider re-designing the Project—and/or consider the DEIR’s multi-building alternative—to direct the Project’s environmental impacts away from adjacent sensitive receptors. The City should also implement clear and specific mitigation to limit the unauthorized travel of trucks from this Project on residential streets off designated truck routes. Please do not hesitate to contact me if you have any questions or would like to discuss.

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Sincerely,



ROBERT SWANSON
Deputy Attorney General

For ROB BONTA
Attorney General

⁵⁹ *Id.* at ES-7.

⁶⁰ *Id.* at ES-9.

Figure A: Projected Noise Contours for Project (DEIR at 3.7-25 Fig. 3-7.3)

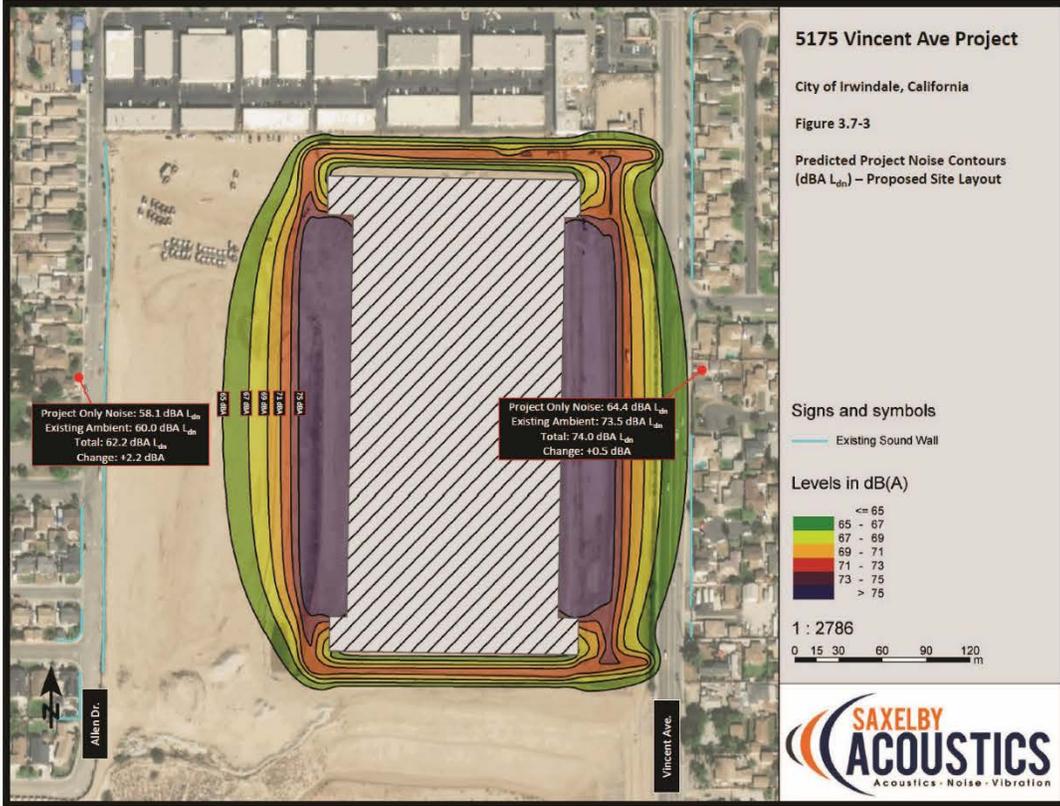
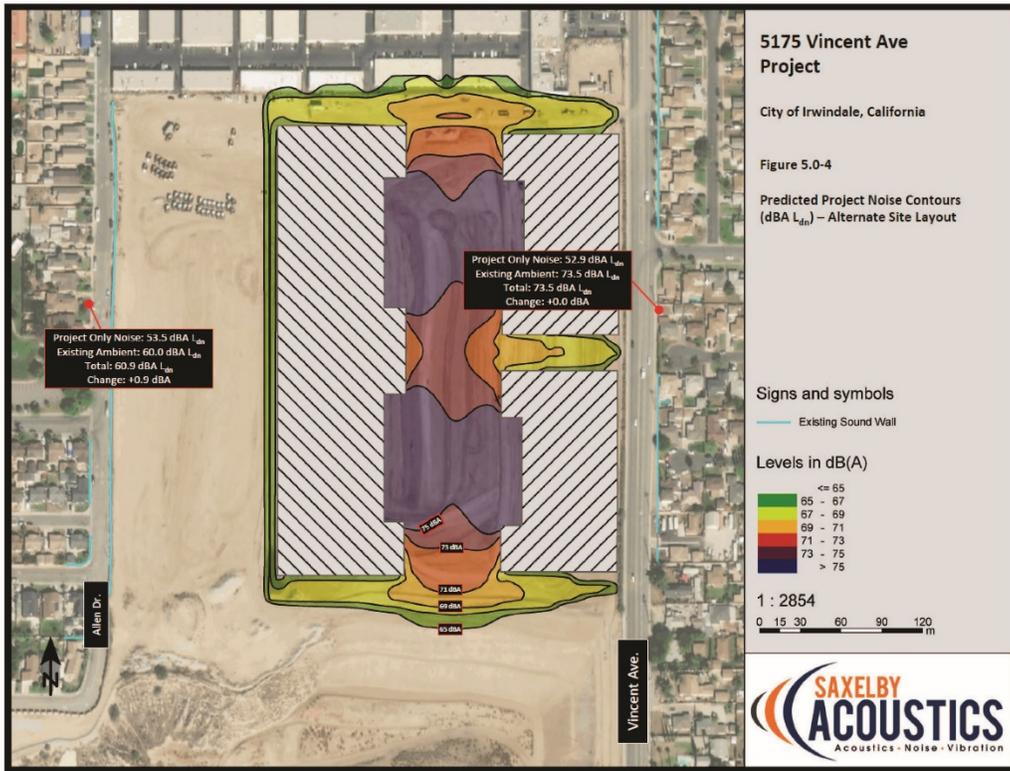


Figure B: Projected Noise Contours for Multi-Building Alternative (DEIR at 5.0-33 Fig. 5.0-4)



Response to State of California Department of Justice Comment Letter

Response 1: The commenter correctly summarizes the proposed Project and summarizes some of the comments made in the body of the letter related to air quality, mitigation measures, and the Multiple Building Alternative. The commenter indicates that there have been improvements to the DEIR, but that the project still lacks mitigation. No specific mitigation is identified in this comment, rather it serves as an introduction to the comment letter. No further response is necessary.

Response 2: The commenter correctly summarizes the proposed Project and the number of truck and automobile trips resulting from the Project. The commenter summarizes the existing and proposed General Plan designation and zoning designation for the site.

It should be noted that one important fact was not articulated in this summary as it related to the City of Irwindale General Plan land uses and zoning discrepancies. The General Plan specifically addresses development of the Manning Pit, a portion of which is the Project site. The General Plan notes that the City owned the northern portion of the pit, which contains two parcels: 8417-034-015 and 8417-034-016. The western parcel on the former Manning Pit (8417-034-912) is approximately 10 acres and is designated Residential, which is not part of the Project development. The eastern parcels comprise the Project site, and contains 19.12 acres of Industrial/Business Park and 6.93 acres of Residential. The entire 26.05 acres is zoned M-2 "Heavy Manufacturing." The inconsistency between the General Plan land use designation and the zoning designation is a mapping error of 6.93 acres of Residential land use that doesn't align with the parcel boundary or the zoning map made by the cartographer when creating the original Land Use and Zoning maps. The mapping error is being corrected through a General Plan Amendment. It is noted that City Staff and their consultants communicated this fact to the Attorney General's Office staff during various discussions. It is noted that, these mapping errors are not uncommon in the world of land use planning, and is attributed to human error. The designations should align with the parcel lines, and the mapping correction is being made through a General Plan Amendment for full transparency. The mapping correction is consistent with the land use on the balance of the parcel and is consistent with the City's intent in 2008 when the site was approved for reclamation. In addition to the General Plan Amendment, a Site Plan and Design Review application and Lot Line Adjustment are under concurrent review. The development proposal includes development of the two (2) parcels as a single use industrial Project. The lot line adjustment would release the southern parcel to create a single parcel. The parcel to the west of the subject property would remain designated Residential and is not proposed for development at this time.

Response 3: The commenter states that the Project site's census tract ranks worse than 85 percent of the state overall on the CalEnviroScreen 4.0 screening tool. The commenter also states that Irwindale residents, including some directly west of the Project site, live alongside extensive industry. The residents of neighboring Vincent likewise bear a higher pollution burden than 82 percent of the rest of the state, according to CalEnviroScreen.

This comment is noted. The Draft EIR has evaluated each of the Project's environmental impacts against the relevant thresholds (such as via an air toxic health risk assessment to determine the total cancer and non-cancer air toxic health risks and the nearby sensitive receptors) and checked consistency with the applicable plans (such as the General Plan, as applicable). Moreover, the Draft EIR has incorporated mitigation measures where applicable and feasible, made appropriate significance determinations, and evaluated cumulative impacts and Project alternatives.

CEQA requires a lead agency to consider whether a project's effects, while they might appear limited on their own, are "cumulatively considerable" and therefore significant. As provided in Chapter 4.0: Other CEQA of the Draft EIR, cumulative impacts are considered and analyzed in full. For example, as provided in Chapter 4.0: Other CEQA of the Draft EIR, the proposed Project was identified as having a cumulatively considerable and significant and unavoidable cumulative air quality impact.

Further, under CEQA, a local government is charged with the important task of "determining whether and how a project should be approved," and must exercise its own best judgment to "balance a variety of public objectives, including economic, environmental, and social factors and in particular the goal of providing a decent home and satisfying living environment for every Californian." (CEQA Guidelines, § 15021, subd. (d).) A local agency has discretion to approve a project even where, after application of all feasible mitigation, the project will have unavoidable adverse environmental impacts. (Id. at § 15093.) When the agency does so, however, it must be clear and transparent about the decision.

To satisfy CEQA's public information and informed decision making purposes, in making a statement of overriding considerations, the agency should clearly state not only the "specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits" that, in its view, warrant approval of the project, but also the project's "unavoidable adverse environmental effects[.]" (Id. at subd. (a).) If, for example, the benefits of the project will be enjoyed widely, but the environmental burdens of a project will be felt particularly by the neighboring communities, this should be set out plainly in the statement of overriding considerations. Therefore, the Statement of Overriding Considerations prepared for the proposed Project will incorporate language that plainly identifies that some of the environmental burdens of the project will be felt particularly by the neighboring communities.

Overall, CEQA's purpose is neither "fair treatment" nor "environmental justice" in the sense of socioeconomic conditions. Rather, CEQA centers on whether a project may have a significant effect on the physical environment. The Draft EIR has been developed consistent with the requirements of CEQA. Nevertheless, the Draft EIR does include analysis of issues that are related to environmental justice, where applicable (such as through the development of an air toxic health risk assessment to determine the total cancer and non-cancer air toxic health risks and the nearby sensitive receptors, and under cumulative impacts).

Response 4:

The commenter summarizes the CEQA requirements for alternatives to a project, and summarizes the Multiple Building Alternative description. The commenter also summarizes the reduced air quality and noise impacts under the Multiple Building Alternative, discusses the Multiple Building Alternative's ability to meet each Project objective, and states that this alternative would meet the objectives. Further, the commenter states that the Draft EIR should explain which Project objectives the multi-building alternative would not meet (if any), and why. The commenter concludes by states that, "Ultimately, if the City decides to approve a warehouse at this location, it should consider the multi-building alternative or another design that locates dock doors away from sensitive receptors. In that event, the City should ensure that the alternative site design includes other mitigation measures mentioned in the following section."

This comment is noted and has been forwarded to the decisionmakers for consideration. In the Final EIR, we have included an Errata that is an update to Chapter 5.0: Alternatives. This discussion includes an amplified discussion on each Project alternatives' ability to achieve each Project

objective. Below is the additional text added to amplify the Project Alternatives discussion. See the revisions within Final EIR Chapter 3.0: Revisions for further detail.

5.4 Comparative Evaluation of the Alternatives' Ability to Satisfy Project Objectives

This section examines how each of the alternatives selected for more detailed analysis meets the Project objectives.

1. *Quantified Development: Development of land use densities and intensities at quantities that maximize the use of the land as a single development to meet the demands of the market while considering zoning and land uses restrictions. The quantifiable objectives include the development of approximately 26.05 acres with a 545,735 square-foot industrial warehouse that provides employment-generating development.*

The No Project (No Build) Alternative would not satisfy this Project objective because under this alternative, the Project site would remain in its current existing condition and would not develop the land as a single development to meet the demands of the market while also considering the zoning and land use restrictions. The Multiple Building Alternative would meet this objective because this alternative would develop the land to meet the demands of the market; it is noted, however, that this alternative would develop 544,483 sf of industrial warehouse uses (a reduction of 1,252 sf compared to the Project). The Maximum FAR Alternative would also meet this objective, but this alternative would develop 1,134,738 sf of industrial warehouse uses (an increase of 589,003 sf compared to the Project).

2. *Economic Contribution: Strengthen the City's economic base through Project's job creation; development related investment; disposable income from future employees; and increased property, sales, and transient occupancy taxes.*

The No Project (No Build) Alternative would not satisfy this Project objective because under this alternative, the Project site would remain in its current existing condition and would not create jobs or increased taxes. Both the Multiple Building Alternative and the Maximum FAR Alternative would strengthen the City's economic base through job creation, development related investment, disposable income from future employees, and increased property, sales, and transient occupancy taxes. As such, both the Multiple Building Alternative and the Maximum FAR Alternative would meet this objective.

3. *Employment Opportunities: Provide for local and regional employment opportunities that take advantage of the areas high level of accessibility, allow for the expansion of the City's economic base, help create a jobs/housing balance, and reduce the commute for local residents.*

The No Project (No Build) Alternative would not satisfy this Project objective because under this alternative, the Project site would remain in its current existing condition and would not provide for local and regional employment opportunities that take advantage of the areas high level of accessibility, allow for the expansion of the City's economic base, help create a jobs/housing balance, and reduce the commute for local residents. Both the Multiple Building Alternative and the Maximum FAR Alternative would provide for local and regional employment opportunities that take advantage of the areas high level of accessibility, allow for the expansion of the City's economic base, help create a jobs/housing balance, and reduce the commute for local residents. As such, both the Multiple Building Alternative and the Maximum FAR Alternative would meet this objective.

4. *Public Facilities and Services: Provide infrastructure and services that meet City standards, integrate with existing and planned facilities and connections and do not diminish services to existing residents of the City.*

The No Project (No Build) Alternative would not satisfy this objective because under this alternative, infrastructure and services would not be provided. Both the Multiple Building Alternative and the Maximum FAR Alternative would provide infrastructure and services that meet City standards, integrate with existing and planned facilities and connections and do not diminish services to existing residents of the City. As such, both the Multiple Building Alternative and the Maximum FAR Alternative would meet this objective.

5. *Marketable High Cube Warehouse: Provide for the construction of a high-cube warehouse facility that could attract a variety of end users, including transload facility, short-term storage facility, light industrial, and/or manufacturing uses. The facility should be designed with efficient transportation access and circulation within the site, accessible loading bays on two sides of the building, and a high level of on-site automation and logistics management to enable highly-efficient processing of goods through the high-cube warehouse.*

The No Project (No Build) Alternative would not satisfy this objective because under this alternative, a high-cube warehouse facility that could attract a variety of end uses would not be provided. Both the Multiple Building Alternative and the Maximum FAR Alternative would construct a high-cube warehouse that could attract a variety of end users. However, the Multiple Building Alternative may not be as marketable as the proposed Project because, by splitting up the warehouse into three buildings, and limiting loading bays to one side of the building, the types of end users may be limited. For example, an end user which requires loading bays on both sides of the buildings due to the logistical efficiencies that are created with this design may be uninterested in these buildings. Additionally, end users that require ample storage space for inventory and large products may prefer one large building to three small or medium buildings. Overall, there are logistical inefficiencies that are created in warehouse operations through this Alternative, which is anticipated to translate into reduced interest from operators that are in need of warehouse facilities in the market. As such, the Multiple Building Alternative would partially meet this objective, but to a lesser extent than the proposed Project because of the operational and logistical inefficiencies that are created through this design. The Maximum FAR Alternative would meet this objective.

6. *End User Restrictions: Restrict the use of the warehouse building such that no business would be able to operate a fulfillment center, parcel hub, or cold storage facility. The intent of this restriction is to minimize the potential air quality impacts from such end users.*

The No Project (No Build) Alternative would not provide a warehouse building; as such, this alternative would not meet this objective. Both the Multiple Building Alternative and the Maximum FAR Alternative would restrict the end use of the warehouse building(s); as such, both would meet this objective.

7. *Buffer Surrounding Uses: Provide a landscaped buffer with sound attenuation along Vincent Avenue to buffer neighboring uses.*

The No Project (No Build) would not provide a landscaped buffer. Both the Multiple Building Alternative and the Maximum FAR Alternative would partially meet this objective, but to a lesser extent than the proposed Project because the buffer along Vincent Avenue would be decreased when compared to the proposed Project.

8. *Redevelopment of the Manning Pit: With the completed remediation and closure of the Manning Pit, provide for redevelopment of the site in accordance with the General Plan, such that the site can be utilized in a manner that provides jobs and provides a tax base for the community.*

The No Project (No Build) Alternative would not achieve this objective because this alternative would not redevelop the Manning Pit in accordance with the General Plan. The Multiple Building Alternative and the Maximum FAR Alternative would meet this objective because both alternatives would redevelop the site in accordance with the General Plan, such that the site can be utilized in a manner that provides jobs and provides a tax base for the community.

It was determined that there are no feasible alternatives to the proposed Project (as identified in Section 5:0: Alternatives of the Draft EIR) that would meet all Project objectives, even after considering alternative project designs (note: alternative locations within the City of Irwindale are not available). Furthermore, there are no additional feasible mitigation that have been presented through the public forum, or developed by the City staff, that could be applied to those impacts, beyond those presented in the Mitigation Monitoring and Reporting Program, that were determined to be “significant and unavoidable”. In addition, as part of the enforcement process, “[i]n order to ensure that the mitigation measures and project revisions identified in the EIR...are implemented,” the local agency must also adopt a program for mitigation monitoring or reporting. (CEQA Guidelines, § 15097, subd. (a).) A Mitigation Monitoring and Reporting Program has been prepared for the Project, as is included in Chapter 4 of this Final EIR.

Response 5: The commenter states that an EIR must describe all feasible mitigation measures that minimize the significant environmental impacts of a project, and that where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. The commenter also states that the lead agency is expected to develop mitigation measures in an open process and consider measures proposed by other interested agencies and the public. Shortly after the DEIR was released, The Attorney’s General’s Office

published a document entitled “Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act”, which the commentor provided to the City as part of their engagement prior to submitting this comment letter. The commentor concludes by stating that the DEIR fails to incorporate feasible mitigation to reduce sensitive receptors’ exposure to the Project’s emissions.

It should be noted here, that the chronology of the Draft EIR publication, and the Attorney’s General Office publishing a Warehouse Best Management Document did not coincide. The City published the Draft EIR before the Attorney’s General Office published their Warehouse Best Management Document. Therefore, it was not possible to consider the contents of the Attorney’s General Office document in the Draft EIR. The Draft EIR was published using the baseline conditions, and the rules and regulations in place at that time which predated the Attorney’s General Office publication. Nevertheless, the air quality-related mitigation measures have been updated within the FEIR, in response to comments related to air quality (See 3.0 Revisions for further detail), including those from the CARB, environmental groups, and others. This includes the recommendations provided by the Attorney’s General Office. For example, based on recommendations provided by CARB, the Attorney’s General Office, various environmental groups, and other organizations, the mitigation measures in Section 3.2: Air Quality have been updated to include additional and more stringent requirements, to incorporate the recommendations provided by commentors. For example, Mitigation Measure 3.2-1 has been updated in this FEIR as follows:

Mitigation Measure 3.2-1: *Prior to the certificate of occupancy issuance, the Project applicant shall demonstrate to the satisfaction of the City of Irwindale Community Development Director and/or their designee that the following measures would be implemented during Project operations. These measures shall be enforced and maintained through Conditions of Approval; Covenants, Codes, and Restrictions (CC&Rs), or other means acceptable to the City of Irwindale Community Development Director and/or their designee.*

- *The proposed warehouse shall be constructed with the appropriate infrastructure to facilitate sufficient electric charging for trucks to plug-in in anticipation of future technology, sufficient to allow for the possibility for all on-site trucks to operate with 100% electric powertrains.*
- *At least five percent of all vehicle parking spaces shall include rough-in of electrical conduit for future EV charging stations. Electrical panels shall be appropriately sized to allow for future expanded use.*
- *Truck refrigeration units (TRUs) shall be prohibited from operating within the Project site, via a condition requiring a restrictive covenant over the Project parcel that prohibits the applicant’s use of TRUs on the property.*
- *Legible, durable, weather-proof signs shall be placed at truck access gates, loading docks, and truck parking areas that identify applicable California Air Resources Board (CARB) anti-idling regulations. At a minimum each sign shall include: 1) instructions for truck drivers to shut off engines when not in use; 2) instructions for drivers of diesel trucks to restrict idling to no more than five minutes; and 3) telephone numbers of the building facilities manager and CARB to report violations.*
- *Limit all on-site vehicle idling to a maximum of five minutes per hour.*
- *Maintain a buffer zone of at least 150 feet between truck loading zones/docks and the nearest sensitive receptors.*
- *Require the installation of vegetative walls or other effective barriers that separate loading docks and people living or working nearby.*
- *All service equipment (i.e., forklifts) used within the site shall be electric or compressed natural gas-powered (propane).*
- *In order to promote alternative fuels, and help support “clean” truck fleets, the developer/successor-in-interest shall provide building occupants with information related to SCAQMD’s Carl Moyer Program, or other such programs that promote truck retrofits or “clean” vehicles and information including, but not limited to, the health effect of diesel particulates, benefits of reduced idling time, CARB regulations, and importance of not parking in residential areas. Tenants shall be notified about the availability of: 1) alternatively fueled cargo handling equipment; 2) grant programs for diesel-fueled vehicle engine retrofit and/or replacement; 3) designated truck parking locations in the Project vicinity; 4) access to alternative fueling stations proximate to the site that supply compressed natural gas; and 5) the United States Environmental Protection Agency’s SmartWay program.*

- *There shall be provisions for preferential on-site parking for carpoolers and vanpools, sufficient to provide an incentive for carpooling and vanpooling to and from the project site.*
- *Construct and designate an area within the Project site for employee pick-up to prevent traffic congestion.*
- *Submit a truck queuing analysis to the City of Irwindale Engineering Division to ensure that there are no trucks queuing outside of the facility and that truck traffic does not idle on public streets.*
- *Submit an employee training handbook to the City of Irwindale that includes the following:*
 - *Required facility operator management and employee training on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks;*
 - *Required facility operator management and employee training on keeping vehicle records in diesel technologies and compliance with CARB regulations;*
 - *Required facility operator management and employee to attend courses approved by the California Air Resources Board.*
- *Submit a transportation demand management program. The transportation demand management plan shall consider:*
 - *Transit and ridesharing programs that discourage single-occupancy vehicle trips.*
 - *Financial incentives for use of alternative modes of transportation, including carpooling, public transit, and biking.*

Furthermore, as another example, Mitigation Measure 3.2-2 has been updated with many additional requirements and improvements to make the existing requirements more stringent, compared to what was provided in the DEIR. Mitigation Measure 3.2-2, as provided in Section 3.0 Revisions, has been updated in the FEIR as follows:

Mitigation Measure 3.2-2: *Prior to the grading permit issuance, the Project applicant shall demonstrate to the satisfaction of the City of Irwindale Community Development Department Director and/or their designee that the following measures would be implemented during Project construction activities. These measures shall be enforced and maintained by the construction contractor throughout construction activities.*

- *Ensure the cleanest possible construction practices and equipment are used. This includes eliminating the idling of diesel-powered equipment and providing the necessary infrastructure (e.g. electrical hookups) to support zero and near-zero equipment and tools, and otherwise requiring the use of construction equipment meeting at least the U.S. EPA's Tier IV compliance standards or better for construction equipment greater than 50 horsepower, and/or utilizing construction vehicles that use alternative fuels such as compressed natural gas (CNG), propane, electricity or biodiesel.*
- *Require off-road diesel-powered equipment used during Project construction to be equipped with Tier 4 or cleaner engines, except for specialized construction equipment in which Tier 4 engines are not available. In place of Tier 4 engines, off-road equipment can incorporate retrofits that achieve emission reductions that equal or exceed that of a Tier 4 engine.*
- *Require all off-road equipment with a power rating below 19 kilowatts (e.g., plate compactors, pressure washers) used during project construction be battery powered.*
- *Implement, and plan accordingly for, the necessary infrastructure to support zero and near-zero emission technology vehicles and equipment that will be operating on-site. Necessary infrastructure shall include the physical (e.g. needed footprint), energy, and fueling infrastructure for construction equipment, on-site vehicles and equipment, and medium-heavy and heavy-duty trucks.*
- *In construction contracts, include language that requires all construction equipment and fleets to be in compliance with all current air quality regulations.*
- *Keep on-site and furnish to the lead agency or other regulators upon request, all equipment maintenance records and other data sheets, including design specifications and emission control tier classifications.*
- *Require that all heavy-duty trucks entering the construction site, during the grading and building construction phases, to be model year 2014 or later. All heavy-duty haul trucks should also meet CARB's lowest optional low-NOx standard starting in the year 2022.*
- *Apply water every 3 hours to disturbed areas within a construction site.*
- *Require minimum soil moisture of 12% for earthmoving by use of a moveable sprinkler system or a water truck. Moisture content can be verified by lab sample or moisture probe.*
- *Limit on-site vehicle speeds (on unpaved roads) to 15 mph.*
- *Replace ground cover in disturbed areas as quickly as possible.*
- *All trucks hauling dirt, sand, soil, or other loose materials are to be tarped with a fabric cover and maintain a freeboard height of 12 inches.*
- *Apply chemical dust suppressant annually to unpaved parking areas.*

- Cover inactive storage piles.
- Sweep streets if visible soil material is carried out from the construction site;
- Provide information on transit and ridesharing programs and services to construction employees.
- Post a publicly visible sign written in English and Spanish, which specifies the telephone number and person to contact regarding dust complaints. This person shall respond to complaints and take corrective action within 48 hours. The sign shall be in accordance with SCAQMD and/or City requirements, as applicable.

Moreover, Mitigation Measure 3.4-1 (see Section 3.4: Greenhouse Gases, Climate Change, and Energy) has been overhauled to additional requirements as recommended by various commentors. The updated Mitigation Measure 3.4-1, which is also provided in Section 3.0 Revisions of this FEIR, has been updated as follows:

Mitigation Measure 3.4-1: *Prior to the Certificate of Occupancy issuance, the Project Applicant shall demonstrate to the satisfaction of the City of Irwindale Community Development Director and/or their designee that the following measures would be implemented during Project operations. These measures shall be enforced and maintained through Conditions of Approval; Covenants, Codes, and Restrictions (CC&Rs), or other means acceptable to the City of Irwindale Community Development Director and/or their designee.*

- Install the maximum feasible number of solar energy arrays on the building roof and/or on the Project site to generate on-site solar energy for the facility.
- Utilize solar energy, on-site and/or off-site, sufficient to provide energy for the entire building's energy consumption on a net annual basis. Purchase off-site energy credits (in part of whole) is allowed, in order to achieve this measure.
- Plant mature trees and shrubs in landscaping and parking lots, to reduce Project heat impacts.
- Employ the use of solar-reflective cool pavement, which may include conventional concrete, in the circulation areas surrounding the truck docks within the Project site to reduce heat impacts.
- Employ the use of light-colored roofing materials for the Project building.
- Utilize only Energy Star heating, cooling, and lighting devices and appliances.
- Employ the use of electric or alternatively-fueled sweeper with high-efficiency particulate air (HEPA) filters.

Overall, each of the mitigation measure recommendations provided by the commentors (including those from the Attorney General's Office published document entitled "Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act") were incorporated into the relevant existing mitigation measures from the DEIR, within this FEIR. The Project applicant is required to incorporate these additional requirements. Only those recommendations that were not deemed feasible by the Project applicant, such as requirement that all trucks traveling on-site to be all-electric, were not included within the updated mitigation measures within this FEIR. The selection of mitigation measures has been conducted in an open process, and those measures recommended by the public and other interested agencies have been incorporated, for all feasible mitigation. It is also noted that design modifications that are in alignment with the design recommendations in the Attorney General's Office Document are provided in the Draft EIR in the form of Alternatives (Alternative Designs) for consideration by the lead agency decisionmakers. Therefore, with the updated mitigation measures provided in this FEIR, and the Alternatives that are already provided in the Draft EIR, no further response is required.

Response 6: The commenter states:

"A. The Project's Site Design Exacerbates its Environmental Impacts on Nearby Residents.

Most fundamentally, the Project's site design maximizes nearby sensitive receptors' exposure to the Project's environmental impacts. As the Warehouse Best Practices document explains,

The most important consideration when planning a logistics facility is its location. Warehouses located in residential neighborhoods or near other sensitive receptors expose community residents and those using or visiting sensitive receptor sites to the air pollution, noise, traffic, and other environmental impacts they generate. Therefore, placing facilities away from sensitive receptors significantly reduces their environmental and quality of life harms on local communities.

This Project is located adjacent to residences to the east and nearby residences, City Hall, a library, and a park to the west. We also understand that the City intends to designate the currently-vacant strip of land between the Project and the sensitive receptors to the west for further residential development in its pending Housing Element update. The Project would therefore cause a severe land use conflict between the proposed industrial warehouse and adjacent sensitive receptors.

In these cases, the Warehouse Best Practices document recommends several feasible measures to mitigate the land use conflict. First, projects should “[l]ocat[e] warehouse dock doors and other onsite areas with significant truck traffic and noise away from sensitive receptors.” Second, projects should “[p]rovid[e] adequate areas for on-site parking, on-site queuing, and truck check-in that prevent trucks and other vehicles from parking or idling on public streets.” Third, projects should “[p]lac[e] facility entry and exit points from the public street away from sensitive receptors.” Fourth, projects should “[c]reat[e] physical, structural, and/or vegetative buffers that adequately prevent or substantially reduce pollutant dispersal between warehouses and any areas where sensitive receptors are likely to be present.” Individually and collectively, these measures would reduce the Project’s land use conflict with sensitive receptors by directing the Project’s environmental impacts away from homes and other uses that are most sensitive to the air emissions, noise, and other impacts caused by trucking and loading activities. These measures are also common for warehouse projects in the Los Angeles and Inland Empire regions.

The Project fails to incorporate these best practices. The Project’s dock doors and internal roads are located on the west and east sides, the same sides where sensitive receptors are located. The Project also provides minimal space for trucks to queue and check in, particularly on the Project’s east side, where the Vincent Avenue entry points are situated close to the dock doors. When multiple trucks arrive at the same time, trucks may queue and idle on Vincent Avenue, in front of homes. Even if trucks do not queue on Vincent Avenue, Vincent Avenue is the only entry or exit point from the Project, ensuring that all 580 daily truck trips—or nearly one truck every other minute, 24 hours a day—pass by these homes. Finally, while the Project does include physical and vegetative buffers, they are relatively small given the Project’s proximity to sensitive receptors.

The Project should be revised to incorporate the basic, feasible design measures discussed above, which would reduce the Project’s significant air quality impacts.”

This comment is noted. The mitigation measures incorporated into the FEIR greatly reduce the magnitude of the Project’s environmental impacts, including the updates made to the mitigation measure requirements within the FEIR, based on comments made by the public and interested agencies. Additionally, Alternatives were provided in the Draft EIR in an attempt to identify feasible

Alternatives that would mitigate impacts to the extent feasible. The City's determination remains that there are no additional feasible mitigation measures that have been identified during the public process that could be applied to the Project to reduce all impacts to below a "significant and unavoidable" level. Moreover, there are no feasible alternatives to the proposed Project (as identified in Section 5.0: Alternatives of the Draft EIR) that would fully meet all Project objectives, even after considering alternative project designs.

Ultimately, although the Project site design may exacerbate environmental impacts on nearby residents and other sensitive receptors, these impacts have been appropriately analyzed within the DEIR and FEIR, and appropriately disclosed through the public process. The Project site design is not required to be modified further, beyond incorporating all feasible mitigation (as provided in the Mitigation Monitoring and Reporting Program). Rather, a modified site design was provided in the Draft EIR as an "Alternative" for consideration by the lead agency. The City of Irwindale is the lead agency, serving as the local land use authority with local police power in deciding how and where to develop land uses within their jurisdiction. At the time of writing this response, no decision by the lead agency has been made. No further response is warranted.

Response 7: The commenter states that the Draft EIR fails to mitigate impacts from truck travel, and summarizes the amount of truck trips and air pollution concerns. The commenter continues to summarize a portion of the Draft EIR relating to truck trip distribution, and concludes by stating that, "without additional mitigation, the Project presents significant risk that a large volume of trucks will travel off truck routes and through residential areas." The commenter lists four measures from the Warehouse Best Practices document to mitigate impacts. The commenter concludes by stating that, "the City should consider routing all traffic west on Arrow Highway or north on Irwindale Avenue, routes through industrial areas from which trucks can access major highways. The City should also post signs at Project exit points detailing the truck routes to highways and directing trucks to those routes. If trucks cannot be diverted away from residential areas entirely, the City should require the project applicant to provide signage along those routes clearly marking the truck routes and prohibiting parking and idling. In addition, as a Condition of Approval, the City should require end user contracts (e.g., a lease) to include a provision making the end user liable to the City for specified fines if the City determines trucks from the Project are regularly violating truck route ordinances in Irwindale or nearby jurisdictions. These feasible measures would mitigate the Project's significant air quality impacts and reduce the risk that trucks visiting the Project violate truck route ordinances."

A preliminary analysis of truck route usage and queuing was completed for the Project. Figure 3.8-4, which has been added to Chapter 3: Revisions, shows that the majority of the truck trips would occur on local or county truck routes; however, there are portions of Vincent Avenue, Vernon Avenue, and Gladstone Street that are not shown as designated truck routes. With respect to queuing, the intersection of Vincent Avenue/Arrow Highway, where Project truck trips would be most concentrated, is forecast to operate at level of service (LOS) C during the AM peak hour and LOS D during the PM peak hour. LOS D generally correlates to fair operation with no long-standing traffic queues. This level is typically associated with design practice for peak periods. All other study intersections are also mitigated to LOS D or better, with the exception of I-605 NB Ramps at Live Oak Avenue (#2) and Rivergrade Road at Live Oak Avenue (#4), where there is no adjacent residential.

It is noted that the Project applicant anticipates that truck drivers associated with the Project would be provided appropriate signage onsite to ensure wayfinding as trucks exist the Project site.

The City's improvement plan review would include a review of signage to comply with City standards. Nevertheless, it is possible that a driver inappropriately travels south on Vincent Avenue which is not a designated truck route. As such, Mitigation Measure 3.8-2 has been added to ensure that there is a clear Traffic Plan prepared by the operator of the business to illustrate the routes to be used for truck traffic generated by their business. Mitigation Measure 3.8-2 was provided in response to discussion that were had with the Attorney General's Office predating the formal letter that was submitted.

***Mitigation Measure 3.8-2:** Any operator of a business within the Project site shall provide the City with a Traffic Plan that illustrates the routes to be used for truck traffic generated by their business. The Traffic Plan shall include way finding signage to ensure that truck drivers can adequately find the appropriate truck routes that should be used. The Traffic Plan shall identify the location of each sign (on and off site), as well as the example sign to be installed. The Traffic Plan shall identify how the plan will be enforced, methods of residents to file a complaint for non-compliance. The Traffic Plan shall include a provision for the City to charge a penalty for non-compliance with the plan. The Traffic Plan shall clearly indicate that all truck traffic is required to make a left turn out of the Project site onto Vincent Avenue and head north toward Arrow Highway where there are appropriate truck routes. Operators of the warehouse shall be responsible for informing truck drivers of the Traffic Plan, which will identify the appropriate truck routes.*

Response 8: The commenter states:

“IV. WE UNDERSTAND THAT THE DEIR HAS BEEN REVISED TO ENSURE MITIGATION IS SUFFICIENTLY SPECIFIC AND ENFORCEABLE.

CEQA requires mitigation measures in an EIR to be enforceable. The DEIR released on February 17, 2021, includes several mitigation measures that are so vague as to be unenforceable. We understand that the City is working to revise the DEIR's mitigation measures to resolve this concern. Examples of the DEIR's unenforceable language are below:

- Measure 3.1-1 requires preparation of a lighting plan “to minimize light spillage onto adjacent properties to the greatest extent feasible,” but it does not describe any specific measures to accomplish this goal.
- Measure 3.2-1 states that “warehouse shall be constructed with the appropriate infrastructure to facilitate sufficient electric charging for trucks,” but it does not define what or how much infrastructure is “appropriate” or “sufficient.”
- Measure 3.2-2 refers generally to “providing the necessary infrastructure (e.g. electrical hookups) to support zero and near-zero equipment and tools” and “the necessary infrastructure to support zero and near-zero emission technology vehicles and equipment that will be operating on-site,” but does not specify the type of zero- or near-zero-emission equipment, tools, or vehicles that will operate on-site, what sort of infrastructure will be provided to support them, or how much is “necessary.”
- Measure 3.4-1 requires the Project to “[m]aximize use of solar energy, including solar panels” and “[i]ninstall the maximum possible number of solar energy arrays on the building roof and/or on the Project site.” However, it does not define “maximum possible” nor does it set a floor on the wattage the Project's solar panels must generate. Similarly, the same measure requires the Project to “[m]aximize the planting of trees in landscaping and parking lots,” but again sets no standards by which to judge whether tree planting has been maximized.

Without more specific or concrete requirements, it is not clear how the City and its residents could enforce these measures. As noted above, we understand that the City is working to resolve this concern in the final EIR it is preparing. We appreciate the City's and De Novo Planning Group's efforts to improve the DEIR and look forward to confirming these revisions in the final EIR."

This comment is noted. As the commentor states, the DEIR has been revised within this FEIR to ensure that mitigation is sufficiently specific and enforceable. More specifically, the mitigation measure identified by the commentor as lacking specificity and enforceability, have been updated in this FEIR to ensure that the mitigation measures are sufficiently specific and enforceable. Specific responses to each of the examples cited by this comment are provided below.

Firstly, Mitigation Measure 3.1-1 has been updated to state that the lighting plan shall include light location and details, and that the lighting plan must be designed for normal levels during operational hours and reduced intensity levels throughout late, non-operational hours (for security purposes), and shall not shine directly in the eyes of pedestrians and shall be shielded to prevent spillover into adjacent residential properties, consistent with the Commercial and Industrial Design Guidelines. The updated mitigation measure is presented below.

Mitigation Measure 3.1-1: *A lighting plan for the Project shall be prepared prior to the approval of the Site Plan. The lighting plan shall include light location and details and shall demonstrate that the lighting systems and other exterior lighting throughout the Project site has been designed to minimize light spillage onto adjacent properties to the greatest extent feasible, consistent with the Site Plan and Design Review requirements established in Chapter 17.70 of the City's Municipal Code and the City of Irwindale Commercial and Industrial Design Guidelines (2009). The lighting plan shall be designed for normal levels during operational hours and reduced intensity levels throughout late, non-operational hours (for security purposes), and shall not shine directly in the eyes of pedestrians and shall be shielded to prevent spillover into adjacent residential properties, consistent with the Commercial and Industrial Design Guidelines.*

Secondly, Mitigation Measure 3.2-1 has been updated to state that the Project's truck electric charging infrastructure must be sufficient to serve the possibility that on-site trucks would operate with 100% electric powertrains. It is noted that the world does not yet have electric transport semi-trucks available, and we cannot speculate when, or if, such trucks would become available.

Mitigation Measure 3.2-1: *Prior to the Certificate of Occupancy issuance, the Project applicant shall demonstrate to the satisfaction of the City of Irwindale Community Development Director and/or their designee that the following measures would be implemented during Project operations. These measures shall be enforced and maintained through Conditions of Approval; Covenants, Codes, and Restrictions (CC&Rs), or other means acceptable to the City of Irwindale Community Development Director and/or their designee.*

- *The proposed warehouse shall be constructed with the appropriate infrastructure to facilitate sufficient electric charging for trucks to plug-in in anticipation of future technology, sufficient to allow for the possibility for all on-site trucks to operate with 100% electric powertrains.*
- *At least five percent of all vehicle parking spaces shall include rough-in of electrical conduit for future EV charging stations. Electrical panels shall be appropriately sized to allow for future expanded use.*
- *Truck refrigeration units (TRUs) shall be prohibited from operating within the Project site, via a Condition requiring a restrictive covenant over the Project parcel that prohibits the applicant's use of TRUs on the property.*
- *Legible, durable, weather-proof signs shall be placed at truck access gates, loading docks, and truck parking areas that identify applicable California Air Resources Board (CARB) anti-idling regulations. At a minimum each sign shall include: 1) instructions for truck drivers to shut off engines when not in use; 2) instructions for drivers of diesel trucks to restrict idling to no more than five minutes; and 3) telephone numbers of the building facilities manager and CARB to report violations.*
- *Limit all on-site vehicle idling to a maximum of five minutes per hour.*
- *Maintain a buffer zone of at least 150 feet between truck loading zones/docks and the nearest sensitive receptors.*

- *Require the installation of vegetative walls or other effective barriers that separate loading docks and people living or working nearby.*
- *All service equipment (i.e., forklifts) used within the site shall be electric or compressed natural gas-powered (propane).*
- *In order to promote alternative fuels, and help support “clean” truck fleets, the developer/successor-in-interest shall provide building occupants with information related to SCAQMD’s Carl Moyer Program, or other such programs that promote truck retrofits or “clean” vehicles and information including, but not limited to, the health effect of diesel particulates, benefits of reduced idling time, CARB regulations, and importance of not parking in residential areas. Tenants shall be notified about the availability of: 1) alternatively fueled cargo handling equipment; 2) grant programs for diesel-fueled vehicle engine retrofit and/or replacement; 3) designated truck parking locations in the Project vicinity; 4) access to alternative fueling stations proximate to the site that supply compressed natural gas; and 5) the United States Environmental Protection Agency’s SmartWay program.*
- *There shall be provisions for preferential on-site parking for carpoolers and vanpools, sufficient to provide an incentive for carpooling and vanpooling to and from the project site.*
- *Construct and designate an area within the Project site for employee pick-up to prevent traffic congestion.*
- *Submit a truck queuing analysis to the City of Irwindale Engineering Division to ensure that there are no trucks queuing outside of the facility and that truck traffic does not idle on public streets.*
- *Submit an employee training handbook to the City of Irwindale that includes the following:*
 - *Required facility operator management and employee training on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks;*
 - *Required facility operator management and employee training on keeping vehicle records in diesel technologies and compliance with CARB regulations;*
 - *Required facility operator management and employee to attend courses approved by the California Air Resources Board.*
- *Submit a transportation demand management program. The transportation demand management plan shall consider:*
 - *Transit and ridesharing programs that discourage single-occupancy vehicle trips.*
 - *Financial incentives for use of alternative modes of transportation, including carpooling, public transit, and biking.*

Thirdly, Mitigation Measure 3.2-2 has been strengthened to augment the requirement that the Project must contain necessary infrastructure (e.g. electrical hookups) to support zero and near-zero equipment and tools with an additional requirement to ensure that construction equipment meets at least the least the U.S. EPA’s Tier IV compliance standards or better for construction equipment greater than 50 horsepower, and/or that construction vehicles that use alternative fuels such as compressed natural gas (CNG), propane, electricity or biodiesel. Moreover, among other improvements, Mitigation Measure 3.2-2 has been updated further to require that off-road diesel-powered equipment used during Project construction must be equipped with Tier 4 or cleaner engines, except for specialized construction equipment in which Tier 4 engines are not available. In addition, the mitigation measure now includes requirements that all off-road equipment with a power rating below 19 kilowatts (e.g., plate compactors, pressure washers) used during project construction are battery powered.

Mitigation Measure 3.2-2: *Prior to the grading permit issuance, the Project applicant shall demonstrate to the satisfaction of the City of Irwindale Community Development Department Director and/or their designee that the following measures would be implemented during Project construction activities. These measures shall be enforced and maintained by the construction contractor throughout construction activities.*

- *Ensure the cleanest possible construction practices and equipment are used. This includes eliminating the idling of diesel-powered equipment and providing the necessary infrastructure (e.g. electrical hookups) to support zero and near-zero equipment and tools, and otherwise requiring the use of construction equipment meeting at least the U.S. EPA’s Tier IV compliance standards or better for construction equipment greater than 50 horsepower, and/or utilizing construction vehicles that use alternative fuels such as compressed natural gas (CNG), propane, electricity or biodiesel.*
- *Require off-road diesel-powered equipment used during Project construction to be equipped with Tier 4 or cleaner engines, except for specialized construction equipment in which Tier 4 engines are not available. In place*

of Tier 4 engines, off-road equipment can incorporate retrofits that achieve emission reductions that equal or exceed that of a Tier 4 engine.

- Require all off-road equipment with a power rating below 19 kilowatts (e.g., plate compactors, pressure washers) used during project construction be battery powered.
- Implement, and plan accordingly for, the necessary infrastructure to support zero and near-zero emission technology vehicles and equipment that will be operating on-site. Necessary infrastructure shall include the physical (e.g. needed footprint), energy, and fueling infrastructure for construction equipment, on-site vehicles and equipment, and medium-heavy and heavy-duty trucks.
- In construction contracts, include language that requires all construction equipment and fleets to be in compliance with all current air quality regulations.
- Keep on-site and furnish to the lead agency or other regulators upon request, all equipment maintenance records and other data sheets, including design specifications and emission control tier classifications.
- Require that all heavy-duty trucks entering the construction site, during the grading and building construction phases, to be model year 2014 or later. All heavy-duty haul trucks should also meet CARB's lowest optional low-NOx standard starting in the year 2022.
- Apply water every 3 hours to disturbed areas within a construction site.
- Require minimum soil moisture of 12% for earthmoving by use of a moveable sprinkler system or a water truck. Moisture content can be verified by lab sample or moisture probe.
- Limit on-site vehicle speeds (on unpaved roads) to 15 mph.
- Replace ground cover in disturbed areas as quickly as possible.
- All trucks hauling dirt, sand, soil, or other loose materials are to be tarped with a fabric cover and maintain a freeboard height of 12 inches.
- Apply chemical dust suppressant annually to unpaved parking areas.
- Cover inactive storage piles.
- Sweep streets if visible soil material is carried out from the construction site;
- Provide information on transit and ridesharing programs and services to construction employees.
- Post a publicly visible sign written in English and Spanish, which specifies the telephone number and person to contact regarding dust complaints. This person shall respond to complaints and take corrective action within 48 hours. The sign shall be in accordance with SCAQMD and/or City requirements, as applicable.

Lastly, Mitigation Measure 3.4-1 has been updated to require that Project to utilize solar energy, on-site and/or off-site, sufficient to provide energy for the entire building's energy consumption on a net annual basis. Purchase off-site energy credits (in part of whole) is allowed, in order to achieve this measure. Additionally, Mitigation Measure 3.4-1 has been updated to include additional requirements to use solar-reflective cool pavement in the circulation areas surrounding the truck docks within the Project site, as well as to employ the use of light-colored roofing materials for the Project building. The requirement for tree planting in landscaping and parking lots has also been clarified.

Mitigation Measure 3.4-1: Prior to the Certificate of Occupancy issuance, the Project Applicant shall demonstrate to the satisfaction of the City of Irwindale Community Development Director and/or their designee that the following measures would be implemented during Project operations. These measures shall be enforced and maintained through Conditions of Approval; Covenants, Codes, and Restrictions (CC&Rs), or other means acceptable to the City of Irwindale Community Development Director and/or their designee.

- Install the maximum feasible number of solar energy arrays on the building roof and/or on the Project site to generate on-site solar energy for the facility.
- Utilize solar energy, on-site and/or off-site, sufficient to provide energy for the entire building's energy consumption on a net annual basis. Purchase off-site energy credits (in part of whole) is allowed, in order to achieve this measure.
- Plant mature trees and shrubs in landscaping and parking lots, to reduce Project heat impacts.
- Employ the use of solar-reflective cool pavement, which may include conventional concrete, in the circulation areas surrounding the truck docks within the Project site to reduce heat impacts.
- Employ the use of light-colored roofing materials for the Project building.
- Utilize only Energy Star heating, cooling, and lighting devices and appliances.
- Employ the use of electric or alternatively-fueled sweeper with high-efficiency particulate air (HEPA) filters.

Overall, the mitigation measures within the FEIR have been updated to ensure sufficient enforceability and specificity, based on comments provided by the public and agencies such as the California Department of Justice. Refer to Section 3.0 Revisions of this FEIR for further detail. No further response is warranted.

Response 9: The commenter states that, “CEQA promotes public health and thoughtful governance by requiring mitigation of a project’s significant environmental impacts and consideration of alternatives before project approval. The need for mitigation in this Project is particularly acute given the severity of the land use conflict this Project would create. While we appreciate the City’s and De Novo Planning Group’s efforts to improve the DEIR, the Project still fails to incorporate critical, feasible mitigation measures. The City should consider re-designing the Project—and/or consider the DEIR’s multi-building alternative—to direct the Project’s environmental impacts away from adjacent sensitive receptors. The City should also implement clear and specific mitigation to limit the unauthorized travel of trucks from this Project on residential streets off designated truck routes. Please do not hesitate to contact me if you have any questions or would like to discuss.”

This comment serves as a conclusion to the comment letter and has been forwarded to the decisionmakers for their consideration. No further response is necessary.

EXHIBIT "I"



RECEIVED

JUN 14 2021

CITY OF IRWINDALE
OFFICE OF CITY MANAGER

6/9/2021

Honorable H. Manual Ortiz, Mayor
City of Irwindale
5050 N. Irwindale Avenue
Irwindale, CA 91706

Dear Honorable Mayor Ortiz:

I am writing in support of the Five Points development project, the proposed 5175 Vincent Avenue Industrial Development in the City of Irwindale. This project is coming forward to the City Council in the near future and I strongly urge you and the City Council to support this impressive project.

I congratulate you, your Council, and the developer for creating a partnership and an agreement that has transformed this property from a blighted, dusty, contaminated site to a clean, ready-to-build 25.4-acre industrial development with 10 acres backfilled and retained for future use by the City.

This project exemplifies a public-private approach to accomplish shared goals of economic development, job creation, increased property assessed values, beautification, and revenue generation for the City, community, and San Gabriel Valley. Our region needs projects like this to boost our post-COVID-19 economic recovery.

Sincerely,

A handwritten signature in blue ink that reads "Bill R. Manis".

Bill R. Manis
President/CEO
San Gabriel Valley Economic Partnership

cc:

Councilman Burrola
Councilman Breceda
Councilman Ambriz
Councilman Garcia
William Tam, City Manager

EXHIBIT "J"



SHEPHERD'S PANTRY
hope and a helping hand

June 16, 2021

Honorable H. Manual Ortiz
Mayor
City of Irwindale
5050 N. Irwindale Avenue
Irwindale, CA 91706

RECEIVED
JUN 21 2021
CITY OF IRWINDALE
OFFICE OF CITY MANAGER

Dear Honorable Mayor Ortiz:

We are writing in support of Five Points development project, the 5175 Vincent Avenue Industrial Development in the City of Irwindale. This project is coming forward to the City Council in the near future and we strongly urge you and the City Council to approve it.

As a community-based organization serving the City of Irwindale and surrounding communities for many years, we understand that people need to have a safe, clean place to live and enjoy life, and they also need support services, jobs, and businesses. Residents look to the City and its leaders to promote and provide these quality of life needs for its citizens.

We support the 5175 Vincent Avenue Industrial Project because it will change a long-time unattractive, unhealthy, dust-generating site into a beautifully designed building with landscaping along a well-traveled street. It will be an income source for the City and create jobs that people really need right now since COVID-19 caused many to lose their jobs.

We want to see the City support this project because it fits well with the surrounding neighborhood. We also urge you to use the 10 acres immediately west of the project, which Five Points ensured the backfilling of, to provide additional land uses that benefit local residents, businesses, and organizations. Progress is needed in Irwindale for future generations, so respectfully, please vote in favor of this project.

Sincerely,

Craig Cerro
Executive Director

cc:

Councilman Burrola, Councilman Breceda, Councilman Ambriz, Councilman Garcia
William Tam, City Manager ✓

Glendora: 657 E. Arrow Highway Ste. J, Glendora, CA 91740 | Phone: 626.852.7630
Irwindale: 1418 Arrow Highway, Irwindale, CA 91706 | Phone: 626.305.0392

Tax ID: 20-8277679 | Email: info@shepherdsparntry.com | Website: www.shepherdsparntry.com

EXHIBIT "K"



July 1, 2021

CITY OF IRWINDALE
COMMUNITY DEVELOPMENT
JUL 01 2021

RECEIVED

The Honorable H. Manual Ortiz
Mayor
City of Irwindale
5050 N. Irwindale Avenue
Irwindale, CA 91706

Dear Mayor Ortiz:

On behalf of the Irwindale Chamber of Commerce, I am writing in support of the proposed Five Points development project at 5175 Vincent Avenue Industrial Development in the City of Irwindale. The Chamber respectfully encourages your approval of this project when it comes before the City Council in the near future.

I congratulate you, your Council, and the developer for creating a partnership and an agreement that has transformed this property from a blighted, dusty, contaminated site to a clean, ready-to-build 25.4-acre industrial development with 10 acres backfilled and retained for future use by the City.

The Chamber believes this project exemplifies a public-private approach to accomplish shared goals of economic development, job creation, increased property assessed values, beautification, and revenue generation for the City, community, and the San Gabriel Valley. We need projects like this to boost our post-COVID-19 recovery.

The partnership between the City and the developer, Five Points, is a model for what cities can do to meet the needs of their residents, businesses, and the community. By collaborating with businesses and investors, your City is making the right kinds of choices to meet the need for housing, jobs, infrastructure, and services.

AVE PAPER, SAVE THE ENVIRONMENT

Irwindale Chamber of Commerce
16102 Arrow Hwy
PO Box 2307 (mailing)
Irwindale, CA 91706

irwindalechamber.org
info@irwindalechamber.org
T: 626-960-6606
#IrwindaleChamber

Thank you in advance for your consideration of this important project. The Chamber looks forward to working with you on this and other projects that aim to promote a robust and thriving Irwindale economy!

Sincerely,



Nicole Shahenian
President & CEO

cc: Councilman Burrola
Councilman Breceda
Councilman Ambriz
Councilman Garcia
William Tam, City Manager

EXHIBIT "L"

IRWINDALE LIONS CLUB

P.O. BOX 2093, IRWINDALE, CA 91706
CHARTERED APRIL 23, 1964

CITY OF IRWINDALE
COMMUNITY DEVELOPMENT

JUL 14 2021

RECEIVED



We Serve

July 13, 2021

Honorable H. Manual Ortiz, Mayor
City of Irwindale
5050 N. Irwindale Avenue
Irwindale, CA 91706

Dear Honorable Mayor Ortiz:

We are writing in support of Five Points development project, the 5175 Vincent Avenue Industrial Development in the City of Irwindale. This project is coming forward to the City Council soon and we strongly urge you and the City Council to approve it.

As a community-based organization serving the City of Irwindale and surrounding communities for many years, we understand that people need to have a safe, clean place to live and enjoy life, and they also need support services, jobs, and businesses. Residents look to the City and its leaders to promote and provide these quality of life needs for its citizens.

We support the 5175 Vincent Avenue Industrial Project because it will change a long-time unattractive, unhealthy, dust-generating site into a beautifully designed building with landscaping along a well-traveled street. It will be an income source for the City and create jobs that people really need right now since COVID-19 caused many to lose their jobs.

We want to see the City support this project because it fits well with the surrounding neighborhood. We also urge you to use the 10 acres immediately west of the project, which Five Points ensured the backfilling of, to provide additional land uses that benefit local residents, businesses, and organizations. We also urge you to do this in a manner that protects health and the environment. Progress is needed in Irwindale for future generations, so respectfully, please vote in favor of this project.

Sincerely,

Teri Hall, Secretary
Irwindale Lions

cc: Councilman Burrola
Councilman Breceda
Councilman Ambriz
Councilman Garcia
William Tam, City Manager

EXHIBIT "M"

AGREEMENT FOR PURCHASE, SALE & DEVELOPMENT OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS

Escrow No. 600649-LAZ

Date of Opening of Escrow: 11/25, 2015

To: Escrow Holder
Phyllis Chambers.
First American Title Insurance Company
National Commercial Services
777 South Figueroa Street, 4th Floor
Los Angeles, CA 90017
Phone: 213-271-1720
Email: pchambers@firstam.com

THIS AGREEMENT FOR PURCHASE, SALE & DEVELOPMENT OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS (this "Agreement") is made this 28th day of October, 2015 ("Effective Date"), by and between THE CITY OF IRWINDALE, a California Charter City ("Seller" and occasionally herein "City"), and M&A GABAE, a California limited partnership ("Buyer" and occasionally herein "Developer").

RECITALS

A. This Agreement pertains to the conveyance to Buyer by Seller of those certain parcels of vacant real property consisting of approximately 25.4 acres in the City of Irwindale more particularly described and depicted in Exhibit "A" attached hereto (the "Site"). As shown and described in Exhibit "A" the Site excludes that residential area adjacent to the Site's eastern border (the "Residential Area"). The Site was initially acquired by the Irwindale Community Redevelopment Agency ("ICRA") using the former Low and Moderate Income Housing Fund ("LMIHF") to develop affordable housing on a portion of the Site. In light of the challenges and time required to secure reclamation of the Site, the ICRA subsequently for consideration made to the LMIHF transferred the Site from the LMIHF to the non-housing ICRA account using redevelopment set-aside funds. The goal of such transfer was to secure a mix of housing and commercial or light industrial development on the reclaimed Site.

B. The Site contained (and continues to contain as of the Effective Date) deleterious materials that included potentially contaminated soil with lead concentrations above the soluble threshold limit concentrations for lead. The potential risks of having to dispose any lead-contaminated soil is included in a May 16, 2013 appraisal report prepared by Mason & Mason.

C. On April 3, 2007, the ICRA issued a Request for Proposals ("RFP") for the Site's remediation, filling of abandoned mine pits, removal of contaminated soils, and other work (collectively, "Remediation") to accomplish future development of the Site. Dispatch Transportation, LLC dba Windrow Earth Transport ("Dispatch"), by way of its April 16, 2007, response to the RFP, proposed to remediate materials placed on the Site by the ICRA's former

contractor as well as any third parties and perform a grading operation to bring the Site to street level.

D. On October 10, 2007, Dispatch was awarded the contract by ICRA to perform the Remediation. During Dispatch's ongoing performance of the Remediation, a California State Supreme Court ruling on the constitutional validity of two 2011 legislative budget trailer bills, ABX1 26 (Chapter 5, Statutes of 2011) and ABX1 27 (Chapter 6, Statutes of 2011), resulted in the outright elimination of all 425 redevelopment agencies in the State of California. The dissolution procedures under ABX1 26 include a process for the disposition and/or transfer of assets, including property holdings of former redevelopment agencies. Subsequent legislation, AB 1484 (Chapter 26, Statutes of 2012), which was passed, signed, and enacted on June 28, 2012, made significant changes to the provisions of ABX1 26, including the process for asset management/disposition/transfers. Pursuant to ABX1 26 and AB 1484, the City serves as Successor Agency to the ICRA following the adoption by the City Council of the City of Irwindale ("City Council") of Resolution No. 2012-08-2547, adopted on January 11, 2012.

E. Under AB 1484, the Site is subject to the disposition process requiring the State Department of Finance ("DOF") to approve a Long Range Property Management Plan ("LRPMP") prepared by the Successor Agency describing the proposed sale of properties owned by the Successor Agency, including the Site. The transfer of the Site by ICRA to the City was approved by DOF via DOF's approval of the LRPMP on August 8, 2014. Therefore, on August 27, 2014, the Site was purchased by the City from the Successor Agency for the then-current fair market value, as confirmed by the May 16, 2013, appraisal report prepared by Mason & Mason.

F. On December 13, 2013, the City, Dispatch, and Developer entered into an Exclusive Negotiating Agreement ("ENA") by which the parties agreed to negotiate the sale of the Site by the City to Developer for light industrial and/or commercial development. The "Project" to be developed on the Site shall include light industrial and commercial improvements including attendant streets, lighting, landscaping and other public improvements. The Project includes a landscaped "buffer area" ("Residential Buffer") to separate the Project's industrial components from the Residential Area. Landscaping and all improvements to the buffer areas shall be maintained by Developer at no cost to City. Developer shall not be required to install any improvements in the Residential Area, but shall use commercially reasonable efforts to provide that any utilities and public improvements developed within the Site are installed in a manner so as to allow for a seamless and efficient tie to the Residential Area. The Project, including demarcations of the Residential Buffer, shall be further described and depicted in the Project description, concept plans, architectural renderings and site plans consistent with Exhibit "B" to be prepared by Developer and submitted to City for review and approval.

G. The City and the Developer now desire to enter into this Agreement to provide for the sale of the Site from the City to the Developer for Project development. In accordance with Irwindale Charter Section 607(j) and Irwindale Municipal Code Section 3.44.160, the City Council has considered the sale of the Site pursuant to this Agreement for the full, appraised fair market value and, per Resolution No. 2015-70-2799 approved concurrently with this Agreement, found that the sale is appropriate to further the City Council's goals of providing for economic development of underutilized and blighted property in the City.

H. The City Council found that the proposed Project will result in a significant economic opportunity. The Site will be revitalized from an extreme blighted condition, including the excavation of contaminated soils and back-filling of clean fill for abandoned mining pits. The City Council finds and determines that the Project is likely to result in employment of City residents, substantial increases in tax revenues to the City, and provide other amenities. City acknowledges the public benefit of such results and wishes to encourage expansion of job opportunities in the City. This Agreement is in accord with applicable state and federal laws and is in the vital and best interests of the community, will serve the health, safety, and general welfare of the City of Irwindale, and their citizens, will serve to strengthen the City's land use and social structure, and alleviate economic and physical blight within the City.

NOW, THEREFORE, based on the above recitals, which are deemed true and correct and which are incorporated into the terms of this Agreement, and in consideration of the mutual covenants set forth herein, the parties hereto agree as follows:

TERMS AND CONDITIONS

1. PURCHASE AND SALE OF PROPERTY.

1.1 Generally. Buyer hereby agrees to purchase from Seller, and Seller agrees to sell to Buyer all Buyer's rights, title and interests to the Site upon the terms and conditions hereinafter set forth.

2. OPENING OF ESCROW; CLOSING DATE; PURCHASE PRICE.

2.1 Opening of Escrow. Within three (3) business days after the execution of this Agreement by Buyer and Seller and approval by the Irwindale City Council, the Parties shall open an escrow ("Escrow") with the Escrow Holder identified above (herein the "Escrow Holder") by causing an executed copy of this Agreement to be deposited with Escrow Holder. Escrow shall be deemed open on the date that a fully executed copy of this Agreement is delivered to Escrow Holder ("Opening of Escrow"). Escrow Holder shall fax written notice of the Opening of Escrow date to Buyer and Seller.

2.2 Closing Date. Escrow shall close on or before sixty (60) days following the Opening of Escrow ("Closing Date"), unless extended by mutual written agreement of the parties. The terms the "Close of Escrow" and/or the "Closing" are used herein to mean the time the Grant Deed (as hereinafter defined) is recorded in the Office of the County Recorder of Los Angeles County, California.

2.3 Purchase Price. The Purchase Price for Buyer's acquisition of all interests of Seller in the Site is THREE MILLION FIFTY-EIGHT THOUSAND, FIVE-HUNDRED SEVENTY-ONE DOLLARS AND 43/100 (\$3,058,571.43).

3. ADDITIONAL FUNDS AND DOCUMENTS REQUIRED FROM BUYER AND SELLER.

3.1 Buyer. Buyer agrees that on or before 1:00 p.m. on the business day preceding the Closing Date, Buyer will cause the deposit with Escrow Holder of all additional funds

and/or documents (executed and acknowledged, if appropriate) which are necessary to comply with the terms of this Agreement, including, without limitation, the following:

(a) A Preliminary Change of Ownership Statement completed in the manner required in Los Angeles County, if any; and

(b) The Purchase Price and such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

3.2 Seller. Seller agrees that on or before 1:00 p.m. on the business day preceding the Closing Date, Seller will deposit with Escrow Holder such funds and other items and instruments (executed and acknowledged, if appropriate) as may be necessary in order for the Escrow Holder to comply with this Agreement, including, without limitation, the following:

(a) A grant deed conveying the Site to Buyer in the form attached hereto as **Exhibit "C" ("Grant Deed")**.

(b) Two duplicate originals of California Form 590 Real Estate Withholding Exemption Certificates in the form required by the California Franchise Tax Board ("**California Residency Affidavit**"); and

(c) Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

3.3 Recordation, Completion and Distribution of Documents. Escrow Holder will cause the Grant Deed to be recorded when (but in no event after the date specified in Section 2.2 above) it can issue the Title Policy in the form described in Section 4.2 below, and holds for the account of Seller the items described above to be delivered to Seller through Escrow, less costs, expenses and disbursements chargeable to Seller pursuant to the terms hereof.

3.4 Escrow Holder Responsibilities. Escrow Holder will not have any responsibilities for the parties' performance of the terms of the Agreement which are to be performed after the Closing. If required pursuant to the terms hereof, the parties may execute supplemental escrow terms and instructions on Escrow Holder's standard form provided such supplemental instructions are consistent with the terms hereof.

4. TITLE MATTERS.

4.1 Approval of Title. Buyer acknowledges that it has received copies of that preliminary title report for the entire Site dated April 9, 2013, as Order No. NCS-600649-LA2 (the "**Preliminary Title Report**"). As of the Effective Date, Buyer approves title in the form specified in Section 4.2.

4.2 Title Policy. Upon receipt by Escrow Holder of the Grant Deed in favor of Buyer executed and acknowledged by Seller as instrument for the conveyance of the Site, Escrow Holder shall cause to be issued and delivered to Buyer and Seller as of the Close of Escrow a CLTA standard coverage owner's policy of title insurance ("**Title Policy**"), or,

upon Buyer's request therefore, an ALTA extended coverage owner's policy of title insurance, issued by Title Company, with liability in the amount of the Purchase Price, insuring the Site according to the terms of the Title Policy and showing title vested in Buyer free of encumbrances, *except*:

(a) All non-delinquent general and special real property taxes, assessments and Los Angeles County solid waste fees for the current fiscal year;

(b) Those easements, encumbrances, covenants, conditions, restrictions, reservations, rights-of-way and other matters of record shown on the Preliminary Title Report and as approved by Buyer;

(c) The standard printed exceptions and exclusions contained in the Title Policy;

(d) Any exceptions created or consented to by Buyer, including, without limitation, any exceptions arising by reason of Buyer's possession of or entry on the Site.

5. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.

5.1 Conditions to Closing.

(a) *Conditions to Buyer's Obligations.* The obligations of Buyer under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Buyer of each of the following conditions precedent on or before the Closing Date ("Buyer's Conditions"):

(i) Title Company will issue the Title Policy as required by Section 4.2 of this Agreement.

(ii) Seller has deposited the executed Grant Deed into Escrow.

(iii) Escrow Holder holds and will deliver to Buyer the instruments and funds, if any, accruing to Buyer pursuant to this Agreement

(iv) All Seller representations and warranties specified in Section 7.1 are true and correct.

(v) Buyer's approval of any other conditions specified in this Agreement.

(vi) Seller shall not be in default of any term or condition of this Agreement.

(vii) A fully executed copy of the "Assignment and Assumption Agreement" as defined and described in Section 6.3(a) hereof has been deposited into Escrow.

(viii) Buyer shall have secured any and all approvals needed to ensure that the Residential Area and any other areas demarcated as "Not A Part" in the Site depiction at Exhibit "A" and excluded from the Site's legal description in Exhibit "A" are legally subdivided from the Site, subject to the provisions of Section 6.3(b) below.

Buyer's approval or disapproval of Buyer's Conditions shall be in Buyer's sole and absolute discretion, for any or no reason; provided, however, if Buyer has not delivered written notice of approval or disapproval of Buyer's Conditions to Seller and Escrow Holder by the times provided above, or if no time is provided, on or before the Close of Escrow, each such condition shall automatically and conclusively be deemed to have been approved by Buyer.

(b) *Conditions to Seller's Obligations.* The obligations of Seller under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Seller of each of the following conditions precedent on or before the Closing Date ("Seller's Conditions"):

(i) The instruments and funds accruing to Seller pursuant to this Agreement including but not limited to a fully executed copy of the Assignment and Assumption Agreement has been deposited with Escrow Holder.

(ii) The Purchase Price has been deposited into Escrow.

(iii) Buyer shall not be in default of any term or condition of this Agreement.

(iv) A executed copy of the Consent to Agreement for Purchase, Sale and Development of Real Property (defined and described in Section 6.3) approved by Licensee and in a form materially similar to that attached hereto as Exhibit "F", has been deposited into Escrow.

(v) Buyer shall have secured any and all approvals needed to ensure that the Residential Area and any other areas demarcated as "Not A Part" in the Site depiction at Exhibit "A" and excluded from the Site's legal description in Exhibit "A" are legally subdivided from the Site, subject to the provisions of Section 6.3(b) below. This condition shall be deemed fulfilled, unless waived in writing by Seller, upon Buyer obtaining a City-approved Final Map, Parcel Map, Lot Line Adjustment, Lot Split, or other such legal mechanism permitted under the Subdivision Map Act (Govt. Code §§ 66410 et seq.) for the legal division of the Residential Area and "Not A Part" areas from the Site.

(vi) Buyer shall provide Seller with a letter evidencing a commitment from lender(s) (in form and substance reasonably acceptable to City) indicating that such lender(s) have a definitive interest in financing the acquisition, construction and/or development of the Project by Buyer. Evidence of financial commitments shall also outline the financial terms pursuant to any proposed financing for the Project as well as specifically identify the sources of all equity

financing to be used by Buyer in the development of the Project. In the event the Project is to be financed exclusively by equity financing, the equity commitment shall evidence an amount sufficient to provide for the net acquisition costs of the Site and development of the Project by Buyer, as the case may be. The evidence of financial commitments required by this condition is further described in Section 10.3 of this Agreement.

Seller shall deliver to Escrow Holder and Buyer written notice of disapproval or waiver of the conditions set forth in this Section 5.1 on or before the Closing. In the event Seller shall fail to deliver such notice on or before the Closing each such condition shall automatically and conclusively be deemed to have been approved by Seller.

5.2 Covenant of Seller and Buyer. Buyer and Seller agree to cooperate with one another, at no cost or expense to the cooperating party, in satisfying the conditions precedent to Close of Escrow. Buyer shall be responsible for proceeding with diligence and in good faith to satisfy the conditions to Buyer's performance set forth in Section 5.1(a) and Seller shall be responsible for proceeding with diligence and in good faith to satisfy the conditions to Seller's performance set forth in Section 5.1(b).

5.3 Termination for Failure of Condition. In the event Buyer fails to waive, approve or disapprove any condition precedent specified in Section 5.1(a) or elsewhere in this Agreement on or before the date for approval set forth therein, Seller shall notify Buyer of such failure in writing and Buyer shall have a period of ten (10) days from receipt of such notice to elect in writing to waive such matter, approve such matter or to disapprove such matter and terminate this Agreement. The failure of Buyer to so approve or waive such matter within said ten (10) days shall be deemed to constitute disapproval thereof and Buyer's election to terminate. In the event Seller fails to waive, approve or disapprove any condition precedent specified in Section 5.1(b) or elsewhere in this Agreement on or before the date for approval set forth therein, Buyer shall notify Seller in writing of such failure and Seller shall have a period of ten (10) days from receipt of such notice to elect in writing to waive such matter, approve such matter or to disapprove such matter and terminate this Agreement. The failure of Seller to so approve or waive such matter within said ten (10) days shall be deemed to constitute disapproval thereof and Seller's election to terminate.

6. CONDITION OF SITE; RELEASES/INDEMNITY SITE CONDITION.

6.1 Environmental Laws. For purposes of this Agreement, "Environmental Laws" shall mean all federal, state or local statutes, regulations, ordinances, codes or rules as such have been or may hereafter be enacted, adopted, amended or supplemented and all common law causes of action relating to the protection of human health or the environment, including without limitations the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 7401, et seq.), the Toxic Substance Control Act, as amended (15 U.S.C. 2601, et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f, et seq.), the Federal Insecticide, Fungicide and

Rodenticide Act, as amended (7 U.S.C. Section 136, et seq.) and the Clean Air Act, as amended (42 U.S.C. 7401, et seq.), and private rights of action for nuisance, trespass, or damages to property or persons.

6.2 Hazardous Materials. For the purposes of this Agreement, Hazardous Materials shall be deemed to mean asbestos, polychlorinated biphenyls, petroleum or by-products thereof, radioactive materials, or any chemical, material or substance included in the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "toxic substances" and/or words of similar import under any federal, state and local laws, ordinances, rules and regulations whether present or future, relating to and/or dealing with the protection of the environment and/or human health and safety and/or applicable to the generation, handling, manufacture, installation, treatment, storage, use, transportation, discharge, disposal, presence and/or release into the air, soil, water at, above or below ground level (whether accidental or intentional) of such substances or materials.

6.3 Environmental Remediation and Grading. Buyer and Seller acknowledge that the Site requires environmental Remediation as described in that certain "License Agreement For Performance of Remediation and Grading" dated October 10, 2007 (the "License Agreement") and that the environmental Remediation may include, but is not limited to, the removal of buried fuel storage tanks and other possible buried structures as well as the removal of any soil contamination caused by possible tank leaks, application of fill soils to fill former mining pits at the Site, removal of contaminated soils, talus, and other Hazardous Material clean-up. The Buyer and Seller further acknowledge that any necessary environmental Remediation of the Site will be performed by Buyer after Close of Escrow. As such, since the Site environmental Remediation has not yet occurred, Buyer and Seller hereby agree as follows:

(a) *License to Enter; Assignment of License Agreement*. Seller shall assign to Buyer all Seller's rights and obligations under the License Agreement as to the Site (which excludes any remediation obligations and grading of the Residential Area which the City shall remain as owner and party to the License Agreement), and Buyer shall assume all such rights and obligations from Seller. Said assignment by Seller and assumption by Buyer shall be a condition precedent to the Closing memorialized in an "Assignment and Assumption Agreement" to be drafted in a form reasonably acceptable to Seller, Buyer, and Licensee (as defined in this Section 6.3(a)) which shall contain Licensee's acknowledgment and acceptance of the assignment by Seller and assumption by Buyer of that portion of the License Agreement that encompasses the Site and Licensee's approval of the sale of the Site to Buyer. Buyer shall thereafter abide by the terms of the License Agreement to allow Dispatch as ("Licensee") the right to enter upon the Site to conduct soils, engineering, or other tests and studies, and to perform the Remediation or for any other purposes to carry out the terms of the License Agreement. Pending formal approval of the Assignment and Assumption Agreement by Buyer, Seller and Licensee, Licensee consents to this Agreement, as confirmed and evidenced by the "Consent to Agreement for Purchase, Sale and Development of Real Property" attached hereto as Exhibit "E", subject to and conditioned upon the "Accommodation Agreement" (as defined in Section 1(d) of the

ENA) detailing the uses of the Buyer's funds for the Remediation and describing Licensee's access, if any, to such funds.

(b) *Ongoing Performance of Remediation and Grading Work.* Seller and Buyer shall cooperate with each other to accomplish the ongoing performance of the Remediation pursuant to the terms of the License Agreement and work in good faith to address and approve any approvals and documents needed to assure the Remediation and grading work is performed in a timely manner. Such cooperation shall be aimed at minimizing any delays to the Project work or disruptions due to the shared boundary during and upon completion of the Remediation. Such cooperation shall further include, but not be limited, to correcting and reestablishing any lot line issues or errors that arise as the Site and Residential Area are being adjusted or when the Site and Residential Area is fully graded and ready for development.

(c) *Encroachment Agreement from County.* Buyer and Seller acknowledge that the Remediation and grading of the Site and Residential Area shall require the parties to secure an encroachment agreement or permit from the County of Los Angeles for the placement of fill material within an area owned by the County immediately south of the Site and Residential Area. The fill material is necessary to provide an appropriate buttress per applicable building code standards to support the fill and grading operations at the Site and Residential Area. As part of its consent to this Agreement per the **Consent to Agreement for Purchase, Sale and Development of Real Property**, Licensee agrees to comply with all applicable filling and buttressing requirements and abide by County of Los Angeles conditions related to same.

(d) *Option to Extend Closing.* As an alternative to the ongoing performance of Remediation on the Site by Licensee after Closing, Buyer, Seller, and Licensee may mutually negotiate in writing a means by which the Remediation would be completed by the Seller.

6.4 As-Is Acceptance of Site. The Buyer shall accept the Site AS-IS and does agree to take the Site in its current condition AS-IS, WITH ALL FAULTS, all defects and conditions whatsoever then existing on the Site, including any Hazardous Materials, vaults, fill soils, debris, pipelines, wells, or other structures that are or may be located in, on, under, or around the Site, whether known or unknown. From and after the Closing, Buyer assumes all responsibility for any and all such defects, faults, and conditions and shall be responsible to affect any remedy or cure, if required by any applicable law or ordinance with respect to all defects in the Site, whether patent or latent, including, without limitation, the physical, environmental and geotechnical condition of the Site, and the existence of any contamination, Hazardous Materials now present upon, or remaining within the Site after the completion of the Remediation. Seller makes no representation or warranty concerning the physical, environmental, geotechnical or other condition of the Site. Buyer acknowledges that any liability of Seller for the environmental condition of the Site is extinguished as of the Closing and that Seller, as of the Closing, shall have no liability for remediating any environmental condition of the Site and that Buyer as of the Closing shall indemnify Seller against any claim or liability relating to the condition of the Site.

(a) *Buyer's Release of Seller.* Notwithstanding any contrary provisions of this Agreement or otherwise, Buyer shall as of the Closing hereby release Seller, its officers, directors, shareholders, affiliates, subsidiaries, heirs, and successors from any and all claims, liabilities, expenses, costs, or damages that Buyer may incur arising from the presence of any Hazardous Materials which are or may be located in, on, under, or around the Site, whether or not caused by Seller or any predecessor-in-interest of Seller, and whether or not known to Seller or Buyer at or before the Close of Escrow. Buyer expressly preserves its rights against other parties and does not release, or waive its rights to contribution against, any other party.

(b) *Buyer's Indemnification of Seller.* Notwithstanding any contrary provisions of this Agreement or otherwise, as of the Closing, Buyer hereby agrees to indemnify, defend (by Seller's choice of counsel as reasonably approved by Buyer), and hold harmless Seller, its directors, officers, employees, agents, representatives, heirs, and successors from and against any and all costs, expenses, damages, claims, and liabilities, including reasonable attorney fees, foreseeable or unforeseeable, directly or indirectly arising from any violation of the Environmental Laws including, without limitation, any release, treatment, use, generation, storage, or disposal of Hazardous Materials in, on, under, around, or from the Site at any time before or after the Close of Escrow including, without limitation, the cost of any required or necessary remediation or removal of any such Hazardous Materials, any costs of repair or improvements on the Site or surrounding properties necessitated by such remediation or removal and costs of any testing, sampling, or other investigation or preparation of Remediation or other required plans undertaken prior to such remediation or removal. Buyer expressly preserves its rights against other parties and does not release, or waive its rights to contribution against, any other party.

6.5 Indemnification and Release from Liabilities Relating to New Legislation.

Buyer acknowledges that it is aware of, and has received advice from legal counsel on, the matter of legislation effective June 29, 2011, purporting to limit or disenfranchise the authority of local governments to transfer or control assets that are, or once were, owned by a local redevelopment agency. Specifically, the 2011 Assembly Bills ABx1 26 and ABx1 27 became effective on June 29, 2011. ABx1 26 purports to eliminate redevelopment agencies while ABx1 27 allows agencies to continue to exist if they agree to pay to the State a proportional share of \$1.7 billion this year and \$400 million annually in perpetuity. On December 29, 2011, the California Supreme Court in *Community Redevelopment Association v. Matosantos* (No. S194861) upheld the constitutionality of ABx1 26 and struck-down the constitutionality of ABx1 27, thus, absent further legislation, effecting the abolishment of redevelopment activities. Buyer hereby acknowledges that ABx1 26, as amended by certain budget trailer bills, might be interpreted or applied in such a manner as to undermine or invalidate Seller's authority to convey the Site to Buyer in accordance with the terms hereof. In order to address this uncertainty, the parties agree as follows:

(a) *Legal Challenge to Transaction; Election to Terminate Agreement.* If, at any time prior to Buyer's commencement of vertical construction of the Project, there arises a legal challenge to the validity or legality of this Agreement and its underlying transactions including but not limited to challenges arising from ABx1 26, the

Matosantos ruling, or any subsequent legislation amending ABx1 26, then either party may, in its sole and absolute discretion, elect to terminate this Agreement by written notice to the other party. In the event of such termination of the Agreement by either party, such termination will require, at the minimum, the return of any Purchase Price amounts that have been paid to Seller (if any) pursuant to this Agreement and the re-vesting by Buyer of all rights, title and interest to the Site back to Seller. No such termination shall be deemed a default by either party and in the event of such termination, each party shall have no further obligations to one another under this Agreement other than those obligations that specifically survive the termination of this Agreement. The right to terminate this Agreement as provided hereunder shall terminate upon Buyer's commencement of vertical construction of any portion of the Project but in no event later than December 1, 2016.

(b) *Rights of Non-Terminating Party.* Notwithstanding the foregoing, should a party elect to terminate this Agreement pursuant to Section 6.5(a), the non-terminating party may invalidate such termination and require continued performance provided; 1) the party seeking to invalidate such termination shall pay all costs of defense, expenses, damages, claims, and liabilities, including attorney fees, foreseeable or unforeseeable, directly or indirectly, as they are incurred, arising from any legal challenge described in this Section 6.5.

(c) *Option to Extend Closing.* In the event any legal challenge described herein and subject to the provisions of this Section 6.5 that arises before the Closing, the Buyer and Seller may extend the date of Closing by a mutually-accepted, written amendment of this Agreement, for a period as may be necessary to accommodate the delays that may be caused by such legal challenge and/or the time needed to determine whether or not this Agreement shall be terminated pursuant to Section 6.5(a).

6.6 Survival. Notwithstanding any other provision of this Agreement, the provisions of this Article 6 shall survive the Close of Escrow and the delivery of the Grant Deed(s).

7. REPRESENTATIONS AND WARRANTIES BY SELLER.

7.1 Representations and Warranties. Seller hereby makes the following representations and warranties to Buyer, each of which (i) is material and relied upon by Buyer in making its determination to enter into this Agreement; (ii) to the best of Seller's knowledge, is true in all respects as of the date hereof and shall be true in all respects on the date of Close of Escrow on the Site; and (iii) shall survive the Close of Escrow as well as any future transfer of the Site by Buyer or any transferee, successor or assignee of Buyer:

(a) To the best of Seller's knowledge, there are no contracts, leases, claims or rights affecting the Site or any agreements entered into by or under Seller that would adversely affect Buyer's rights with respect to this Agreement or Buyer's right or ability to develop the Project on the Site, except as heretofore disclosed in:

(i) The Preliminary Title Report.

(ii) The geotechnical inspection agreement for the Site and Residential Area dated July 22, 2009, by and between the Irwindale Community Redevelopment Agency and KFM Geoscience., as amended and assumed by the City of Irwindale on behalf of the former Irwindale Community Redevelopment Agency and the successor to KFM Geoscience, Tetra Tech BAS Geoscience per that certain First Amendment to Tetra Tech BAS Geoscience Contract for Construction Quality Assurance Geotechnical Services for the Remediation and Reclamation of the Manning Pit, dated August 26, 2015;

(iii) Section 6.5 of this Agreement,

(iv) The License Agreement or,

(v) The ENA.

(b) Seller has delivered or, within the period required in Section 5.1(a) and Article 3, will deliver true, correct and complete copies of all the documents and other information specified in Section 5.1(a) and Article 3 including any other documents or information that may be required under this Agreement. Seller represents and warrants that to the best of Seller's knowledge, the information contained therein is true and accurate.

(c) Other than as provided herein, to the best of Seller's knowledge, there are no other executory contracts, options or agreements relating in any manner to all or any portion of the Site or any interest therein.

(d) From and after the date of the Preliminary Title Report, Seller has not created or taken any action to create, or otherwise caused any additional encumbrances to be placed against or encumber title to the Site other than those shown on the Preliminary Title Report.

(a) Seller is not a foreign person as defined in Internal Revenue Code Section 1445(f)(3).

7.2 Changed Circumstances. If Seller becomes aware of any fact or circumstance which would change or render incorrect, in whole or in part, any representation or warranty made by Seller under this Agreement, whether as of the date given or any time thereafter through the Close of Escrow and whether or not such representation or warranty was based upon Seller's knowledge and/or belief as of a certain date, Seller will give immediate written notice of such changed fact or circumstance to Buyer, but such notice shall not release Seller of its liabilities or obligations with respect thereto. Seller shall issue a certificate as of the Close of Escrow stating that all the representations and warranties contained in Section 7.1 are true and correct as of said date, or setting forth in detail which of such matters are not true and correct. Buyer shall have five (5) days from the receipt of any notice by Seller of the material change of any representation or warranty made by Seller hereunder to terminate this Agreement by providing written notice to Seller and Escrow

Holder, and immediately receive without further instruction a return of all sums deposited in the Escrow by Buyer.

7.3 No Other Representations or Warranties by Seller. Other than those express representations and warranties contained in this Agreement, Seller makes no other representations or warranties, either express or implied.

8. REPRESENTATIONS AND WARRANTIES BY BUYER.

8.1 "AS-IS" Condition of Site. Subject to the provisions of Section 5.1 and as set forth in Section 6.4, Buyer represents, acknowledges, and agrees that Buyer is electing to purchase the Site in its "AS-IS, WHERE IS" physical condition except to the extent set forth in Section 6.5.

8.2 Sole Reliance. Buyer represents and acknowledges that it is relying solely upon Buyer's own inspections and investigations with respect to its decision to purchase the Site.

8.3 Legislation. Buyer represents that as for the matters disclosed in Section 6.5, Buyer is not relying on any legal analysis of Seller or Seller's legal counsel.

9. ESCROW PROVISIONS.

9.1 Escrow Instructions. This Agreement, when signed by Buyer and Seller, shall also constitute escrow instructions to Escrow Holder.

9.2 General Escrow Provisions. Escrow Holder shall deliver the Title Policy to the Buyer and instruct the Los Angeles County Recorder to mail the Grant Deed to Buyer at the address set forth in Section 12.16 after recordation. All funds, if any, received in this Escrow shall be deposited in one or more general escrow accounts of the Escrow Holder with any bank doing business in Los Angeles County, California, and may be disbursed to any other general escrow account or accounts. All disbursements shall be made by Escrow Holder from Escrow Holder's general escrow accounts.

9.3 Prorations of Real Property Taxes. Buyer acknowledges that Seller is a governmental agency, not subject to payment of Real Property Taxes ("Taxes"). Accordingly, Buyer shall be solely responsible for payment of Taxes for the Site accruing after Close of Escrow and/or seeking, if warranted, a refund of any overpayment of Taxes from the appropriate taxing agencies. Utilities and other expenses of the Site which are payable by or to the owner of the Site shall be prorated to the Close of Escrow on the basis of a thirty (30) day month and a three hundred sixty (360) day year. Any reimbursement payment of prorated utilities or other expenses after the Close of Escrow by either Seller or Buyer shall be rendered to the appropriate party within five (5) business days after completion of the final proration. Seller shall receive a credit for any refundable utility or governmental deposits made by Seller with respect to the Site, if any, and shall assign to Buyer all rights to same including but not limited to the right to receive a refund of such deposits.

9.4 Payment of Costs. Buyer shall pay one hundred percent (100%) of the documentary transfer taxes, one half of the escrow fees, recording fees, 100% of its attorneys' fees and costs, 100% of the charges for recording the Grant Deed, and 100% of the additional portion of the Title Policy premium which is attributable to the cost of obtaining any additional title endorsements not included in standard CLTA owner's coverage. Seller shall pay one-half of all escrow fees, 100% of the Title Policy premium for CLTA standard owner's coverage, and 100% of its attorneys' fees and costs. Notwithstanding the foregoing, in the event a party defaults under this Agreement, the defaulting party shall pay all escrow fees and charges.

9.5 Termination and Cancellation of Escrow. If Escrow fails to close as of the Closing Date, and provided the Escrow has not been extended by mutual written instruction from both Buyer and Seller and deposited into Escrow, Escrow shall immediately terminate automatically without further instruction or action from Buyer, Seller or Escrow Holder, and Escrow Holder is instructed to immediately return all funds and documents then in Escrow to the respective depositor. Cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights Buyer or Seller may have against each other arising from the Escrow or this Agreement.

9.6 Information Report. The "Reporting Person" within the meaning of Treasury Regulation Section 1.6045-4(e)(5) with respect to the transactions contemplated by this Agreement shall be Escrow Holder. The name and address of Escrow Holder is set forth on the first page of this Agreement. It is agreed that Escrow Holder is an eligible person under Section 1.6045-4(e)(5)(ii) of said Regulations. Escrow Holder hereby agrees to be responsible for complying with the reporting and other requirements of Internal Revenue Code Section 6045(e) and the income tax regulations promulgated thereunder. Pursuant to said regulations, the address for the transferor and transferee are as set forth for Seller and Buyer respectively in Section 12.16 below, and the identifying information regarding the real estate transferred is the legal description for the Site or portion thereof being transferred. Escrow Holder agrees to file the form required by said regulations between the end of the calendar year in which the Close of Escrow occurs and February 28 of the following calendar year. Buyer and Seller agree (i) to cooperate with Escrow Holder and with each other in completing any report and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including, without limitation, Internal Revenue Service Form 1099-S as such may be hereafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereafter promulgated by the Treasury Department with respect thereto; (ii) that Buyer and Seller, their respective employees and attorneys, and Escrow Holder and its employees may disclose to the Internal Revenue Service, this Agreement or the transaction contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e); (iii) that neither Buyer nor Seller shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information; and (iv) to retain this Agreement for at least four (4) years following the close of the calendar year in which the Close of Escrow occurs.

9.7 Possession. Possession of the Site shall be delivered to Buyer as of Close of Escrow. In the event any personal property remains on the Site following the Close of Escrow, it shall automatically become the property of Buyer excepting such personal property that is the property of Licensee under the License Agreement.

10. COVENANTS RELATING TO THE PROJECT.

10.1 Restrictions On Transfer. The qualifications of Buyer are of particular concern to the Seller, and it is because of such qualifications that Seller has entered into this Agreement with Buyer. The Seller has considered Buyer's experience and financial capability, the Project proposed by Buyer and its affiliates, the Site location and its characteristics, the public costs, if any, of acquiring and developing the Site, the potential return on the investment of public funds, if any, and the product mix necessary to produce a successful Project. Based upon these considerations, the Seller has imposed the following restrictions with respect to an assignment of this Agreement or Transfer of the Site as defined below;

(b) (a) *Transfer Defined*. As used in this section, the term "Transfer" shall include any assignment, or conveyance, of this Agreement, the Site, or the improvements thereon other than to an entity which assumes all of Buyer's obligations hereunder and controls, or is controlled by, or under control of Buyer. A Transfer shall also include the hypothecation, mortgage, pledge, conveyance, or encumbrance of this Agreement, the Site, or the improvements thereon provided such hypothecation, mortgage, pledge, conveyance, or encumbrance is not directly related to the acquisition or financing of the Site or the Project as further described in Section 10.1(c) below. A Transfer shall also include the assignment or transfer of more than fifty percent (50%) of the ownership and/or control of Buyer as of the Effective Date to an entity not under the direct control of Buyer as further described in Section 10.1(c) below ("Buyer Affiliate"). Buyer is a limited partnership and as such, Transfer shall refer to the transfer or assignment of more than fifty percent (50%) of the limited partnership interest subject to the provisions of Section 10.1(c). ; *Transfers Require Approval*. Buyer shall not enter into a Transfer directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of Seller which consent shall not be unreasonably withheld. In considering whether it will grant written approval to any assignment by Buyer of its interests in the Site, which assignment requires Seller approval, Seller shall consider factors such as (i) whether the completion of the Project is jeopardized; (ii) the financial strength and capability of the proposed transferee to perform Buyer's obligations hereunder; (iii) the proposed transferee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects; and (iv) how the proposed transferee will complement the other users and uses in the City of Irwindale downtown area, whether commercial users or otherwise.

In the absence of a specific written agreement with the Seller, prior to the issuance of a Certificate of Completion as described in Section 10.9(b) for the entire Project or any portion thereof, no Transfer (including without limitation an assignment or transfer not requiring Seller approval hereunder) shall be deemed to relieve Buyer or any successor

party from any obligations under this Agreement. In addition, no assignment and assumption of any of Buyer's obligations hereunder shall be effective unless and until the successor party executes and delivers to Seller an assignment and assumption agreement in a form reasonably approved by the Seller assuming such obligations.

(c) *Exceptions.* The foregoing prohibition shall not apply to any of the following:

(i) Any mortgage, deed of trust, or other form of conveyance for financing, as provided in Section 10.3, but Buyer shall notify Seller in advance of any such mortgage, deed of trust, or other form of conveyance (but only for purposes of financing the Project).

(ii) Any mortgage, deed of trust, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above.

(iii) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of any easements or permits needed to facilitate the Site's development.

(iv) A sale or Transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(v) A conveyance of the Site to any entity Buyer Affiliate. "Buyer Affiliate" shall mean any entity which owns or controls Buyer, to any entity owned or controlled by Buyer, to any entity owned or controlled by or affiliated with any entity which owns or controls Buyer, or to any entity resulting from a consolidation, or to the surviving entity in case of a merger, to which consolidation or merger Buyer shall be a party, or to an entity to which all or substantially all of the assets of Buyer have been sold.

(vi) Transfers of ownership or control interest between members of Buyer's immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the Buyer's immediate family, or among the entities constituting Buyer.

(e) *Ground Leases & Individual Unit Purchases.* Buyer may enter into ground lease conveyances to a ground lessee or individual commercial/industrial unit purchases to implement the Project subject to all provisions of this Section 10.1.

(f) *Release Of Buyer.* Seller's consent to a Transfer shall not be deemed to release Buyer of liability for performance under this Agreement unless such release is specific and in writing executed by Seller, which release shall not be unreasonably

withheld. Upon the written consent of Seller to the complete assignment of this Agreement and the express written assumption of the assigned obligations of Buyer under this Agreement by the assignee, Buyer shall be relieved of its legal duty from the assigned obligations under this Agreement, except to the extent Buyer is in default under the terms of this Agreement prior to said Transfer.

(g) *Termination; Lease Provisions.* Notwithstanding anything to the contrary in this Agreement, the Buyer Transfer restriction described in this Section 10.1 shall unconditionally terminate upon the recordation of the Notice of Completion for the entire Project. From and after the date of recordation of the Notice of Completion, Buyer shall have no restrictions on Transfer with respect to this Agreement, the Site, the Project or the improvements thereon.

10.2 Scope Of Development & Schedule Of Performance. The Site shall be developed by Buyer as provided in the Buyer's scope of development and conceptual plans ("Scope of Development") as indicated on the attached Exhibit "B" and the plans and permits to be prepared by Developer and approved by the City pursuant to Section 10.4. Notwithstanding any other provision set forth in this Agreement to the contrary, Developer, subject to the reasonable approval of City shall have the right to modify or change the Scope of Development. In the event of any conflict between the narrative description of the Project in this Agreement (including Exhibit "B") and the ultimate, final approved plans and permits with respect to an altered Scope of Development, the approved plans and permits shall govern.

(a) *Critical Construction Deadlines.* Once construction is commenced, it shall be diligently pursued to completion, and shall not be abandoned for more than thirty (30) consecutive days, except when due to an Enforced Delay (Section 11.5 hereof) or changes in the Scope of Development as mutually approve in writing by both Buyer and Seller. Buyer shall keep the Seller reasonably informed of the progress of construction and submit to the Seller written reports of the progress of the construction when and in the form reasonably requested by the Seller. In no event shall Buyer be required to submit written progress reports more often than one time every quarter. The parties shall begin and complete all plans, reviews, construction and development specified in the Scope of Development within the times specified in the "Schedule of Performance" as described in the attached Exhibit "E" or such reasonable extensions of said dates as may be mutually approved in writing by the parties. Project construction shall proceed generally within the times specified in the Schedule of Performance or such reasonable extensions of said dates as may be mutually approved in writing by the parties. Critical Project construction deadlines are estimated as follows:

(i) Final map (if applicable), Site Plan and Design Review approvals shall be completed no later than January 31, 2017.

(ii) Grading shall commence no later than six (6) months following Site Plan and Design Review Permit approvals.

(iii) Vertical construction shall commence no later than twenty-four (24) months following Site Plan and Design Review Permit approvals.

(iv) Completion of all Project improvements shall be accomplished no later than thirty-six (36) months following Site Plan and Design Review Permit approvals. In addition to delays in the Project deadlines as may be permitted due to Enforced Delays, it is understood that the foregoing critical deadlines are subject to all other terms and conditions set forth in this Agreement including but not limited to changes in the Scope of Development as mutually agreed upon in writing between the parties, which may be more thoroughly set forth in the future. The critical construction deadlines may be altered or amended by written agreement signed by both Buyer and Seller. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The City Manager of Seller shall have the authority to approve extensions of time without City Council action if such extension does not exceed a cumulative total of 180 days.

(b) *Truck Routes.* Buyer shall make all reasonable efforts to ensure that all vehicles entering and exiting the Site shall utilize the access route at the northern corner of the Site on Vincent Avenue, and acknowledges that it must provide access to the County of Los Angeles and otherwise comply with the County's right to utilize such access for ingress egress to County-owned properties. Additionally, all commercial trucks shall utilize traffic circulation routes as prescribed by any mitigation adopted through the approved Site Plan and Design Review Permit.

(c) *Use of Water.* Buyer shall ensure procurement from the applicable water supplier, and use water in the amounts and manner necessary to control dust at that Site as well as any other prudent operational purpose as described by any mitigation adopted through the approved Site Plan and Design Review Permit.

(d) *Responding to Public Concerns.* Buyer shall respond to any reasonable public complaints or concerns related to the Project via public outreach, website outreach, cooperation with the Seller, shall make a written record of all complaints received and present them to Seller within 72 hours of receiving a complaint.

(e) *CEQA Compliance.* The City shall be responsible for obtaining the approval of this Agreement and any Project as required by CEQA. Without limitation of the foregoing, Buyer specifically acknowledges and agrees that Buyer shall satisfy all conditions necessary to ensure that the Project conforms to all applicable CEQA requirements.

10.2 Project Financing.

(a) *Buyer Solely Responsible for Project Costs.* Buyer is responsible for paying all costs for the Project unless otherwise provided herein. Project costs include the total Project construction costs, all Site preparation costs, all infrastructure costs, building permits and development fees, all design and consultant costs, all financing costs, all

fixtures and equipment for the facility, and all other costs related to the Project of any nature whatsoever.

Although the parties hereto believe that the Site is being conveyed to the Buyer at fair market value, in accordance with the May 16, 2013, appraisal report prepared by Mason & Mason, and that no financial assistance or public monies are being provided to Buyer with respect to the Project, Buyer acknowledges that should construction or development of the Site qualify as a "public work" "paid for in whole or in part out of public funds," as described in California Labor Code Section 1720 *et seq.*, ("Prevailing Wage Law"), it may cause Buyer to be required to pay prevailing wages for any aspect of the development. Buyer believes to its actual knowledge that the Project is not subject to Prevailing Wage Law because no funding sources for the Project will trigger the application of Prevailing Wage Laws. Notwithstanding the foregoing, the Buyer fully bears any and all risk that Prevailing Wage Laws may be found to apply to the Project. To this end, Buyer acknowledges and agrees that should any third party, including but not limited to the Director of the Department of Industrial Relations ("DIR"), require Buyer or any of its contractors or subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the DIR under Prevailing Wage Law for all or any of the assistance provided hereunder, then Buyer shall indemnify, defend, and hold Seller harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law. The Seller makes no representation that any construction completed by Buyer is or is not subject to Prevailing Wage Law.

(b) *Buyer's Financial Statements.* Buyer agrees to provide the Seller with reasonable documentation and financial statements to the end of demonstrating that Buyer can fund the total projected/estimated Project costs through, cumulatively, the following sources: (i) Buyer equity, (ii) private financing from financial institutions, and/or (iii) financing provided through foreign investment via the USCIS-administered Immigrant Investor Program, also known as the "EB-5" program, or (iv) other reliable funding sources. To this end, no later than the Close of Escrow, Buyer agrees to deliver to Seller, for Seller's reasonable approval, financial statements which, demonstrate that Buyer has the financial capability to undertake the development provided herein. Such financial statements shall include statements from financial institutions with whom Buyer conducts business evidencing their willingness to provide the financing required hereunder. If Buyer elects to self-fund the construction of the Project, Buyer may satisfy this obligation by providing Seller with a letter evidencing approval of the Project by the relevant parties on behalf of Buyer along with an explanation of facts demonstrating Buyer's ability to self-fund the Project. Equity commitment by the Buyer may be in the form of letters of intent from credit worthy investors.

(c) *Obtaining Construction & Permanent Loans.* Should Buyer choose to utilize any financing towards Project completion ("**Buyer Financing**"), Buyer agrees to deliver to Seller and obtain the reasonable approval of Seller of written commitments from financial institutions licensed to do business in California and reasonably

acceptable to the Seller ("Lender") agreeing to make a construction loan and/or a permanent loan to Buyer and secured by a deed of trust (said commitment and loan are sometimes referred to collectively as the "Loan").

Buyer covenants and agrees to take all action, furnish all information, give all consents and pay all sums required to keep said commitment and Loan in full force and effect and shall comply with all conditions thereof, and shall promptly execute, acknowledge and deliver all loan applications, credit applications and data, financial statements, and loan documents in connection therewith, and shall actually draw upon and utilize the Loan only for financing the cost of the Project.

(d) *Seller Approval Of Lender.* Buyer shall not enter into any Buyer Financing without the prior written approval of Seller. Seller's written approval or disapproval shall not be unreasonably withheld or delayed. Seller's review of the Lender shall be limited to the question of whether or not said Lender is a qualified and responsible financial or lending institution or other acceptable entity or person capable of performing its obligations under the Loan.

10.3 Project Plans, Final Building Plans.

(a) *Proposed Project's Consistency With Plans and Codes.* Seller warrants and represents that the City of Irwindale General Plan and Zoning Ordinance permit Seller's proposed development, and construction, operation, and use of the Site as provided in this Agreement, including without limitation the Project as described in Exhibit "B", subject only to (i) approval of this Agreement and the proposed Project pursuant to Government Code § 52201, (ii) those development approvals yet to be obtained, including site plan review, and (iii) City of Irwindale review and approval of a Final Map for the Project, and (iv) those entitlements required under Section 5.1(b)(v) hereof. It is expressly understood by the parties hereto that Seller makes no representations or warranties with respect to approvals required by any other governmental entity or with respect to approvals hereinafter required from City provided however that Seller shall cooperate with Buyer in procuring the foregoing approvals. The City and any other governmental body with jurisdiction over the Project reserve full police power authority over the Project. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items or a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

(b) *Evolution Of Development Plan.* Prior to the Effective Date of this Agreement, the Seller approved the Buyer's conceptual plans and Scope of Development (Exhibit "B"). On or before commencement of any Project construction, Buyer must submit to the Seller preliminary, and thereafter final, drawings and specifications for development of the Project in accordance with the City's requirements. The term preliminary and final drawings shall be deemed to include site plans, building plans and elevations, grading plans, if applicable, landscaping plans, parking plans, material pallets, a description of structural, mechanical, and electrical systems, the Final Map and all other plans, drawings and specifications. Final drawings

will be in sufficient detail to obtain a building permit. Said plans, drawings and specifications shall be consistent with the Scope of Development (Exhibit "B") and the various development approvals referenced hereinabove, except as such items may be amended by Seller and Buyer in writing. Plan submissions shall be progressively more detailed and will be approved if a logical evolution of plans, drawings or specifications previously approved.

(c) *Buyer Efforts To Obtain Approvals.* Buyer shall exercise its commercially reasonable efforts to timely submit all documents and information necessary to obtain all development and building approvals from the City in a timely manner. Not by way of limitation of the foregoing, in developing and constructing the Project, Buyer shall comply with all applicable development standards in the City of Irwindale Municipal Code and shall comply with all building codes, landscaping, signage, and parking requirements, except as may be permitted through approved variances and modifications.

(d) *Disapproval.* The Seller shall reasonably approve or disapprove any submittal made by Buyer pursuant to this Section within thirty (30) days after such submittal. All submittals made by Buyer shall note the 30-day time limit, and specifically reference this Agreement and this Section 10.4(d). Any disapproval shall state in writing in reasonable detail the reason for the disapproval and the changes which the Seller requests be made. Buyer shall make the required changes and revisions and resubmit for approval as soon as is reasonably practicable but no more than thirty (30) days of the date of disapproval. Thereafter, Seller shall have an additional ten (10) business days for review of the re-submittal, but if the Seller disapproves the re-submittal, then the cycle shall repeat, until the Seller's approval has been obtained. If Buyer desires to make any substantial change to approved working drawings, Buyer shall submit the proposed change to Seller for approval. If the drawings as modified by the proposed change conform to this Agreement and the Scope of Development (Exhibit "B"), City of Irwindale design criteria applicable to the Site, and all other applicable City of Irwindale regulations, Seller shall approve the change and Seller shall notify Buyer of its approval or disapproval in writing within thirty (30) days after submission of such proposed change.

Seller's Community Development Director or designee shall have authority to determine on behalf of Seller if a proposed revision or change to any plans, drawings, or other documents previously approved by Seller is a material change requiring further City approval. If the Community Development Director or designee determines that the proposed revision or change is not a material change no approval by City of such revision or change will be necessary. Seller shall reasonably approve or disapprove the plans, drawings and related documents referred to in this Section 10.4 within the times stated in foregoing paragraph of this subpart (d). However, to the extent that Buyer proposes substantial and material revisions or changes to any plan, drawing, or other document previously approved by Seller, Buyer acknowledges that such substantial and material revision will require review by the City Council or such other legislative body(s) as may be applicable. City's review is intended to insure that the plans, drawings and related documents are reasonably consistent with the Scope of

Development (Exhibit "B"). Any disapproval shall state in writing the reasons for disapproval and the changes which Seller requests to be made. Such reasons and such changes must be consistent with the Scope of Development (Exhibit "B") and any items previously approved or deemed approved hereunder. Buyer, upon receipt of a disapproval based upon powers reserved to Seller hereunder, shall revise the plans, drawings and related documents, and shall resubmit to Seller as soon as possible after receipt of the notice of disapproval; provided that in no case shall Seller be entitled to require changes which are inconsistent with the Scope of Development (Exhibit "B"), including previously-approved or deemed-approved modifications to the Scope of Development.

During the preparation of all drawings and plans, the parties shall hold regular progress meetings to coordinate the preparation of, submission to, and review of construction plans and related documents by Seller. If any substantial revisions or corrections of plans approved by Seller shall be required by any government official, agency, department or bureau having jurisdiction, or any lending institution involved in financing, the parties shall cooperate in efforts to develop a mutually acceptable alternative.

10.4 Applicable Laws. Buyer shall carry out the construction of the Project improvements in conformity with all applicable laws, including all applicable federal and state labor laws.

10.5 Anti-Discrimination During Construction. Buyer, for himself and his successors and assigns, agrees that in the construction of the improvements to be constructed by Buyer, it shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, ancestry or national origin.

10.6 County Solid Waste Materials Fee. Filling operations undertaken as part of the Remediation will utilize clean soil materials only and no recycled or crushed concrete will be imported and/or exported to/from the Site. As such, the parties believe that the Project is not subject to the Waste Discharge Permit fee requirements of the RWQCB, or County of Los Angeles, as may be applicable, or any other waste discharge-related fees (collectively "Discharge Fee") insofar as no "Solid Waste Materials, as that term is defined (copied below) in the Los Angeles County Code, section 20.88.020 H, will be imported at the Site. To this end, Buyer shall indemnify and defend the City for the cost of any Discharge Fees imposed by any regulatory authority pertaining to the Project as a result of the determination, if any, that the fill used in the fill operation contains waste, reused or recycled materials. Should there be a determination that Discharge Fees apply on another basis, the Seller, at its cost, will participate with Buyer in the joint defense of an action for collection (or challenge to the imposition) of the Discharge Fee. Solid Waste Materials are defined in Los Angeles County Code, section 20.88.0-20(H) as:

"Solid Waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes,

demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes.”

Notwithstanding the foregoing, Buyer is aware that City, Seller and Dispatch are litigating the application of the Discharge Fee against Los Angeles County, per *City of Irwindale as Successor Agency to the Irwindale Community Redevelopment Agency, et al, v. County of Los Angeles, et al*, (Los Angeles Sup. Ct. Case No. BS148777). Buyer acknowledges that an adverse ruling could result in application of the Discharge Fee to the Site, and hereby agrees to indemnify, defend, and hold Seller harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings. The License Agreement requires Licensee to indemnify Seller from such Discharge Fees and costs arising from the application of such Discharge Fees to the Site and Residential Area and Buyer shall cause compliance with those obligations under the License Agreement.

Rights Of Holders Of Approved Security Interests In Site.

(a) *Definitions.* As used in this Section, the term “mortgage” shall mean a leasehold mortgage and include any mortgage, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing. The term “Holder” shall include any holder of any such mortgage, deed of trust, or other security interest, or the lessor under a lease-back, or the grantee under any other conveyance for financing.

(b) *No Encumbrances Except Mortgages To Finance The Project.* Notwithstanding the restrictions on transfer in Section 10.1, mortgages required for any reasonable method of financing of the construction of the Project improvements are permitted before issuance of a Certificate of Completion but Buyer shall promptly notify the Seller of any mortgage, encumbrance, or lien that has been created or attached thereto prior to issuance of a Certificate of Completion, whether by voluntary act of the Buyer or otherwise. *Buyer's Breach Shall Not Defeat Mortgage Lien.* Buyer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to the Site, or any part thereof or interest therein, but unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the Holder of any such mortgage of the Site whose interest is acquired by foreclosure, trustee's sale or otherwise.

(c) *Holder Not Obligated To Construct Or Complete Improvements.* The Holder of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or the improvements proposed thereon or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any such Holder to devote the Site or any

portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

(d) *Notice Of Default To Mortgagee, Deed Of Trust Or Other Security Interest Holders.* Whenever Seller shall deliver any notice or demand to Buyer with respect to any breach or default by Buyer hereunder, Seller shall at the same time deliver a copy of such notice or demand to each Holder of record of any mortgage who has previously made a written request to Seller therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the Holder unless such notice is given.

(e) *Right To Cure.* Each Holder (with respect to the rights of Seller) shall have the right, at its option, within ninety (90) days after the receipt of the notice, to:

(i) Obtain possession, if necessary, and to commence and diligently pursue said cure until the same is completed, and

(ii) Add the cost of said cure to the security interest debt and the lien or obligation on its security interest;

Provided that in the case of a default which cannot with diligence be remedied or cured within such ninety (90) day period, such Holder shall have additional time as reasonably necessary to remedy or cure such default.

In the event there is more than one such Holder, the right to cure or remedy a breach or default of Buyer under this Section 10.8(f) shall be exercised by the Holder first in priority or as the Holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of Buyer under this Section 10.8.

No Holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed Buyer's obligations to Seller by written agreement reasonably satisfactory to Seller with respect to the Site or any portion thereof in which the Holder has an interest. In the event any Holder shall decide, in its sole and absolute discretion to undertake or continue the construction or completion of the improvements, such Holder shall complete, in the manner required by this Agreement, the improvements to which the lien or title of such Holder relates, and submit evidence satisfactory to the Seller that it has the qualifications and financial responsibility necessary to perform such obligations. Any Holder properly completing such improvements shall be entitled, upon written request made to Seller, to a Certificate of Completion from Seller.

(f) *Seller's Rights Upon Failure Of Holder To Complete Improvements.* In any case where one hundred eighty (180) days after default by Buyer in completion of construction of Project improvements under this Agreement, the Holder of any mortgage creating a lien or encumbrance upon the Site or improvements thereon has not exercised its right to complete the improvements of the Project afforded in this

Section 10.8(e), or if it has exercised such right has not proceeded diligently with construction, Seller may, after ninety (90) days' written notice to such Holder ("Failure to Construct Notice") purchase the mortgage, upon payment to the Holder of an amount equal to the sum of the following:

(i) The unpaid mortgage debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);

(ii) All expenses, incurred by the Holder with respect to foreclosure, if any;

(iii) The net expenses (exclusive of general overhead), incurred by the Holder as a direct result of the ownership or management of the Site, such as insurance premiums or real estate taxes, if any;

(iv) The costs of any improvements made by such Holder, if any; and

(v) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by the Seller.

Notwithstanding the foregoing, Seller's right to purchase the mortgage according to the term of this Section 10.8 shall be null and void if such Holder has exercised such right to construct the improvements and has diligently proceeded with such construction within the ninety (90) day period immediately after the receipt by Holder of the Failure to Construct Notice from Seller.

In the event that the Holder does not exercise its right to construct the improvement afforded in this Section 10.8, and Seller elects not to purchase the mortgage of Holder, upon written request by the Holder to Seller, Seller agrees to use reasonable efforts to assist the Holder with the sale of the Holder's interest to a qualified and responsible party or parties (as reasonably determined by Seller), who shall assume the obligations of making or completing the improvements required to be constructed by Buyer, or such other improvements in their stead as shall be satisfactory to Seller. The proceeds of such a sale shall be applied first to the Holder of those items specified in subparagraphs (i) through (v) listed hereinabove, and any balance remaining thereafter shall be applied as follows:

(i) First, to reimburse Seller for all costs and expenses actually and reasonably incurred by Seller, including but not limited to payroll expenses, management expenses, legal expenses, and others.

(vi) Second, to reimburse Seller for all payments made by Seller to discharge any other encumbrances or liens on the Site or to discharge or prevent

from attaching or being made any subsequent encumbrances or liens due, to obligations, defaults, or acts of Buyer, its successors or transferees.

(vii) Third, any balance remaining thereafter shall be paid to Buyer.

(g) *Right Of Seller To Cure Mortgage, Deed Of Trust Or Other Security Interest Default.* In the event of a default or breach by Buyer (or entity permitted to acquire title under this Section 10.8) of a mortgage prior to the issuance by Seller of a Certificate of Completion for the Site or portions thereof covered by said mortgage, and the Holder of any such mortgage has not exercised its right to complete the Project, Seller may cure the default prior to completion of any foreclosure.

(h) *Right Of The Seller To Satisfy Other Liens On The Site After Conveyance Of Title.* After the conveyance of title and prior to the recordation of a Certificate of Completion for construction and development of the Project, and after the Buyer has had all amounts of time allowed by law to challenge, cure, or satisfy any liens or encumbrances on the Site or any portion thereof, the Seller shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Buyer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Buyer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site or any portion thereof to forfeiture or sale.

(i) *Minor Amendments.* Seller's City Manager shall be authorized to approve and execute minor non-substantive amendments to this Agreement as may be requested by Buyer's lender in relation to the protection of such lender's security interest in the Site, without formal approval of Seller's legislative body.

10.7 Certificate(s) Of Occupancy & Certificate Of Completion.

(a) *Certificate(s) Of Occupancy.* It is anticipated that some portions the Project might be suitable for occupancy and use prior to the final completion of all Project improvements. When portions of the Project have been constructed to a point whereby certain Project improvements can be safely opened and occupied for business (in compliance with all applicable codes, permit requirements and local agency regulation) without any material interference from other Project activities, the Buyer may request from the City a Certificate of Occupancy for all such completed improvements. The issuance of such Certificate of Occupancy shall be in the reasonable discretion of the City and based on the Project's (or that portion of the Project for which a Certificate of Occupancy is requested) compliance with all codes, permit conditions and local agency regulations. Seller shall not unreasonably withhold a Certificate of Occupancy.

Upon issuance of a Certificate of Occupancy, Buyer's tenants shall, subject to the terms and conditions of their individual leases, promptly open for business to the public. The Buyer shall exert all reasonable efforts to keep any tenants of the Project then occupying space in the Project open for business to the public during regular and customary business hours despite any ongoing Project activities. Buyer shall

reasonably coordinate any ongoing Project activities with business hours in order to minimize any interference between the Project and any tenants open for business. Such efforts to be undertaken by Buyer may include in the reasonable discretion of Buyer, the undertaking of Project activities during hours other than regular and customary business hours and the phasing of the Project such that Project activities continuing after the issuance of the Certificate of Occupancy will be in locations other than areas open to the public.

(b) *Certificate(s) Of Project Completion.* Upon the completion of all Project construction required to be completed by Buyer pursuant to the terms of this Agreement, Seller shall furnish Buyer, within thirty (30) days of notice from Buyer to Seller of such completion, a "Certificate of Completion" in a form acceptable to Seller. The Certificate of Completion shall be executed and notarized so as to permit it to be recorded in the Office of the Recorder of Los Angeles County.

(i) A Certificate of Completion shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by this Agreement upon the Site and of full compliance with the terms of this Agreement with respect thereto.

(ii) After the issuance of a Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by the covenants, encumbrances, and easements contained in the Deed and the CC&Rs (as described in Section 10.10(a)).

(iii) In no event shall Seller shall unreasonably withhold a Certificate of Completion. If Seller refuses or fails to furnish a Certificate of Completion after written request from Buyer or any entity entitled thereto as described above, Seller shall provide a written statement of the reasons Seller refused or failed to furnish a Certificate of Completion. The statement shall also contain Seller's opinion of any further action Buyer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, or other minor so-called "punch list" items, Seller will issue its Certificate of Completion subject to the completion by Buyer of the punch list items within one hundred and twenty (120) days of the issuance of the Certificate of Completion. A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Buyer to any Holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Certificate of Completion is not notice of completion as referred to in the California Civil Code § 3093. Nothing herein shall prevent or affect Buyer's right to obtain a Certificate of Occupancy from the Seller before the Certificate of Completion is issued.

10.8 Use of the Site & Project; CC&Rs.

The Buyer covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction and thereafter, that the Buyer and such successors and such assigns shall devote the Site to the uses specified therefore in the Project Scope of Development (Exhibit "B") or any plans as may be approved in writing by the City.

Buyer agrees to use, devote, and maintain the Site for (i) light industrial and commercial improvements on approximately two-thirds (2/3) of the easterly portion of the Site, including attendant streets, lighting, landscaping and other public improvements, and (ii) aesthetic landscaping in the Residential Buffer to be maintained in such a manner as to effectively and attractively screen the Residential Area from visual, noise and dust impacts associated with the Project. Buyer shall maintain all landscaping in the Residential Buffer at its sole cost and expense in a manner so as to allow for an attractive, seamless and efficient tie to the Residential Area and pursuant to the covenants, conditions & restrictions ("CC&Rs") in a form materially similar to that attached hereto as Exhibit "D".

11. DEFAULTS; ENFORCEMENT.

11.1 Defaults & Right To Cure. A "Non-Defaulting Party" in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other party ("Defaulting Party") to perform any material duty or obligation of said Defaulting Party under the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by Defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in "Default" under this Agreement, if said breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such breach or failure within thirty (30) days after the date of such notice ("Cure Period"). However, if such non-monetary breach or failure cannot be cured within such Cure Period, and if and, as long as the Defaulting Party does each of the following:

- (a) Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted Default is not curable within the thirty (30) day period;
- (b) Notifies the Non-Defaulting Party of the Defaulting Party's proposed course of action to cure the Default;
- (c) Promptly commences to cure the Default within the thirty (30) day period;
- (d) Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and
- (e) Diligently prosecutes such cure to completion.

Then the Defaulting Party shall not be deemed in breach of this Agreement.

11.2 Legal Actions.

(a) *Institution Of Legal Actions.* In addition to any other rights or remedies, and subject to the requirements of Section 11.1, either party may institute legal action to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other legal or equitable remedy consistent with the purpose of this Agreement, including the remedy of specific performance. Legal actions must be instituted and maintained in the Superior Court of the County of Los Angeles, State of California, in any other appropriate court in that county, or in the Federal District Court in the Central District of California.

(b) *Applicable Law & Forum.* The laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles.

(c) *Acceptance Of Service of Process.* In the event that any legal action is commenced by Buyer against Seller, service of process on Seller shall be made by personal service upon the City Manager, or in such other manner as may be provided by law. In the event that any legal action is commenced by Seller against Buyer, service of process on Buyer shall be made in such manner as may be provided by law and shall be valid whether made within or without the State of California.

11.3 Rights & Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

11.4 Waiver. Except as otherwise provided in this Agreement, waiver by either party of the performance of any covenant, condition, or promise shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right as to any default shall not operate as a waiver of any default or of any rights or remedies or to deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

11.5 Enforced Delays; Extension Of Times of Performance. Time is of the essence in the performance of this Agreement. Notwithstanding the foregoing, in addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the "public enemy"; epidemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; delays of any contractor, subcontractor or supplier; acts of the other party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of Seller shall not excuse performance by Seller); or any other

causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In the event of such a delay (herein "Enforced Delay"), the party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the Enforced Delay, and shall commence to run from the time of the commencement of the cause, provided notice by the party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause. Failure to provide such notice shall constitute a waiver of the claim. The following shall not be considered as events or causes beyond the control of Buyer, and shall not entitle Buyer to an extension of time to perform: (i) Buyer's failure to obtain financing for the Project, and (ii) Buyer's failure to negotiate agreements with prospective users for the Project or the alleged absence of favorable market conditions for such uses.

Times of performance under this Agreement may also be extended by mutual written agreement by Seller and Buyer. The City Manager of Seller shall have the authority on behalf of Seller to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days with respect to the development of the Site.

12. MISCELLANEOUS.

12.2 Brokerage Commissions. Buyer and Seller each represent and warrant to the other that no third party is entitled to a broker's commission and/or finder's fee with respect to the transaction contemplated by this Agreement. Buyer and Seller each agree to indemnify and hold the other party harmless from and against all liabilities, costs, damages and expenses, including, without limitation, attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay a broker's commission and/or finder's fee.

12.3 Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective heirs, representatives, transferees, successors and assigns. The transfer of all or any part of the interest of any party hereunder in the Site shall not release Seller of its obligations under this Agreement.

12.4 Time of Essence. Time is of the essence in this Agreement and with respect to each covenant and condition hereof. Buyer and Seller each specifically agrees to strictly comply and perform its obligations herein in the time and manner specified and waives any and all rights to claim such compliance by mere substantial compliance with the terms of this Agreement.

12.5 Time Period Computations. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and California state or national holidays unless the reference is to business days, in which event such weekends and holidays shall be excluded in the computation of time and provide that if the last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or California state or national holiday, such act or notice shall be deemed to have been timely performed or given on the next succeeding day which is not a Saturday, Sunday or California state or national holiday.

12.6 Qualification: Authority. Each individual executing this Agreement on behalf of the City as Seller or a partnership, LLC or corporation as Buyer represents and warrants that such entity is duly formed and authorized to do business in the State of California and that he or she is duly authorized to execute and deliver this Agreement on behalf of such partnership, LLC, corporation or the City in accordance with authority granted under the formation documents of such entity, and, if a corporation, by a duly passed resolution of its Board of Directors, and that all conditions to the exercise of such authority have been satisfied, and that this Agreement is binding upon such entity in accordance with their respective terms. The City as Seller represents and warrants that it has the authority to sell the Property to Buyer upon the terms and conditions of this Agreement. Upon request of either party, Escrow Holder or Title Company, Buyer and Seller agree to deliver such documents reasonably necessary to evidence the foregoing.

12.7 Attorneys' Fees. In the event of any dispute between the parties hereto arising out of the subject matter of this Agreement or the Escrow, or in connection with the Site, the prevailing party in such action shall be entitled to have and to recover from the other party its actual attorneys' fees and other expenses and costs in connection with such action or proceeding (including expert witness fees) in addition to its recoverable court costs.

12.8 Interpretation: Governing Law. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

12.9 No Waiver. No delay or omission by either party hereto in exercising any right or power accruing upon the compliance or failure of performance by the other party hereto under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party hereto of a breach of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

12.10 Modifications. Except as otherwise specified herein, any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

12.11 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.12 Merger of Prior Agreements and Understandings. This Agreement and other documents incorporated herein by reference contain the entire understanding between the parties relating to the transaction contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

12.13 Covenants to Survive Escrow. The covenants and agreements contained herein shall survive the Close of Escrow and, subject to the limitations on assignment contained in Article 10 above, shall be binding upon and inure to the benefit of the parties hereto and their representatives, heirs, successors and assigns.

12.14 Consent of Parties. Whenever by the terms of this Agreement the consent or approval of Buyer or Seller is to be given, such consent or approval shall be evidenced by the signature of one person designated for such purpose. Such designated persons may be changed by the party so designating at any time by the delivery of a written notice to the other party.

12.15 No Withholding Because Non-Foreign Seller. Seller represents and warrants to Buyer that Seller is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code Section 1445 or any out-of-state seller under California Revenue and Tax Code Section 18862 and that it will deliver to Buyer on or before the Close of Escrow (i) a non-foreign affidavit on Escrow Holder's standard form pursuant to Internal Revenue Code Section 1445(b)(2) and the Regulation promulgated thereunder and (ii) a California Form 590.

12.16 Execution in Counterpart. This Agreement and any modifications, amendments or supplements thereto may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

12.17 Notices. Any notice which either party may desire to give to the other party or to the Escrow Holder must be in writing and shall be effective (i) when personally delivered by the other party or messenger or courier thereof; (ii) three (3) business days after deposit in the United States mail, registered or certified; (iii) twenty-four (24) hours after deposit before the daily deadline time with a reputable overnight courier or service; or (iv) upon receipt of a telecopy or fax transmission, provided a hard copy of such transmission shall be thereafter delivered in one of the methods described in the foregoing (i) through (iii); in each case postage fully prepaid and addressed to the respective parties as set forth below or to such other address and to such other persons as the parties may hereafter designate by written notice to the other parties hereto:

To Buyer: M&A Gabace
9034 West Sunset Blvd
West Hollywood, CA 90069
Attention: Mark Gabay

To Seller: City of Irwindale
5050 N. Irwindale Ave.
Irwindale, CA 91706
Attention: City Manager

Copy to: Aleshire & Wynder, LLP
18881 Von Karman Ave., Ste. 1700
Irvine, CA 92612
Attn: Fred Galante, Esq.
Facsimile: 949-223-1180

Escrow Holder: At the above stated address.

12.18 Exhibits: Exhibits "A" through "F", inclusive are attached hereto and incorporated herein by this reference. The Exhibits are as follows:

Exhibit	Description
A.	Legal Description of Site
B.	Scope of Development
C.	Grant Deed
D.	Form of CC&Rs
E.	Schedule of Performance
F.	Consent to Agreement for Purchase, Sale and Development of Real Property

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of Purchase and Sale of Real Property and Escrow Instructions as of the date set forth above.

"BUYER"

M&A GABAY
A California limited Partnership

By: [Signature]
Mark Gabay, Managing General Partner

ATTEST:

"SELLER"

CITY OF IRWINDALE,
A California Charter City

[Signature]
Laura M. Nieto, CMC, Deputy City Clerk

By: [Signature]
Mark A. Breceda, Mayor

APPROVED AS TO FORM
ALESHIRE & WYNDELL LLP

[Signature]
Fred Galante, City Attorney

AGREED AND ACCEPTED AS OF THIS 25th DAY OF November, 2015

FIRST AMERICAN TITLE COMPANY

By: [Signature]
Escrow Officer

EXHIBIT B

Scope of Development

Any proposed future project shall be consistent with the City's General Plan and Zoning Code. The "Project" to be developed on the Site, when submitted at a future date, shall be light industrial and/or commercial in nature and shall include improvements to enhance the aesthetics of the surrounding neighborhood and protect the residential uses; improvements shall include but not be limited to, attendant streets, lighting, landscaping, decorative perimeter walls, and other public improvements. The Project shall include a landscaped "buffer area" ("Residential Buffer") to separate the Project's industrial components from the residential areas.

Since a project has yet to be identified and submitted for review, project impacts cannot be identified at this time. Therefore, any proposed future project on this property shall comply with the requirements of the California Environmental Quality Act through the preparation of an Initial Study that may result in the preparation of a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report."

EXHIBIT C

Form of Grant Deed

Deed

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City Clerk
City of Irwindale
5050 N. Irwindale Avenue
Irwindale, California 91706

SPACE ABOVE THIS LINE FOR RECORDER'S USE
EXEMPT FROM RECORDING FEE PER GOV. CODE § 27383

GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the CITY OF IRWINDALE, a California municipal corporation ("Grantor"), hereby grants to M&A GABAE, a California limited partnership ("Grantee"), all of its respective rights, title, and interest in the real property hereinafter referred to as the "Property" in the City of Irwindale, County of Los Angeles, State of California, as more particularly described in Attachment 1 attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on its behalf as of the date written below.

CITY OF IRWINDALE,
a California municipal corporation

Mark A. Breceda, Mayor

ATTEST:

Laura Nieto, Deputy City Clerk

Attachment 1 to Grant Deed

Legal Description of the Property

The Property is that certain real property located in the City of Irwindale, County of Los Angeles, State of California, and is described as follows:

EXHIBIT D

Form of CC&Rs

FREE RECORDING REQUESTED AND
WHEN RECORDED, RETURN TO:

City of Irwindale
5050 N. Irwindale Ave.
Irwindale, CA 91706
Attn: City Clerk

(Space above this line for Recorder's Office Use Only)

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("CC&Rs") is made and entered into this _____ day of _____, 2015, by M&A GABAEF, a California limited partnership (collectively, "Owner"). These CC&Rs are declared for the benefit of the CITY OF IRWINDALE, a California Charter municipality ("City"). Owner and City are occasionally referred to herein each as a "party" and collectively as the "parties".

RECITALS:

A. Owner is the purchaser of that certain real property located in the City of Irwindale, County of Los Angeles, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference ("Site") from the City pursuant to that certain Agreement For Purchase, Sale & Development of Real Property and Joint Escrow Instructions dated October 28, 2015 ("Purchase-Sale Agreement").

B. City entered into the Purchase-Sale Agreement in reliance upon Owner entering into these CC&Rs. Additionally, City has fee or easement interests in various streets, sidewalks and other property within the City and is responsible for the appropriate planning and development of land within the City in such a manner so as to provide for the health, safety and welfare of the residents of the City. That portion of the City's interest in real property most directly affected by these CC&Rs are public rights of way surrounding the Site.

C. City and Owner now desire to place restrictions upon the use and operation of the Site in order to ensure that the Site shall be developed and operated in accordance with the requirements set forth herein and in the Purchase-Sale Agreement.

D. It is the intent of City and Owner that these CC&Rs shall be recorded on title to the Site in the Office of the County Recorder for the County of Los Angeles, and that the terms hereof shall be binding on the Owner and its successors in interest in the Site until replaced with covenants applicable to the developed Site.

AGREEMENT:

NOW, THEREFORE, Owner declares, covenants and agrees, by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, that the Site shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied, subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a common plan for the improvement and sale of the Site, and are established expressly and exclusively for the use and benefit of City, the residents of the City of Irwindale, and every person buying an interest in the Site.

1. DEVELOPMENT OF THE SITE

Owner has represented and hereby represents to City that it intends to and will develop the Site in compliance with the City's ordinances. Owner represents that it will cause the Site and Residential Area to be graded so as to allow for full development in compliance with the City's ordinances and in accordance with the applicable provisions of the Los Angeles Building Code, including, but not limited to Chapter 33 thereunder, as incorporated into the City's Municipal Code under Irwindale Municipal Code Chapter 15.04 (collectively "Applicable Building Codes") and that Owner will diligently pursue approval of the grading plan currently being processed by the County of Los Angeles, which serves as the City's Building Department.

Owner agrees to use, devote, and maintain the Site for (i) light industrial and commercial improvements on approximately two-thirds (2/3) of the easterly portion of the Site, including attendant streets, lighting, landscaping and other public improvements, and (ii) aesthetic landscaping in the Residential Buffer to be maintained in such a manner as to effectively and attractively screen the Residential Area from visual, noise and dust impacts associated with the Project. Owner shall maintain all landscaping in the Residential Buffer at its sole cost and expense in a manner so as to allow for an attractive, seamless and efficient tie to the Residential Area. The term Site, as used herein, includes the Residential Buffer.

2. MAINTENANCE.

2.1 General Maintenance Obligations. Following remediation and development of the Site in a manner consistent with the Commercial and/or Light Industrial Zone designation of the City, Owner, for itself and its successors and assigns, shall enter into a new covenant agreement to replace these CC&Rs, which shall require Owner to maintain and repair or cause to be maintained and repaired the Site (or such applicable portion of the Site) and all related on-site improvements and landscaping thereon, including, without limitation, buildings, parking areas, lighting, signs and walls in a first class condition of comparable properties in the Irwindale area and repair, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction, at Owner's sole cost and expense. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal; (ii) the care and replacement of all shrubbery, plantings, and other landscaping in a healthy condition; and (iii) the repair, replacement and restriping of asphalt or concrete paving using the same type of material originally installed, to the end that such pavings at all times be kept in a level and smooth condition. Such conditions to be imposed

shall require the Owner to maintain the Property or cause the Property to be maintained in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to the public health, safety or general welfare or that such a condition of deterioration or disrepair causes appreciable harm or is materially detrimental to property or improvements within one thousand (1,000) feet of such portion of the Site.

2.2 Condition During Construction. During any period of remediation, grading or other construction activities, Owner, for itself and its successors and assigns, hereby covenants and agrees to maintain and repair or cause to be maintained and repaired the Site (or such applicable portion of the Site) in a safe condition, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction, at Owner's sole cost and expense. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal; (ii) ground watering or other similar measures for the reasonable suppression of construction-related dust and air particulates; and (iii) employment of acoustical barriers, limited heavy construction hours, or other similar measures for the reasonable suppression of construction-related noise.

2.3 Parking and Driveways. The driveways and traffic aisles on the Site shall be kept clear and unobstructed at all times. No obstructions to vehicular or pedestrian traffic shall project into any of the driveways, traffic aisles, or pedestrian thoroughfares in such a manner as to unreasonably block ingress, egress and circulation or create a safety hazard.

2.4 Right of Entry. From and after the date(s) that Owner's obligations to maintain the Site commence under Sections 2.1 through 2.3, and in the event Owner, or its successors or assigns, fail to maintain the common area of the Site as set forth in Sections 2.1 through 2.3 above, and satisfactory progress is not made in correcting the condition within thirty (30) days from the date of written notice from City, City may, at its option, and without further notice to Owner, declare the unperformed maintenance to constitute a public nuisance. Thereafter, subject to the rights of tenants to perform the landscaping or maintenance pursuant to such tenant's lease, City, its employees, contractors or agents, may cure Owner's default by entering upon the Site and performing the necessary maintenance. The City shall give Owner reasonable notice of the time and manner of entry, and entry shall only be at such times and in such manner as is reasonably necessary to carry out these CC&Rs. The Owner, or its successors and assigns owning the affected portion of the Site, shall pay such costs as are reasonably incurred by City for such maintenance for the affected common area of the Site, including attorneys' fees and costs within thirty (30) days after receipt of a written invoice from City with supporting documentation for such costs.

Nothing in this Section 2.5 shall be construed to waive, limit or prevent the City from seeking all legal and equitable remedies for the abatement or prosecution of public nuisances found on the Site in the reasonable determination of a duly authorized official of the City, regardless of whether such nuisance conditions are located within a common area, tenant improvement, or any other portion of the Site.

2.5 Lien. If such costs incurred by City pursuant to Section 2.5 above are not

reimbursed within thirty (30) days after Owner's, or such successors or assigns, receipt of written notice thereof with supporting documentation as set forth in Section 2.5 above, the same shall be deemed delinquent, and the amount thereof shall bear interest thereafter at a rate equal to the lesser of ten percent (10%) per annum or the legal maximum until paid. Any and all delinquent amounts, together with said interest, costs and reasonable attorney's fees, shall be an obligation of the Owner or such successor or assign as well as a lien and charge, with power of sale, upon the property interests of Owner or such successor, and the rents, issues and profits of such property. City may bring an action at law against Owner or such successor obligated to pay any such sums or foreclose the lien against Owner's or such successor's property interests. Any such lien shall be created by recordation of a Notice of Claim of Lien against the affected portion of the Site and may be enforced by sale by the City following recordation of a Notice of Default of Sale given in the manner and time required by law as in the case of a deed of trust; such sale to be conducted in accordance with the provisions of Section 2924, *et seq.*, of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law.

Any monetary lien provided for herein shall be subordinate to any bona fide mortgage or deed of trust covering an ownership or leasehold interest in and to the Site or the applicable portion thereof, and any purchaser at any foreclosure or trustee's sale (as well as the transferee under any deed or assignment in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title free from any monetary lien created by these CC&Rs, but otherwise subject to the provisions hereof; provided that, after the foreclosure of any such mortgage and/or deed of trust, all other assessments provided for herein to the extent they relate to the expenses incurred subsequent to such foreclosure and are assessed hereunder to the purchaser at the foreclosure sale, as Owner of the subject Site after the date of such foreclosure sale, shall become a lien upon the affected portion of the Site upon recordation of a Notice of Claim of Lien as hereinabove provided.

3. COMPLIANCE WITH LAWS.

3.1 State and Local Laws. Owner or its successors and assigns shall comply with all ordinances and regulations of the State or City applicable to the Site. Owner or its successors and assigns shall comply with all rules and regulations of any assessment district of the City with jurisdiction over the Site.

3.2 Environmental Conditions; Compliance with State and Local Soils Conditions Requirements. The Site consists of a former silt landfill. The fill of the former landfill comprising the Site is not adequately compacted requiring any construction on the Site to address soil compaction in the manner as may be required by the County of Los Angeles, the City's contract Building Department, at the sole cost, and responsibility of Owner or any successor owner of the Site, as further described in Section 1 above. Owner and its successor shall defend, save and hold the City and its elected and appointed boards, commissions, officers, agents, and employees harmless from any and all claims, costs (including attorneys' fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from the conditions described in this Section 3.2. Owner and its successors take the Site AS-IS with respect to all environmental conditions thereon, and shall be responsible for any defects in the Site, including, without limitation, the physical, environmental and geotechnical condition of the

Site, and the existence of any contamination, hazardous materials, underground storage tanks, vaults, debris, pipelines or other structures located on, under or about the Site, excepting that nothing herein shall be construed to require Owner or its successors to hold the City harmless and/or defend it from any claims arising from, or alleged to arise from, the sole negligence or gross or willful misconduct of the City's officers, employees, agents, contractors of subcontractors.

4. OBLIGATION TO REPAIR.

If a portion of the Project shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty, Owner, or its successor with respect to the affected portion of the Project, shall either (i) promptly proceed to obtain any available insurance proceeds and take all steps necessary to begin reconstruction and, upon receipt of insurance proceeds and any applicable permits and approvals, to promptly and diligently commence and to thereafter pursue the repair or replacement of the affected portion of the Project to substantially the same condition as existed prior to such damage or destruction, or (ii) if Owner, or such successor with respect to the affected portion of the Site, elects not to restore or replace such improvements, such Owner or successor shall promptly remove all debris from the affected portion of the Site and place the affected portion of the Site in a clear and secure condition. City shall cooperate with Owner, at no expense to City, in obtaining any governmental permits required for the repair, replacement, or restoration of any improvements. Following any such event of damage or destruction, Owner, or its successor with respect to the affected portion of the Site, may also reconstruct such other improvements on the Site as are consistent with applicable land use regulations provided it shall obtain all legally required approvals from the City and other governmental agency or agencies with jurisdiction with respect to those improvements.

5. ENFORCEMENT.

In the event Owner defaults in the performance or observance of any covenant, agreement or obligation of Owner pursuant to these CC&Rs, and if such default remains uncured for a period of thirty (30) days after written notice thereof shall have been given by City, or, in the event said default cannot reasonably be cured within said time period, Owner has failed to commence to cure such default within said thirty (30) days and thereafter fails to diligently prosecute said cure to completion, then City may declare an "Event of Default" to have occurred hereunder, and, at its option, may take one or more of the following steps:

5.1 By mandamus or other suit, action or proceeding at law or in equity, require Owner to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of these CC&Rs; or

5.2 Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of Owner hereunder; or

5.3 Enter the affected portion of the Site and cure the Event of Default.

Except as otherwise expressly stated in these CC&Rs, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of its rights or remedies

shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by another party.

6. COVENANTS TO RUN WITH THE LAND.

Owner hereby subjects the Site to the covenants, reservations, and restrictions set forth in these CC&Rs. City and Owner hereby declare their express intent that all such covenants, reservations, and restrictions shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Site. All covenants, without regard to technical classification or designation, shall be binding for the benefit of the City, and such covenants shall run in favor of the City for the entire term of these CC&Rs, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate. Each and every contract, deed or other instrument hereafter executed covering or conveying the Site, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the CC&Rs, regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed or other instrument.

City and Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land. City and Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Site by the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes of protecting the public health, safety and welfare.

Owner hereby agrees to hold, sell, and convey the Site subject to the terms of these CC&Rs. Owner also grants to the City, as a third party beneficiary hereof, the right and power to enforce the terms of these CC&Rs against the Owner and all persons having any right, title or interest in the Site or any part thereof, their heirs, successive owners and assigns.

7. INDEMNIFICATION.

Owner, while in possession of the Site, and each successor or assign of Owner while in possession of the Site, shall remain fully obligated for the payment of any property taxes and assessments applicable to its interest in the Site. Owner, and its successors and assigns, shall indemnify, defend and hold harmless City from and against any loss, liability, claim or judgment arising from their breach of the foregoing covenant. The foregoing indemnification, defense, and hold harmless agreement shall only be applicable to and binding upon the party then owning the Site or applicable portion thereof.

8. INSURANCE.

Owner covenants and agrees for itself, and its assigns and successors-in-interest in the Site, that during remediation, grading and related construction activities on the Site, Owner or such successors and assigns shall procure and keep in full force and effect or cause to be procured and kept in full force and effect for the mutual benefit of Owner and City, and shall provide City evidence reasonably acceptable to Executive Director and the City's Risk Manager of the existence of, the following policies of insurance:

8.1 Comprehensive General Liability Insurance. Owner shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$5,000,000 per occurrence, \$5,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.

8.2 Workers' Compensation Insurance. If applicable, Owner shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). Owner shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers. Should the Owner be a sole proprietor, Owner will have to complete and submit a declaration of sole proprietor form to the City in lieu of proof of Workers' Compensation as it is not required for sole proprietors.

8.3 Automotive Insurance. Owner shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Owner arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$5,000,000 combined single limit for each accident.

9. ATTORNEY'S FEES.

In the event that a party to these CC&Rs brings an action against the other party hereto by reason of the breach of any condition, covenant, representation or warranty in these CC&Rs, the prevailing party in such action shall be entitled to recover from the other reasonable expert witness fees, and its reasonable attorney's fees and costs. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, including the conducting of discovery.

10. AMENDMENTS.

These CC&Rs shall only be amended by a written instrument executed by both the Owner and City or their successors in title, and duly recorded in the real property records of the County of Los Angeles.

11. NOTICES.

Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

To City: City of Irwindale
 5050 N. Irwindale Ave.
 Irwindale, CA 91706
 Attn: City Manager

With copy to: Aleshire & Wynder
18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612
Attn: Fred Galante

To Owner: M&A Gabace
9034 West Sunset Blvd
West Hollywood, CA 90069
Attention: Mark Gabay

The notice shall be deemed given three (3) business days after the date of mailing, or, if personally delivered, when received.

12. SEVERABILITY / WAIVER / LENDER PROTECTION.

12.1 Severability. If any provision of these CC&Rs shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

12.2 Waiver. A waiver by either party of the performance of any covenant or condition herein shall not invalidate these CC&Rs nor shall it be considered a waiver of any other covenants or conditions, nor shall the delay or forbearance by either party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

12.3 Owner's Breach Does Not Defeat Mortgage Lien. Owner's breach of any of the covenants or restrictions contained in these CC&Rs shall not defeat or render void or invalid the lien of any mortgage, deed of trust or other security interest encumbering the Site made in good faith and for value but, unless otherwise provided herein, the terms, covenants, conditions, restrictions, easements and reservations of these CC&Rs shall be binding and effective against the holder of such encumbrance whose interest is acquired by foreclosure, trustee's sale, deed or assignment in lieu thereof, or otherwise.

13. GOVERNING LAW.

These CC&Rs shall be governed by the laws of the State of California.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Owner has executed these CC&Rs by its duly authorized representative on the date first written hereinabove.

"OWNER"

M&A GABAE, a California limited partnership

By: _____
Mark Gabay, Managing General Partner

APPROVED BY CITY OF IRWINDALE as third-party beneficiary to the CC&Rs:

City: CITY OF IRWINDALE, a municipal corporation

By: _____
Mark A. Breceda, Mayor+

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By _____
Fred Galante, City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, 2015, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary in and for the State of California

[SEAL]

EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

EXHIBIT E

Schedule of Performance

	<u>Item To Be Performed</u>	<u>Time For Performance</u>	<u>Agreement Reference</u>
1.	Purchaser executes and delivers Purchase, Sale & Development Agreement ("PSDA") to Seller	Within 30 days of the Effective Date	
2.	Purchaser provides Seller with financial commitments to finance the Project	Within the Contingency Period	10.3
3.	Seller approves or disapproves financial commitments to finance the Project	Within 60 days of receipt of evidence of Purchaser's financial commitments	10.4
4.	Open Escrow	Within 3 days after execution of PSDA by Seller	2
5.	Seller delivers to Purchaser Title Insurance Commitment and Title Documents	Before Close of Escrow	5
6.	Purchaser approves or disapproves title exceptions	Within 30 days after delivery to Purchaser of Title Documents	5
7.	Seller delivers notice to Purchaser as to whether it will cure disapproved exceptions	Within 10 days after receipt of Purchaser's notice	5
8.	Purchaser submits land use entitlement applications for review, including site plans, floor plan, building elevations, materials board, and conceptual landscaping plan, and other discretionary actions for public hearing	Within 60 days after Close of escrow	10.2
9.	City Planning Commission approves or disapproves Purchaser's application for Approvals	Within 270 days of Purchaser's submittal of applications for Approvals	10.2
10.	City Council approves or disapproves Purchaser's application for Approvals	Within 60 days of Planning Commission decision	10.2

	<u>Item To Be Performed</u>	<u>Time For Performance</u>	<u>Agreement Reference</u>
11.	Purchaser prepares and submits to City construction plans, drawings and specifications prepared in accordance with City approvals	Within 60 days after City Council decision	10.2
12.	Seller provides plan check comments	Within 60 days of Purchaser's submittal; provided that Purchaser may request expedited review subject to payment of City's standard expediting costs	10.2
13.	Escrow Agent gives notice of fees, charges, and costs to close escrow	One (1) week prior to Closing	
14.	Deposits into escrow by Seller:		
	a) Executed Deed	On or before 1:00 p.m. on the business day preceding the Closing Date	4.2
	b) Payment of Seller's Share of Escrow Costs	On or before 1:00 p.m. on the business day preceding the Closing Date	
	c) Taxpayer ID Certificate	On or before 1:00 p.m. on the business day preceding the Closing Date	
	d) FIRPTA Certificate	On or before 1:00 p.m. on the business day preceding the Closing Date	
15.	Deposits into escrow by Purchaser:		
	a) The Deposit	Within 5 days after execution of PSDA	3.1
	b) The Purchase Price	On or before 1:00 p.m. on the business day preceding the Closing Date	2.3; 3.1

	<u>Item To Be Performed</u>	<u>Time For Performance</u>	<u>Agreement Reference</u>
	c) Payment of Purchaser's Share of Escrow Costs	On or before 1:00 p.m. on the business day preceding the Closing Date	
	d) Preliminary Change of Ownership Statement	Prior to Closing Date	
16.	Seller or Purchaser, as case may be, may cure any condition to closing disapproved or waived; or may cure any default	Within 30 days after date established therefore, or date of breach, as the case may be	11.1
17.	Close of escrow; recordation and delivery of documents	Within 60 days after Opening of Escrow	2.2
18.	Purchaser completes construction of a development project	Within 36 months after commencement of improvements, provided that Purchaser may complete project in phases consistent with market conditions.	10.2

It is understood that the foregoing Schedule of Performance is subject to all of the terms and conditions set forth in the text of the Agreement. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text; in the event of any conflict or inconsistency between this Schedule of Performance and the text of the Agreement, the text shall govern.

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both Purchaser and Seller. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The City Manager of Seller shall have the authority to approve extensions of time without City Council action not to exceed a cumulative total of 180 days.

EXHIBIT F

Consent to Agreement for Purchase, Sale and Development of Real Property

EXHIBIT "N"

RESOLUTION NO. 2015-70-2799

A RESOLUTION OF THE CITY OF IRWINDALE APPROVING A PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS FOR THE SALE OF A PORTION OF PROPERTY KNOWN AS THE MANNING PIT LOCATED AT 5175 VINCENT AVENUE (APNs: 8417-034-904, 910 AND 911) TO M&A GABAE, LLC, AND FINDING THE SALE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. RECITALS

WHEREAS, the approximately 35.4 acres of real property consisting of three parcels located at 5175 Vincent Avenue in the City of Irwindale, Los Angeles County, California, described as Assessor's Parcel Numbers 8417-034-904, 910 and 911, ("Site") and more particularly described in the Legal Description attached to the Purchase and Sale Agreement and Escrow Instructions accompanying this Resolution ("Purchase and Sale Agreement") was initially acquired by the Irwindale Community Redevelopment Agency ("ICRA") for redevelopment purposes; and

WHEREAS, the acquisition of the Site by ICRA was made using the former Low and Moderate Income Housing Fund ("LMIHF") to develop affordable housing on a portion of the Site. In light of the challenges and time required to secure reclamation of the Site, the ICRA subsequently transferred the Site from the LMIHF to the non-housing ICRA account using redevelopment set-aside funds. The goal was to secure a mix of housing and commercial or light industrial development upon Site reclamation; and

WHEREAS, the Site contained deleterious materials that included potentially contaminated soil with lead concentrations above the soluble threshold limit concentrations for lead; and

WHEREAS, the potential risks of having to dispose of any lead-contaminated soil was included in a May 16, 2013, appraisal report prepared by Mason & Mason; and

WHEREAS, on April 3, 2007, the ICRA issued a Request for Proposals ("RFP") for the Site's remediation, filling of abandoned mine pits, removal of contaminated soils, and other work (collectively, "Remediation") to accomplish future development of the Site. Dispatch Transportation, LLC dba Windrow Earth Transport ("Dispatch"), by way of its April 16, 2007, response to the RFP, proposed to remediate materials placed on the Site by the ICRA's former contractor as well as any third parties and perform a grading operation to bring the Site to street level; and

WHEREAS, during Dispatch's performance of the Remediation, a California State Supreme Court ruling on the constitutional validity of two 2011 legislative budget trailer bills, ABX1 26 (Chapter 5, Statutes of 2011) and ABX1 27 (Chapter 6, Statutes of 2011), resulted in the outright elimination of all 425 redevelopment agencies in the State of California. The dissolution procedures under ABX1 26 include a process for the disposition and/or transfer of assets, including property holdings of former redevelopment agencies. Subsequent legislation, AB 1484 (Chapter 26, Statutes of 2012), which was passed, signed, and enacted on June 28, 2012, made significant changes to the provisions of ABX1 26, including the process for asset management/disposition/transfers. Pursuant to ABX1 26 and AB 1484, the City serves as Successor Agency to the ICRA following the adoption by the City Council of the City of Irwindale Resolution No. 2012-08-2547, adopted on January 11, 2012; and

WHEREAS, on December 13, 2013, the City, Dispatch, and M&A Gabae, LLC ("Buyer") entered into an Exclusive Negotiating Agreement ("ENA") by which the parties agreed to negotiate the sale of a portion of the Site, which portion excludes approximately 10 acres along the western boundary ("Sale Parcels"), by the City to the Buyer for a future light industrial and/or commercial development. It was agreed that the future development would include light industrial and commercial improvements including attendant streets, lighting, landscaping and other public improvements as well as a landscaped "buffer area" ("Residential Buffer") to separate the development's industrial components from the residential area; and

WHEREAS, under AB 1484, the Site is subject to the disposition process requiring the State Department of Finance ("DOF") to approve a Long Range Property Management Plan ("LRPMP") prepared by the Successor Agency describing the proposed sale of properties owned by the Successor Agency, including the Site. The transfer of the Site by ICRA to the City was approved by DOF via DOF's approval of the LRPMP on August 8, 2014. Therefore, on August 27, 2014, the Site was purchased by the City from the Successor Agency for the then-current fair market value, as confirmed by the May 16, 2013, appraisal report prepared by Mason & Mason; and

WHEREAS, based on the above finding, the City wishes to sell the Sale Parcels and M&A GABAE, LLC ("Buyer") wishes to purchase the Sale Parcels; and

WHEREAS, the City Attorney prepared a Purchase and Sale Agreement ("Agreement") for the Sale Parcels between the Buyer and the City in order to commence a period of ninety days (90) days for the Developer to perform its due diligence and obtain all necessary approvals ("Contingency Period"), and provided that the Developer has been diligently pursuing its due diligence investigations of the Site and obtaining the Approvals the City Manager shall be authorized to grant an one or more extensions for and on behalf of the City Council in his/her sole and absolute discretion ("Extended Contingency Period"); and

WHEREAS, the Agreement establishes that the intent is for the Developer to purchase the Sale Parcels from the City at the proposed price of \$3,058,571.43 for future development of light industrial facilities to be approved by the City separately; and

WHEREAS, any proposed future project will be required to consistent with the City's General Plan and Zoning Code. Based on the existing land use designation, future proposals shall be light industrial and/or commercial in nature and shall include improvements to enhance the aesthetics of the surrounding neighborhood and protect the residential uses. Improvements shall include but not be limited to, attendant streets, lighting, landscaping, decorative perimeter walls, and other public improvements ("Project"). The Project shall include a landscaped "buffer area" ("Residential Buffer") to separate the Project's industrial components from the residential areas.

WHEREAS, the sale of the Sale Parcels does not compel any specific development or project, but does make approval of a project a condition to the sale subject to separate compliance with the California Environmental Quality ("CEQA") Act when such project is presented to the City for consideration; as such, the sale qualifies as exempt per Section 15378(b)(4) of the CEQA Guidelines as the Agreement is considered a "government funding mechanism or other governmental fiscal activity which do not involve any commitment to any specific project"; a general rule exemption also applies per Section 15061(b)(3) in that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

B. RESOLUTION

NOW, THEREFORE, the City Council of the City of Irwindale hereby finds, determines, and resolves as follows:

SECTION 1. The Recitals set forth above are true and correct and incorporated herein by reference.

SECTION 2. The sale of the Sale Parcels to Buyer pursuant to the Purchase and Sale Agreement provided with this Resolution is in accordance with Ordinance No. 695.

SECTION 3. The City and the Buyer now desire to enter into the Agreement to provide for the sale of the Site from the City to the Buyer for future project development. In accordance with Irwindale Charter Section 607(j) and Irwindale Municipal Code Section 3.44.160, the City has considered the sale of the Site pursuant to the Agreement for the full, appraised fair market value and finds that the sale is appropriate to further the City

Council's goals of providing for economic development of underutilized and blighted property in the City.

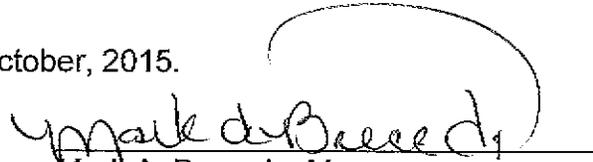
SECTION 4. The City Council approves the sale of the Sale Parcels to Buyer for the full fair market value of \$3,058,571.43 pursuant to the terms of the Agreement provided with this Resolution and authorizes the City Manager to execute same and other documents as necessary to consummate such sale, subject to the approval of the form of such Agreement and related documents by the City Attorney.

SECTION 5. The proposed Project will result in a significant economic opportunity. The Site will be revitalized from an extreme blighted condition, including the excavation of contaminated soils and back-filling of clean fill for abandoned mining pits. The Project is likely to result in employment of City residents, substantial increases in tax revenues to the City, and provide other amenities. The City acknowledges the public benefit of such results and wishes to encourage expansion of job opportunities in the City. The Agreement is in accord with applicable state and federal laws and is in the vital and best interests of the community, will serve the health, safety, and general welfare of the City of Irwindale, and their citizens, will serve to strengthen the City's land use and social structure, and alleviate economic and physical blight within the City.

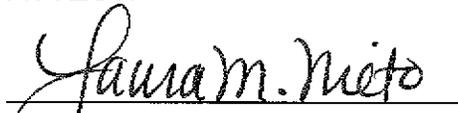
SECTION 6. The sale qualifies as exempt per Section 15378(b)(4) of the CEQA Guidelines as the Agreement is considered a "government funding mechanism or other governmental fiscal activity which do not involve any commitment to any specific project"; a general rule exemption also applies per Section 15061(b)(3) in that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The Community Development Director is directed to file the appropriate Notice of Exemption.

SECTION 7. The City Clerk shall certify to the passage and adoption of this resolution, and the same shall thereupon take effect and be in force.

PASSED AND ADOPTED this 28th day of October, 2015.


Mark A. Breceda, Mayor

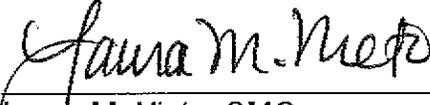
ATTEST:


Laura M. Nieto, CMC
Deputy City Clerk

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.
CITY OF IRWINDALE }

I, Laura M. Nieto, Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Resolution No. 2015-70-2799 duly adopted by the City Council of the Irwindale, at a regular meeting held on the 28th day of October, 2015, by the following vote:

AYES:	Councilmembers:	Ambriz, Garcia, Miranda, Ortiz, Mayor Breceda
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None
ABSTAIN:	Councilmembers:	None



Laura M. Nieto, CMC
Deputy City Clerk

**AGREEMENT FOR PURCHASE, SALE & DEVELOPMENT
OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS**

Escrow No. _____

Date of Opening of Escrow: _____, 2015

To: Escrow Holder

Attn: _____, Escrow Officer

Phone: _____; Email: _____

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS (this "Agreement") is made this ___ day of ____, 2015, by and between THE CITY OF IRWINDALE, a California Charter City ("Seller" and occasionally herein "City"), and M&A GABAE, LLC, a California limited liability company ("Buyer" and occasionally herein "Developer").

RECITALS

A. This Agreement pertains to the conveyance to Buyer of those certain parcels of vacant real property consisting of a total of 35.38 acres, in the City of Irwindale more particularly described and depicted in **Exhibit "A"** attached hereto (the "Site"). As shown in Exhibit "A", the Site excludes that approximately 10-acre residential area adjacent to the Site's eastern border (the "**Residential Area**"). The Site was initially acquired by the Irwindale Community Redevelopment Agency ("**ICRA**") using the former Low and Moderate Income Housing Fund ("**LMIHF**") to develop affordable housing on a portion of the Site. In light of the challenges and time required to secure reclamation of the Site, the ICRA subsequently for consideration made to the LMIHF transferred the Site from the LMIHF to the non-housing ICRA account using redevelopment set-aside funds. The goal was to secure a mix of housing and commercial or light industrial development on the reclaimed Site.

B. The Site contained deleterious materials that included potentially contaminated soil with lead concentrations above the soluble threshold limit concentrations for lead. The potential risks of having to dispose any lead-contaminated soil was included in a May 16, 2013, appraisal report prepared by Mason & Mason.

C. On April 3, 2007, the ICRA issued a Request for Proposals ("**RFP**") for the Site's remediation, filling of abandoned mine pits, removal of contaminated soils, and other work (collectively, "**Remediation**") to accomplish future development of the Site. Dispatch Transportation, LLC dba Windrow Earth Transport ("**Dispatch**"), by way of its April 16, 2007, response to the RFP, proposed to remediate materials placed on the Site by the ICRA's former contractor as well as any third parties and perform a grading operation to bring the Site to street level.

D. During Dispatch's performance of the Remediation, a California State Supreme Court ruling on the constitutional validity of two 2011 legislative budget trailer bills, ABX1 26 (Chapter 5, Statutes of 2011) and ABX1 27 (Chapter 6, Statutes of 2011), resulted in the outright elimination of all 425 redevelopment agencies in the State of California. The dissolution procedures under ABX1 26 include a process for the disposition and/or transfer of assets, including property holdings of former redevelopment agencies. Subsequent legislation, AB 1484 (Chapter 26, Statutes of 2012), which was passed, signed, and enacted on June 28, 2012, made significant changes to the provisions of ABX1 26, including the process for asset management/disposition/transfers. Pursuant to ABX1 26 and AB 1484, the City serves as Successor Agency to the ICRA following the adoption by the City Council of the City of Resolution No. 2012-08-2547, adopted on January 11, 2012.

E. Under AB 1484, the Site is subject to the disposition process requiring the State Department of Finance ("DOF") to approve a Long Range Property Management Plan ("LRPMP") prepared by the Successor Agency describing the proposed sale of properties owned by the Successor Agency, including the Site. The transfer of the Site by ICRA to the City was approved by DOF via DOF's approval of the LRPMP on August 8, 2014. Therefore, on August 27, 2014, the Site was purchased by the City from the Successor Agency for the then-current fair market value, as confirmed by the May 16, 2013, appraisal report prepared by Mason & Mason.

F. On December 13, 2013, the City, Dispatch, and Developer entered into an Exclusive Negotiating Agreement ("ENA") by which the parties agreed to negotiate the sale of the Site by the City to Developer for light industrial and/or commercial development. The "Project" to be developed on the Site shall include light industrial and commercial improvements including attendant streets, lighting, landscaping and other public improvements. The Project includes a landscaped "buffer area" ("**Residential Buffer**") to separate the Project's industrial components from the Residential Area. Landscaping and all improvements to the buffer areas shall be maintained by Developer at no cost to City. Developer shall not be required to install any improvements in the Residential Area, but shall provide that any utilities and public improvements developed within the Site are installed in a manner so as to allow for a seamless and efficient tie to the Residential Area. The Project, including demarcations of the Residential Buffer, shall be further described and depicted in the Project description, concept plans, architectural renderings and site plans to be prepared by Developer and submitted to City for review and approval.

G. The City and the Developer now desire to enter into this Agreement to provide for the sale of the Site from the City to the Developer for Project development. In accordance with Irwindale Charter Section 607(j) and Irwindale Municipal Code Section 3.44.160, has considered the sale of the Site pursuant to this Agreement for the full, appraised fair market value and, per Resolution No. 2015-70-2799 approved concurrently with this Agreement, found that the sale is appropriate to further the City Council's goals of providing for economic development of underutilized and blighted property in the City.

H. The Council found that the proposed Project will result in a significant economic opportunity. The Site will be revitalized from an extreme blighted condition, including the excavation of contaminated soils and back-filling of clean fill for abandoned mining pits. The

City Council finds and determines that the Project is likely to result in employment of City residents, substantial increases in tax revenues to the City, and provide other amenities. City acknowledges the public benefit of such results and wishes to encourage expansion of job opportunities in the City. This Agreement is in accord with applicable state and federal laws and is in the vital and best interests of the community, will serve the health, safety, and general welfare of the City of Irwindale, and their citizens, will serve to strengthen the City's land use and social structure, and alleviate economic and physical blight within the City.

NOW, THEREFORE, based on the above recitals, which are deemed true and correct and which are incorporated into the terms of this Agreement, and in consideration of the mutual covenants set forth herein, the parties hereto agree as follows:

TERMS AND CONDITIONS

1. PURCHASE AND SALE OF PROPERTY.

1.1 Generally. Buyer hereby agrees to purchase from Seller, and Seller agrees to sell to Buyer all Buyer's rights, title and interests to the Site upon the terms and conditions hereinafter set forth.

2. OPENING OF ESCROW; CLOSING DATE; PURCHASE PRICE.

2.1 Opening of Escrow. Within three (3) business days after the execution of this Agreement by Buyer and Seller and approval by the Irwindale City Council, the Parties shall open an escrow ("**Escrow**") with the Escrow Holder identified above, (herein the "**Escrow Holder**") by causing an executed copy of this Agreement to be deposited with Escrow Holder. Escrow shall be deemed open on the date that a fully executed copy of this Agreement is delivered to Escrow Holder ("**Opening of Escrow**"). Escrow Holder shall fax written notice of the Opening of Escrow date to Buyer and Seller.

2.2 Closing Date. Escrow shall close *no later than* sixty (60) days following opening ("**Closing Date**"), unless extended by mutual written agreement of the parties. The terms the "**Close of Escrow**" and/or the "**Closing**" are used herein to mean the time the Grant Deed (as hereinafter defined) is recorded in the Office of the County Recorder of Los Angeles County, California.

2.3 Purchase Price. The Purchase Price for Buyer's acquisition of all interests Seller holds in the Site is THREE MILLION FIFTY-EIGHT THOUSAND, FIVE-HUNDRED SEVENTY-ONE DOLLARS AND 43/100 (\$3,058,571.43).

3. ADDITIONAL FUNDS AND DOCUMENTS REQUIRED FROM BUYER AND SELLER.

3.1 Buyer. Buyer agrees that on or before 1:00 p.m. on the business day preceding the Closing Date, Buyer will deposit with Escrow Holder all additional funds and/or documents (executed and acknowledged, if appropriate) which are necessary to comply with the terms of this Agreement, including, without limitation, the following:

(a) A Preliminary Change of Ownership Statement completed in the manner required in Los Angeles County, if any; and

(b) The Purchase Price and such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

3.2 Seller. Seller agrees that on or before 1:00 p.m. on the business day preceding the Closing Date, Seller will deposit with Escrow Holder such funds and other items and instruments (executed and acknowledged, if appropriate) as may be necessary in order for the Escrow Holder to comply with this Agreement, including, without limitation, the following:

(a) A grant deed conveying the Site to Buyer in the form attached hereto as **Exhibit "C" ("Grant Deed")**.

(b) Two duplicate originals of California Form 590 Real Estate Withholding Exemption Certificates in the form required by the California Franchise Tax Board ("**California Residency Affidavit**"); and

(c) Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

3.3 Recordation, Completion and Distribution of Documents. Escrow Holder will cause the Grant Deed to be recorded when (but in no event after the date specified in Section 2.2 above) it can issue the Title Policy in the form described in Section 4.2 below, and holds for the account of Seller the items described above to be delivered to Seller through Escrow, less costs, expenses and disbursements chargeable to Seller pursuant to the terms hereof.

3.4 Escrow Holder Responsibilities. Escrow Holder will not have any responsibilities for the parties' performance of the terms of the Agreement which are to be performed after the 30-day Closing. The parties may execute supplemental escrow terms and instructions into Escrow Holder's general form and consistent with the terms hereof.

4. **TITLE MATTERS.**

4.1 Approval of Title. Buyer acknowledges that it has received copies of that preliminary title report for the entire Site dated _____, as Order No. _____ (the "**Preliminary Title Report**"). Buyer hereby approves title in the form specified in Section 4.2.

4.2 Title Policy. When Escrow Holder holds for Buyer the Grant Deed in favor of Buyer executed and acknowledged by Seller covering the Site, Escrow Holder shall cause to be issued and delivered to Buyer and Seller as of the Close of Escrow a CLTA standard coverage owner's policy of title insurance ("**Title Policy**"), or, upon Buyer's request therefore, an ALTA extended coverage owner's policy of title insurance, issued by Title Company, with liability in the amount of the Purchase Price, covering the Site and showing title vested in Buyer free of encumbrances, *except*:

(a) All non-delinquent general and special real property taxes, assessments and Los Angeles County solid waste fees for the current fiscal year;

(b) Those easements, encumbrances, covenants, conditions, restrictions, reservations, rights-of-way and other matters of record shown on the Preliminary Title Report;

(c) The standard printed exceptions and exclusions contained in the CLTA or ALTA form policy;

(d) Any exceptions created or consented to by Buyer, including, without limitation, any exceptions arising by reason of Buyer's possession of or entry on the Site.

5. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.

5.1 Conditions to Closing.

(a) *Conditions to Buyer's Obligations.* The obligations of Buyer under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Buyer of each of the following conditions precedent:

(i) Title Company will issue the Title Policy as required by Section 4.2 of this Agreement.

(ii) Seller has deposited an executed Grant Deed into Escrow.

(iii) Escrow Holder holds and will deliver to Buyer the instruments and funds, if any, accruing to Buyer pursuant to this Agreement.

(iv) All representations and warranties specified in Section 7.1 are true and correct.

(v) Buyer's approval of any other conditions specified in this Agreement.

(vi) Seller shall not be in default of any term or condition of this Agreement.

(vii) A fully executed copy of the "Assignment and Assumption Agreement" required by Section 6.3(a) hereof if Remediation Work will be ongoing after Closing.

Buyer's approval shall be based upon Buyer's sole and absolute discretion; provided, however, if Buyer has not delivered written notice of approval of the above conditions to Seller and Escrow Holder by the times provided above, or if no time is provided, on or before the Close of Escrow, each such condition shall automatically and conclusively be deemed to have been disapproved by Buyer.

(b) *Conditions to Seller's Obligations.* The obligations of Seller under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Seller of each of the following conditions precedent:

(i) Escrow Holder holds and will deliver to Seller the instruments and funds accruing to Seller pursuant to this Agreement.

(ii) An executed Grant Deed to be recorded upon the Site has been deposited into Escrow.

(iii) The Purchase Price has been deposited into Escrow via direct wire transfer.

(iv) Buyer shall not be in default of any term or condition of this Agreement.

(v) A copy of the Consent to Agreement for Purchase, Sale and Development of Real Property approved by Licensee, as described in Section 6.3 and in the form attached hereto as Exhibit "F", has been deposited into Escrow.

(vi) Buyer shall have secured any and all approvals needed to ensure that the Residential Area and any other areas demarcated as "Not A Part" in the Site depiction at Exhibit "A" and excluded from the Site's legal description in Exhibit "A" are legally subdivided from the Site. This condition shall be deemed fulfilled, unless waived in writing by Seller, upon Buyer obtaining a City-approved Final Map, Parcel Map, Lot Line Adjustment, Lot Split, or other such legal mechanism permitted under the Subdivision Map Act (Govt. Code §§ 66410 et seq.) for the legal division of the Residential Area and "Not A Part" areas from the Site.

(vii) Buyer shall provide Seller with a letter evidencing a commitment from lender(s) (in form and substance reasonably acceptable to City) indicating that such lender(s) have a definitive interest in financing the acquisition, construction and/or development of the Project by Buyer. Evidence of financial commitments shall also outline the financial terms pursuant to any proposed financing for the Project as well as specifically identify the sources of all equity financing to be used by Buyer in the development of the Project. In the event the Project is to be financed exclusively by equity financing, the equity commitment shall evidence an amount sufficient to provide for the net acquisition costs of the Site and development of the Project by Buyer, as the case may be. The evidence of financial commitments required by this condition is further described in Section 10.3 of this Agreement.

If requested by Escrow Holder or Buyer, Seller shall deliver to Escrow Holder and Buyer written notice of satisfaction of the conditions set forth in this Section 5.1.

5.2 Covenant of Seller and Buyer. Buyer and Seller agree to cooperate with one another, at no cost or expense to the cooperating party, in satisfying the conditions precedent

to Close of Escrow. Buyer shall be responsible for proceeding with diligence and in good faith to satisfy the conditions to Buyer's performance set forth in Section 5.1(a) and Seller shall be responsible for proceeding with diligence and in good faith to satisfy the conditions to Seller's performance set forth in Section 5.1(b).

5.3 Termination for Failure of Condition. In the event Buyer fails to approve or disapprove any condition precedent specified in Section 5.1(a) or elsewhere in this Agreement on or before the date for approval set forth therein, Seller shall notify Buyer of such failure in writing and Buyer shall have a period of ten (10) days from receipt of such notice to elect in writing to approve such matter or to disapprove such matter and terminate this Agreement. The failure of Buyer to so approve such matter within said ten (10) days shall be deemed to constitute disapproval thereof and Buyer's election to terminate. In the event Seller fails to approve or disapprove any condition precedent specified in Section 5.1(b) or elsewhere in this Agreement on or before the date for approval set forth therein, Buyer shall notify Seller in writing of such failure and Seller shall have a period of ten (10) days from receipt of such notice to elect in writing to approve such matter or to disapprove such matter and terminate this Agreement. The failure of Seller to so approve such matter within said ten (10) days shall be deemed to constitute disapproval thereof and Seller's election to terminate.

6. **CONDITION OF SITE; RELEASES/INDEMNITY SITE CONDITION.**

6.1 Environmental Laws. For purposes of this Agreement, "Environmental Laws" shall mean all federal, state or local statutes, regulations, ordinances, codes or rules as such have been or may hereafter be enacted, adopted, amended or supplemented and all common law causes of action relating to the protection of human health or the environment, including without limitations the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 7401, et seq.), the Toxic Substance Control Act, as amended (15 U.S.C. 2601, et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f, et seq.), the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. Section 136, et seq.) and the Clean Air Act, as amended (42 U.S.C. 7401, et seq.), and private rights of action for nuisance, trespass, or damages to property or persons.

6.2 Hazardous Materials. For the purposes of this Agreement, Hazardous Materials shall be deemed to mean asbestos, polychlorinated biphenyls, petroleum or by-products thereof, radioactive materials, or any chemical, material or substance included in the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "toxic substances" and/or words of similar import under any federal, state and local laws, ordinances, rules and regulations whether present or future, relating to and/or dealing with the protection of the environment and/or human health and safety and/or applicable to the generation, handling, manufacture, installation, treatment, storage, use, transportation, discharge, disposal, presence and/or release into the air, soil, water at, above or below ground level (whether accidental or intentional) of such substances or materials.

6.3 Environmental Remediation and Grading. Buyer and Seller acknowledge that the Site requires environmental Remediation as described in that certain "License Agreement For Performance of Remediation and Grading" dated October 10, 2007 (the "**License Agreement**") and that the environmental Remediation will include, but is not limited to, the removal of buried fuel storage tanks and other possible buried structures as well as the removal of any soil contamination caused by possible tank leaks, application of fill soils to fill former mining pits at the Site, removal of contaminated soils, tallus, and other Hazardous Material clean-up. The Buyer and Seller further acknowledge that the Purchase Price is based on the assumption that any necessary environmental Remediation of the Site would be performed by Buyer after Close of Escrow. As such, since the Site environmental Remediation has not yet occurred, Buyer and Seller hereby agree as follows:

(a) *License to Enter; Assignment of License Agreement*. Seller shall assign to Buyer all Seller's rights and obligations under the License Agreement as to the Site (which excludes remediation and grading of the Residential Area over which the City shall remain as owner and party to the License Agreement), and Buyer shall assume all such rights and obligations from Seller. Said assignment shall be a condition to closing memorialized in an "Assignment and Assumption Agreement" to be drafted in a form reasonably acceptable to Seller and Licensee. Buyer shall thereafter abide by the terms of the License Agreement to allow DISPATCH TRANSPORTATION LLC, a Delaware limited liability corporation, d.b.a. WINDROW EARTH TRANSPORT ("**Licensee**") the right to enter upon the Site to conduct soils, engineering, or other tests and studies, and to perform the Remediation Work or for any other purposes to carry out the terms of the License Agreement. Pending formal approval of the Assignment and Assumption Agreement by the parties and Licensee, Licensee consents to this Agreement, as confirmed by the Consent to Agreement for Purchase, Sale and Development of Real Property attached hereto as Exhibit "___". The "Assignment and Assumption Agreement" shall further contain Licensee's acknowledgment and acceptance of the assignment of the portion of the License Agreement that encompasses the Site and sale of the Site to Buyer. Licensee's acknowledgment and acceptance shall be further subject to and conditioned upon the "Accommodation Agreement" (as defined in Section 1(d) of the ENA) detailing the uses of the Buyer's funds for such Remediation Work and Licensee's access to such funds .

(b) *Ongoing Performance of Remediation and Grading Work*. Seller and Buyer shall cooperate with each other to accomplish the ongoing performance of the Remediation Work pursuant to the terms of the License Agreement and work in good faith to address and approve any approvals and documents needed to assure such work is performed in a timely manner. Such cooperation shall be aimed at minimizing any delays to the Project work or disruptions due to the shared boundary during and upon completion of the Remediation Work. Such cooperation shall further include, but not be limited, to correcting any lot line issues that arise as the Site and Residential Area are being reclaimed or when fully graded and ready for development.

(c) *Encroachment Agreement from County*. Buyer and Seller acknowledge that the remediation and grading of the Site and Residential Area shall require the parties to secure an encroachment agreement or permit from the County of Los Angeles for the

placement of fill material within an area owned by the County immediately south of the Site and Residential Area. The fill material is necessary to provide an appropriate buttress per applicable Building Code standards to support the fill and grading operations at the Site and Residential Area. As part of its consent to this Agreement per Section ___ and Exhibit ___, Licensee agrees to comply with all applicable filling and buttressing requirements and abide by County of Los Angeles conditions related to same.

(d) *Option to Extend Closing.* As an alternative to ongoing performance of Remediation Work on the Site after Closing, the parties may mutually negotiate a means by which the Remediation Work would be completed by the Seller.

6.4 As-Is Acceptance of Site. The Buyer shall accept the Site AS-IS and does agree to take the Site in its current condition AS-IS, WITH ALL FAULTS, all defects and conditions whatsoever then existing on the Site, including any Hazardous Materials (as defined herein above), vaults, fill soils, debris, pipelines, wells, or other structures that are or may be located in, on, under, or around the Site, whether known or unknown. Buyer assumes all responsibility for any and all such defects, faults, and conditions and shall be responsible for any and all defects in the Site, whether patent or latent, including, without limitation, the physical, environmental and geotechnical condition of the Site, and the existence of any contamination, Hazardous Materials now present upon, or remaining within the Site after Remediation Completion. Seller makes no representation or warranty concerning the physical, environmental, geotechnical or other condition of the Site. Buyer acknowledges that any liability of Seller for the environmental condition of the Site is hereby extinguished and that Seller shall have no liability for further remediating any environmental condition of the Site, and that Buyer shall indemnify Seller against any claim or liability relating to the condition of the Site.

(a) *Buyer's Release of Seller.* Notwithstanding any contrary provisions of this Agreement or otherwise, Buyer shall and does hereby release Seller, its officers, directors, shareholders, affiliates, subsidiaries, heirs, and successors from any and all claims, liabilities, expenses, costs, or damages that Buyer may incur arising from the presence of any Hazardous Materials (as defined herein above) which are or may be located in, on, under, or around the Site, whether or not caused by Seller or any predecessor-in-interest of Seller, and whether or not known to Seller or Buyer at or before the Close of Escrow. Buyer expressly preserves its rights against other parties and does not release, or waive its rights to contribution against, any other party.

(b) *Buyer's Indemnification of Seller.* Notwithstanding any contrary provisions of this Agreement or otherwise, Buyer hereby agrees to indemnify, defend (by Seller's choice of counsel), and hold harmless Seller, its directors, officers, employees, agents, representatives, heirs, and successors from and against any and all costs, expenses, damages, claims, and liabilities, including reasonable attorney fees, foreseeable or unforeseeable, directly or indirectly arising from any violation of the Environmental Laws (as defined herein above) including, without limitation, any release, treatment, use, generation, storage, or disposal of Hazardous Materials in, on, under, around, or from the Site at any time before or after close of escrow including, without limitation,

the cost of any required or necessary remediation or removal of any such Hazardous Materials, any costs of repair or improvements on the Site or surrounding properties necessitated by such remediation or removal and costs of any testing, sampling, or other investigation or preparation of Remediation or other required plans undertaken prior to such remediation or removal. Buyer expressly preserves its rights against other parties and does not release, or waive its rights to contribution against, any other party.

6.5 Indemnification and Release from Liabilities Relating to New Legislation. Buyer acknowledges that it is aware of, and has received advice from legal counsel on, the matter of legislation effective June 29, 2011, purporting to limit or disenfranchise the authority of local governments to transfer or control assets that are, or once were, owned by a local redevelopment agency. Specifically, the 2011 Assembly Bills ABx1 26 and ABx1 27 became effective on June 29, 2011. ABx1 26 purports to eliminate redevelopment agencies while ABx1 27 allows agencies to continue to exist if they agree to pay to the State a proportional share of \$1.7 billion this year and \$400 million annually in perpetuity. On December 29, 2011, the California Supreme Court in *Community Redevelopment Association v. Matosantos* (No. S194861) upheld the constitutionality of ABx1 26 and struck-down the constitutionality of ABx1 27, thus, absent further legislation, effecting the abolishment of redevelopment activities. Buyer hereby acknowledges that ABx1 26, as amended by certain budget trailer bills, might be interpreted or applied in such a manner as to undermine or invalidate Seller's authority to convey the Site to Buyer in accordance with the terms hereof. In order to address this uncertainty, the parties agree as follows:

(a) *Legal Challenge to Transaction; Election to Terminate Agreement.* If, at any time prior the Buyer's commencement of vertical construction of the Project, there arises a legal challenge to the validity or legality of this Agreement and its underlying transactions based on the grounds of, or arising from, (i) ABx1 26, (ii) the *Matosantos* ruling, or (iii) any subsequent legislation directly amending ABx1 26, then either party may, in its sole discretion, elect to terminate this Agreement; such termination of the Agreement, if accepted by both parties, would require the return of any Purchase Price amounts that have been paid pursuant to this Agreement to Seller (if any) and re-vest all right title and interest to the Site back to Seller. Such termination shall not be deemed a default and each party shall cancel any further actions to be performed hereunder without liability to the other. The right to terminate provided hereunder shall expire upon Buyer's commencement of vertical construction of any portion of the Project, but in no case later than December 1, 2016.

(b) *Rights of Non-Terminating Party.* Should a party elect to terminate this Agreement pursuant to foregoing Section 6.5(a), the non-terminating party may refuse such termination and require continued performance hereof. However, such non-terminating party shall pay all costs of defense, expenses, damages, claims, and liabilities, including reasonable attorney fees, foreseeable or unforeseeable, directly or indirectly arising from any legal challenge subject to the provisions of Section 6.5(a).

(c) *Option to Extend Closing.* In the event any legal challenge subject to the provisions of Section 6.5(a) arises before a Closing, the parties may extend the date of Closing by a mutually-accepted, written amendment of this Agreement as may be

necessary to accommodate the delays that may be caused by such legal challenge and/or the time needed to determine whether or not this Agreement shall be terminated pursuant to Section 6.5(a).

6.6 Survival. Notwithstanding any other provision of this Agreement, the provisions of this Article 6 shall survive the Close of Escrow and the delivery of the Grant Deed(s).

7. **REPRESENTATIONS AND WARRANTIES BY SELLER.**

7.1 Representations and Warranties. Seller hereby makes the following representations and warranties to Buyer, each of which (i) is material and relied upon by Buyer in making its determination to enter into this Agreement; (ii) to the best of Seller's knowledge, is true in all respects as of the date hereof and shall be true in all respects on the date of Close of Escrow on the Site; and (iii) shall survive the Close of Escrow of the purchase and sale of the Site as well as any future transfer of the Site to Buyer or any transferee, successor or assignee of Buyer:

(a) With the exception of the matters stated in 6.5, the License Agreement and the ENA, as disclosed hereinabove, to the best of Seller's knowledge, other than the agreement with the geotechnical engineering firm _____ dated _____ for the inspection of the Site and Residential Area, there are no contracts, leases, claims or rights affecting the Site and no agreements entered into by or under Seller shall survive the Close of Escrow that would adversely affect Buyer's rights with respect to the Site, except as heretofore disclosed through the Preliminary Title Report.

(b) Seller has delivered or, within the period required in Section 5.1(a) and Article 3, will have delivered true, correct and complete copies of all the documents and other information specified in Section 5.1(a) and Article 3 in Seller's possession or control (or has reasonable access thereto). To the best of Seller's knowledge, the information contained in the said documents is true and accurate.

(c) With the exception of any items disclosed in the Preliminary Title Report, License Agreement, and the ENA, there are no executory contracts, options or agreements existing (other than this Agreement) relating to the purchase of all or any portion of the Site or any interest therein.

(d) Since the time of issuance of the Preliminary Title Report, Seller has taken no action to create, nor otherwise caused, any additional encumbrances to title other than those shown on the Preliminary Title Report.

(a) Seller is not a foreign person as defined in Internal Revenue Code Section 1445(f)(3).

7.2 Changed Circumstances. If Seller becomes aware of any fact or circumstance which would change or render incorrect, in whole or in part, any representation or warranty made by Seller under this Agreement, whether as of the date given or any time thereafter through the Close of Escrow and whether or not such representation or warranty was based upon Seller's knowledge and/or belief as of a certain date, Seller will give immediate

written notice of such changed fact or circumstance to Buyer, but such notice shall not release Seller of its liabilities or obligations with respect thereto. Seller shall issue a certificate as of the Close of Escrow stating that all the representations and warranties contained in Section 7.1 are true and correct as of said date, or setting forth in detail which of such matters are not true and correct. Buyer shall have five (5) days from the receipt of any notice by Seller of the material change of any representation or warranty made by Seller hereunder to terminate this Agreement by providing written notice to Seller and Escrow Holder, and receive return of its Deposit and any other sums deposited in the Escrow.

7.3 No Other Representations or Warranties by Seller. Other than those express representations and warranties contained in this Agreement, Seller makes no other representations or warranties, either express or implied.

8. REPRESENTATIONS AND WARRANTIES BY BUYER.

8.1 "AS-IS" Condition of Site. As set forth in Section 6.4, Buyer represents, acknowledges, and agrees that Buyer is electing to purchase the Site in its "AS-IS, WHERE IS" physical condition except to the extent set forth in Section 6.5.

8.2 Sole Reliance. Buyer represents and acknowledges that it is relying solely upon Buyer's own inspections in purchasing the Site.

8.3 Legislation. Buyer represents that as for the matters disclosed in Section 6.5, Buyer has received advice through its own legal counsel and is not relying on any legal analysis of Seller or Seller's legal counsel.

9. ESCROW PROVISIONS.

9.1 Escrow Instructions. This Agreement, when signed by Buyer and Seller, shall also constitute escrow instructions to Escrow Holder.

9.2 General Escrow Provisions. Escrow Holder shall deliver the Title Policy to the Buyer and instruct the Los Angeles County Recorder to mail the Grant Deed to Buyer at the address set forth in Section 12.16 after recordation. All funds, if any, received in this Escrow shall be deposited in one or more general escrow accounts of the Escrow Holder with any bank doing business in Los Angeles County, California, and may be disbursed to any other general escrow account or accounts. All disbursements shall be made by Escrow Holder's check.

9.3 Prorations of Real Property Taxes. Buyer acknowledges that Seller is a governmental agency, not subject to payment of taxes. Accordingly, Buyer shall be solely responsible for payment of taxes accruing after Close of Escrow and/or seeking a refund of any overpayment of taxes from the appropriate taxing agencies. Utilities and other expenses of the Site which are payable by or to the owner of the Site shall be prorated to the Close of Escrow on the basis of a thirty (30) day month and a three hundred sixty (360) day year. Any party who is obligated to pay net amounts based on said final proration shall reimburse the other party said amount within five (5) business days after completion of the final proration. Seller shall receive a credit for any refundable utility or governmental deposits

made by Seller with respect to the Site, if any, and shall assign Buyer all rights to refund of same.

9.4 Payment of Costs. Buyer shall pay one hundred percent (100%) of the documentary transfer taxes, escrow fees, recording fees, Title Policy premiums, and the charges for recording the Grant Deed, and the additional portion of the Title Policy premium which is attributable to the additional cost of obtaining any additional coverage requested by Buyer, including the difference between CLTA and ALTA coverage. Seller and Buyer shall each be responsible for their respective attorneys' fees and costs. As to all other costs of escrow not otherwise specifically allocated by this Agreement, Buyer and Seller shall each pay one-half of all escrow and similar fees, except that if one party defaults under this Agreement, the defaulting party shall pay all escrow fees and charges.

9.5 Termination and Cancellation of Escrow. If Escrow fails to close as provided above, Escrow shall terminate automatically without further action by Escrow Holder or any party, and Escrow Holder is instructed to return all funds and documents then in Escrow to the respective depositor of the same with Escrow Holder; provided that any document which has been signed by a party who is not to receive the return of such document, shall be marked "void and of no force or effect" by Escrow Holder before it is delivered. Cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights Buyer or Seller may have against each other arising from the Escrow or this Agreement.

9.6 Information Report. The "Reporting Person" within the meaning of Treasury Regulation Section 1.6045-4(e)(5) with respect to the transactions contemplated by this Agreement shall be Escrow Holder. The name and address of Escrow Holder is set forth on the first page of this Agreement. It is agreed that Escrow Holder is an eligible person under Section 1.6045-4(e)(5)(ii) of said Regulations. Escrow Holder hereby agrees to be responsible for complying with the reporting and other requirements of Internal Revenue Code Section 6045(e) and the income tax regulations promulgated thereunder. Pursuant to said regulations, the address for the transferor and transferee are as set forth for Seller and Buyer respectively in Section 12.16 below, and the identifying information regarding the real estate transferred is the legal description for the Site or portion thereof being transferred. Escrow Holder agrees to file the form required by said regulations between the end of the calendar year in which the Close of Escrow occurs and February 28 of the following calendar year. Buyer and Seller agree (i) to cooperate with Escrow Holder and with each other in completing any report and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including, without limitation, Internal Revenue Service Form 1099-S as such may be hereafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereafter promulgated by the Treasury Department with respect thereto; (ii) that Buyer and Seller, their respective employees and attorneys, and Escrow Holder and its employees may disclose to the Internal Revenue Service, this Agreement or the transaction contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e); (iii) that neither Buyer nor Seller shall seek to hold any such party liable

for the disclosure to the Internal Revenue Service of any such information; and (iv) to retain this Agreement for at least four (4) years following the close of the calendar year in which the Close of Escrow occurs.

9.7 Possession. Possession of the Site shall be delivered to Buyer as of Close of Escrow. In the event any personal property remains on the Site following the Close of Escrow, it shall automatically become the property of Buyer excepting such property that is the property of Licensee under the License Agreement.

10. COVENANTS RELATING TO THE PROJECT.

10.1 Restrictions On Transfer. The qualifications and identity of Buyer are of particular concern to the Seller, and it is because of such qualifications and identity that Seller has entered into this Agreement with Buyer. The Seller has considered the experience, financial capability, and product being marketed by Buyer and its affiliates, the Site location and characteristics, the public costs of acquiring and developing the Site and return on investment, and the product mix necessary to produce a successful Project. Based upon these considerations, the Seller has imposed the restrictions on transfer set forth in this Agreement.

(a) *Transfer Defined*. As used in this section, the term “**Transfer**” shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Agreement, the Site, or the improvements thereon. A Transfer shall also include the Transfer to any person or group of persons acting in concert of more than fifty percent (50%) of the present ownership and/or control of Buyer in the aggregate taking all Transfers into account on a cumulative basis. In the event Buyer or its successor is a corporation or trust, such Transfer shall refer to the Transfer of the issued and outstanding capital stock of Buyer, or of beneficial interests of such trust; in the event that Buyer is a limited or general partnership, such Transfer shall refer to the Transfer of more than fifty percent (50%) of the limited or general partnership interest; in the event that Buyer is a joint venture, such Transfer shall refer to the Transfer of more than fifty percent (50%) of the ownership and/or control of any such joint venture partner, taking all Transfers into account on a cumulative basis.

(b) *Transfers Require Approval*. Buyer shall not Transfer this Agreement or any of Buyer’s rights hereunder, or any interest in the Site or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of Seller which consent shall not be unreasonably withheld. In considering whether it will grant written approval to any assignment by Buyer of its interests in the Site, which assignment requires Seller approval, Seller shall consider factors such as (i) whether the completion of the Project is jeopardized; (ii) the financial strength and capability of the proposed assignee to perform Buyer’s obligations hereunder; (iii) the proposed assignee’s experience and expertise in the planning, financing, development, ownership, and operation of similar projects; and (iv) how the proposed assignee will complement the other users and uses in the City of Irwindale downtown area, whether commercial users or otherwise.

In the absence of a specific written agreement with the Seller, prior to the issuance of a Certificate of Completion for the entire Project or any portion thereof, no assignment or transfer by of all or any portion of its interest in the Site or this Agreement (including without limitation an assignment or transfer not requiring Seller approval hereunder) shall be deemed to relieve Buyer or any successor party from any obligations under this Agreement with respect to the completion of the development of the Project with respect to that portion of the Site which is so transferred. In addition, no attempted assignment of any of Buyer's obligations hereunder shall be effective unless and until the successor party executes and delivers to Seller an assumption agreement in a form reasonably approved by the Seller assuming such obligations.

(c) *Exceptions.* The foregoing prohibition shall not apply to any of the following:

(i) Any mortgage, deed of trust, or other form of conveyance for financing, as provided in Section 10.3, but Buyer shall notify Seller in advance of any such mortgage, deed of trust, or other form of conveyance (but only for purposes of financing the Project).

(ii) Any mortgage, deed of trust, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance on the debt incurred to finance the Project, including any additional costs of construction, whether direct or indirect.

(iii) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of any easements or permits needed to facilitate the Site's development.

(iv) A sale or Transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(v) A conveyance of the Site to any entity Buyer Affiliate. "**Buyer Affiliate**" shall mean any entity which owns or controls Buyer, to any entity owned or controlled by Buyer, to any entity owned or controlled by or affiliated with any entity which owns or controls Buyer, or to any entity resulting from a consolidation, or to the surviving entity in case of a merger, to which consolidation or merger Buyer shall be a party, or to an entity to which all or substantially all of the assets of Buyer have been sold.

(vi) Transfers of ownership or control interest between members of Buyer's immediate family, or transfers to a trust, testamentary or otherwise, in

which the beneficiaries are limited to members of the Buyer's immediate family, or among the entities constituting Buyer.

(d) *Ground Leases & Individual Unit Purchases.* Buyer may enter into ground lease conveyances to a ground lessee or individual commercial/industrial unit purchases to implement the Project subject to all provisions of this Section 10.1.

(e) *Release Of Buyer.* Seller's consent to a Transfer shall not be deemed to release Buyer of liability for performance under this Agreement unless such release is specific and in writing executed by Seller, which release shall not be unreasonably withheld. Upon the written consent of Seller to the complete assignment of this Agreement and the express written assumption of the assigned obligations of Buyer under this Agreement by the assignee, Buyer shall be relieved of its legal duty from the assigned obligations under this Agreement, except to the extent Buyer is in default under the terms of this Agreement prior to said Transfer.

(f) *Buyer To Pay Transfer Costs.* Buyer will pay Seller its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any Transfer.

(g) *Termination; Lease Provisions.* The Transfer restriction in this Section 10.1 terminates upon the recordation of the Notice of Completion for the entire Project.

10.2 Scope Of Development & Schedule Of Performance. The Site shall be developed by Buyer as provided in the Buyer's scope of development and conceptual plans (Exhibit "B") and the plans and permits approved by the City pursuant to Section 10.4. Notwithstanding any other provision set forth in this Agreement to the contrary, in the event of any conflict between the narrative description of the Project in this Agreement (including Exhibit "B") and the approved plans and permits, the approved plans and permits shall govern.

(a) *Critical Construction Deadlines.* Once construction is commenced, it shall be diligently pursued to completion, and shall not be abandoned for more than thirty (30) consecutive days, except when due to an Enforced Delay (Section 11.5 hereof). Buyer shall keep the Seller informed of the progress of construction and submit to the Seller written reports of the progress of the construction when and in the form requested by the Seller. The parties shall begin and complete all plans, reviews, construction and development specified in the Scope of Development within the times specified in the Schedule of Performance or such reasonable extensions of said dates as may be mutually approved in writing by the parties. Project construction shall proceed generally within the times specified in the Schedule of Performance (Exhibit "E") or such reasonable extensions of said dates as may be mutually approved in writing by the parties. Critical Project construction deadlines are as follows:

(i) Final map (if applicable) and Site Plan and Design Review approvals shall be completed no later than January 31, 2017.

(ii) Grading shall commence no later than six (6) months following Site Plan & Design Review Permit approvals.

(iii) Vertical construction shall commence no later than nine (9) months following Site Plan & Design Review Permit approvals.

(iv) Completion of all Project improvements no later than eighteen (18) months following Site Plan & Design Review Permit approvals.

In addition to delays in the Project deadlines as may be permitted due to Enforced Delays, it is understood that the foregoing critical deadlines are subject to all other terms and conditions set forth in this Agreement, and as will be more thoroughly set forth in the future. The critical construction deadlines may be altered or amended by written agreement signed by both Buyer and Seller. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The City Manager of Seller shall have the authority to approve extensions of time without City Council action if such extension does not exceed a cumulative total of 180 days.

(b) *Truck Routes.* Buyer shall make all reasonable efforts to ensure that all vehicles entering and exiting the Site shall utilize the access route at the northern corner of the Site on Vincent Avenue, and acknowledges that it must provide access to the County of Los Angeles and otherwise comply with the County's right to utilize such access for ingress egress to County-owned properties. Additionally, all commercial trucks shall utilize traffic circulation routes as prescribed by any mitigation adopted through the approved Site Plan and Design review Permit.

(c) *Use of Water.* Buyer shall ensure procurement from the applicable water supplier, and use water in the amounts and manner necessary to control dust at that Site as well as any other prudent operational purpose as described by any mitigation adopted through the approved Site Plan and Design review Permit.

(d) *Responding to Public Concerns.* Buyer shall respond to any public complaints or concerns related to the Project via public outreach, website outreach, cooperation with the Seller, shall make a written record of all complaints received and present them to Seller within 48 hours of receiving a complaint.

(e) *CEQA Compliance.* The City shall be responsible for obtaining the approval of this Agreement and any future Project as required by CEQA. Without limitation of the foregoing, Buyer specifically acknowledges and agrees that Buyer shall satisfy all conditions necessary to ensure that the Project conforms to all applicable CEQA requirements.

10.3 Project Financing.

(a) *Buyer Solely Responsible for Project Costs.* Buyer is responsible for paying all costs for the Project unless otherwise provided herein. Project costs include the total Project construction costs, all Site preparation costs, all infrastructure costs, building

permits and development fees, all design and consultant costs, all financing costs, all fixtures and equipment for the facility, and all other costs related to the Project of any nature whatsoever.

Although the parties hereto believe that the Site is being conveyed to the Buyer at fair market value, in accordance with the May 16, 2013, appraisal report prepared by Mason & Mason, and that no financial assistance or public monies are being provided to Buyer with respect to the Project, Buyer fully accepts the risk that construction or development of the Site may qualify as a "public work" "paid for in whole or in part out of public funds," as described in California Labor Code Section 1720 *et seq.*, ("Prevailing Wage Law"), such that it would cause Buyer to be required to pay prevailing wages for any aspect of the development. Buyer hereby represents and warrants that the Project is not subject to Prevailing Wage Law because no funding sources for the Project will trigger the application of Prevailing Wage Laws. Notwithstanding the foregoing, the Buyer fully bears any and all risk that Prevailing Wage Laws may be found to apply to the Project. To this end, Buyer acknowledges and agrees that should any third party, including but not limited to the Director of the Department of Industrial Relations ("DIR"), require Buyer or any of its contractors or subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the DIR under Prevailing Wage Law for all or any of the assistance provided hereunder, then Buyer shall indemnify, defend, and hold Seller harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law. The Seller makes no representation that any construction completed by Buyer is or is not subject to Prevailing Wage Law.

(b) *Buyer's Financial Statements.* Buyer agrees to provide the Seller with documentation and financial statements to the end of demonstrating that Buyer can fund the total projected/estimated Project costs through, cumulatively, the following sources: (i) Buyer equity, (ii) private financing from financial institutions, and/or (iii) financing provided through foreign investment via the USCIS-administered Immigrant Investor Program, also known as the "EB-5" program, or (iv) other reliable funding sources. To this end, no later than the Close of Escrow, Buyer agrees to deliver to Seller, for Seller's approval, financial statements which, in the opinion of Seller, demonstrate that Buyer has the financial capability to undertake the development provided herein. Such financial statements shall include statements from financial institutions with whom Buyer conducts business evidencing their willingness to provide the financing required hereunder. If Buyer elects to self-fund the construction of the Project, Buyer may satisfy this obligation by providing Seller with a letter evidencing approval of the Project by the relevant parties on behalf of Buyer along with an explanation of facts demonstrating Buyer's ability to self-fund the Project. Equity commitment by the Buyer may be in the form of letters of intent from credit worthy investors.

(c) *Obtaining Construction & Permanent Loans.* Should Buyer choose to utilize any financing towards Project completion ("**Buyer Financing**"), Buyer agrees to deliver to Seller and obtain the approval of Seller of irrevocable written commitments from financial institutions licensed to do business in California and acceptable to the Seller ("**Lender**") agreeing to make a construction loan and a permanent loan to Buyer and secured by a First Deed of Trust (said commitment and loan are sometimes referred to collectively as the "**Loan**"). The amount of the commitment shall include all consultant and loan fees, "points," commissions, charges, furnishings, fixtures, taxes, interest start-up and other costs and expenses in an amount not less than the total Project construction contract and costs.

Buyer covenants and agrees to take all action, furnish all information, give all consents and pay all sums required to keep said commitment and Loan in full force and effect and shall comply with all conditions thereof, and shall promptly execute, acknowledge and deliver all loan applications, credit applications and data, financial statements, and loan documents in connection therewith, and shall actually draw upon and utilize the full amount of said Loan only for financing the cost of the Project.

(d) *Seller Approval Of Lender.* Buyer shall not enter into any conveyance for financing without the prior written approval of Seller. Seller's written approval or disapproval shall not be unreasonably withheld or delayed. Seller's review of the Lender shall be limited to the question of whether or not said Lender is a qualified and responsible financial or lending institution or other acceptable entity or person capable of performing its obligations under the Loan.

10.4 Project Plans, Final Building Plans.

(a) *Proposed Project's Consistency With Plans and Codes.* Seller warrants and represents that the City of Irwindale General Plan and Zoning Ordinance permit Seller's proposed development, and construction, operation, and use of the Site as provided in this Agreement, including without limitation the Project as described in Exhibit "B", subject only to (i) approval of this Agreement and the proposed Project pursuant to Government Code § 52201, (ii) those development approvals yet to be obtained, including site plan review, and (iii) City of Irwindale review and approval of a Final Map for the Project, and (iv) those entitlements required under Section 5.1(b)(v) hereof. It is expressly understood by the parties hereto that Seller makes no representations or warranties with respect to approvals required by any other governmental entity or with respect to approvals hereinafter required from City. The City and any other governmental body with jurisdiction over the Project reserve full police power authority over the Project. However, Seller shall reasonably cooperate with Buyer in procuring the foregoing approvals. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items or a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

(b) *Evolution Of Development Plan.* The general scope of development is described in Exhibit "B". On or before commencement of any Project construction,

Buyer must submit to the Seller preliminary, and thereafter final, drawings and specifications for development of the Project in accordance with the City's requirements. The term preliminary and final drawings shall be deemed to include site plans, building plans and elevations, grading plans, if applicable, landscaping plans, parking plans, material pallets, a description of structural, mechanical, and electrical systems, the Final Map and all other plans, drawings and specifications. Final drawings will be in sufficient detail to obtain a building permit. Said plans, drawings and specifications shall be consistent with the Concept Plans (Exhibit "B") and the various development approvals referenced hereinabove, except as such items may be amended by Seller and Buyer in writing. Plan submissions shall be progressively more detailed and will be approved if a logical evolution of plans, drawings or specifications previously approved.

(c) *Buyer Efforts To Obtain Approvals.* Buyer shall exercise its commercially reasonable efforts to timely submit all documents and information necessary to obtain all development and building approvals from the City in a timely manner. Not by way of limitation of the foregoing, in developing and constructing the Project, Buyer shall comply with all applicable development standards in the City of Irwindale Municipal Code and shall comply with all building codes, landscaping, signage, and parking requirements, except as may be permitted through approved variances and modifications.

(d) *Disapproval.* The Seller shall reasonably approve or disapprove any submittal made by Buyer pursuant to this Section within sixty (60) business days after such submittal. All submittals made by Buyer shall note the 60-business day time limit, and specifically reference this Agreement and this Section. Any disapproval shall state in writing in reasonable detail the reason for the disapproval and the changes which the Seller requests be made. Buyer shall make the required changes and revisions and resubmit for approval as soon as is reasonably practicable but no more than thirty (30) business days of the date of disapproval. Thereafter, Seller shall have an additional ten (10) business days for review of the re-submittal, but if the Seller disapproves the re-submittal, then the cycle shall repeat, until the Seller's approval has been obtained. If Buyer desires to make any substantial change to approved working drawings, Buyer shall submit the proposed change to Seller for approval. If the drawings as modified by the proposed change conform to this Agreement and the Concept Plans (Exhibit "B"), City of Irwindale design criteria applicable to the Site, and all other applicable City of Irwindale regulations, Seller shall approve the change and Seller shall notify Buyer of its approval or disapproval in writing within thirty (30) business days after submission of such proposed change.

Seller's Community Development Director or designee shall have authority to determine on behalf of Seller if a proposed revision or change to any plans, drawings, or other documents previously approved by Seller is a substantial change requiring further City approval. If the Community Development Director or his/her designee determines that the proposed revision or change is not substantial, no approval by City of such revision or change will be necessary. Seller shall reasonably approve or disapprove the plans, drawings and related documents referred to in this Section 10.4

within the times stated in foregoing paragraph of this subpart (d). However, to the extent that Buyer proposes substantial revisions or changes to any plan, drawing, or other document previously approved by Seller, Buyer acknowledges that such substantial revision will require review by the City Council or such other legislative body(ies) as may be applicable and, in such circumstance, Buyer agrees to waive the time frames set forth herein if necessary. City's review is intended to insure that the plans, drawings and related documents are consistent with the Project concept (Exhibit "B"). Any disapproval shall state in writing the reasons for disapproval and the changes which Seller requests to be made. Such reasons and such changes must be consistent with the Project concept (Exhibit "B") and any items previously approved or deemed approved hereunder. Buyer, upon receipt of a disapproval based upon powers reserved to Seller hereunder, shall revise the plans, drawings and related documents, and shall resubmit to Seller as soon as possible after receipt of the notice of disapproval; provided that in no case shall Seller be entitled to require changes which are inconsistent with the Project scope and concept (Exhibit "B"), the most recently-applicable, previously-approved or deemed-approved items.

During the preparation of all drawings and plans, the parties shall hold regular progress meetings to coordinate the preparation of, submission to, and review of construction plans and related documents by Seller. If any substantial revisions or corrections of plans approved by Seller shall be required by any government official, agency, department or bureau having jurisdiction, or any lending institution involved in financing, the parties shall cooperate in efforts to develop a mutually acceptable alternative.

10.5 Applicable Laws. Buyer shall carry out the construction of the Project improvements in conformity with all applicable laws, including all applicable federal and state labor laws.

10.6 Anti-Discrimination During Construction. Buyer, for himself and his successors and assigns, agrees that in the construction of the improvements to be constructed by Buyer, it shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, ancestry or national origin.

10.7 County Solid Waste Materials Fee. Filling operations undertaken as part of the Remediation Work will utilize clean soil materials only and no recycled or crushed concrete will be imported and/or exported to/from the Site. As such, the parties believe that the Project is not subject to the Waste Discharge Permit fee requirements of the RWQCB, or County of Los Angeles, as may be applicable, or any other waste discharge-related fees (collectively "**Discharge Fee**") insofar as no "Solid Waste Materials, as that term is defined (copied below) in the Los Angeles County Code, section 20.88.020 H, will be imported at the Site. To this end, Buyer shall indemnify and defend the City for the cost of any Discharge Fees imposed by any regulatory authority pertaining to the Project as a result of the determination, if any, that the fill used in the fill operation contains waste, reused or recycled materials. Should there be a determination that Discharge Fees apply on another basis, the Seller, at its cost, will participate with Buyer in the joint defense of an action for

collection (or challenge to the imposition) of the Discharge Fee. Solid Waste Materials are defined in Los Angeles County Code, section 20.88.0-20(H) as:

“Solid Waste’ means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes.”

Notwithstanding the foregoing, Buyer is aware that City, Seller and Dispatch are litigating the application of the Discharge Fee against Los Angeles County, per *City of Irwindale as Successor Agency to the Irwindale Community Redevelopment Agency, et al, v. County of Los Angeles, et al*, (Los Angeles Sup. Ct. Case No. BS148777). Buyer acknowledges that an adverse ruling could result in application of the Discharge Fee to the Site, and hereby agrees to indemnify, defend, and hold Seller harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such Discharge Fees and costs arising from the application of such Fees to the Site and Residential Area.

10.8 Rights Of Holders Of Approved Security Interests In Site.

(a) *Definitions.* As used in this Section, the term “mortgage” shall mean a leasehold mortgage and include any mortgage, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing. The term “holder” shall include the holder of any such mortgage, deed of trust, or other security interest, or the lessor under a lease-back, or the grantee under any other conveyance for financing.

(b) *No Encumbrances Except Mortgages To Finance The Project.* Notwithstanding the restrictions on transfer in Section 11.1, mortgages required for any reasonable method of financing of the construction of the Project improvements are permitted before issuance of a Certificate of Completion but only for the construction of Project improvements thereon, and for any other expenditures necessary and appropriate to develop the Site under this Agreement, or for restructuring or refinancing any of same, so long as the refinancing does not exceed the then-outstanding balance of the existing financing. The Buyer (or any entity permitted to acquire title under this Section) shall notify the Seller in advance of any mortgage, if the Buyer or such entity proposes to enter into the same before issuance of the Certificate of Completion. The Buyer or such entity shall not enter into any such conveyance for financing without the prior written approval of the Seller as provided in Section 10.1. Any lender approved by the Seller pursuant to Section 10.1 shall not be bound by any amendment, implementation, or modification to this Agreement subsequent to its approval without

such lender giving its prior written consent thereto. In any event, the Buyer shall promptly notify the Seller of any mortgage, encumbrance, or lien that has been created or attached thereto prior to issuance of a Certificate of Completion, whether by voluntary act of the Buyer or otherwise.

(c) *Buyer's Breach Shall Not Defeat Mortgage Lien.* Buyer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to the Site, or any part thereof or interest therein, but unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the holder of any such mortgage of the Site whose interest is acquired by foreclosure, trustee's sale or otherwise.

(d) *Holder Not Obligated To Construct Or Complete Improvements.* The holder of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the Project improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Site or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

(e) *Notice Of Default To Mortgagee, Deed Of Trust Or Other Security Interest Holders.* Whenever Seller shall deliver any notice or demand to Buyer with respect to any breach or default by Buyer hereunder, Seller shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to Seller therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

(f) *Right To Cure.* Each holder (insofar as the rights of Seller are concerned) shall have the right, at its option, within ninety (90) days after the receipt of the notice, to:

(i) Obtain possession, if necessary, and to commence and diligently pursue said cure until the same is completed, and

(ii) Add the cost of said cure to the security interest debt and the lien or obligation on its security interest;

provided that in the case of a default which cannot with diligence be remedied or cured within such ninety (90) day period, such holder shall have additional time as reasonably necessary to remedy or cure such default.

In the event there is more than one such holder, the right to cure or remedy a breach or default of Buyer under this Section shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of Buyer under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed Buyer's obligations to Seller by written agreement satisfactory to Seller with respect to the Site or any portion thereof in which the holder has an interest. The holder must agree to complete, in the manner required by this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the Seller that it has the qualifications and financial responsibility necessary to perform such obligations. Any holder properly completing such improvements shall be entitled, upon written request made to Seller, to a Certificate of Completion from Seller.

(g) *Seller's Rights Upon Failure Of Holder To Complete Improvements.* In any case where one hundred eighty (180) days after default by Buyer in completion of construction of Project improvements under this Agreement, the holder of any mortgage creating a lien or encumbrance upon the Site or improvements thereon has not exercised the option to construct afforded in this Section or if it has exercised such option and has not proceeded diligently with construction, Seller may, after ninety (90) days' notice to such holder and if such holder has not exercised such option to construct within said ninety (90) day period, purchase the mortgage, upon payment to the holder of an amount equal to the sum of the following:

- (i) The unpaid mortgage debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);
- (ii) All expenses, incurred by the holder with respect to foreclosure, if any;
- (iii) The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the Site, such as insurance premiums or real estate taxes, if any;
- (iv) The costs of any improvements made by such holder, if any; and
- (v) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by the Seller.

In the event that the holder does not exercise its option to construct afforded in this Section, and Seller elects not to purchase the mortgage of holder, upon written request by the holder to Seller, Seller agrees to use reasonable efforts to assist the holder selling the holder's interest to a qualified and responsible party or parties (as determined by Seller), who shall assume the obligations of making or completing the improvements required to be constructed by Buyer, or such other improvements in their stead as shall be satisfactory to Seller. The proceeds of such a sale shall be

applied first to the holder of those items specified in subparagraphs (i) through (v) listed hereinabove, and any balance remaining thereafter shall be applied as follows:

(i) First, to reimburse Seller for all costs and expenses actually and reasonably incurred by Seller, including but not limited to payroll expenses, management expenses, legal expenses, and others.

(vi) Second, to reimburse Seller for all payments made by Seller to discharge any other encumbrances or liens on the Site or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due, to obligations, defaults, or acts of Buyer, its successors or transferees.

(vii) Third, any balance remaining thereafter shall be paid to Buyer.

(h) *Right Of Seller To Cure Mortgage, Deed Of Trust Or Other Security Interest Default.* In the event of a default or breach by Buyer (or entity permitted to acquire title under this Section) of a mortgage prior to the issuance by Seller of a Certificate of Completion for the Site or portions thereof covered by said mortgage, and the holder of any such mortgage has not exercised its option to complete the development, Seller may cure the default prior to completion of any foreclosure. In such event, Seller shall be entitled to reimbursement from Buyer or other entity of all costs and expenses incurred by Buyer in curing the default, including legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to:

(i) Any mortgage for financing permitted by this Agreement; and

(ii) Any rights or interests provided in this Agreement for the protection of the holders of such mortgages for financing;

provided that nothing herein shall be deemed to impose upon Seller any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Site in the event of its enforcement of its lien.

(i) *Right Of The Seller To Satisfy Other Liens On The Site After Conveyance Of Title.* After the conveyance of title and prior to the recordation of a Certificate of Completion for construction and development of the Project, and after the Buyer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Site or any portion thereof, the Seller shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Buyer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Buyer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site or any portion thereof to forfeiture or sale.

(j) *Minor Amendments.* Seller's City Manager shall be authorized to approve and execute minor non-substantive amendments to this Agreement as may be requested

by Buyer's lender in relation to the protection of such lender's security interest in the Site, without formal approval of Seller's legislative body.

10.9 Certificate(s) Of Occupancy & Certificate Of Completion.

(a) *Certificate(s) Of Occupancy.* It is anticipated that some portions the commercial/industrial Project elements might be suitable for occupation and the carrying-on of business prior to actual completion of all Project improvements. When the Project has been constructed to such a point that any commercial Project improvements can be safely opened for business (in compliance with all applicable codes, permit requirements and local agency regulation) without any interference by further Project activities, the Buyer shall request from the City a Certificate of Occupancy for all the completed improvements. The issuance of such Certificate of Occupancy shall be in the sole discretion of the City and based on its review of the existing Project improvements versus those improvements that will be required for full Project completion, determination of whether further Project activities will unreasonably or harmfully interfere with the ongoing business activities upon a particular area opened for business, and whether the issuance of a Certificate of Occupancy will comply with all codes, permit conditions and local agency regulations. Seller shall not unreasonably withhold a Certificate of Occupancy.

Upon issuance of a Certificate of Occupancy, Buyer's tenants shall promptly open for business to the public. The Buyer shall exert all reasonable efforts to keep the business open for business to the public during regular and customary business hours despite any ongoing Project activities. Buyer shall reasonably coordinate any ongoing Project activities with business hours in order to minimize any interference between the Project and the business. Such efforts to be undertaken by Buyer shall include, without limitation, the undertaking of Project activity during hours other than regular and customary business hours and the phasing of the Project such that Project activities continuing after the issuance of the Certificate of Occupancy will be in locations other than areas open to the public.

(b) *Certificate(s) Of Project Completion.* Upon the completion of all Project construction required to be completed by Buyer on the Site pursuant to the terms of this Agreement, Seller shall furnish Buyer with the Certificate of Completion in a form acceptable to Seller, upon written request therefore by Buyer. The Certificate of Completion shall be executed and notarized so as to permit it to be recorded in the Office of the Recorder of Los Angeles County.

(i) A Certificate of Completion shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by this Agreement upon the Site and of full compliance with the terms of this Agreement with respect thereto.

(ii) After the issuance of a Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the

Site shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by the covenants, encumbrances, and easements contained in the Deed and the CC&Rs.

(iii) Seller shall not unreasonably withhold a Certificate of Completion. If Seller refuses or fails to furnish a Certificate of Completion within thirty (30) days after written request from Buyer or any entity entitled thereto, Seller shall provide a written statement of the reasons Seller refused or failed to furnish a Certificate of Completion. The statement shall also contain Seller's opinion of any further action Buyer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, or other minor so-called "punch list" items, Seller will issue its Certificate of Completion upon the posting of a bond or other security reasonably acceptable to Seller by Buyer with Seller in an amount representing one hundred fifty percent (150%) of the fair value of the work not yet completed.

(iv) A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Buyer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Certificate of Completion is not notice of completion as referred to in the California Civil Code § 3093. Nothing herein shall prevent or affect Buyer's right to obtain a Certificate of Occupancy from the Seller before the Certificate of Completion is issued.

10.10 Use of the Site & Project; CC&Rs.

(a) *Use For Light Industrial/Commercial Uses.* The Buyer covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction and thereafter, that the Buyer and such successors and such assigns shall devote the Site to the uses specified therefore in the Project concept plan (Exhibit "B") or any other plans as may be approved by the City. Exhibit "B" includes a well-defined architectural concept for the Project showing vehicular circulation and access points, amounts and location of parking, location and size of all buildings (including height and perimeter dimensions) pedestrian circulation, landscaping and architectural character of the Project.

Buyer agrees to use, devote, and maintain the Site for (i) light industrial and commercial improvements on approximately two-thirds (2/3) of the easterly portion of the Site, including attendant streets, lighting, landscaping and other public improvements, and (ii) aesthetic landscaping in the Residential Buffer to be maintained in such a manner as to effectively and attractively screen the Residential Area from visual, noise and dust impacts associated with the Project. Concept plans for the Buyer's proposed landscaping in the Residential Buffer are attached hereto at Exhibit "B". Buyer shall maintain all landscaping in the Residential Buffer at its sole cost and

expense in a manner so as to allow for an attractive, seamless and efficient tie to the Residential Area.

In order to maintain these Site uses, Covenants, Conditions & Restrictions ("CC&Rs") shall be recorded upon the Site by Buyer and Seller prior to the occupancy of any Project building. The CC&R's, in addition to Seller's normal commercial/industrial restrictions, shall include provisions making Seller a party with enforcement rights, and shall include for maintenance of the Site, non-discrimination, transfer restrictions and other provisions consistent with the Project approvals and this Agreement. The CC&Rs shall be subject to the approval of the City which will not unreasonably withhold its consent and shall be in a form substantially similar to that at **Exhibit "D"** hereto. Buyer acknowledges that the Site shall become subject to the CC&Rs upon Seller's execution and recordation of the CC&Rs and Buyer will comply with all of the terms and conditions contained in the CC&Rs.

(b) *Maintenance Of Improvements.* Buyer covenants and agrees for itself, its successors and assigns, and every successor in interest to the Site or any part thereof, that, after Closing of Escrow, the Buyer shall be responsible for maintenance of all improvements that may exist on the Site, as the case may be, from time to time, including without limitation buildings, parking lots, lighting, signs, and walls, in first class condition and repair, and shall keep the Site, including the Residential Buffer, free from any accumulation of debris or waste materials. The Seller shall also maintain all landscaping required pursuant to Seller's approved landscaping plan in a healthy condition, including replacement of any dead or diseased plants. The foregoing maintenance obligations shall run with the land and thereby become the obligations of any transferee of the Site or any portion thereof, and such obligations are set forth in the CC&Rs. Buyer hereby waives any notice, public hearing, and other requirements of the public nuisance laws and ordinances of the City of Irwindale that would otherwise apply, except as specified in said CC&Rs.

(c) *Covenants Run With Land; Effect Of CC&Rs.* All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Site, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law. Each covenant to do or refrain from doing some act on the Site hereunder (i) is for the mutual benefit of and is a mutual burden upon the Site and surrounding City-owned streets, sidewalks, and other public lands, (ii) runs with such lands, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and each other person succeeding to an interest in such lands.

Seller is deemed a beneficiary of the terms and provisions of this Agreement and of the restrictions and covenants running with the land, including the CC&Rs, for and in their own right for the purposes of protecting the interests of the community in whose favor and for whose benefit the covenants running with the land have been provided. The covenants in favor of Seller shall run without regard to whether Seller has been, remains or is an owner of any land or interests therein in the Site. Seller, and any of its related government entities or subdivisions, shall have the right, if any of the covenants set forth in this Agreement or the CC&Rs are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it may be entitled. With the exception of a government entity related to, or designated by the City, no other person or entity shall have any right to enforce the terms of this Agreement or the CC&Rs under a theory of third-party beneficiary or otherwise.

11. DEFAULTS; ENFORCEMENT.

11.1 Defaults & Right To Cure. A “Non-Defaulting Party” in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other party (“Defaulting Party”) to perform any material duty or obligation of said Defaulting Party under the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by Defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in “Default” under this Agreement, if said breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such breach or failure within sixty (60) days after the date of such notice (“Cure Period”). However, if such non-monetary breach or failure cannot be cured within such Cure Period, and if and, as long as the Defaulting Party does each of the following:

- a. Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted Default is not curable within the sixty (60) day period;
- b. Notifies the Non-Defaulting Party of the Defaulting Party’s proposed course of action to cure the Default;
- c. Promptly commences to cure the Default within the sixty (60) day period;
- d. Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and
- e. Diligently prosecutes such cure to completion.

Then the Defaulting Party shall not be deemed in breach of this Agreement.

11.2 Legal Actions.

(a) *Institution Of Legal Actions.* In addition to any other rights or remedies, and subject to the requirements of Section 11.1, either party may institute legal action to

cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other legal or equitable remedy consistent with the purpose of this Agreement, including the remedy of specific performance. Legal actions must be instituted and maintained in the Superior Court of the County of Los Angeles, State of California, in any other appropriate court in that county, or in the Federal District Court in the Central District of California.

(b) *Applicable Law & Forum.* The laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles.

(c) *Acceptance Of Service of Process.* In the event that any legal action is commenced by Buyer against Seller, service of process on Seller shall be made by personal service upon the City Manager, or in such other manner as may be provided by law. In the event that any legal action is commenced by Seller against Buyer, service of process on Buyer shall be made in such manner as may be provided by law and shall be valid whether made within or without the State of California.

11.3 Rights & Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

11.4 Waiver. Except as otherwise provided in this Agreement, waiver by either party of the performance of any covenant, condition, or promise shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right as to any default shall not operate as a waiver of any default or of any rights or remedies or to deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

11.5 Enforced Delays; Extension Of Times of Performance. Time is of the essence in the performance of this Agreement. Notwithstanding the foregoing, in addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the "public enemy"; epidemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; delays of any contractor, subcontractor or supplier; acts of the other party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of Seller shall not excuse performance by Seller); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In the event of such a delay (herein "**Enforced Delay**"), the party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the Enforced

Delay, and shall commence to run from the time of the commencement of the cause, provided notice by the party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause. Failure to provide such notice shall constitute a waiver of the claim. The following shall not be considered as events or causes beyond the control of Buyer, and shall not entitle Buyer to an extension of time to perform: (i) Buyer's failure to obtain financing for the Project, and (ii) Buyer's failure to negotiate agreements with prospective users for the Project or the alleged absence of favorable market conditions for such uses.

Times of performance under this Agreement may also be extended by mutual written agreement by Seller and Buyer. The City Manager of Seller shall have the authority on behalf of Seller to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days with respect to the development of the Site.

12. MISCELLANEOUS.

12.1 Brokerage Commissions. Buyer and Seller each represent and warrant to the other that no third party is entitled to a broker's commission and/or finder's fee with respect to the transaction contemplated by this Agreement. Buyer and Seller each agree to indemnify and hold the other party harmless from and against all liabilities, costs, damages and expenses, including, without limitation, attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay a broker's commission and/or finder's fee.

12.2 Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective heirs, representatives, transferees, successors and assigns. The transfer of all or any part of the interest of any party hereunder in the Site shall not release Seller of its obligations under this Agreement.

12.3 Time of Essence. Time is of the essence in this Agreement and with respect to each covenant and condition hereof. Buyer and Seller each specifically agrees to strictly comply and perform its obligations herein in the time and manner specified and waives any and all rights to claim such compliance by mere substantial compliance with the terms of this Agreement.

12.4 Time Period Computations. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and California state or national holidays unless the reference is to business days, in which event such weekends and holidays shall be excluded in the computation of time and provide that if the last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or California state or national holiday, such act or notice shall be deemed to have been timely performed or given on the next succeeding day which is not a Saturday, Sunday or California state or national holiday.

12.5 Qualification; Authority. Each individual executing this Agreement on behalf of a partnership or corporation represents and warrants that such entity is duly formed and authorized to do business in the State of California and that he or she is duly authorized to

execute and deliver this Agreement on behalf of such partnership or corporation in accordance with authority granted under the formation documents of such entity, and, if a corporation, by a duly passed resolution of its Board of Directors, that all conditions to the exercise of such authority have been satisfied, and that this Agreement is binding upon such entity in accordance with their respective terms. Upon request of either party, Escrow Holder or Title Company, Buyer and Seller agree to deliver such documents reasonably necessary to evidence the foregoing.

12.6 Attorneys' Fees. In the event of any dispute between the parties hereto arising out of the subject matter of this Agreement or the Escrow, or in connection with the Site, the prevailing party in such action shall be entitled to have and to recover from the other party its actual attorneys' fees and other expenses and costs in connection with such action or proceeding (including expert witness fees) in addition to its recoverable court costs.

12.7 Interpretation; Governing Law. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

12.8 No Waiver. No delay or omission by either party hereto in exercising any right or power accruing upon the compliance or failure of performance by the other party hereto under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party hereto of a breach of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

12.9 Modifications. Except as otherwise specified herein, any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

12.10 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.11 Merger of Prior Agreements and Understandings. This Agreement and other documents incorporated herein by reference contain the entire understanding between the parties relating to the transaction contemplated hereby and all prior or contemporaneous

agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

12.12 Covenants to Survive Escrow. The covenants and agreements contained herein shall survive the Close of Escrow and, subject to the limitations on assignment contained in Article 10 above, shall be binding upon and inure to the benefit of the parties hereto and their representatives, heirs, successors and assigns.

12.13 Consent of Parties. Whenever by the terms of this Agreement the consent or approval of Buyer or Seller is to be given, such consent or approval shall be evidenced by the signature of one person designated for such purpose. Such designated persons may be changed by the party so designating at any time by the delivery of a written notice to the other party.

12.14 No Withholding Because Non-Foreign Seller. Seller represents and warrants to Buyer that Seller is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code Section 1445 or any out-of-state seller under California Revenue and Tax Code Section 18862 and that it will deliver to Buyer on or before the Close of Escrow (i) a non-foreign affidavit on Escrow Holder's standard form pursuant to Internal Revenue Code Section 1445(b)(2) and the Regulation promulgated thereunder and (ii) a California Form 590.

12.15 Execution in Counterpart. This Agreement and any modifications, amendments or supplements thereto may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

12.16 Notices. Any notice which either party may desire to give to the other party or to the Escrow Holder must be in writing and shall be effective (i) when personally delivered by the other party or messenger or courier thereof; (ii) three (3) business days after deposit in the United States mail, registered or certified; (iii) twenty-four (24) hours after deposit before the daily deadline time with a reputable overnight courier or service; or (iv) upon receipt of a telecopy or fax transmission, provided a hard copy of such transmission shall be thereafter delivered in one of the methods described in the foregoing (i) through (iii); in each case postage fully prepaid and addressed to the respective parties as set forth below or to such other address and to such other persons as the parties may hereafter designate by written notice to the other parties hereto:

To Buyer: M&A Gabae
 9034 West Sunset Blvd
 West Hollywood, CA 90069
 Attention: Mark Gabay

To Seller: City of Irwindale
5050 N. Irwindale Ave.
Irwindale, CA 91706
Attention: City Manager

Copy to: Aleshire & Wynder, LLP
18881 Von Karman Ave., Ste. 1700
Irvine, CA 92612
Attn: Fred Galante, Esq.
Facsimile: 949-223-1180

Escrow Holder: At the above stated address.

12.17 Exhibits. Exhibits "A" through "F", inclusive are attached hereto and incorporated herein by this reference. The Exhibits are as follows:

Exhibit	Description
A.	Legal Description of Site
B.	Project Scope, Concept Plans, Etc.
C.	Grant Deed
D.	Form of CC&Rs
E.	Schedule of Performance
F.	Consent to Agreement for Purchase, Sale and Development of Real Property

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of Purchase and Sale of Real Property and Escrow Instructions as of the date set forth above.

“BUYER”

M&A GABAE
A California limited Partnership

By: _____
Mark Gabay, Managing General Partner

“SELLER”

CITY OF IRWINDALE,
A California Charter City

ATTEST:

Laura M. Nieto, CMC, Deputy City Clerk

By: _____
Mark A. Breceda, Mayor

APPROVED AS TO FORM
ALESHIRE & WYNDER, LLP

Fred Galante, City Attorney

AGREED AND ACCEPTED AS OF THIS ____ DAY OF _____, 2015

FIRST AMERICAN TITLE COMPANY

By: _____
Maria Martinez, Escrow Officer
777 S. Figueroa Street, 4th Floor
Los Angeles, CA 90017
Main (213) 271-1700
Fax (213) 623-4767
mariamartinez@firstam.com

EXHIBIT A

Legal Description & Depictions of Site

EXHIBIT B

Scope of Development

Any proposed future project shall be consistent with the City's General Plan and Zoning Code. The "Project" to be developed on the Site, when submitted at a future date, shall be light industrial and/or commercial in nature and shall include improvements to enhance the aesthetics of the surrounding neighborhood and protect the residential uses; improvements shall include but not be limited to, attendant streets, lighting, landscaping, decorative perimeter walls, and other public improvements. The Project shall include a landscaped "buffer area" ("Residential Buffer") to separate the Project's industrial components from the residential areas.

Since a project has yet to be identified and submitted for review, project impacts cannot be identified at this time. Therefore, any proposed future project on this property shall comply with the requirements of the California Environmental Quality Act through the preparation of an Initial Study that may result in the preparation of a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report."

EXHIBIT C

Form of Grant Deed

Deed

FREE RECORDING REQUESTED BY
City Clerk
City of Irwindale
5050 N. Irwindale Avenue
Irwindale, California 91706

AND WHEN RECORDED MAIL THIS DEED
AND TAX STATEMENTS TO:

Seventh Street Development, Inc.
3780 Kilroy Airport Way, Suite 520
Long Beach, CA 90806
Attn: Craig Furniss

SPACE ABOVE THIS LINE FOR RECORDER'S USE
EXEMPT FROM RECORDING FEE PER GOV. CODE § 27383

GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the CITY OF IRWINDALE, a California municipal corporation as Successor Agency to the Irwindale Community Redevelopment Agency ("Grantor"), hereby grants to Seventh Street Development, Inc., a California corporation ("Grantee"), the real property located in the City of Irwindale, County of Los Angeles, State of California, as more particularly described in Attachment 1 attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on its behalf as of the date written below.

CITY OF IRWINDALE,
a California municipal corporation,
Successor Agency to the Irwindale Community Redevelopment
Agency

Mayor

ATTEST:

City Clerk
MAIL TAX STATEMENTS AS DIRECTED ABOVE

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Fred Galante, City Attorney

Attachment 1 to Grant Deed
Legal Description of the Property

EXHIBIT D

Form of CC&Rs

EXHIBIT E

Schedule of Performance

	<u>Item To Be Performed</u>	<u>Time For Performance</u>	<u>Agreement Reference</u>
1.	Purchaser executes and delivers Purchase, Sale & Development Agreement ("PSDA") to Seller		
2.	Purchaser provides Seller with financial commitments to finance the Project	Within the Contingency Period	10.3
3.	Seller approves or disapproves financial commitments to finance the Project	Within 10 days of receipt of evidence of Purchaser's financial commitments	10.3
4.	Seller approves or disapproves PSDA and, if approves, executes PSDA		
5.	Open Escrow	Within 3 days after execution of PSDA by Seller	2
6.	Seller delivers to Purchaser Title Insurance Commitment and Title Documents	Within 5 days after Seller execution of PSDA	5
7.	Purchaser approves or disapproves title exceptions	Within 30 days after delivery to Purchaser of Title Documents	5
8.	Seller delivers notice to Purchaser as to whether it will cure disapproved exceptions	Within 10 days after receipt of Purchaser's notice	5
9.	Purchaser submits land use entitlement applications for review, including site plans, floor plan, building elevations, materials board, and conceptual landscaping plan, and other discretionary actions for public hearing	Within 60 days after Close of escrow	10.2
10.	City Planning Commission approves or disapproves Purchaser's application for Approvals	Within 270 days of Purchaser's submittal of applications for Approvals	10.2
11.	City Council approves or disapproves Purchaser's application for Approvals	Within 60 days of Planning Commission decision	10.2

	<u>Item To Be Performed</u>	<u>Time For Performance</u>	<u>Agreement Reference</u>
12.	Purchaser prepares and submits to City construction plans, drawings and specifications prepared in accordance with City approvals	Within 60 days after City Council decision	10.2
13.	Seller provides plan check comments	Within 60 days of Purchaser's submittal; provided that Purchaser may request expedited review subject to payment of City's standard expediting costs	10.2
14.	Escrow Agent gives notice of fees, charges, and costs to close escrow	One (1) week prior to Closing	
15.	Deposits into escrow by Seller:		
	a) Executed Deed	On or before 1:00 p.m. on the business day preceding the Closing Date	4.2
	b) Payment of Seller's Share of Escrow Costs	On or before 1:00 p.m. on the business day preceding the Closing Date	
	c) Taxpayer ID Certificate	On or before 1:00 p.m. on the business day preceding the Closing Date	
	d) FIRPTA Certificate	On or before 1:00 p.m. on the business day preceding the Closing Date	
16.	Deposits into escrow by Purchaser:		
	a) The Deposit	Within 5 days after execution of PSDA	3.1
	b) The Purchase Price	On or before 1:00 p.m. on the business day preceding the Closing Date	2.3; 3.1

	<u>Item To Be Performed</u>	<u>Time For Performance</u>	<u>Agreement Reference</u>
	c) Payment of Purchaser's Share of Escrow Costs	On or before 1:00 p.m. on the business day preceding the Closing Date	
	d) Preliminary Change of Ownership Statement	Prior to Closing Date	
17.	Seller or Purchaser, as case may be, may cure any condition to closing disapproved or waived; or may cure any default	Within 30 days after date established therefore, or date of breach, as the case may be	
18.	Close of escrow; recordation and delivery of documents	Within 30 days after Expiration of Contingency Period	
19.	Purchaser completes construction of a development project	Within 12 months after commencement of improvements, provided that Purchaser may complete project in phases consistent with market conditions.	

It is understood that the foregoing Schedule of Performance is subject to all of the terms and conditions set forth in the text of the Agreement. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text; in the event of any conflict or inconsistency between this Schedule of Performance and the text of the Agreement, the text shall govern.

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both Purchaser and Seller. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The City Manager of Seller shall have the authority to approve extensions of time without City Council action not to exceed a cumulative total of 180 days.

EXHIBIT F

Consent to Agreement for Purchase, Sale and Development of Real Property