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**TIERRA LUNA**

**DEVELOPMENT AGREEMENT**

by and between

**CITY OF DOWNEY**

and

**PCCP IRG DOWNEY, LLC,**

a Delaware limited liability company, as to an undivided 90% interest,  
and **IRG DOWNEY, LLC,**

a California limited liability company, as to an undivided 10% interest

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## DEVELOPMENT AGREEMENT

This TIERRA LUNA DEVELOPMENT AGREEMENT ("**Agreement**") is entered into this 15<sup>th</sup> day of March, 2012, by and among the CITY OF DOWNEY, a California charter city ("**City**") and PCCP IRG DOWNEY, LLC, a Delaware limited liability company, as to an undivided 90% interest, and IRG DOWNEY, LLC, a California limited liability company, as to an undivided 10% interest (collectively, "**Developer**"). City and Developer are collectively referred to herein as the "**Parties**" and individually as a "**Party**."

### RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted the "**Development Agreement Statute**," Sections 65864, *et seq.*, of the Government Code. The Development Agreement Statute authorizes City to enter into an agreement with any person having a legal or equitable interest in real property and to provide for the development of such property and to establish certain development rights therein.

B. Developer owns that certain real property consisting of approximately 58 acres of land area located at 12214 Lakewood Boulevard in the Downey Landing Specific Plan Area, within the City of Downey, County of Los Angeles, State of California, as more particularly described in the legal description attached hereto as Exhibit "A" and depicted on Exhibit "B" (the "**Developer Owned Property**").

C. Developer holds a leasehold interest in that certain real property consisting of approximately 20 acres of land area located at 12214 Lakewood Boulevard in the Downey Landing Specific Plan Area, within the City of Downey, County of Los Angeles, State of California, as more particularly described in the legal description attached as Exhibit "C" and depicted on Exhibit "D" (the "**Developer Leased Property**"). The Developer Owned Property and the Developer Leased Property abut each other.

D. The Developer Owned Property and the Developer Leased Property are collectively described as the "**Property**." The Property is depicted on Exhibit "E".

E. The Amended Downey Landing Specific Plan ("**Specific Plan**") allows for the development of the Property with a mixed-use commercial development consisting of up to 1,035,000 square feet of non-theater commercial/retail floor area; an additional 65,000 square feet of commercial/retail floor area for a theater use, 300,000 square feet of office floor area; and 116,000 square feet of hotel floor area (150 hotel rooms). The Specific Plan contemplates that, subject to City's approval if placed on the Developer Owner Property, an additional 200,000 square feet of office floor area may be incorporated into the proposed development so long as the retail floor area is decreased by 200,000 square feet and the total square footage of the proposed development does not exceed 1,516,000 square feet. Development of the Property in any manner consistent with the Specific Plan and the remaining Existing Land Use Regulations is hereinafter referred to as the "**Base Project**."

F. Through this Agreement, the City has committed to provide certain vested rights to Developer in exchange for (i) the development of the Base Project on the Property, and (ii) Developer's provision of certain additional public benefits to City.

G. Developer desires to develop the Property in a specific configuration that is consistent with the Specific Plan, consisting of the Large Format Retail Development, the Remaining Commercial Development, the Theater Development, the Office Development, and the Hotel Development. Developer's development of the Property within the parameters set forth in this Recital, and in a manner consistent with the Existing Land Use Regulations, is hereinafter referred to as the "Enhanced Project."

H. Through this Agreement, the City has committed to provide certain additional inducements and benefits to Developer in exchange for the development of the Enhanced Project on the Property.

I. This Agreement is intended to be, and shall be construed as, a development agreement within the meaning of the Development Agreement Statute. This Agreement will eliminate uncertainty in planning for and secure the orderly development of the Property, ensure a desirable and functional community environment, provide effective and efficient development of public facilities, infrastructure, and services appropriate for the development of the Property, assure attainment of the maximum effective utilization of resources within City, and provide other significant public benefits to City and its residents by otherwise achieving the goals and purposes of the Development Agreement Statute. In exchange for these benefits to City, Developer desires to receive the assurance that it may proceed with development of the Property in accordance with the terms and conditions of this Agreement and the Existing Land Use Regulations (as defined below), all as more particularly set forth herein.

J. City has determined that the Base Project and the Enhanced Project are consistent with the goals and policies of the General Plan and imposes appropriate standards and requirements with respect to the development of the Property in order to maintain the overall quality of life and of the environment within City. Prior to its approval of this Agreement, City considered the environmental impacts of the Base Project and the Enhanced Project and completed its environmental review of the Based Project and the Enhanced Project.

K. On December 21, 2011, the Downey City Planning Commission ("Planning Commission") held a public hearing on this Agreement, made certain findings and determinations with respect thereto, and recommended to the City Council of the City of Downey ("City Council") that the Agreement be approved.

L. On January 10, 2012, the City Council held a public hearing on this Agreement, considered the recommendations of the Planning Commission, and found that this Agreement is consistent with General Plan. In accordance with the Development Agreement Statute and applicable law, on January 24, 2012, the City Council adopted Ordinance No. 05-10 approving this Agreement.

## AGREEMENT

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Developer hereby agree as follows:

### 1. DEFINITIONS.

The following terms when used in this Agreement shall have the meanings set forth below:

1.1 The term "**Action**" shall mean any proceeding between City and Developer seeking enforcement of any of the terms and provisions of this Agreement.

1.2 The term "**Agreement**" shall mean this Development Agreement by and among City and Developer.

1.3 The term "**Annual Review**" shall have the meaning ascribed in Section 10.1 of this Agreement.

1.4 The term "**Bankruptcy Law**" shall mean Title 11, United States Code, and any other or successor state or federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

1.5 The term "**Bankruptcy Proceeding**" shall mean any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

1.6 [RESERVED]

1.7 The term "**Base Project**" shall mean Developer's development of the Property within the parameters set forth in Recital E, and in a manner otherwise consistent with the Existing Land Use Regulations.

1.8 The term "**CEQA**" shall mean and refer to the California Environmental Quality Act, Public Resources Code Sections 21000, et seq.

1.9 The term "**Certificate of Occupancy**" shall mean A Certificate of Occupancy as defined in the Uniform Building Code, 2010 Edition, published by the International Conference of Building Officials, as may be amended from time to time.

1.10 The term "**Certification**" shall mean a written certification provided on or before February 15 of each year during the Term, signed by Developer's managing member (i) certifying its compliance with the operating covenant and all other covenants and restrictions set forth in Article 6 for each Compliance Year for which Developer seeks a Grant (if Developer makes the election authorized by Section 6.1); provided, however, that this portion of the Certification shall not be required unless Developer elects to develop the Enhanced Project under

Section 6.1 of this Agreement, and (ii) demonstrating Developer's good faith compliance all terms of this Agreement for purposes of conducting the annual review required by Section 10.

1.11 The term "**City**" shall mean the City of Downey, a California Charter City.

1.12 The term "**City Council**" shall mean the City Council of the City of Downey.

1.13 [RESERVED]

1.14 The term "**City Fees and Charges**" shall mean Development Fees and City Processing Fees, to the extent such fees are collected by and on behalf of City.

1.15 [RESERVED]

1.16 The term "**City Parties**" shall mean City, City Council, City officers, employees, attorneys and agents.

1.17 The term "**City Processing Fees**" shall mean all fees charged by and on behalf of the City in connection with the processing, review, and consideration of applications for development, including any periodic updates thereto to reflect changes in the costs of processing, review, and consideration of applications..

1.18 The term "**Claim**" shall mean any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees, Legal Costs, and expenses and investigation costs of whatever kind or nature), and any judgment. Without limiting the foregoing, "Claims" include any matter that results or arises in any way from any of the following: (i) the noncompliance by Developer or its contractor with any applicable local, state and/or federal law or regulation, including, without limitation, any applicable federal and/or state labor laws or regulations (including, without limitation, if applicable, the requirement to pay state and/or federal prevailing wages and hire apprentices); (2) the implementation of Labor Code Section 1781 and/or Davis-Bacon, or any other similar law or regulation; and/or (3) failure Developer to provide any required disclosure or identification as required by Labor Code Section 1781 and/or Davis Bacon, as the same may be amended from time to time, or any other similar law or regulation.

1.19 [RESERVED]

1.20 The term "**Compliance Year**" shall mean and refer to a period of one year. The first Compliance Year commences on the Operation Period Commencement Date and ends on the anniversary of the Operation Period Commencement Date. The second through twentieth Compliance Years follow thereafter.

1.21 The term "**Defaulting Party**" shall have the meaning set forth in Section 9.1, below.

1.22 The term "**Davis-Bacon**" shall mean , 40 U.S.C. Section 3141, et seq., and the regulations promulgated thereunder set forth at 29 CFR Part 1, as the same may be amended from time to time, or any other similar law or regulation.

1.23 The term "**Developer**" shall mean the individual or entity which owns fee title to the Developer Owned Property, or any portion thereof, and holds the leasehold interest in the Developer Leased Property, or any portion thereof, and any permissible successor or assignee to the rights, powers, and responsibilities of said individual or entity hereunder, in accordance with Section 12 of this Agreement.

1.24 The term "**Developer Leased Property**" shall mean that certain real property that abuts the Developer Owned Property, and consists of approximately twenty (20) acres of land area located at 12214 Lakewood Boulevard in the Downey Landing Specific Plan Area, within the City of Downey, County of Los Angeles, State of California, as more particularly described in the legal description attached as Exhibit "C" and depicted on Exhibit "D."

1.25 The term "**Developer Owned Property**" shall mean that certain real property consisting of approximately fifty eight (58) acres of land area located at 12214 Lakewood Boulevard in the Downey Landing Specific Plan Area, within the City of Downey, County of Los Angeles, State of California, as more particularly described in the legal description attached hereto as Exhibit "A" and depicted on Exhibit "B" (the "**Developer Owned Property**").

1.26 The term "**Developer Representative**" shall have the meaning set forth in Section 5.5.

1.27 The term "**Development Agreement Statute**" shall mean Sections 65864 through 65869.5 of the California Government Code, as the same may be amended from time to time.

1.28 The term "**Development Fees**" shall mean all fees collected by and on behalf of the City that are enacted by the City at any time pursuant to the Mitigation Fee Act, Government Code sections 66000 *et seq.*

1.29 The term "**Effective Date**" shall mean March 15, 2012.

1.30 The term "**Enhanced Project**" shall mean Developer's development of the Property within the parameters set forth in Recital G, and in a manner otherwise consistent with the Existing Land Use Regulations.

1.31 The term "**Environmental Losses**" means any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses, including, without limitation, attorney fees, disbursements and costs of attorneys, environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever that may, at any time, be imposed upon, incurred or suffered by, or claimed, asserted or awarded against, City directly or indirectly relating to or arising from any Environmental Matters arising during or from Developer's ownership or use of the Property.

1.32 The term "**Environmental Matters**" means (i) the presence of Hazardous Substances on, in, under, from or affecting all or any portion or the Property; (ii) the storage, holding, handling, release, threatened release, discharge, generation, leak, abatement, removal or transportation of any Hazardous Substances on, in, under, from or affecting all or any portion of Property; (iii) the violation of any law, rule, regulation, judgment, order, permit, license, agreement, covenant, restriction, requirement or the like by Developer, its agents or contractors, relating to or governing in any way Hazardous Substances on, in, under, from or affecting all or any portion of tile Property; (iv) the failure of Developer, its agents or contractors, to properly complete, obtain, submit and/or file any and all notices, permits, licenses, authorizations, covenants and the like in connection with Developer's activities on all or any portion of the Property; (v) the implementation and enforcement by Developer, its agents or contractors of any monitoring, notification or other precautionary measures that may, at any lime, become necessary to protect against the release, potential release or discharge of Hazardous Substances on, in, under, from or affecting all or any portion of the Property; (vi) the failure of Developer, its agents or contractors, in compliance with all applicable Environmental Laws, to lawfully remove, contain, transport or dispose of any Hazardous Substances existing, stored or generated on, in, under or from all or any portion of the Property; and (vii) any investigation, inquiry, order, hearing, action or other proceeding by or before any Governmental Agency in connection with any Hazardous Substances on, in, under, from or affecting all or any portion of the Property or the violation of any Environmental Law relating to all or any portion of the Property.

1.33 The term "**Existing Land Use Regulations**" shall mean the General Plan, the Specific Plan, the MOA (which is part of the Specific Plan) the Zoning Code, the Municipal Code, Maps, and all other ordinances, resolutions, rules, and regulations of City governing development and use of the Property in effect as of the Effective Date, including without limitation the permitted uses of the Property, the density and intensity of use, maximum height and size of proposed buildings, provisions for the reservation and dedication of land for public purposes, and, subject to the following sentence, construction standards and specifications. The term "Existing Land Use Regulations" does not include the Uniform Codes pertaining to construction adopted for general application in City. The Specific Plan provides that in the event of a conflict between the provisions of the Specific Plan and the provisions of the Zoning Code, the provisions of the Specific Plan control.

1.34 The term "**Equity Interest**" shall mean all or any part of any direct or indirect equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in any entity at any tier of ownership that directly or indirectly owns or holds any ownership or equity interest in a Person.

1.35 [RESERVED]

1.36 The term "**Fire Station**" shall mean a minimum of an eight thousand (8,000) square foot portion of Building 1 that is required to be preserved in place by the MOA, The Fire Station shall be appointed with amenities and facilities that are the functional equivalent of those at a typical fire station headquarters existing at the time of the development of the Fire Station.

1.37 The Term "**Fire Station Construction Costs**" shall mean an amount not to exceed Four Million Four Hundred Thousand Dollars (\$4,400,000), including but not limited to construction costs, soft costs, financing costs and a developer fee of ten percent (10%).

1.38 The term "**Fire Station Lease**" shall mean a lease by Developer to City of the Fire Station and the Fire Station Site upon the following material terms: (1) initial rental rate under the Fire Station Lease shall equal five percent (5%) of the Fire Station Construction Costs incurred by Developer in the construction of the Fire Station; and (2) City shall receive rights of access over the Property sufficient to meet the reasonable access and response time needs of the Downey Fire Department, as reasonably determined by the Fire Chief of the Downey Fire Department.

1.39 The term "**Fire Station Site**" shall mean a site within that portion of the Property comprising approximately 38,000 square feet, together with associated parking, depicted on Exhibit "F."

1.40 The term "**Floor Area**" shall mean the total area of all floors contained within the exterior walls of all buildings on the Property.

1.41 The term "**General Plan**" shall mean and refer to the City of Downey General Plan, as said General Plan exists as of the Effective Date.

1.42 The term "**Grant Amount**" means up to One Million Dollars per year (\$1,000,000.00) that, upon the satisfaction of certain conditions and requirements related to the development of the Enhanced Project, shall be paid by City to Developer, pursuant to the terms and conditions of this Agreement, commencing on June 30 of the first year after which the Required Operations are established and maintained on the Property, and continuing for nineteen years thereafter; provided, however, that the Grant Amount shall not be payable on June 30 following any calendar year during which the Required Operations are not maintained.

1.43 The term "**Hotel Development**" shall mean 116,000 square feet of floor area (150 hotel rooms) of development for hotel uses under the Enhanced Project which shall be operated under one of the brand names set forth in Exhibit "I" or such other brand name approved by City, in its sole and absolute discretion; provided, however, that the City Manager shall have the authority to grant up to a ten percent (10%) variance in the amount of hotel square footage and/or the number of hotel rooms, and in the event such a variance is granted, the resulting development shall constitute "Hotel Development" under this Agreement.

1.44 The term "**Hazardous Substances**" means and refers to, without limitation, substances defined as "hazardous substances," "hazardous material," "toxic substance," "solid waste," or "pollutant or contaminate" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601, et seq.; the Toxic Substances Control Act ("TSCA") [15 U.S.C. Sections 2601, et seq.]; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or by the EPA, or any successor authority, as hazardous substances [40 CFR Part 302]; and those substances defined as

"hazardous waste" in Section 25117 of the California Health and Safety Code or, as "hazardous substances" in Section 25316 of the California Health and Safety Code; other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under federal, state, or local laws or regulations and in the regulations adopted pursuant to said laws, and shall also include, without limitation, asbestos, polychlorinated biphenyl, flammable explosives, radioactive material, petroleum products, and substances designated as a hazardous substance pursuant to 33 U.S.C. Section 1321 or listed pursuant to 33 U.S.C. Section 1317.

1.45 The term "**Improvements**" shall mean all commercial improvements, landscaping, parking, and other related appurtenances to be constructed on, under, about or around the Property for the uses authorized by this Agreement.

1.46 The term "**Institutional Lender**" shall mean any of the following: (a) A bank (State, Federal or foreign), trust company (in its individual or trust capacity), insurance company, credit union, savings bank (State or Federal), pension, welfare or retirement fund or system, real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner), Federal or State agency regularly making or guaranteeing mortgage loans, investment bank or a subsidiary of a Fortune 500 company (such as AT&T Capital Corporation or General Electric Capital Corporation); (b) any Person that is a wholly owned subsidiary of or is a combination of any one or more of the Persons described in "(a)" of this Section.

1.47 [RESERVED]

1.48 [RESERVED]

1.49 [RESERVED]

1.50 The term "**Large Format Retail Development**" shall mean at least a total of 275,000 square feet of floor area of retail development spread over at least two retail establishments, each of which comprises at least 90,000 square feet of floor area, which shall be constructed if Developer makes the election under Section 6.1 to build the Enhanced Project.

1.51 The term "**Legal Costs**" shall mean, for any Person, all actual and reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs and expenses, including in or as a result of any: (a) Bankruptcy Proceeding; (b) litigation between the Parties; (c) negotiating or documenting any agreement with a third party requested by the other Party; (d) requirement or request that such Person or its employees act as a witness in any proceeding regarding this Agreement or the other Party; and (e) review or approval that the other Party requests of such Person. All references to Legal Costs shall include the salaries, benefits and costs of in-house or contract general counsel to City or Developer, respectively, and the lawyers employed in the office of such general counsel who provide legal services regarding a particular matter, adjusted to or billed at an hourly rate and multiplied by the time spent on such matter rounded to increments of one-tenth of an hour, in addition to Legal Costs of outside counsel retained by City or Developer, respectively, for such matter.

1.52 The term "**Maintenance Deficiency**" shall mean an occurrence of an adverse condition on any area of the Property that is subject to public view in contravention of the general maintenance standard described in Section 5.6.1, below.

1.53 The term "**Maximum Fee Sharing Amount**" shall mean three million eight hundred thousand dollars (\$3,800,000).

1.54 The term "**MOA**" means that Memorandum of Agreement by and among National Aeronautics and Space Administration, the General Services Administration, the California State Historic Preservation Officer and the City of Downey.

1.55 The term "**Mortgage**" shall mean a mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance in which the Property, or a portion thereof or interest therein, is pledged as security, and contracted for in good faith and for fair value.

1.56 The term "**Mortgagee**" shall mean the holder of a beneficial interest under a Mortgage, or any successor or assignee of any such Mortgagee.

1.57 The term "**Municipal Code**" shall mean and refer to the City of Downey Municipal Code, as the Municipal Code exists as of the Effective Date.

1.58 [RESERVED].

1.59 The term "**Non-Defaulting Party**" shall have the meaning set forth in Section 9.1, below.

1.60 The term "**Office Development**" shall mean 300,000 square feet of floor area of development for office uses.

1.61 The term "**Operating Period**" shall mean the period commencing upon the Operation Period Commencement Date and ending on the twentieth (20<sup>th</sup>) anniversary thereof.

1.62 The term "**Operation Period Commencement Date**" shall mean and refer to the date on which the Required Operations are established.

1.63 The term "**Parties**" shall mean Developer and City, and their respective successors and assigns.

1.64 The term "**Person**" shall mean any association, corporation, government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.65 The term "**Political Reform Act**" shall mean Government Code section 18000 *et seq.*

1.66 The term "**Property**" shall mean the Developer Owned Property and the Developer Leased Property, as jointly depicted on Exhibit "E."

1.67 The term "**Remaining Commercial Development**" shall mean all retail, commercial, restaurant development on the Property other than (i) the Large Format Retail Development, and (ii) the Theater Development.

1.68 The term "**Required Operations**" shall mean and refer to operations conducted or caused to be conducted by Developer on the Property that includes at least the opening for sales to the public of 100% of the Large Format Retail Development. As part of the Required Operations, all sales of taxable goods shall be subject to any and all sales and use taxes under the laws of California, with the City designated as the point of sale for any and all such sales subject to California sales and use taxes.

1.69 The term "**Sales Tax Revenues**" shall mean shall mean the total sales taxes under the laws of California during a Compliance Year from sales on the Property that have the City and the Property designated as the point of sale.

1.70 The term "**Specific Plan**" shall mean and refer to the Amended Downey Landing Specific Plan, as it exists as of the Effective Date.

1.71 The term "**Term**" shall mean the period of time during which this Agreement shall be in effect and bind the Parties and their respective successors and assigns, as set forth in Section 2.1 of this Agreement; provided, however, that certain of the obligations described in this Agreement shall be in effect and bind the Parties and their respective successors and assigns for in perpetuity, as more particularly described in Sections 2.2.

1.72 The term "**Theater Development**" shall mean 65,000 square feet of development for one or more theater uses.

1.73 The term "**Transfer**" shall mean with respect to any property, right or obligation any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (i) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, right or obligation, or of any legal, beneficial, or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien, or other encumbrance); (ii) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in the owner of such property, right or obligation by the holders of such Equity Interest(s); (iii) any transaction described in "(i)" of this Section affecting any Equity Interest(s) or any other interest in such property, right or obligation or in any such owner (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or (iv) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses "(i)" through "(iv)" of this Section shall be deemed a Transfer by Developer even though Developer is not technically the transferor. A "Transfer" shall not, however, include any of the following (provided that the other Party to this Agreement has received notice of such occurrence) relating to any Equity Interest: (i) A mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under Federal income tax law and the State real estate transfer tax; (ii) A conveyance to member(s) of the immediate family(ies) of the

transferor(s) or trusts for their benefit; or (iii) a conveyance to any Person that, as of the Effective Date, holds an Equity Interest in the entity whose Equity Interest is being transferred.

1.74 The term "**Zoning Code**" shall mean and refer to the City of Downey Zoning Code, as said Zoning Code exists as of the Effective Date of this Agreement, and as it may further be amended by City from time.

2. TERM.

2.1 Term.

2.1.1 Term without Enhanced Project Election. Subject to Section 2.2, if Developer does not make the election authorized by Section 6.1 within the time required by Section 6.1, the Term shall commence on the Effective Date and shall continue thereafter for a period of seven (7) years from and after the Effective Date, unless this agreement is terminated, modified, or extended by circumstances set forth in this Agreement or by mutual written consent of the Parties.

2.1.2 Term with Enhanced Project Election. Subject to Section 2.2, if Developer makes the election authorized by Section 6.1 within the time required by Section 6.1, the Term shall commence on the Effective Date and shall continue thereafter for a period of twenty-five (25) years from and after the Effective Date, unless this Agreement is terminated, modified, or extended by circumstances set forth in this Agreement or by mutual written consent of the Parties.

2.2 Provisions Surviving Expiration of Term. The provisions, rights, and obligations set forth in, Section 4.4.5 shall remain effective and binding on City and Developer (and/or its successor(s) in interest) until the expiration of the time periods set forth in Section 4.4.5. The provisions, rights, and obligations set forth in, Article 8 shall remain effective and binding on City and Developer (and/or its successor(s) in interest) until the expiration of the time periods set forth in Article 8. The provisions, rights, and obligations set forth in Section 12.4 shall remain effective and binding on City and Developer (and/or its successor(s) in interest) until the expiration or earlier termination of that certain Ground Lease By and Between City of Downey and Industrial Realty Group, LLC, dated on or about December 4, 2003. The provisions, rights, and obligations set forth in Section 13.2 shall remain effective and binding on the City and Developer (and/or its successor(s) in interest) until the expiration of the statute of limitations on any and every Claim. The provisions, rights, and obligations set forth in Article 5 shall remain effective and binding on the City and Developer (and/or its successor(s) in interest) for a period of twenty five (25) years from and after the Effective Date.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Applicable Regulations; Vested Right to Develop. Other than as expressly set forth herein, during the Term, the terms and conditions of development applicable to the Property, including but not limited to the permitted uses of the Property, the density and intensity of use, maximum height and size of proposed buildings, and provisions for the reservation and dedication of land for public purposes, shall be those set forth in the Existing Land Use Regulations. In connection therewith, subject to the terms and conditions of this Agreement,

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Developer (and/or its successor(s) in interest) shall have the vested right to carry out and develop the Base Project and/or the Enhanced Project on the Property in accordance with the Existing Land Use Regulations. Developer shall also have a vested right to: (i) receive from City all future development approvals for the Base Project and/or the Enhanced Project that are consistent with, and implement, the Existing Land Use Regulations and this Agreement; (ii) not to have such approvals for the Base Project and/or the Enhanced Project be conditioned or delayed for reasons inconsistent with the Existing Land Use Regulations or this Agreement; and (iii) develop the Base Project and/or the Enhanced Project in a manner consistent with such approvals in accordance with the Existing Land Use Regulations and this Agreement.

3.2 Tentative Subdivision Maps. With respect to applications by Developer for tentative subdivision maps for portions of the Property, City agrees that Developer may file and process vesting tentative maps in accordance with Chapter 4.5 (commencing with Section 66498.1) of Division 2 of Title 7 of the California Government Code and the applicable provisions of City's subdivision ordinance, as the same may be amended from time to time. If final maps are not recorded for an entire parcel before such tentative map(s) would otherwise expire, the term of such tentative map(s) automatically shall be extended until the expiration of the Term or the earlier termination of this Agreement. If final maps are not recorded prior to the expiration of the Term or the earlier termination of this Agreement, but such maps have not otherwise expired under State law, the Municipal Code and/or the Zoning Code, then such maps shall remain effective until and to the extent otherwise required under State law, the Municipal Code, and/or the Zoning Code.

3.3 Processing of Applications and Permits. Upon satisfactory completion by Developer of all required preliminary actions and payment of appropriate City Fees and Charges, if any, subject to the Maximum Fee Sharing Amount City shall proceed to process and check all applications for Base Project and/or the Enhanced Project development and building approvals within the times set forth in the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the California Government Code), the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the California Government Code), and other applicable provisions of law, as the same may be amended from time to time.

3.4 Other Governmental Permits. Provided that Developer pays the reasonable cost of such cooperation, after City has approved the development of any portion of the Property, City shall reasonably cooperate with Developer in its efforts to obtain such additional permits and approvals as may be required by any other governmental or quasi-governmental agencies having jurisdiction over such portion of the Property, which permits and approvals are consistent with City's approval and which are consistent with applicable regulatory requirements. City does not warrant or represent that any other governmental or quasi-governmental permits or approvals will be granted.

3.5 Subsequent General Plan Amendments and Zone Changes. In consideration for the benefits provided to Developer under this Agreement, including without limitation the vesting of the right to develop the Base Project on the Property in accordance with the Existing Land Use Regulations, Developer agrees that City shall have no obligation under this Agreement to grant any subsequent application for any amendments to the General Plan and/or changes to the zone designations for the Property which may be initiated by Developer. Notwithstanding

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the foregoing, this Section 3.5 shall not limit Developer's statutory, constitutional, or common law right(s) (if any) to seek future legislative approvals from City.

3.6 Timing of Development. City acknowledges that Developer cannot at this time predict the timing or rate at which the Base Project and/or the Enhanced Project will be developed. The timing and rate of development depend on numerous factors such as market demand, interest rates, absorption, completion schedules, and other factors which are not within the control of Developer or City. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance notwithstanding that the construction company and the city had, prior to the adoption of that ordinance, entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property in accordance with the existing zoning. The California Supreme Court reached this result on the basis that the consent judgment failed to address the timing of development. It is the intent of the Parties to avoid the result of the *Pardee* case by hereby acknowledging and providing in this Agreement that Developer shall have the vested right to develop the Base Project and/or the Enhanced Project on the Property in such order and at such rate and at such time as Developer deems appropriate within the exercise of Developer's sole subjective business judgment, notwithstanding the adoption of an initiative or any other measure after the Effective Date by City's electorate to the contrary. In addition to and not in limitation of the foregoing, but except as set forth in the following sentence, it is the intent of the Parties that no City moratorium or other similar limitation relating to the rate or timing of the development of the Base Project and/or the Enhanced Project on the Property or any portion thereof, whether adopted by initiative or otherwise, shall apply to the Base Project and/or the Enhanced Project on the Property to the extent such moratorium or other similar limitation is in conflict with the express provisions of this Agreement. Notwithstanding the foregoing, Developer acknowledges and agrees that nothing herein is intended or shall be construed as overriding any of the provisions relating to the timing of and/or conditions to the provision of any benefit to Developer under Section 4.1, Section 4.3, Section 6.1, Section 6.2 and Section 6.3, or any Section that otherwise requires that Developer perform an obligation on or before a specified calendar date and/or event, and/or within a specified period of time.

3.7 Reservations of Authority. Notwithstanding any provision set forth in this Agreement to the contrary, the laws, rules, regulations, and official policies set forth in this Section 3.7 shall apply to and govern development of the Base Project and/or the Enhanced Project on the Property:

3.7.1 Consistent Future City Regulations. City ordinances, resolutions, regulations, and official policies adopted or approved after the Effective Date pursuant to procedures provided by law which do not conflict with the Existing Land Use Regulations shall apply to and govern development of the Property. Any future City regulations which reduce the intensity of the development of the Property below that permitted by the Existing Land Use Regulations, or limit the rate, timing or sequencing of development of the Property in a manner not otherwise provided for in the Existing Land Use Regulations, shall be deemed inconsistent with this Agreement and shall not be applicable to the development of the Property.

3.7.2 Overriding State and Federal Laws and Regulations. State and federal laws and regulations which override Developer's vested rights set forth in this Agreement shall apply to the Property, together with any City ordinances, resolutions, regulations, and official policies which are necessary to enable City to comply with such overriding State and federal laws and regulations; provided, however, that (i) Developer does not waive its right to challenge or contest the validity of any such State, federal, or local laws, regulations or official policies; and (ii) in the event that any such State or federal law or regulation (or City ordinance, resolution, regulation, or official policy undertaken pursuant thereto) prevents or precludes compliance with one or more provisions of this Agreement, the Parties agree to consider in good faith amending or suspending such provisions of this Agreement as may be necessary to comply with such State or federal laws, provided that no Party shall be bound to approve any amendment to this Agreement unless this Agreement is amended in accordance with the procedures applicable to the adoption of development agreements as set forth in the Development Agreement Statute and each Party retains full discretion with respect thereto.

3.7.3 Public Health and Safety. Any City ordinance, resolution, regulation, or official policy, which is necessary to protect persons on the Property or in the immediate community, or both, from conditions dangerous to their health or safety, or both, notwithstanding that the application of such ordinance, resolution, regulation, or official policy or other similar limitation would result in the impairment of Developer's vested rights under this Agreement.

3.7.4 Uniform Construction Codes. Provisions of the building standards set forth in the Uniform Construction Codes shall apply to the Property. As used herein, the term "Uniform Construction Codes" collectively refers to the 2010 California Building Codes, the 2010 California Electric Code, the 2010 California Plumbing Code, the 2010 California Mechanical Code, the 2009 Uniform Solar Energy Code, the 2009 Uniform Swimming Pool, Spa and Hot Tub Code, the 2010 Green Plumbing and Mechanical Code, and the 2010 California Fire Code (including amendments thereto by the Downey Fire Department), as modified and amended by official action of City, and any modifications or amendments to any such Code adopted in the future by City.

3.7.5 Police Power. In all respects not provided for in this Agreement, City shall retain full rights to exercise its police power to regulate the development of the Property. Any uses or developments requiring a site plan, tentative tract map, conditional use permit, variance, or other discretionary permit or approval in accordance with the Existing Land Use Regulations shall require a permit or approval pursuant to this Agreement, and, notwithstanding any other provision set forth herein, this Agreement is not intended to vest Developer's right to the issuance of such permit or approval nor to restrict City's exercise of discretion with respect thereto; provided, however, that City acknowledges that it is obligated to process discretionary and ministerial approvals consistent with the Existing Land Use Regulations in accordance with the procedures set forth in the Specific Plan.

3.8 Large Format Retail Development Parking Easement. During the Term, Developer may request in writing that City enter into negotiations for the provision, at no additional charge to Developer, of a parking easement and/or license agreement to accommodate up to twenty (20) parking spaces on no more than forty five one hundredths (0.45) acres of property adjacent to the Property and owned by City. The Parties shall negotiate in good faith to

determine the initial location and other terms and conditions for the provision of the easement or license, with a shared objective of recording the easement or license within ninety (90) days after Developer's request to enter into negotiations. City shall have the right to terminate the easement or license, and/or relocate the parking to a different location owned by City and adjacent to the Property if, in City's reasonable business and/or regulatory judgment, relocation of the parking is necessary to allow for the sale, lease, or other use of any property owned by City. If it elects to terminate or relocate the easement or license, City shall provide at least ninety (90) days advanced notice to Developer. If it elects to relocate the easement or license, Developer shall be responsible for all costs of improving the newly-designated parking area and of removing improvements on the prior-designated parking area.

3.9 Signature Entrance. City and Developer agree to work together in good faith, at no cost to City, toward the design, approval, and development of a signature entrance to the property for the Base Project and/or the Enhanced Project.

3.10 City Infrastructure Improvements. To the extent required by applicable laws, the City shall pay prevailing wages for intersection and groundwater well improvements that are funded (in part or in whole) by Developer as conditions of approval of the Project. City makes no representation or warranty to Developer concerning the legal effect, if any, of the City's construction of such improvements on Developer's rights and responsibilities under state law, federal law, and/or this Agreement.

3.11 Flexible Office Space on Developer Leased Property. Notwithstanding anything to the contrary in this Agreement, Developer shall be permitted to develop the 200,000 square feet of additional office floor area described in Recital E on the Developer Leased Property without further discretionary action by the City, so long as the retail floor area is decreased by 200,000 square feet and the total square footage of the proposed development does not exceed 1,516,000 square feet.

4. FEES, CONDITIONS, PUBLIC BENEFITS, AND AUDIT RIGHTS.

4.1 Temporary Fee Rebate. Within thirty (30) days following the end of each calendar quarter during the Term, Developer shall submit to City written evidence of all City Fees and Charges paid during the preceding calendar quarter. Within fifteen (15) days after submission of such written evidence, City shall notify Developer of any deficiencies in the evidence submitted by Developer and/or any need for additional information. Developer shall provide such information as is reasonably requested by City in response to any request therefor. Within sixty (60) days after receipt of sufficient documentation of the payment of City Fees and Charges, City shall remit to Developer fifty percent (50%) of said City Fees and Charges. The procedures set forth in this Section 4.1 shall continue until the earlier of (i) the expiration of the Term, and (ii) such time as the total amount of City Fees and Charges rebated to Developer equals the Maximum Fee Sharing Amount. Notwithstanding anything to the contrary in this Agreement, Developer shall only be eligible for the temporary fee rebate provided in this Section 4.1 if and after it makes the election under Section 6.1 to build the Enhanced Project.

4.2 Other Fees and Charges. Except as specifically set forth in this Section 4, nothing set forth in this Agreement is intended or shall be construed to limit or restrict City's authority to

impose, on new development within the City, new fees, charges, assessments, or taxes that apply to the development of the Property or that increase any existing fees, charges, assessments, or taxes that apply to the development of the Property, and nothing set forth herein is intended or shall be construed to limit or restrict whatever right Developer might otherwise have to challenge any fee, charge, assessment, or tax either not set forth in this Agreement or not in effect as of the Effective Date. In connection therewith, and subject to the partial rebate of City Fees and Charges provided in Section 4.1, Developer shall timely pay all applicable fees, charges, assessments, and special and general taxes validly imposed in accordance with the Constitution and laws of the State of California. Notwithstanding the foregoing, City represents that it has no current plans to increase any City Fees and Charges.

4.3 [RESERVED]

4.4 Accounting and Review.

4.4.1 Maintenance of Books and Records. Developer (and/or its successor(s) in interest) shall cause to be prepared and maintained complete, proper and accurate books, accounts and records of all matters or amounts relevant to any calculation of any and all sums owed to or by City under this Agreement, including without limitation the City Fees and Charges subject to rebate under Section 4.1, the Grant Amount under Section 6.3.2, and the Fire Station Construction Costs under Section 8 so that said payments can be accurately determined for all relevant periods; provided, however, that City shall not have a right of audit of the temporary fee rebate under Section 4.1 or the Grant Amount under Section 6.3.2 unless developer elects under Section 6.1 to build the Enhanced Project. All such books, accounts and records, including true copies of all revenue and other income statements and tax returns, shall be maintained at Developer's (and/or its successor(s) in interest) address in Southern California, or at another location reasonably designated by each Development Party in Southern California, for a period of at least five (5) calendar years after the expiration of the year during which the same relates.

4.4.2 Allocation of Costs and Expenses. In allocating any item of cost, expense, receipts or income to a particular portion of the Property, commercially reasonable real estate accounting principles, consistently applied, shall be utilized.

4.4.3 Non-Waiver By City. The acceptance by the City of a payment, or the provision by City to Developer of a payment, required by this Agreement shall be without prejudice to the City's right to examine and to audit Developer's (and/or its successor(s) in interest) books, accounts and records to verify the accuracy of any information supplied by Developer (and/or its successor(s) in interest), and to challenge the accuracy and validity of any such payment(s). Developer (and/or its successor(s) in interest) shall make available to the City and the City's designated representatives for inspection during normal business hours at a business location of Developer (and/or its successor(s) in interest) located in Southern California, or at another location reasonably designated by Developer (and/or its successor(s) in interest) in Southern California, on twenty (20) business days' advance written notice, all of Developer's (and/or its successor(s) in interest's) books, accounts and records relating to the development of the Property (and all matters which are the subject of this Agreement), which books, accounts and records may be copied or extracted in whole or in part by the City or the City's designated representatives, but which will be maintained by City as proprietary and confidential business

information to the extent permitted by the California Public Records Act (Government Code section 6250, et seq.), the Ralph M. Brown Act (Government Code section 54950, et seq.) and/or any other applicable state or federal laws respecting the disclosure of information held by a public agency.

4.4.4 [RESERVED]

4.4.5 Survival of Audit Rights. Notwithstanding any provision of this Agreement to the contrary, all of the City's rights under this Agreement to audit and review any calculations or information submitted thereunder and collect any payments due the City shall survive any expiration of this Agreement as follows: (i) if Developer elects under Section 6.1 to build the Enhanced Project, then any audit right of the temporary fee rebate amounts under Section 4.1 shall continue until two (2) years following the final payment of a rebate amount under Section 4.1; (ii) if Developer elects under Section 6.1 to build the Enhanced Project, then any audit right of the Grant Amount under Section 6.3.2 shall continue until two (2) years after the expiration of the Operating Period; (iii) the City's audit right of the Fire Station Construction Costs under Section 8 shall continue until three (3) years after the issuance of a Certificate of Occupancy for the Fire Station.

5. GENERAL DEVELOPER COVENANTS

5.1 Commencement of Improvements and Completion. In accordance with Section 3.6, Developer shall commence and complete, or cause to be commenced and completed, at Developer's sole cost and expense the construction of the Improvements. Developer shall be responsible for all costs of developing the Base Project and/or the Enhanced Project, which includes all costs for construction, alteration, demolition, installation, and repair work, and all costs for pre-development and pre-construction associated therewith, including inspection and land surveying work, for the Improvements. Once construction has commenced, Developer shall use commercially reasonable efforts to proceed to complete or cause to be completed the Base Project and/or the Enhanced Project in a good and workmanlike manner.

5.2 Large Format and Remaining Commercial Development Retailers. All Large Format Retail Development and Remaining Commercial Development shall be operated under one of the retail brand names set forth in Exhibit "H" or such other retail brand name approved by City, in its sole and absolute discretion.

5.3 [RESERVED].

5.4 City Right to Inspect. Officers, employees, agents and representatives of City shall have the right of reasonable access to the Property, without the payment of charges or fees, during normal construction hours, during the period of construction and operation of the Base Project and/or the Enhanced Project. Developer shall make a representative or Developer available to accompany City representatives onto the Property, at all times, during normal construction hours, upon reasonable advance notice from City. Developer understands and agrees that any such City inspections are for the sole purpose of protecting City's rights under this Agreement, are made solely for City's benefit, that City's inspections may be superficial and general in nature, and are for the purposes of informing City of the progress of the construction

of the Base Project and/or the Enhanced Project in a manner consistent with the terms and conditions of this Agreement, and that Developer shall not be entitled to rely on any such inspection(s) as constituting City's approval, satisfaction or acceptance of any materials, workmanship, conformity of the Base Project and/or the Enhanced Project with this Agreement or otherwise. Developer agrees to make its own regular inspections of the work of construction of the Base Project and/or the Enhanced Project to determine that the quality of the improvements and all other requirements of the work of construction of the Base Project and/or the Enhanced Project are being performed in a manner satisfactory to Developer.

5.5 Developer Attendance at City Meetings. Developer shall ensure that one or more of its employees or consultants who are knowledgeable regarding this Agreement and the construction and installation of the Improvements, such that such person(s) can meaningfully respond to City questions regarding the progress of the Improvements and attend meetings of the City Council and City staff, when reasonably requested to do so by City staff ("**Developer Representative**"). Developer shall identify the Developer Representative in writing to City within 30 days of the Effective Date, and shall identify any changes in the identity of the Developer Representative in writing to City immediately upon such change.

5.6 Maintenance Covenant. Developer for itself, its successors and assigns, covenants and agrees that:

5.6.1 General Maintenance of Property. The areas of the Property that are subject to public view (including all improvements and the existing and future improvements, paving, walkways, landscaping, exterior signage and ornamentation) shall be maintained in good repair and a neat, clean and orderly condition, ordinary wear and tear excepted. If at any time prior to the end of the Term, there is an occurrence of a Maintenance Deficiency, then City may notify Developer in writing of the Maintenance Deficiency. If Developer fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) calendar days of its receipt of notice of the Maintenance Deficiency, City shall have the right to enter the Property, as necessary, and perform all acts necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to City to accomplish the abatement of the Maintenance Deficiency. Any sum expended by City for the abatement of a Maintenance Deficiency, as authorized by this Section, shall become the debt of Developer. If the amount of the debt is not paid by Developer within thirty (30) calendar days after written demand for payment from City to Developer, City shall have the right to enforce collection by any available legal means including without limitation the withholding of the amount of the debt from any future payments and/or rebates to Developer under this Agreement.

5.6.2 Graffiti. Graffiti, as defined in Government Code Section 38772, that has been applied to the Improvements and that is visible from any public right-of-way adjacent or contiguous to the Property shall be removed by Developer by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water, as appropriate. If any such graffiti is not removed within seventy two (72) hours following the time of written notice from City to Developer of the discovery of the graffiti, City shall have the right to enter the Property, as necessary, and remove the graffiti, without further notice to Developer. Any sum actually expended by City for the abatement of the graffiti, as authorized by this Section, shall

become the debt of Developer. If the amount of the debt is not paid by Developer within thirty (30) calendar days after written demand for payment from City to Developer, City shall have the right to enforce collection by any available legal means including without limitation the withholding of the amount of the debt from any future annual Grant payment under this Agreement.

5.6.3 Lien Rights. The obligations of Developer and its successors and assigns under this Section 5.6 shall be secured by a lien against the Property. Developer hereby grants to the City a security interest in the Property with the power to establish and enforce a lien or other encumbrance against the Property, in the manner provided in Civil Code Sections 2924, 2924b and 2924c, to secure the obligations of the Developer and its successors under this Section, including Legal Costs and other costs of the City associated with the abatement of a Maintenance Deficiency or removal of graffiti. This Agreement shall provide notice of such security interest in favor of the City. The City shall reasonably subordinate its lien rights under this Section to security instruments or leases securing bonafide financing from Institutional Lenders to the Developer for construction of the Base Project and/or the Enhanced Project, upon written request from Developer and on the condition that Developer reimburse the City all of its costs (including Legal Costs) incurred in providing such subordination.

## 6. DEVELOPER COVENANTS RELATING TO THE ENHANCED PROJECT

6.1 Developer Election To Develop Enhanced Project. At any time during the first five (5) years following the Effective Date, Developer may in its sole and absolute discretion elect to develop the Enhanced Project. Such an election shall be effective upon the provision of notice of such election in writing to the City.

6.2 Applicability of Base Project Covenants. If, pursuant to Section 6.1, Developer elects to develop the Enhanced Project, the following covenants, in addition to those set forth in Article 5 shall remain applicable and binding upon the parties.

6.3 Operating Covenant. The provision to City of an election to develop the Enhanced Project pursuant to Section 6.1, shall constitute Developer's binding commitment to be bound by the Operating Covenant contained in this Section 6.3, which consists of the following terms and conditions:

6.3.1 Conduct of Required Operations. During the Operating Period, Developer hereby covenants and agrees to diligently endeavor to continuously conduct or cause to be conducted the Required Operations on the Property. The failure of Developer to maintain the Required Operations during any Compliance Year within Operating Period shall, *inter alia*, excuse the City from the obligation to make any annual Grant payment pursuant to Section 6.3.2 for that Compliance Year.

6.3.2 Annual Grant Payment. Subject to Developer's continued compliance under this Agreement, on or before June 30 following each calendar year during Operating Period in which Developer maintains the Required Operations, City agrees to pay Developer the Grant Amount, provided, however, that City shall not be required to pay the Grant Amount for

any calendar year during which Sales Tax Revenues do not equal a minimum of Two Million Five Hundred Thousand Dollars (\$2,500,000).

6.3.3 Certification. Within forty-five (45) days following the end of each Compliance Year for which Developer claims an entitlement to receive an annual Grant Amount, Developer shall file a Certification.

6.3.4 Use Restriction. Throughout the Operating Period, the Property shall include buildings and facilities sufficient to support the Required Operations.

6.3.5 Covenant to Maintain Property on Tax Rolls. Developer covenants to cause the Property to remain on the County of Los Angeles secured real property tax rolls, continuously, throughout the Term, and to pay all property taxes regarding the Property and all improvements on or to the Property before delinquency, throughout the Term. Notwithstanding the foregoing, the City may, in its sole and absolute discretion, and upon written request of Developer, consent to a use of a portion of the Property that would cause said portion of the Property to be removed from the County of Los Angeles secured real property tax rolls.

6.3.6 No Conveyance to Tax Exempt Entity. Developer covenants and agrees that throughout the Term, neither Developer, nor its successors or assigns, shall Transfer all or any portion of the Property to any Person or use all or any portion of the Property for any use, that is partially or wholly exempt from the payment of property taxes or that would cause the exemption of the payment of all or any portion of property taxes otherwise assessable regarding the Property, without the prior written consent of the City, which may be given or withheld in the City's sole and absolute discretion. Developer acknowledges and agrees that the covenants contained in this Section are material to the City and its decision to enter into this Agreement, as the City receives significant financing from property tax revenues from development within the City and that any violation of such covenants will result in financial injury to the City by depriving the City of property tax revenues from all or a portion of the Property or the Base Project and/or the Enhanced Project. Additionally, Developer acknowledges and agrees that the restrictions on Transfers set forth in this Section are reasonable under the circumstances because of the City's interest in property tax revenues from the Property. Notwithstanding the foregoing, Developer and City acknowledge that upon its transfer in accordance with Section 8 of this Agreement, ownership of the Fire Station Site may be held by a tax exempt entity and/or the Fire Station Site may be used for purpose that is exempt from taxation, and such ownership and/or use shall not require any further consents under this Section 6.3.6.

6.3.7 Quality of Improvements. Developer shall cause the Improvements for the Enhanced Project to be constructed in a first class manner and at an average cost (i.e., cost spread over all Improvements on the Property) of no less than two hundred thirty five dollars (\$235.00) per square foot (including design, permitting, and construction costs), adjusted on an annual basis from and after the Effective Date based on the year-over-year change in the California Highway Construction Cost Index (or, if the California Highway Construction Cost Index is discontinued, a substantially similar index selected by the City). All improvements will be maintained in a condition substantially identical (or better) than their original condition. All Large Format Retail Development and Remaining Commercial Development shall be operated

under one of the retail brand names set forth in Exhibit "H" or such other retail brand name approved by City, in its sole and absolute discretion.

6.4 Covenants Running with the Land. The provisions of this Article 6 shall be covenants running with the land of the Property during the Operating Period for the benefit of and shall be enforceable solely by the City in its sole discretion.

7. NON-DISCRIMINATION

7.1 Obligation to Refrain from Discrimination. Developer covenants and agrees for itself, its successors, its assigns and all persons claiming under or through them to the Property or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Developer itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, or sublessees of the Property. The foregoing covenants shall run with the land and shall remain in effect during the Extended Term.

7.2 Form of Non-discrimination and Non-segregation Clauses. Developer covenants and agrees for itself, its successors, its assigns, and all persons claiming under or through them to the Property that Developer, such successors and such assigns shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Property on the basis of sex, marital status, race, color, religion, creed, ancestry or national origin of any person. All deeds, leases or contracts pertaining to all or any portion of the Property shall contain or be subject to substantially the following non-discrimination or non-segregation covenants:

7.2.1 In deeds. "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, or sub-lessees in the premises herein conveyed. The foregoing covenants shall run with the land."

7.2.2 In leases. "The Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, or sub-tenants in the premises herein leased."

7.2.3 In contracts. "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed or leased, nor shall the transferee or any person claiming under or through it, establish or permit any such practice or practices or discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, or sub-tenants of the premises herein transferred." The foregoing provision shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

8. FIRE STATION DEDICATION AND DEVELOPMENT.

8.1 Election to Require Development of Fire Station Site. At any time during the twenty-five years period following the Effective Date, City may request in writing that Developer begin design and ultimately construct the Fire Station on the Fire Station Site. Upon issuing such request in writing, and upon furnishing approved specifications for the development of the Fire Station to Developer, Developer shall be required to diligently commence design and other predevelopment activities, and to diligently proceed to the completion of construction of the Fire Station on the Fire Station Site. City shall reasonably cooperate with Developer and developer shall reasonably cooperate with City in facilitating the construction of the Fire Station on the Fire Station Site. The Parties completion of construction of the Fire Station on the Fire Station Site shall occur within twenty four (24) months after the City issues its request that Developer begin design and ultimately construct the Fire Station on the Fire Station Site, but said timeline shall be extended based on force majeure events under Section 9.4, and based on unreasonable delays in the issuance of permits or authorizations from governmental authorities.

8.2 Design and Construction Costs. Developer shall bear all costs, fees, burdens, and charges associated with the design, permitting, construction and delivery of the Fire Station in a manner that conforms to the specifications furnished by City pursuant to Section 8.1. City shall waive all City Fees and Charges in connection with the development and construction of the Fire Station, and such waived amount shall not be included in the Maximum Fee Amount.

8.3 Subdivision of Fire Station Site. Within two years following the issuance of a Certificate of Occupancy for the Fire Station, Developer and City shall cause the Fire Station Site to be a separately saleable property through the filing of a condominium map, or such other procedure for rendering the Fire Station Site saleable as the Parties may mutually agree upon.

8.4 Developer's Rental of Fire Station to City. Upon issuance of a Certificate of Occupancy for the Fire Station, City and Developer shall enter into the Fire Station Lease. This Agreement creates a present obligation to enter into the Fire Station Lease. All material terms and requirements to be included in the Fire Station Lease have been included in this Agreement, and any additional matters included by mutual consent in the Fire Station Lease shall be fully consistent with the terms set forth in this Agreement.

8.5 Conveyance of Fire Station and Fire Station Site to City. Upon payment by City to Developer of the Fire Station Construction Costs, which shall be paid by City to Developer as rent over a period of twenty (20) years, the Fire Station Lease shall terminate. Upon the

termination of the Fire Station Lease, Developer shall convey fee title to the Fire Station, the Fire Station Site and all improvements and fixtures thereon to City, and the Fire Station Lease shall be terminated with such termination.

9. DEFAULT, REMEDIES, AND TERMINATION.

9.1 Notice and Opportunity to Cure. Before this Agreement may be terminated or action may be taken to obtain judicial relief, the Party seeking relief ("**Non-Defaulting Party**") shall comply with the notice and cure provisions of this Section 9.1. A Nondefaulting 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 any other Party ("**Defaulting Party**") to perform any material duty or obligation of said Defaulting Party in accordance with 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 the Nondefaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in "default" of its obligations set forth in this Agreement if the Defaulting Party has failed to take action and cured the default within fifteen (15) days after the date of such notice (for monetary defaults), within thirty (30) days after the date of such notice (for non-monetary defaults), or within such lesser time as may be specifically provided in this Agreement. If, however, a non-monetary default cannot be cured within such thirty (30) day period, as long as the Defaulting Party does each of the following, then the Defaulting Party shall not be deemed in breach of this Agreement: (i) 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; (ii) notifies the Non-Defaulting Party of the Defaulting Party's proposed course of action to cure the default; (iii) promptly commences to cure the default within the thirty (30) day period; (iv) makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and (v) diligently prosecutes such cure to completion. Notwithstanding the foregoing, the Defaulting Party shall be deemed in default of its obligations set forth in this Agreement if said breach or failure involves the payment of money but the Defaulting Party has failed to completely cure said monetary default within fifteen (15) days (or such lesser time as may be specifically provided in this Agreement) after the date of such notice.

9.2 Default Remedies. Subject to Section 9.3, in the event of a default, the Non-Defaulting Party, at its option, may institute legal action to cure, correct, or remedy such default, enjoin any threatened or attempted violation, enforce the terms of this Agreement by specific performance, or pursue any other legal or equitable remedy. Furthermore, City, in addition to or as an alternative to exercising the remedies set forth in this Section 9.2, in the event of a material default by Developer, may give notice of its intent to terminate or modify this Agreement pursuant to the Development Agreement Statute, in which event the matter shall be scheduled for consideration and review by the City Council in the manner set forth in the Development Agreement Statute.

9.3 Developer's Exclusive Remedy. The Parties acknowledge that City would not have entered into this Agreement if it were to be liable in damages under or with respect to this Agreement, or the Existing Land Use Regulations, or the application thereof, or any permit or approval sought by Developer in accordance with the Existing Land Use Regulations. Accordingly, Developer covenants on behalf of itself and its successors and assigns, not to sue

City for damages or monetary relief for any breach of this Agreement or arising out of or connected with any dispute, controversy or issue regarding the application, interpretation or effect of this Agreement, the Existing Land Use Regulations, or any land use permit or approval sought in connection with the development or use of the Property or any portion thereof, the Parties agreeing that declaratory and injunctive relief, mandate, and specific performance shall be Developer's sole and exclusive judicial remedies. Notwithstanding the foregoing, the Parties acknowledge and agree that Developer may seek specific performance of City's monetary obligations under this Agreement, and that such an action for specific performance shall not be construed as an action for damages.

9.4 Force Majeure. The obligations by any Party hereunder shall not be deemed to be in default where delays or failures to perform are due to any cause without the fault and beyond the reasonable control of such Party, including to the extent applicable, the following: war; insurrection; strikes; walk-outs; the unavailability or shortage of labor, material, or equipment; riots; floods; earthquakes; the discovery and resolution of hazardous waste or significant geologic, hydrologic, archaeological, paleontological, or endangered species problems on the Property; fires; casualties; acts of God; governmental restrictions imposed or mandated by other governmental entities; with regard to delays of Developer's performance, delays caused by City's failure to act or timely perform its obligations set forth herein; with regard to delays of City's performance, delays caused by Developer's failure to act or timely perform its obligations set forth herein; inability to obtain necessary permits or approvals from other governmental entities; enactment of conflicting state or federal statutes or regulations; judicial decisions; or litigation not commenced by such Party. Notwithstanding the foregoing, any delay caused by the failure of City or any agency, division, or office of City to timely issue a license, permit, or approval required pursuant to this Agreement shall not constitute an event of force majeure extending the time for City's performance hereunder. If written notice of such delay or impossibility of performance is provided to the other Parties within a reasonable time after the commencement of such delay or condition of impossibility, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon by the Parties in writing, or the performance rendered impossible may be excused in writing by the Party so notified. In no event shall adverse market or financial conditions constitute an event of force majeure extending the time for such Party's performance hereunder. Unless the parties agree in writing to the contrary, in no event shall the Term of this Agreement be extended by an event of force majeure.

## 10. ANNUAL REVIEW.

10.1 Timing of Annual Review. During the Term of this Agreement, at least once during every twelve (12) month period from the Effective Date, after receipt of each annual Certification from Developer, City shall review the good faith compliance of Developer with the terms of this Agreement ("**Annual Review**"). The Annual Review shall be conducted by the City Council or its designee in accordance with the Development Agreement Staute.

10.2 Standards for Annual Review. During the Annual Review, Developer shall be required to demonstrate good faith compliance with the terms of this Agreement. If City or its designee finds and determines that Developer has not complied with any of the terms or conditions of this Agreement, then City may declare a default by Developer in accordance with

Article 9 herein. City may exercise its rights and remedies relating to any such event of default only after the period for curing a default as set forth in Article 9 has expired without cure of the default. The costs incurred by City in connection with the Annual Review process shall be paid by Developer.

10.3 Certificate of Compliance. With respect to each year in which City approves Developer's compliance with this Agreement, City shall, upon written request by Developer, provide Developer with a written certificate of good faith compliance within thirty (30) days of City's receipt of Developer's request for same.

## 11. MORTGAGEE RIGHTS.

11.1 Encumbrances on the Property. The Parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, from encumbering the Property or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use, or operation of the Base Project and/or the Enhanced Project.

11.2 Mortgagee Protection. This Agreement shall be superior and senior to the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof by a Mortgagee (whether pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise) shall be subject to all of the terms and conditions of this Agreement and any such Mortgagee who takes title to the Property or any portion thereof shall be entitled to the benefits arising under this Agreement.

11.3 Mortgagee Not Obligated. Notwithstanding the provisions of this Article 11, a Mortgagee will not have any obligation or duty pursuant to the terms set forth in this Agreement to perform the obligations of any of Developer or other affirmative covenants of Developer hereunder, or to guarantee such performance, except that (i) the Mortgagee shall have no right to develop the Property under the Existing Land Use Regulations without fully complying with the terms of this Agreement and (ii) to the extent that any covenant to be performed by Developer is a condition to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder.

11.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure. Each Mortgagee shall, upon written request to City, be entitled to receive written notice from City of the results of the Annual Review and of any default by Developer of its obligations set forth in this Agreement. Each Mortgagee shall have a further right, but not an obligation, to cure such default within fifteen (15) days after receipt of such notice (for monetary defaults), within thirty (30) days after receipt of such notice (for non-monetary defaults) or, if such default can only be remedied or cured by such Mortgagee upon obtaining possession of the Property, such Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure such default within thirty (30) days after obtaining possession, and, except in case of emergency or to protect the public health or safety, City may not exercise any of its judicial remedies set forth in this Agreement until expiration of such thirty

(30) day period; provided, however, that in the case of a default which cannot with diligence be remedied or cured within such thirty (30) day period, the Mortgagee shall have such additional time as is reasonably necessary to remedy or cure such default provided Mortgagee promptly commences to cure the default within the thirty (30) day period and diligently prosecutes such cure to completion.

## 12. ASSIGNMENT.

12.1 Right to Assign. Subject to City's prior written consent, which shall not be unreasonably withheld, Developer shall have the right to assign its rights and obligations under this Agreement in connection with a Transfer of Developer's interest in the Property. In the event of any such assignment, the assignee shall be liable for the performance of the assigned obligations of Developer. In determining whether to grant consent to an assignment under this Section, factors that may be considered by the City include, but are not limited to, the extent of the assignee's ownership interest in the Property (or any portion thereof), the desire to have the master developer of the Property hold substantially all of the rights under the Agreement, the assignee's demonstrated experience in developing and/or operating projects of like kind and scale as the Base Project (or the Enhanced Project, if Developer makes the election authorized by Section 6.1), the assignee's commitment to develop and maintain the Base Project (or the Enhanced Project, if Developer makes the election authorized by Section 6.1), and the financial ability of the assignee to complete development and/or maintain operation of the Base Project (or the Enhanced Project, if Developer makes the election authorized by Section 6.1). In the event of Transfers to end users such as those who will develop Large Format Retail Development or Remaining Commercial Development, if such Transfer(s) is/are approved by the City, such transferee(s) shall inure to the benefits and burdens of this Agreement; provided, however, that such transferee(s) shall not receive the benefits of set forth in Section 4.1 and Section 6.3.

12.2 Release Upon Transfer of Agreement. Upon the written consent of City to the partial or complete assignment of this Agreement (which consent shall not be unreasonably withheld) and the express written assumption in a form approved by City of such assigned obligations of Developer under this Agreement by the assignee, Developer shall be relieved of its legal duty to perform the assigned obligations set forth in this Agreement, except to the extent Developer is in default hereunder prior to said transfer.

12.3 Assignee Subject to Terms of Agreement. Following an assignment or transfer of any of the rights and interests of Developer set forth in this Agreement in accordance with Sections 12.1 and 12.2, the assignee's exercise, use, and enjoyment of the Property shall be subject to the terms of this Agreement to the same extent as if the assignee or transferee were Developer.

12.4 Release Upon Transfer of Interest in Leased Property. Upon the written consent of City to the partial or complete transfer of Developer's interest in the Leased Property pursuant to Section 13.01 of that certain Ground Lease By and Between City of Downey and Industrial Realty Group, LLC, dated on or about December 4, 2003 (which consent shall not be unreasonably withheld) and the express written assumption in a form approved by City of such assigned obligations of Developer under said Ground Lease by that assignee, Developer shall be

relieved of its legal duty to perform the assigned obligations set forth in said Ground Lease, except to the extent Developer is in default thereunder prior to said transfer.

13. INSURANCE AND INDEMNITY.

13.1 Insurance.

13.1.1 Base Project Insurance. Developer shall procure and maintain on the Developer Leased Property the insurance required under that certain Ground Lease dated December 4, 2003 between City and Industrial Realty Group, LLC, a Nevada limited liability company.

13.1.2 Enhanced Project Insurance. If Developer elects under Section 6.1 to build the Enhanced Project, then Developer shall procure and maintain insurance on the Property in the types and amounts required under that certain Ground Lease dated December 4, 2003 between City and Industrial Realty Group, LLC, a Nevada limited liability company.

13.1.3 Insurance Does Not Relieve Liability. Insurance coverage in the minimum amounts set forth in this Agreement shall not be construed to relieve Developer of any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude City from taking such other actions as are available to it under any other provision of this Agreement or otherwise at law.

13.1.4 Default for Failure to Maintain Insurance. Failure by Developer to maintain all insurance required by this Agreement in effect at all times shall be a default by Developer under this Agreement. City, at its sole option, may exercise any remedy available to it in connection with such default. Additionally, City may purchase any such required insurance coverage and City shall be entitled to immediate payment from Developer for any premiums and associated costs paid by City for such insurance coverage. Any election by City to purchase or not to purchase insurance for Developer's contractor shall not relieve Developer of its obligation to obtain and maintain the insurance coverage required by this Agreement.

13.2 Indemnities by Developer.

13.2.1 General Indemnity. Developer agrees to indemnify, protect, defend, and hold harmless the City Parties from and against any and all Claims which may arise, directly or indirectly, from the acts, omissions, or operations of Developer or Developer's agents, contractors, subcontractors, agents, or employees pursuant to this Agreement, but excluding any loss resulting solely from the intentional or active negligence of the City Parties. Notwithstanding the foregoing, City shall have the right to select and retain counsel to defend any such action or actions and Developer shall pay the cost thereof; provided, however, that the Parties agree to attempt in good faith to coordinate and/or consolidate their defense of any Claim that is subject to the indemnification provisions of this Section 13.2.

13.2.2 Prevailing Wage Indemnity and Notice to Developer of Labor Code Section 1781. In connection with, but without limiting, the foregoing, Developer hereby expressly acknowledges and agrees that the City is not by this Agreement affirmatively

representing, and has not previously affirmatively represented, to the Developer or any contractor(s) of Developer for any construction on or development on or adjacent to the Property, in writing or otherwise, in a call for bids or any agreement or otherwise, that any work to be undertaken on the Property, as may be referred to in this Agreement or construed under this Agreement, is *not* a "public work," as defined in Section 1720 of the Labor Code or under Davis-Bacon, or under any similar existing or hereinafter enacted law or regulation. The Parties agree that, in connection with the development and construction (as defined by applicable law) of the Base Project (or the Enhanced Project if Developer makes the election authorized by Section 6.1), including, without limitation, any and all public works (as defined by applicable law), Developer shall bear all risks of payment or non-payment of prevailing wages under California law and/or federal law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or Davis Bacon and/or any other similar law. With respect to the foregoing, Developer shall be solely responsible, expressly or impliedly and legally and financially, for determining and effectuating compliance with all applicable federal, state and local public works requirements, prevailing wage laws, and labor laws and standards, and City makes no representation, either legally and/or financially, as to the applicability or non-applicability of any federal, state and local laws to the construction of the Base Project and/or the Enhanced Project

Without limiting the foregoing, Developer shall indemnify, protect, defend and hold harmless the City and its officers, employees, agents, representatives, and attorneys, with counsel reasonably acceptable to City, from and against "increased costs" as defined in California Labor Code Section 1781 (including City's reasonable attorneys' fees, court and litigation costs, and fees of expert witnesses) in connection with the development or construction (as defined by applicable law) of or on the Property, that results or arises in any way from (1) noncompliance by Developer of the requirement, if and to the extent applicable, to pay federal or state prevailing wages and hire apprentices; or (2) failure by Developer to provide any required disclosure or identification as required by California Labor Code Sections 1720 *et seq.* including without limitation specifically Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive the expiration or earlier termination of this Agreement.

13.2.3 Environmental Indemnity. Developer agrees, in addition to any other indemnity obligations of Developer to City under this Agreement or any other agreement between the Parties and at Developer's sole cost and expense, to indemnify, protect, defend, hold harmless, (with counsel reasonably acceptable to City) the City Parties and each of them, from and against any and all Environmental Losses that may, at any time, be imposed upon, incurred or suffered by, or claimed, asserted or awarded against, City directly or indirectly relating to or arising from any Environmental Matters arising during or as a result of Developer's ownership or use of the Property, but excluding any loss resulting solely from the intentional or active negligence of the City Parties. Notwithstanding the foregoing, City shall have the right to select and retain counsel to defend any such action or actions and Developer shall pay the cost thereof; provided, however, that the Parties agree to attempt in good faith to coordinate and/or consolidate their defense of any Environmental Losses that are subject to the indemnification provisions of this Section 13.2.3. The indemnity provisions set forth in this Agreement shall survive termination of this Agreement until the expiration of the statute of limitations for the applicable Claim.

13.3 Indemnification Procedures. Wherever this Agreement requires any indemnitor to indemnify any indemnitee:

13.3.1 Prompt Notice. City shall promptly notify Developer in writing of any Claim.

13.3.2 Cooperation. City shall reasonably cooperate with Developer's defense, provided Developer reimburses City's actual reasonable out of pocket expenses (including Legal Costs) of such cooperation.

13.3.3 Settlement. Any settlement shall require the prior written consent of both City and Developer, which consent shall not be unreasonably withheld.

13.3.4 City Cooperation. City shall reasonably cooperate with Developer's defense, provided Developer reimburses City for its actual reasonable out of pocket expenses (including Legal Costs) of such cooperation.

13.3.5 Insurance Proceeds. Developer's obligations shall be reduced by net insurance proceeds City actually receives for the matter giving rise to indemnification.

#### 14. THIRD PARTY LEGAL CHALLENGE.

14.1 Developer Covenant to Defend this Agreement. Developer acknowledges that City is a "public entity" and/or a "public agency" as defined under applicable California law. Therefore, City must satisfy the requirements of certain California statutes relating to the actions of public entities, including, without limitation, CEQA. Also, as a public body, City's action in approving this Agreement, the Specific Plan, Maps, and/or any other current or future action of City in connection with the approval or implementation of the Base Project and/or the Enhanced Project may be subject to proceedings to invalidate this Agreement or mandamus. Developer assumes the risk of and waives and releases any claims for delays and damages that may result to Developer from any third-party legal actions related to City's approval of this Agreement, the activities contemplated under this Agreement, the Specific Plan, Maps, and/or any other current or future action of City in connection with the approval or implementation of the Base Project and/or the Enhanced Project, even in the event that an error, omission or abuse of discretion by the City is determined to have occurred. If a third party files a legal action regarding City's approval of this Agreement, the pursuit of the activities contemplated by this Agreement, the Specific Plan, Maps, and/or any other current or future action of City in connection with the approval or implementation of the Base Project and/or the Enhanced Project, Developer shall indemnify and defend the City, with legal counsel reasonably selected by the City, against such third-party legal action, and shall pay all of the court costs, attorney fees, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and any expenses of any and all financial or performance obligations resulting from the disposition of the legal action. If Developer breaches its obligations to defend and indemnify City as detailed in this Section 14.1, City may terminate this Agreement on thirty (30) calendar days' written notice to Developer of City's intent to terminate this Agreement, referencing this Section 14.1, without any further obligation on the part of City to perform the terms of this Agreement. Nothing contained in this Section 14.1 shall be deemed or construed to be an express or implied admission that City is

liable to Developer or any other person or entity for damages alleged from any alleged or established failure of City to comply with any statute, including, without limitation, CEQA.

15. MISCELLANEOUS.

15.1 Compliance with Applicable Law. Developer shall carry out the construction of the Base Project and/or the Enhanced Project in accordance with all applicable laws, regulations, and rules of Governmental Agencies, including without limitation all applicable federal and state labor standards.

15.2 Covenants. The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Property for the benefit thereof, and the burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto.

15.3 Mutual Covenants. The covenants contained in this Agreement are mutual covenants and constitute conditions precedent or concurrent to the subsequent or concurrent performance by the Party benefited by the covenant(s).

15.4 Recordation of Agreement. This Agreement and any amendment, modification, termination or cancellation of this Agreement shall be recorded against the Property in the official records of the County Recorder by the Clerk of the City Council, within the period required by Section 65868.5 of the Government Code. Developer authorizes the recording of all such documents against the Property, and each and every parcel within the Property, whether preceding, during or after the Extended Term.

15.5 Constructive Notice and Acceptance. Subject to Article 12, every person who now or hereafter owns or acquires any right, title, or interest in or to any portion of the Base Project and/or the Enhanced Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Base Project and/or the Enhanced Project or the Property.

15.6 Successors in Interest. Subject to Section 12.1, the burdens of this Agreement shall be binding upon and the benefits of this Agreement shall inure to all successors in interest to the Parties. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land of the Property. Subject to Section 12.1, each covenant of this Agreement to do or refrain from doing some act regarding development of the Property: (i) is for the benefit of and is a burden upon every portion of the Property; (ii) runs with every portion of the Property; and (iii) is binding upon Developer and each successor in interest to Developer in ownership of the Property or any portion of the Property.

15.7 City Manager Implementation. City shall implement this Agreement through its City Manager. The City Manager is hereby authorized by City to issue approvals, interpretations or waivers and enter into certain amendments to this Agreement on behalf of City, to the extent that any such action(s) does/do not materially or substantially change the Improvement or increase the monetary obligations of City by more than Seventy-Five Thousand Dollars (\$75,000) in the aggregate, provided, however, that in the event the Specific Plan allows certain

approvals by the Community Development Director, his designee or the Community Development Department, the procedures in the Specific Plan shall be followed. All other actions shall require the consideration and approval of the City Council, unless expressly provided otherwise by action of the City Council. Nothing in this Section 15.6 shall restrict the submission to the City Council of any matter within the City Manager's authority under this Section 15.6, in the City Manager's sole and absolute discretion, to obtain the City Council's express and specific authorization on such matter. The specific intent of this Section 15.6 is to authorize certain actions on behalf of City by the City Manager, but not to require that such actions be taken by the City Manager, without consideration by the City Council.

15.8 Political Reform Act. The Parties acknowledge that they are each aware of the Political Reform Act. Each Party represents and warrants to the other that it is its full intention to comply with all applicable provisions of the Political Reform Act.

15.9 Survival of Agreement. All of the provisions of this Agreement shall be applicable to any dispute between the Parties arising from this Agreement, whether prior to or following expiration or termination of this Agreement, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms and conditions of this Agreement relating to dispute resolution and limitations on damages or remedies shall survive any expiration or termination of this Agreement.

15.10 Entire Agreement; Waivers and Amendments. This Agreement constitutes the entire understanding and agreement of the Parties and supersedes all previous negotiations, discussions, and agreements among the Parties with respect to all or part of the subject matter hereof. No parole evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by any other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Parties with the terms of this Agreement thereafter. Any amendments or modifications to this Agreement must be in writing, signed by duly authorized representatives of each of the Parties hereto, and recorded in the Official Records of Los Angeles County, California.

15.11 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Agreement includes the word "and." Every reference to a law, statute,

regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

15.12 Incorporation of Recitals. The Recitals of fact set forth preceding this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

15.13 Section Headings and Section and Article References. All section headings and subheadings in this Agreement are inserted for convenience only and shall not be considered in the construction or interpretation of this Agreement. All references to Section numbers shall be construed to include any and all subsections of the referenced Section number. All references to Articles shall be construed to include each and every section and subsection within the referenced Article.

15.14 Singular and Plural. As used in this Agreement, the singular of any word includes the plural.

15.15 Calculation of Time Periods. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to business days in this Agreement shall mean consecutive business days.

15.16 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

15.17 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other Parties to the extent necessary to implement this Agreement. Upon the request of a Party at any time, the other Parties shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

15.18 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, unless and to the extent the rights and obligations of any Party has been materially altered or abridged by such holding.

15.19 Legal Expenses. In any Action proceeding between City and Developer, the prevailing party in such Action shall recover all of its actual and reasonable costs and expenses (whether or not the same would be recoverable pursuant to Code of Civil Procedure Section 1033.5 or Civil Code Section 1717 in the absence of this Agreement), including expert witness fees, attorney's fees, and costs of investigation and preparation prior to the commencement of the Action. However, such recovery shall not exceed the dollar amount of the actual costs and expenses of the party from whom such recovery is sought for such same Action, and such prevailing party shall not recover any costs and expenses in excess of the non-prevailing party's expenses. The right to recover such costs and expenses shall accrue upon



15.25 Applicable Law; Venue. This Agreement shall be construed and enforced in accordance with the internal laws of the State of California. Any action at law or in equity arising under this Agreement or brought by any Party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Los Angeles, State of California or the United States District Court for the Central District of California, Los Angeles Division, and the Parties hereto waive all provisions of law providing for the removal or change of venue to any other court.

15.26 Non-Liability of City Officers and Employees. No official, officer, employee, agent or representative of City shall be personally liable to any of Developer or its shareholders, partners, officers, employees, agents, respective, successors and/or assigns for any loss arising out of or connected with this Agreement, the Existing Land Use Regulations, or the development of the Property.

15.27 Non-Liability of Developer's Officers and Employees. No official, officer, employee, agent or representative of Developer shall be personally liable to any of the City Parties for any loss arising out of or connected with this Agreement, the Existing Land Use Regulations, or the development of the Property.

15.28 Notices. Any notice or communication required hereunder between City and Developer must be in writing and may be given either personally, by registered or certified mail, return receipt requested, or by facsimile transmission. If given by registered or certified mail, the same shall be deemed to have been given and received on the date of actual receipt by the addressee designated hereinbelow as the Party to whom the notice is sent. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Notices delivered by facsimile transmission shall be deemed to have been given on the first business day following the date of transmission to the facsimile number. A Party hereto may at any time, by giving ten (10) days' written notice to the other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City: City of Downey  
City Hall  
11111 Brookshire  
Downey, CA 90241  
Attn: City Manager  
Telephone: (562) 904-7284  
Telecopy: (562) 923-6388

With a copy to: Rutan & Tucker, LLP  
611 Anton Blvd., Suite 1400  
Costa Mesa, CA 92626  
Attn: Jeffrey T. Melching, Esq.  
Telephone: (714) 641-5100  
Telecopy: (714) 546-9035

If to Developer: Manarino Realty LLC  
15615 Alton Parkway #450  
Irvine, CA 92618  
Attn: Robert A. Manarino  
Telephone: (949) 748-7800  
Telecopy: (949) 748-7807

With a copy to: Allen Matkins Leck Gamble Mallory & Natsis LLP  
Three Embarcadero Center, 12<sup>th</sup> Floor  
San Francisco, CA 94111-4074  
Attn: Sonia Ransom, Esq.  
Telephone: (415) 837-1515  
Telecopy: (415) 837-1516

15.29 Representation as to Ownership. Developer represents and warrants that Developer is the owner in fee of the Developer Owned Property.

15.30 Representation as to Ownership. City represents and warrants that City is the owner in fee of the Developer Leased Property.

15.31 Authority to Execute. Developer warrants and represents that (i) it is duly organized and existing, (ii) it is duly authorized to execute and deliver this Agreement, (iii) by so executing this Agreement, Developer is formally bound to the provisions of this Agreement, (iv) Developer's entering into and performance of its obligations set forth in this Agreement does not violate any provision of any other agreement to which Developer is bound, and (v) there is no existing or threatened litigation or legal proceeding of which Developer is aware which could prevent Developer from entering into or performing its obligations set forth in this Agreement.

15.32 Authority to Execute. City warrants and represents that (i) it is duly organized and existing, (ii) it is duly authorized to execute and deliver this Agreement, (iii) by so executing this Agreement, City is formally bound to the provisions of this Agreement, (iv) City's entering into and performance of its obligations set forth in this Agreement does not violate any provision of any other agreement to which City is bound, and (v) there is no existing or threatened litigation or legal proceeding of which City is aware which could prevent City from entering into or performing its obligations set forth in this Agreement.

15.33 Execution of Agreement; Counterparts. This Agreement may be executed by the Parties in counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. This Agreement shall constitute a valid and enforceable agreement between City and Developer.

15.34 Exhibits. This Agreement contains nine (9) exhibits, attached hereto and made a part hereof by this reference. Said exhibits are identified as follows:

- A Legal Description of Developer Owned Property
- B Depiction of Developer Owned Property
- C Legal Description of Developer Leased Property
- D Depiction of Developer Leased Property

- E Depiction of Property
- F Fire Station Site Plan
- G [RESERVED]
- H Pre-Approved Retail Development Brand Names
- I Pre-Approved Hotel Development Brand Names

[Signatures on next page]

RECORDER MEMO: This COPY is NOT an OFFICIAL RECORD.

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first written above.

"CITY"

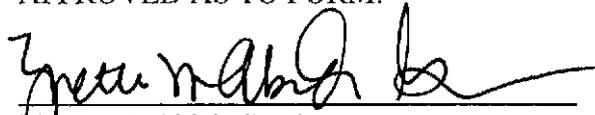
CITY OF DOWNEY,  
a Charter City

By:   
Mayor  
ROGER C.  
BROSSMER

ATTEST:

  
City Clerk ADRIA M. JIMENEZ

APPROVED AS TO FORM:

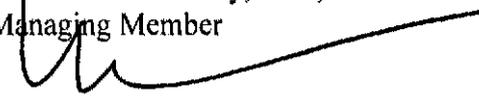
  
Yvette M. Abich Garcia  
City Attorney

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

"DEVELOPER"

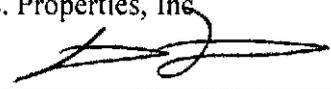
PCCP IRG DOWNEY, LLC,  
a Delaware limited liability company

By: PCCP LB IRG Downey, LLC,  
its Managing Member

By:   
Name: William R. Lindsay  
Title: Authorized Signatory

IRG DOWNEY, LLC,  
a California limited liability company

By: IRG III, LLC

By: S.L. Properties, Inc.  
By:   
Name: STUART LOCKTON  
Title: CEO

RECORDER MEMO: This COPY is NOT an OFFICIAL RECORD.

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF LOS ANGELES)

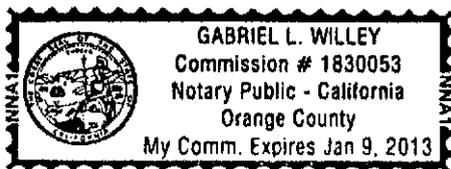
Notary Public

On March 22, 2012, before me, Gabriel L Willey, personally appeared William R. Lindsay ~~personally known to me~~ (or, 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.

X

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

Witness my hand and official seal.



[SEAL]

Gabriel L Willey  
Notary Public

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF LOS ANGELES)

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ personally known to me (or 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.

Witness my hand and official seal.

See attachment for Notary  
Notary Public

[SEAL]

### CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles }

On April 10, 2012 before me, Adria M. Jimenez, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Roger C. Blossmer  
Name(s) of Signer(s)



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.  
Signature [Handwritten Signature]  
Signature of Notary Public

Place Notary Seal Above

#### OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

#### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

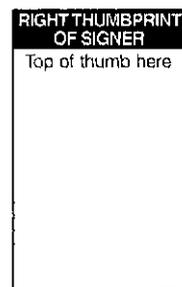
#### Capacity(ies) Claimed by Signer(s)

- Signer's Name: \_\_\_\_\_
- Individual
  - Corporate Officer — Title(s): \_\_\_\_\_
  - Partner —  Limited  General
  - Attorney in Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

- Signer's Name: \_\_\_\_\_
- Individual
  - Corporate Officer — Title(s): \_\_\_\_\_
  - Partner —  Limited  General
  - Attorney in Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

RECORDER MEMO: This COPY is NOT an OFFICIAL RECORD.

### CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of LOS ANGELES

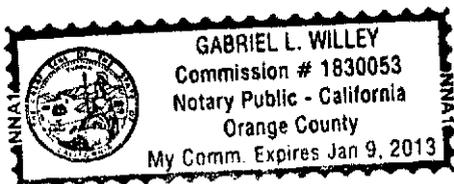
On March 27, 2012 before me, Gabriel L. Willey Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared William R. Lindsay  
Name(s) of Signer(s)

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.



Place Notary Seal Above

Signature [Handwritten Signature]  
Signature of Notary Public

#### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

#### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

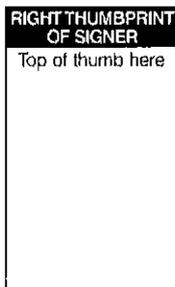
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

#### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

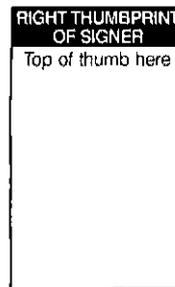
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

RECORDER MEMO: This COPY is NOT an OFFICIAL RECORD.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

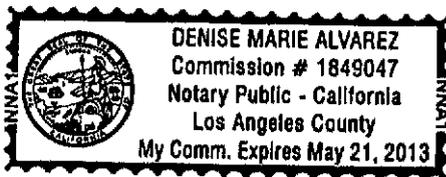
State of California

County of Los Angeles

On April 4, 2012 before me, Denise M. Alvarez Notary Public

personally appeared Stuart J. Lichter

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. Signature: Denise M. Alvarez

OPTIONAL Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document:

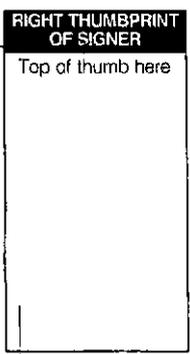
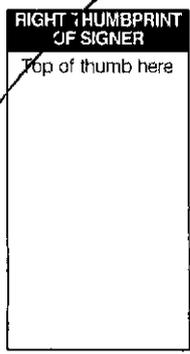
Document Date: Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name: Signer's Name:

- Corporate Officer - Title(s): Individual Partner - Limited General Attorney in Fact Trustee Guardian or Conservator Other:



Signer Is Representing: Signer Is Representing:

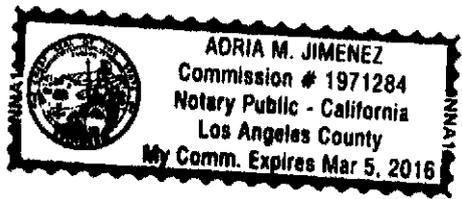
RECORDER MEMO: This COPY is NOT an OFFICIAL RECORD.

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF LOS ANGELES)

On April 10, 2012, before me, Adria M. Jimenez <sup>notary public</sup> personally appeared Roger C. Brossmer <sup>who</sup> ~~personally known to me~~ (or 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 is true and correct. X

Witness my hand and official seal.

Adria M. Jimenez  
Notary Public



[SEAL]

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF LOS ANGELES)

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ personally known to me (or 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.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

EXHIBIT "A"

Legal Description of Developer Owned Property

EXHIBIT "A"  
LEGAL DESCRIPTION  
ACQUISITION PARCEL

THOSE PORTIONS OF LOT 2 AND LOT 3 OF FRACTIONAL SECTION 10, TOWNSHIP 3 SOUTH, RANGE 12 WEST, IN THE RANCHO SANTA GERTRUDES, TOGETHER WITH A PORTION OF THE SOUTHWEST QUARTER OF SAID FRACTIONAL SECTION 10, IN THE CITY OF DOWNEY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS RECORDED IN BOOK 1, PAGE 502 OF MISCELLANEOUS RECORDS, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF SAID LOT 2 IN THE NORTHWEST QUARTER OF FRACTIONAL SECTION 10, SAID LINE ALSO BEING THE NORTHERLY LINE OF STEWART AND GRAY ROAD, 80 FEET WIDE, DISTANT THEREON SOUTH 89°52'14" WEST 846.51 FEET FROM THE NORTHEAST CORNER OF SAID LOT 2; THENCE ON A LINE BETWEEN SAID POINT OF BEGINNING AND THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF FRACTIONAL SECTION 10, SOUTH 00°13'18" WEST 1011.24 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 89°48'11" WEST 1194.23 FEET TO A POINT IN A LINE THAT IS PARALLEL WITH AND DISTANT SOUTHEASTERLY 40.00 FEET, MEASURED AT RIGHT ANGLES, FROM THE CENTERLINE OF LAKEWOOD BOULEVARD, AS SHOWN ON COUNTY SURVEYORS B SERIES MAP NO. 1147, ON FILE IN THE OFFICE OF THE COUNTY ENGINEER OF SAID COUNTY; THENCE SOUTH 3141'38" WEST, ALONG SAID PARALLEL LINE, A DISTANCE OF 1437.27 FEET TO A POINT IN A LINE THAT IS PARALLEL WITH AND DISTANT EASTERLY 40.00 FEET, MEASURED AT RIGHT ANGLES, FROM THE CENTERLINE OF CLARK AVENUE AS SHOWN ON SAID COUNTY SURVEYORS B SERIES MAP NO. 1147; THENCE SOUTH 00°03'38" WEST, ALONG LAST SAID PARALLEL LINE, A DISTANCE OF 485.49 FEET; THENCE NORTH 90°00'00" EAST 859.79 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 600.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 18°48'42", A DISTANCE OF 197.00 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 82.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 59°12'23", A DISTANCE OF 84.73 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 398.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 78°01'06", A DISTANCE OF 541.85 FEET; THENCE NORTH 90°00'00" EAST 321.62 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 418.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°39'05", A DISTANCE OF 128.78 FEET TO SAID LINE BETWEEN THE POINT OF BEGINNING AND THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF FRACTIONAL SECTION 10; THENCE NORTH 00°13'18" EAST, ALONG SAID LINE, A DISTANCE OF 1324.18 FEET TO THE TRUE POINT OF BEGINNING.

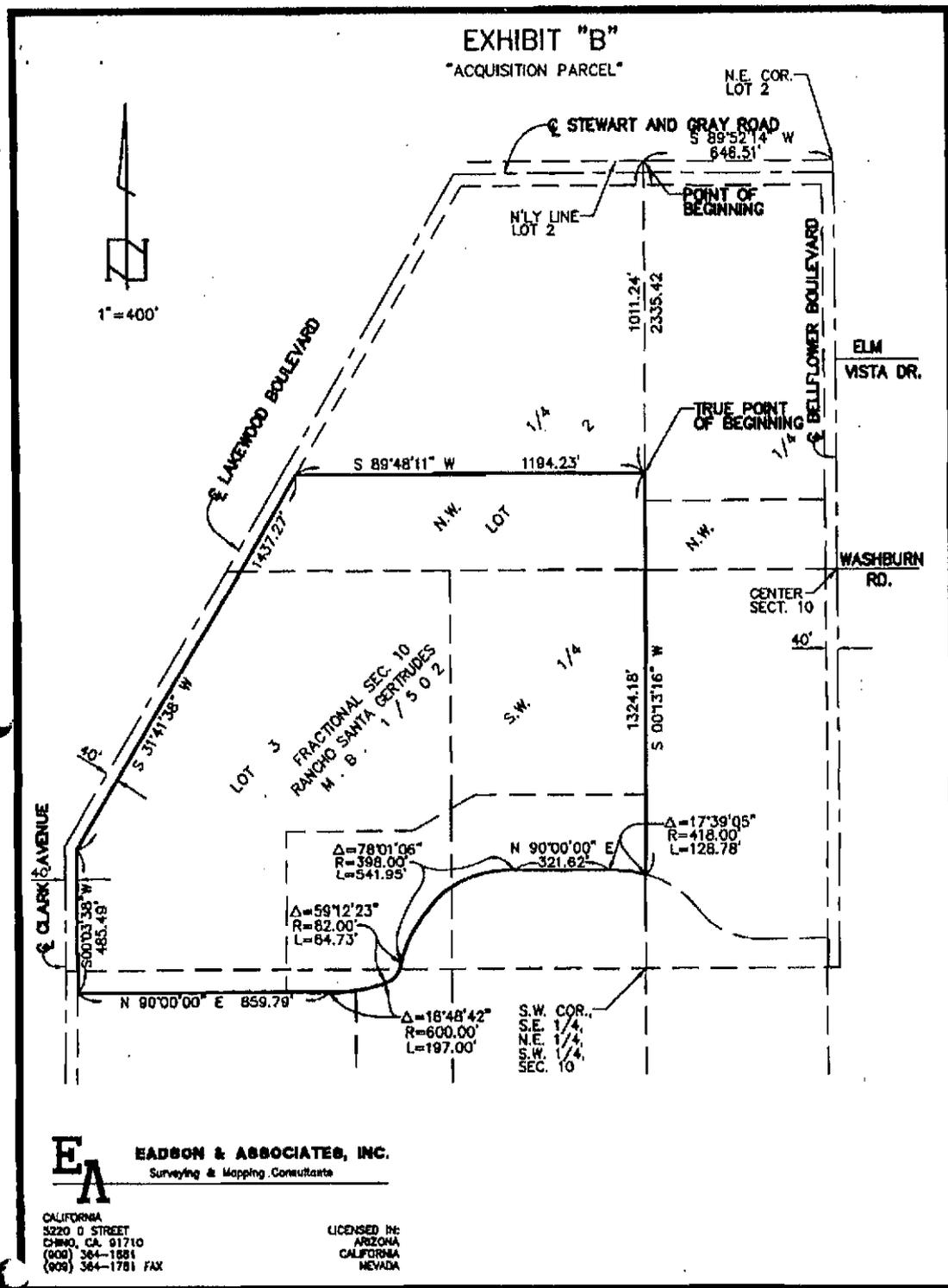
CONTAINING AN AREA OF 2,550,976 SQUARE FEET, MORE OR LESS.

ALL AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.

  
WILLIAM E. EADSON, L.S. 6154



EXHIBIT "B"  
"ACQUISITION PARCEL"



**EADSON & ASSOCIATES, INC.**  
Surveying & Mapping Consultants

CALIFORNIA  
3220 O STREET  
CERRITOS, CA. 91710  
(909) 364-1881  
(909) 364-1781 FAX

LICENSED IN:  
ARIZONA  
CALIFORNIA  
NEVADA

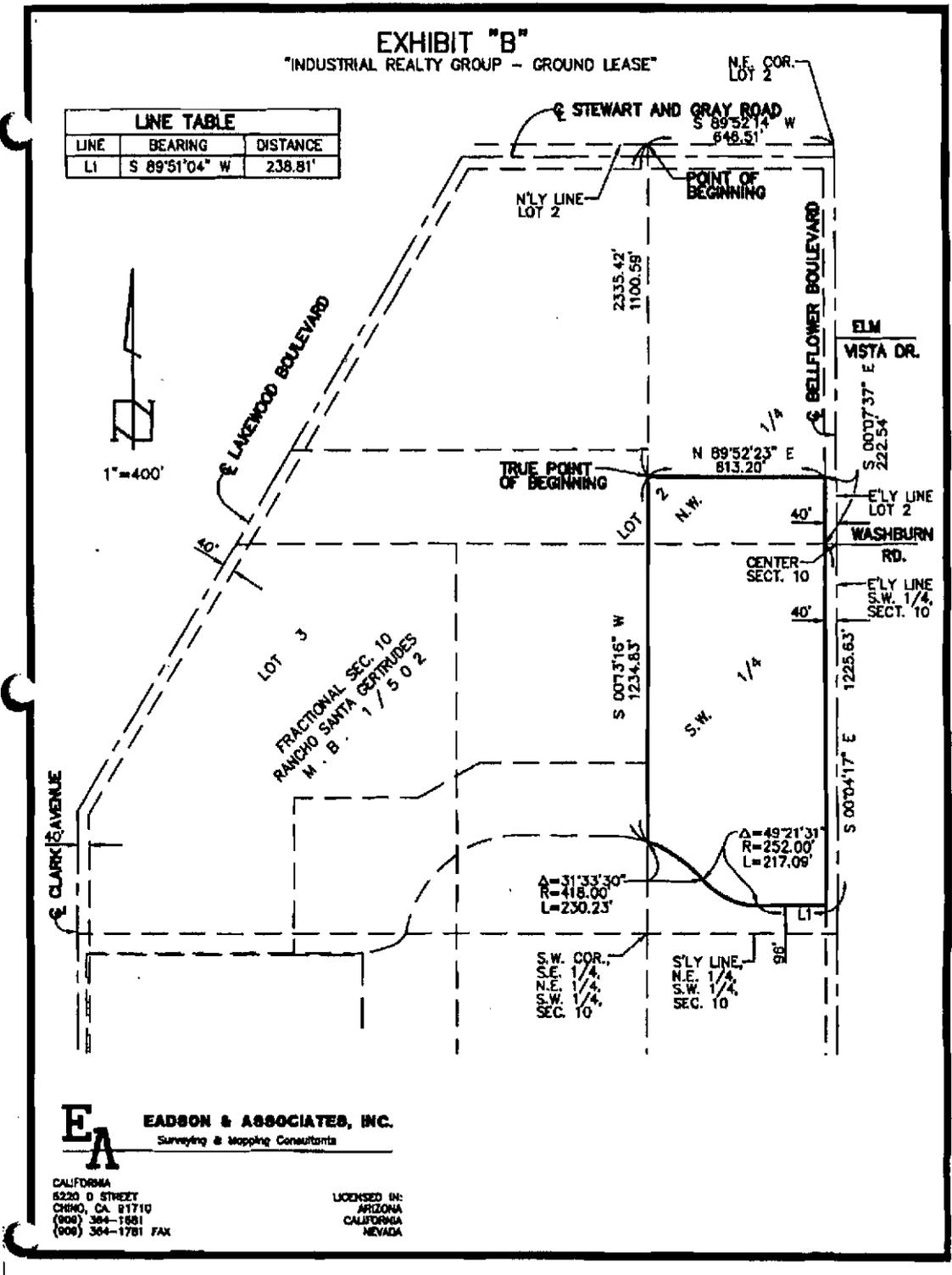
RECORDER MEMO: This COPY is NOT an OFFICIAL RECORD.

**EXHIBIT "B"**

**Depiction of Developer Owned Property**

EXHIBIT "B"  
 "INDUSTRIAL REALTY GROUP - GROUND LEASE"

LINE	BEARING	DISTANCE
L1	S 89°51'04" W	238.81'



**EADSON & ASSOCIATES, INC.**  
 Surveying & Mapping Consultants

CALIFORNIA  
 6220 O STREET  
 CHINO, CA 91710  
 (909) 384-1881  
 (909) 364-1781 FAX

LICENSED IN:  
 ARIZONA  
 CALIFORNIA  
 NEVADA

RECORDER MEMO: This COPY is NOT an OFFICIAL RECORD.

EXHIBIT "C"

Legal Description of Developer Leased Property

RECORDER MEMO: This COPY is NOT an OFFICIAL RECORD.

EXHIBIT "A"  
LEGAL DESCRIPTION  
INDUSTRIAL REALTY GROUP - GROUND LEASE

THAT PORTION OF LOT 2 IN THE NORTHWEST QUARTER OF FRACTIONAL SECTION 10, TOWNSHIP 3 SOUTH, RANGE 12 WEST, IN THE RANCHO SANTA GERTRUDES, TOGETHER WITH A PORTION OF THE SOUTHWEST QUARTER OF SAID FRACTIONAL SECTION 10, IN THE CITY OF DOWNEY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS RECORDED IN BOOK 1, PAGE 502 OF MISCELLANEOUS RECORDS, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF SAID LOT 2 IN THE NORTHWEST QUARTER OF FRACTIONAL SECTION 10, SAID LINE ALSO BEING THE NORTHERLY LINE OF STEWART AND GRAY ROAD, 80 FEET WIDE, DISTANT THEREON SOUTH 89°52'14" WEST 848.51 FEET FROM THE NORTHEAST CORNER OF SAID LOT 2; THENCE ON A LINE BETWEEN SAID POINT OF BEGINNING AND THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF FRACTIONAL SECTION 10, SOUTH 00°13'18" WEST 1100.59 FEET TO THE TRUE POINT OF BEGINNING; THENCE AT RIGHT ANGLES TO THE EASTERLY LINE OF SAID LOT 2, SAID EASTERLY LINE ALSO BEING THE CENTERLINE OF BELLFLOWER BOULEVARD, NORTH 89°52'23" EAST 813.20 FEET TO A POINT IN A LINE THAT IS PARALLEL WITH AND DISTANT WESTERLY 40.00 FEET, MEASURED AT RIGHT ANGLES, FROM SAID EASTERLY LINE OF LOT 2; THENCE SOUTH 00°07'37" EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 222.54 FEET TO THE INTERSECTION OF SAID PARALLEL LINE, WITH A LINE THAT IS PARALLEL WITH AND DISTANT WESTERLY 40.00 FEET, MEASURED AT RIGHT ANGLES, FROM THE EASTERLY LINE OF SAID SOUTHWEST QUARTER OF SAID FRACTIONAL SECTION 10; THENCE SOUTH 00°04'17" EAST, ALONG LAST SAID PARALLEL LINE, A DISTANCE OF 1225.83 FEET TO A LINE THAT IS PARALLEL WITH AND DISTANT NORTHERLY 98.00 FEET, MEASURED AT RIGHT ANGLES, FROM THE SOUTHERLY LINE OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF FRACTIONAL SECTION 10; THENCE SOUTH 89°51'04" WEST, ALONG LAST SAID PARALLEL LINE, A DISTANCE OF 238.81 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 252.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE 49°21'31", A DISTANCE OF 217.09 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 418.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 31°33'30", A DISTANCE OF 230.23 FEET TO SAID LINE BETWEEN THE POINT OF BEGINNING AND THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF FRACTIONAL SECTION 10; THENCE NORTH 00°13'18" EAST, ALONG SAID LINE, A DISTANCE OF 1234.83 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING AN AREA OF 857,497 SQUARE FEET, MORE OR LESS.

ALL AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.

  
WILLIAM E. EDSON, L.S. 8154



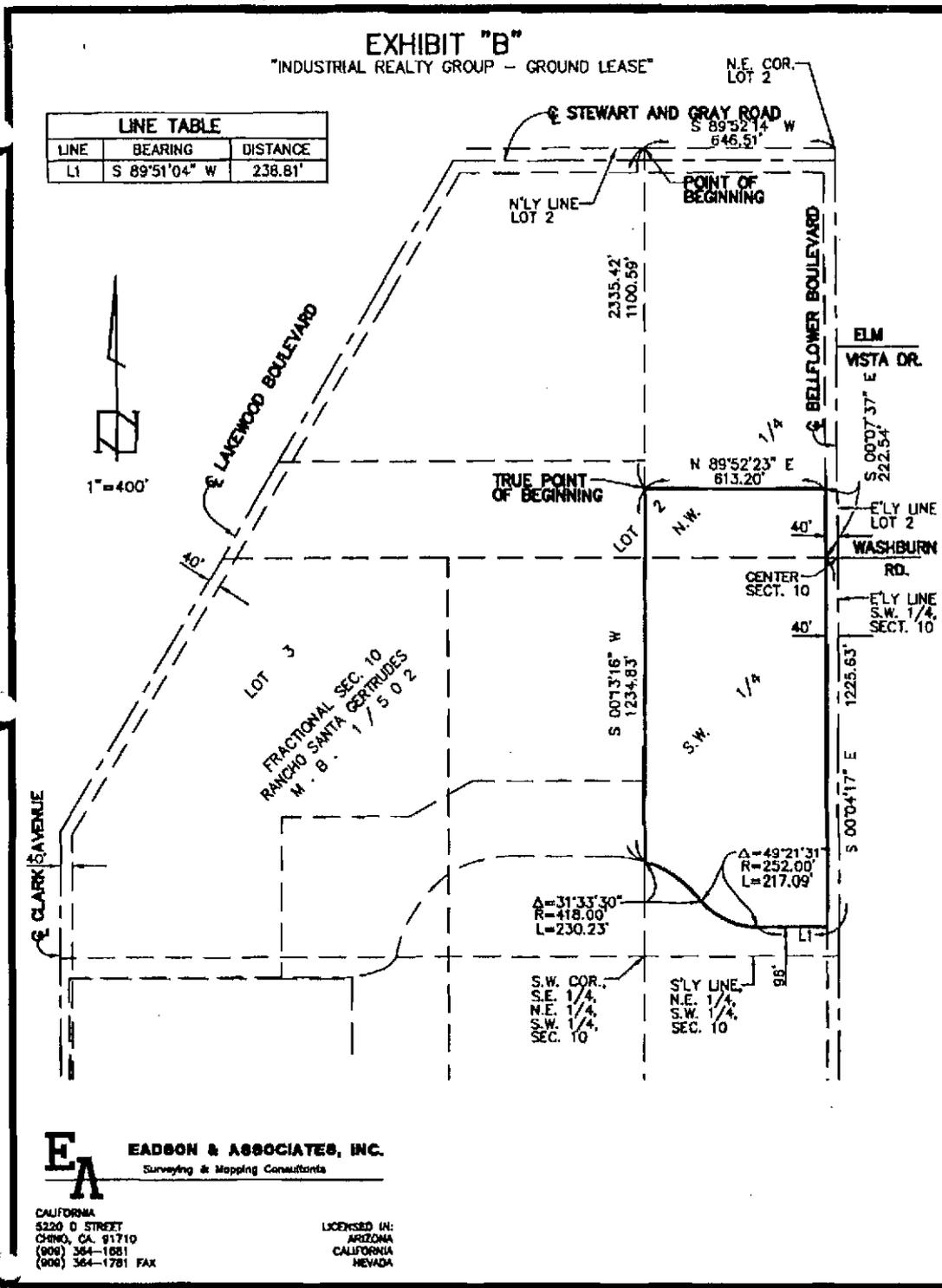
**EXHIBIT "B"**

"INDUSTRIAL REALTY GROUP - GROUND LEASE"

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 89°51'04" W	238.81'



1" = 400'



**EADSON & ASSOCIATES, INC.**  
 Surveying & Mapping Consultants

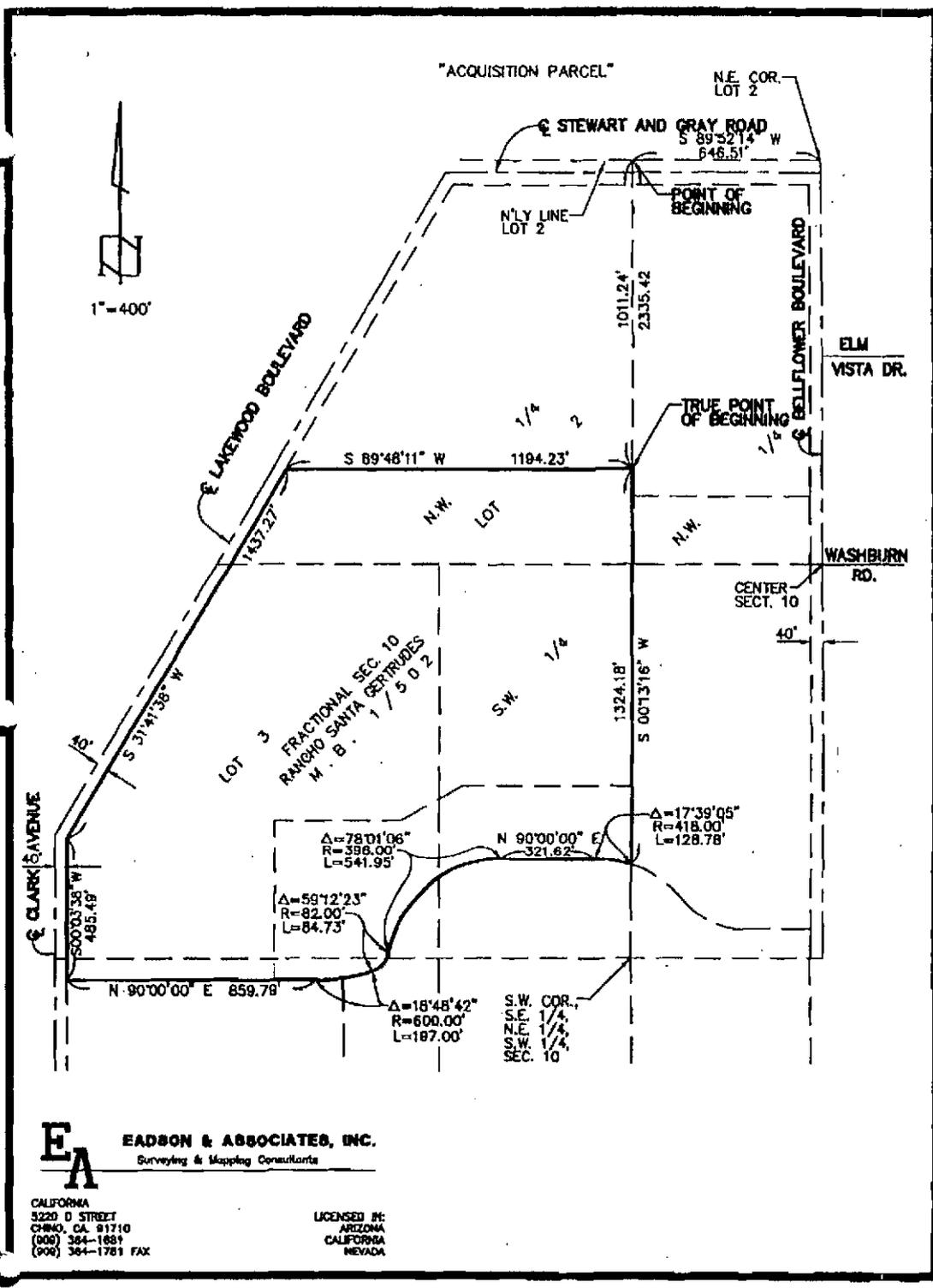
CALIFORNIA  
 5220 D STREET  
 CHINO, CA. 91710  
 (909) 364-1081  
 (909) 364-1781 FAX

LICENSED IN:  
 ARIZONA  
 CALIFORNIA  
 NEVADA

EXHIBIT "D"

Depiction of Developer Leased Property

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**EADSON & ASSOCIATES, INC.**  
 Surveying & Mapping Consultants

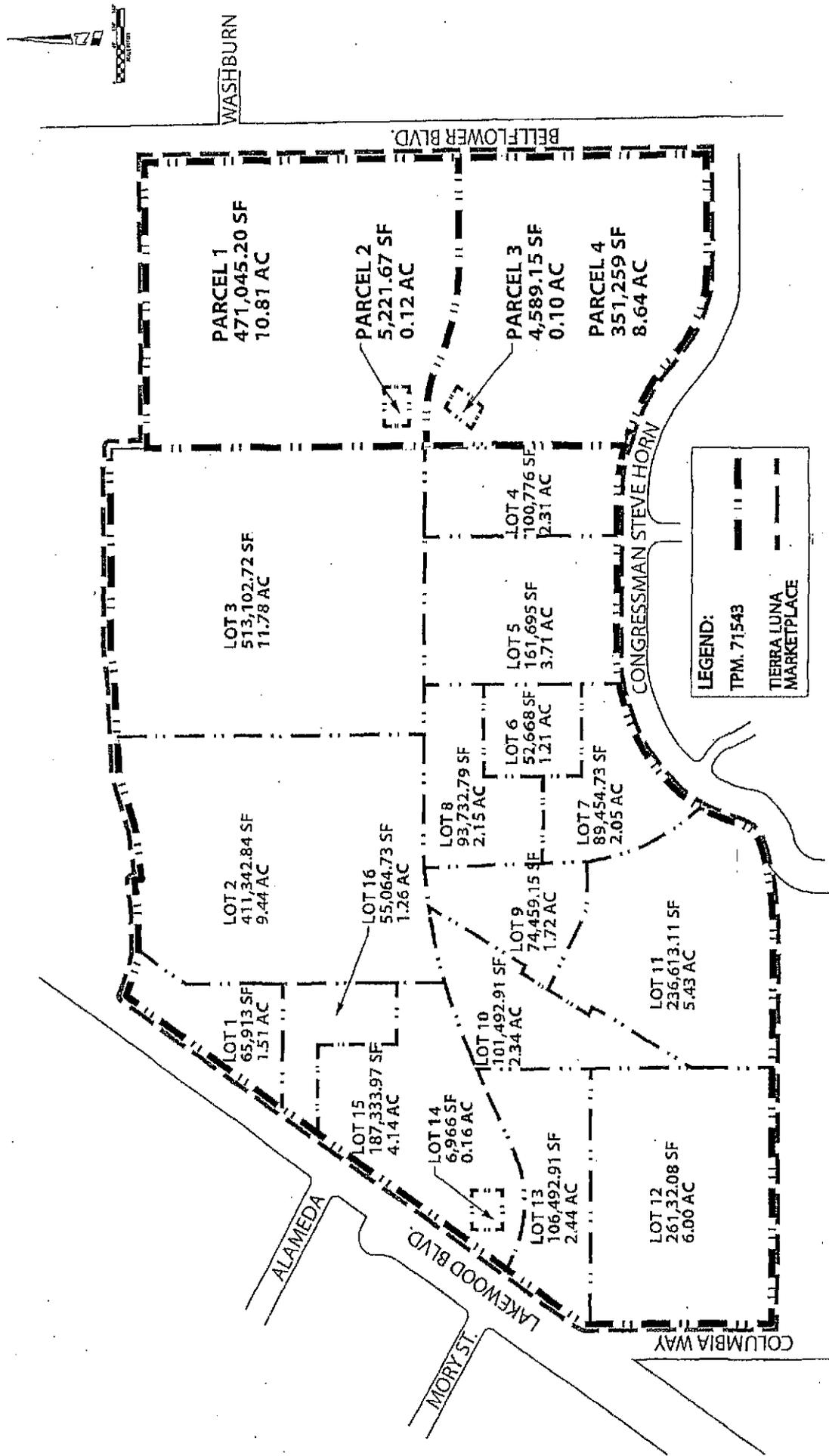
CALIFORNIA  
 5220 D STREET  
 CHINO, CA. 91710  
 (909) 384-1881  
 (909) 384-1781 FAX

LICENSED IN:  
 ARIZONA  
 CALIFORNIA  
 NEVADA

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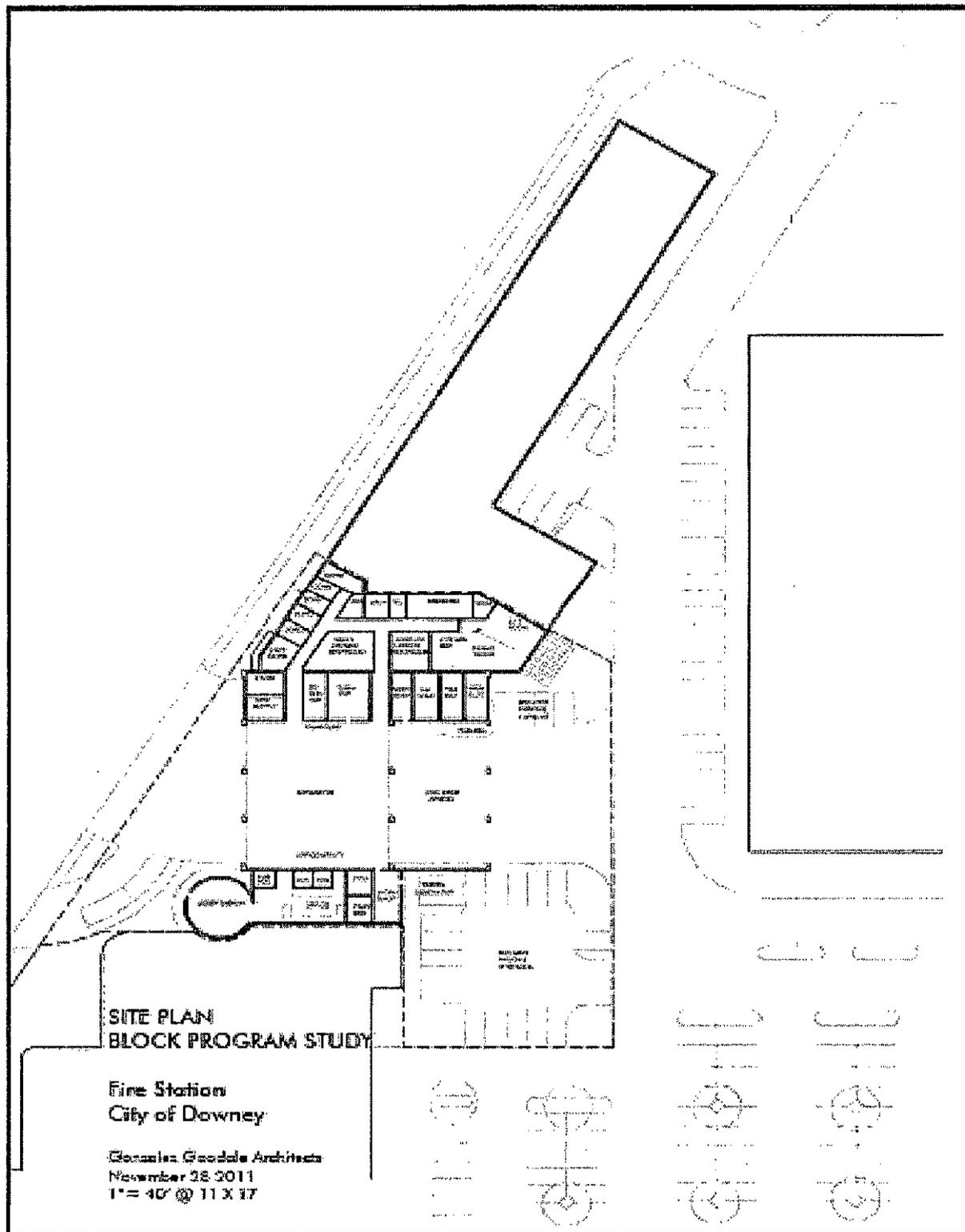
EXHIBIT "E"

Depiction of Property



**EXHIBIT "F"**

**Depiction of Fire Station Site**



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EXHIBIT "G"

[RESERVED]

**EXHIBIT "H"**

**Pre-Approved Retail Development Brand Names**

**SPORTING GOODS**

90  
BIG 5  
CABELAS  
DICKS SPORTING GOODS  
GOLF SMITH  
NIKE FACTORY STORE  
ROGER DUNN  
SPORT CHALET  
SPORTMART  
BASS PRO SHOP – OUTDOOR WORLD, TRACKER BOATS  
SUPERCENTER

**TOYS, GAMES & ELECTRONICS**

AT&T WIRELESS  
BABIES R US  
GAME STOP  
T-MOBILE  
TOYS R US  
VERIZON WIRELESS  
FRY'S

**SPECIALTY DINING**

AUNTIE ANNE'S PRETZEL  
BAJA FRESH  
BASKIN ROBBINS  
BEN & JERRY'S  
COFFEE BEAN & TEA LEAF  
COLDSTONE CREAMERY  
HOT DOG ON A STICK  
JAMBA JUICE  
LAMAJOON SHISH KABOB  
MAUI STYLE HAWAIIAN BBQ  
NIBI PHO BISTRO  
ON THE BORDER  
PANDA EXPRESS  
PANERA BREAD  
RED BRICK PIZZA  
ROCKY MOUNTAIN CHOCOLATE FACTORY  
ROLL IT SUSHI  
SBARRO ITALIAN EATERY  
STARBUCKS  
SUBWAY  
SWEET FACTORY  
TOGO'S  
TUTTI FRUTTI FROZEN YOGURT  
YOGURTLAND  
PINKBERRY  
FARRELLS ICE CREAM PARLOR

**CASUAL DINING**

APPLEBEE'S  
BENIHANA  
BLACK ANGUS  
BOSTON'S GOURMET PIZZA  
BUBBA GUMP SHRIMP CO. RESTAURANTS

CALIFORNIA PIZZA KITCHEN  
CEFIORE ITALIAN YOGURT  
CHEESECAKE FACTORY  
CHICAGO PIZZA & BREWERY  
CLAIM JUMPER  
CORNER BAKERY CAFE  
DAILY GRILL  
DAPHNE'S GREEK CAFE  
EINSTEIN BROS BAGELS  
FIVE GUYS FAMOUS BURGERS AND FRIES  
FRESCA'S MEXICAN GRILL  
HANAH GRILLE  
ISLANDS RESTAURANTS  
JOE'S CRAB SHACK HOLDINGS, INC.  
JOHNNY ROCKETS  
HABIT BURGER  
LONE STAR STEAKHOUSE & SALOON INC.  
MACARONI GRILL  
MAGGIANO'S LITTLE ITALY  
MCCORMICK & SCHMICK'S SEAFOOD RESTAURANTS  
MEL'S DRIVE-IN  
OLD SPAGHETTI FACTORY  
ON THE BORDER MEXICAN GRILL & CANTINA  
ORIGINAL ROADHOUSE GRILL  
OUTBACK STEAKHOUSE  
P.F. CHANG'S CHINA BISTRO, INC.  
PARADISE BAKERY & CAFE  
PEI WEI ASIAN DINER  
PICK UP STIX, INC.  
PORTILLO RESTAURANT GROUP  
RED LOBSTER  
RED ROBIN  
RUBY'S DINER  
SOUPLANTATION  
T.G.I. FRIDAYS  
WOOD RANCH  
YARDHOUSE

**FORMAL DINING**

BOA STEAK HOUSE  
CAFÉ R&D  
FLEMINGS  
HOUSTONS  
KINGS SEAFOOD  
LE GRAND ORANGE  
MORTONS  
ROY'S  
SUSHI ROKU  
TONY ROMAS  
TORO'S  
RUTH CHRIS STEAKHOUSE

**FOOTWEAR**

ADIDAS  
AEROSOLE  
BASS  
BENNETTON

CLAIRE'S  
CLARKS/BOSTONIAN  
CONVERSE  
DC SHOES  
DSW  
ETNIES: EXS  
FAMOUS FOOTWEAR  
NINE WEST  
OFF BROADWAY  
PUMA  
REEBOK  
ROCKPORT  
SHOE PAVILLION  
SKETCHERS  
SPRITZ  
VANS  
VINCE CAMUTO SHOES  
VOLCOM

**HOUSEWARES & HOME FURNISHING**

3 DAY BLINDS  
AARON BROTHERS  
ANNA'S LINENS  
BOMBAY COMPANY  
CORNINGWARE CORELLE REVERE  
COST PLUS  
HOME GOODS (TJX COMPANY)  
KITCHEN COLLECTION  
LE CREUSET  
LINENS N THINGS  
MATTRESS GALLERY  
PIER 1 IMPORTS

**MEN'S APPAREL**

AEROPOSTLE  
AMERICAN APPAREL  
BACHRACH  
BANANA REPUBLIC  
BENNETTON  
BILLABONG  
CALVIN KLEIN  
COLUMBIA SPORTSWEAR  
DC SHOES  
DKNY  
DOCKERS  
ECKO UNLTD.  
FILENE'S BASEMENT  
FOSSIL  
GAP, INC  
GUESS  
H&M  
HANES BRANDS  
HURLEY INTERNATIONAL  
IZOD  
JOURNEYS  
JUICY COUTURE  
KENNETH COLE  
LEVIS  
LIDS  
LUCKY BRAND JEANS  
MICHAEL KORS  
MICHAEL'S  
NAUTICA

NIKE FACTORY STORE  
NORDSTROM  
NORDSTROM RACK  
O'NEILL  
PAOLO GIARDINI  
PERRY ELLIS  
QUICKSILVER  
STEIN MART  
T.J. MAXX  
TILLY'S  
TOMMY HILFIGER  
U.S. POLO ASSN.  
UNDER ARMOUR  
VAN HEUSEN

**WOMENS APPAREL**

AEROPOSTLE  
AMERICAN APPAREL  
ANN TAYLOR  
BANANA REPUBLIC  
BCBGIRLS  
BCBG/ MAXAZRIA  
BENNETTON  
BILLABONG  
CABI  
CALVIN KLEIN  
CHARLOTTE RUSSE  
CHARMING SHOPS  
COLUMBIA SPORTSWEAR  
DKNY  
DOCKERS  
DOT'S  
DRESS BARN  
ECKO UNLTD.  
ESPIRIT  
FILENE'S BASEMENT  
FOREIGN EXCHANGE  
FOSSIL  
GAP, INC  
GUESS  
H&M  
HANES BRANDS  
HURLEY INTERNATIONAL  
IZOD  
JOURNEYS  
JUICY COUTURE  
JUSTICE  
KENNETH COLE  
KIPLING  
LEVIS  
LIDS  
LUCKY BRAND JEANS  
MAIDENFORM  
MAXSTUDIO.COM  
MICHAEL KORS  
MICHAEL'S  
NAUTICA  
NIKE FACTORY STORE  
NORDSTROM  
NORDSTROM RACK  
NOT YOUR DAUGHTERS JEANS  
O'NEILL  
PAPAYA FACTORY OUTLET  
PERRY ELLIS

**EXHIBIT "I"**

**Pre-Approved Hotel Development Brand Names**

***HILTON WORLDWIDE***

***LUXURY***

CONRAD HOTELS & RESORTS

WALDORF ASTORIA HOTELS AND RESORTS

***FULL SERVICE***

HILTON HOTELS & RESORTS

DOUBLETREE BY HILTON

EMBASSY SUITES

***FOCUSED SERVICE***

HILTON GARDEN INN

HAMPTON INN

HAMPTON INN & SUITES

***STARWOOD HOTELS AND RESORTS***

SHERATON

WESTIN

W HOTELS

FOUR POINTS BY SHERATON

LE MÉRIDIEN

ST. REGIS

THE LUXURY COLLECTION

ALOFT

ELEMENT

***MARRIOTT INTERNATIONAL***

MARRIOTT HOTELS & RESORTS

JW MARRIOTT HOTELS & RESORTS

RENAISSANCE HOTELS

EDITION HOTELS

AUTOGRAPH COLLECTION

COURTYARD BY MARRIOTT

AC HOTELS BY MARRIOTT

RESIDENCE INN BY MARRIOTT

FAIRFIELD INN & SUITES BY MARRIOTT

MARRIOTT CONFERENCE CENTERS

TOWNEPLACE SUITES BY MARRIOTT

SPRINGHILL SUITES BY MARRIOTT

MARRIOTT VACATION CLUB

THE RITZ-CARLTON HOTEL COMPANY, L.L.C.

THE RITZ-CARLTON DESTINATION CLUB

EXECUSTAY

MARRIOTT EXECUTIVE APARTMENTS

GRAND RESIDENCES BY MARRIOTT

***CROWNE PLAZA HOTELS***

EXHIBIT "I"

67  
RS

QUICKSILVER  
STEIN MART  
SUO  
T.J. MAXX  
THE AVE  
TILLY'S  
TOMMY HILFIGER  
TORRID  
TREND THEORY  
TWO LIPS  
U.S. POLO ASSN.  
ULTA  
UNDER ARMOUR

TRADER JOE'S  
TRUE VALUE  
WELLS FARGO  
WHOLEFOODS  
WILSONS LEATHER

**CHILDREN'S APPAREL**

BABIES R US  
CARTER'S  
CHILDREN'S PLACE  
KIDS BUDDIEZ  
KIDS SUPERCENTER  
OSHKOSH  
STRIDE RITE

**SPECIALTIES**

24 HOUR FITNESS  
ACE HARDWARE  
ARIZONA LEATHER  
BALLY'S  
BARBEQUES GALORE  
BARNES & NOBLE  
BEVERAGES N MORE  
BRISTOL FARMS  
CALIFORNIA NATIONAL BANK  
CHASE BANK  
COACH  
DAVIDS BRIDAL  
DAVE AND BUSTERS  
DESIGNER FRAGRANCES & COSMETICS  
ECKO UNLTD.  
FEDEX KINKOS  
GELSONS SUPER MARKET  
GOLD'S GYM  
GYMBOREE  
HAIR CUTTERS  
HAIR SALON  
HALLMARK  
HANCOCK FABRICS  
HENRY'S FARMERS MARKET  
HILTON  
JO-ANN FABRIC  
KRAGEN  
LIDS  
NAIL SALON  
OFFICE DEPOT  
PACIFIC DENTAL  
PARTY AMERICA  
SAMSONITE COMPANY STORE  
SMART & FINAL  
SPROCKETS KIDS  
SPROUTS MARKET  
SUNGLASS HUT  
TARGET  
TIME FACTORY WATCH OUTLET

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