

**MEMORANDUM OF UNDERSTANDING  
(Crows Landing Air Facility)**

THIS MEMORANDUM OF UNDERSTANDING (this “**MOU**”), dated and made effective as of April \_\_\_\_, 2008 (the “**Effective Date**”), is entered into by and between the Redevelopment Agency of the County of Stanislaus, a public body, corporate and politic (“**Agency**”), the County of Stanislaus, a political subdivision of the State of California (“**County**”) and PCCP West Park, LLC, a Delaware limited liability company (“**Developer**”). Agency, County and Developer are hereinafter collectively referred to as the “**Parties.**”

**RECITALS**

A. County is or will be the owner of 1524 acres of that certain real property located in the County of Stanislaus and known as the Crows Landing Naval Air Facility as shown on the map attached hereto as Exhibit A and incorporated herein by this reference (the “**Property**”).

B. On February 27, 2007, the Board of Supervisors of the County authorized an exclusive negotiation with Developer regarding the master development of the Property.

C. County and Developer entered into a Pre-Development Agreement dated June 5, 2007 (“**Pre-Development Agreement**”), which set forth the respective roles and obligations of County and Developer and the procedures for developing a project description for master development of the Property.

D. Pursuant to the Pre-Development Agreement, the Parties have undertaken discussions and studies relating to the development of the Property, and the Parties wish to set forth in this MOU their preliminary points of agreement without intending to be bound thereby.

E. County intends to adopt a redevelopment plan for the Property pursuant to Health and Safety Code Section 33492 *et seq.* and convey the Property to Agency for the purpose of redevelopment. Accordingly, County and Agency intend to hold public hearings to adopt a redevelopment plan prior to entering into an agreement with Developer for disposition and development of the Property.

F. Agency and Developer intend to negotiate a Disposition and Development Agreement (“**DDA**”) which, subject to the approval of the governing board of the Agency, would incorporate the terms of this MOU and set forth additional terms and conditions relating to the disposition of the Property and the development and construction of an intermodal inland port facility, general aviation airport, commercial, industrial and business park improvements on the Property, together with related infrastructure improvements described herein (all of the foregoing, collectively, the “**Project**”).

G. The Parties acknowledge that the effectiveness of any definitive agreements will be contingent upon the approval of such definitive agreements and related documents by the County Board of Supervisors, Redevelopment Agency Board of Directors and Developer.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Purpose of this MOU.** This MOU is intended as an expression of preliminary points of agreement amongst the Parties. The Parties expressly acknowledge and agree that: (i) the terms and conditions set forth in this MOU are subject to the approval of, or modification by, the governing boards of the County and Agency; and (ii) following approval of this MOU by the County and Agency, the Parties intend to execute a DDA and leases with terms substantially in the form and content attached hereto and set forth in Exhibit B (as such terms may be modified pursuant to the direction of the Agency Board of Directors and the written agreement of the Parties).

2. **Preliminary Terms; No Obligation to Proceed.** Nothing in this MOU creates a binding obligation, and no binding agreement will exist unless the Parties sign final and definitive agreements. Each Party expressly acknowledges and agrees that this MOU creates no obligation on the part of any Party to: (i) enter into a DDA; (ii) grant any approvals or authorizations required for the Project; (iii) agree to any specific terms or obligations; (iv) provide financing for the Project, or (v) proceed with the development of the Property. All of the terms set forth in this MOU are preliminary in nature and subject to approval by the County, Agency and Developer; and memorialization in an executed DDA and related documents including but not limited to lease documents. The Parties acknowledge that the Project may be revised as the environmental, financial and planning processes proceed and, provided that Agency and County approve of such revisions, that the DDA and other related documents may be modified. The provisions of this section are hereby incorporated into each and every section of this MOU as though set forth in their entirety in each such section.

3. **Good Faith Efforts to Negotiate.** This MOU only binds the Parties to negotiate in good faith for the purposes specified herein. County, Agency and Developer shall use reasonable efforts to complete negotiations for and preparation of a DDA and related documents including but not limited to lease documents which shall set forth the terms and conditions governing disposition and development of the Property by Developer. Furthermore, the Parties shall use reasonable efforts to obtain any third-party consent, authorization, or approval required in connection with the transactions contemplated hereby.

4. **Term.** The term of this MOU (the “**Term**”) shall commence on the Effective Date, and shall terminate [one hundred eighty (180)] days thereafter, unless extended or earlier terminated as provided herein. The Term may be extended for up to a maximum of three (3) thirty (30) additional day terms upon the mutual written agreement of Developer, the Agency acting through and in the discretion of its Executive Director and the County acting through and in the discretion of its Chief Executive Officer.

5. **Redevelopment Plan; Project.**

(a) County and Agency intend to use their reasonable efforts to designate the Property as a redevelopment project area and adopt a redevelopment plan for such project area (“**Redevelopment Plan**”) pursuant to the redevelopment of military bases under California Redevelopment Law (Health and Safety Code Section 33492 *et seq.*). Provided that a Redevelopment Plan is adopted, County will convey the Property to Agency. County and Agency will hold the appropriate public hearing for adoption of a Redevelopment Plan. Approval of a DDA and related documents including but not limited to lease documents may be considered by the County and Agency during such public hearings, but after the adoption of a Redevelopment Plan and conveyance of the Property from County to Agency.

(b) The Project will include Developer and its development partners or sub-lessees (i) designing, engineering and obtaining permits for and constructing an intermodal inland port facility, (ii)

designing, engineering and obtaining permits for and constructing commercial, industrial and business park improvements on the Property, together with related infrastructure improvements as further described in Developer's Master Plan attached hereto as Exhibit C and approved by the County Board of Supervisors on \_\_\_\_\_, 2008, (iii) designing and constructing infrastructure improvements described in the Preliminary Statement of Probable Costs by Stantec Consulting dated February 20, 2008, attached hereto as Exhibit D, and (iv) designing and constructing the Project pursuant to the phasing schedule attached hereto as Exhibit E, and (v) satisfying the obligations set forth in the DDA and leases including but not limited to designing, engineering, obtaining permits for and constructing infrastructure improvements to the community of Crows Landing. The Project will also include the County owning and operating the airfield on the existing runways and taxiways within the Property.

## **6. Development Fees; Processing and Entitlements; CEQA.**

6.1 Development Costs; Design Review. Except as otherwise expressly stated herein, Developer will be responsible for all Project development costs (other than the remediation of the existing Hazardous Materials on the Property), including without limitation all design, development, demolition and construction costs, the cost of all permits, planning, impact and processing fees including consultant costs, and the cost of all on-site and off-site public improvements required in connection with the Project.

6.2 County Approvals. Developer shall be responsible for obtaining all approvals required by County for the Project in accordance with County's standard application process for discretionary land use entitlements, including payment for all of County's costs of processing such approvals. Nothing set forth herein shall be construed as a grant of any such approvals, or as an obligation on the part of County to grant such approvals.

6.3 CEQA. Any approval by County or Agency shall be subject to and in full compliance with the California Environmental Quality Act ("**CEQA**"), Sections 21000 *et seq.* of the Public Resources Code and the CEQA Guidelines set forth in 14 California Code of Regulations Sections 15000 *et seq.*

## **7. Expenses.**

7.1 Agency Staff. Agency staff costs and expenses shall be the sole responsibility of and paid by the Agency.

### **7.2 County and Agency Consultants.**

(a) Reimbursement. County and/or Agency may in its sole discretion determine that it is necessary to obtain additional assistance from external consultant sources to expedite the approvals necessary under this MOU and to provide subject matter expertise. Subject to the requirements of this Section 7.2, Developer shall pay for County's and Agency's third-party costs and expenses (including, without limitation, all legal and/or consultant fees and related expenses) incurred in connection with this MOU and the activities contemplated by the Parties. County and/or Agency shall forward invoices from consultants to Developer, and upon receipt, Developer shall pay the County and/or Agency the amount(s) owed for all invoices within thirty (30) days.

(b) Consultation with Developer. Developer shall be provided a copy of all contract proposals and amendments, including the scope of work and pricing, for all consultants that County and/or

Agency intend to retain. County and/or Agency will obtain and take into consideration Developer's input regarding the scope of work, pricing and deliverables, but final determination on the scope of work, pricing and deliverables shall solely be the discretion of County and/or Agency or its respective staff designee.

7.3 Developer Expenses. Developer shall pay for its own third-party costs and expenses (including, without limitation, all legal and/or consultant fees and related expenses) incurred in connection with this MOU and the activities contemplated by the Parties.

8. **Developer Access.** During the Term, County shall provide Developer access to the Property and will cooperate with the Developer to enable Developer or its representatives to obtain access to the Property for the purpose of obtaining data and making tests necessary to investigate the condition of the Property, provided that Developer complies with all safety rules and does unreasonably interfere with the operations of any current tenants. Developer's inspection, examination, survey and review of the Property will be at Developer's sole expense. Developer shall provide County with copies of all reports and test results promptly following completion of such reports and testing. Except as otherwise agreed upon by County in writing, Developer shall repair, restore and return the Property and any improvements thereon to their condition immediately preceding Developer's entry thereon at Developer's sole expense. Developer shall at all times keep the Property free and clear of all liens and encumbrances affecting title to the Property. Without limiting any other indemnity provisions set forth in this MOU, Developer shall indemnify, defend (with counsel approved by Agency) and hold County and Agency and their respective elected and appointed officers, officials, employees, agents and representatives (all of the foregoing, collectively hereinafter the "**Indemnitees**") harmless from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense (including, without limitation, reasonable attorney's fees and costs of litigation) (all of the foregoing, collectively hereinafter "**Claims**") resulting from or arising in connection with entry upon the Property by Developer or Developer's agents, employees, consultants, contractors or subcontractors pursuant to this Section 8.

9. **Execution of Disposition and Development Agreement.** Provided that County and Agency adopt a redevelopment plan for the Property and the Parties successfully complete negotiations for and preparation of a DDA and leases, Agency staff, County staff and Developer shall recommend approval of such documents to their respective governing bodies or members, as applicable. The Parties shall have no legal obligation to grant any approvals or authorizations for the Project unless and until their respective governing bodies or partners, as applicable, have authorized execution of a DDA and related documents.

10. **Reserved.**

11. **No Liability.**

11.1 Project Costs. Developer hereby acknowledges and agrees that Agency has no obligation whatsoever to accept or approve of any DDA, lease or related documents proposed in this MOU. County and Agency have no obligation whatsoever to reimburse Developer for any costs incurred by Developer during the term of this MOU, including reimbursement costs for County or Agency retained consultants.

11.2 Indemnification.

(a) Developer hereby covenants, on behalf of itself and its permitted successors and assigns, to indemnify, hold harmless and defend the Indemnitees from and against all Claims and liability,

arising out of or in connection with this MOU provided however, Developer shall have no indemnification obligation with respect to the gross negligence or willful misconduct of any Indemnitee.

(b) The obligations of Developer under this indemnification shall survive the termination of this MOU, regardless of whether any approvals, permits or entitlements are granted by County or Agency.

(c) County and Agency will promptly notify Developer of any Claim that is or may be subject to this indemnification and will cooperate fully in the defense.

(d) County and/or Agency may, in its respective unlimited discretion, participate in the defense of any Claim if the County and/or Agency defends the Claim in good faith. To the extent that the County and/or Agency use any of its resources responding to a Claim, Developer shall reimburse County and/or Agency its respective reasonable expenses upon demand. Such expenses include, but are not limited to, staff time, court costs, legal fees (County Counsel's time at their regular rate for external or non-County agencies or retained outside counsel), and any other direct or indirect cost associated with responding to the Claim. Managerial staff time shall not be reimbursable. Developer shall not pay or perform any settlement by the County and/or Agency of the Claim unless the settlement is approved in writing by Developer, which approval shall not be unreasonably withheld.

(e) Developer shall pay all court ordered costs and attorney fees.

**12. Termination; Effect of Termination.** This MOU may be terminated for cause at any time by any Party. Upon ~~[thirty (30)]~~ days prior written notice and upon a showing of cause, each Party shall have the right to terminate this MOU in its sole discretion. Upon termination as provided herein, or upon the expiration of the Term and any extensions thereof without the Parties having successfully negotiated a DDA and related documents, this MOU shall forthwith be void, and there shall be no further liability or obligation on the part of each Party or their respective officers, employees, agents or other representatives; provided however, the provisions of Section 7 (Expenses), Section 8 (Property Access), Section 10 (Confidentiality) and Section 11 (Indemnity) shall survive such termination.

**13. Notices.** Except as otherwise specified in this MOU, all notices to be sent pursuant to this MOU shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Parties in accordance with this Section. All such notices shall be sent by:

(i) personal delivery, in which case notice is effective upon delivery; or

(ii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

**County:** County of Stanislaus  
1010 Tenth Street, Suite 6800  
Modesto, CA 95354  
Attn: Chief Executive Officer  
Telephone: (209) 525-6333  
Facsimile: (209) 525-6226

**Agency:** Redevelopment Agency of the County of Stanislaus  
1010 Tenth Street, Suite 3400  
Modesto, CA 95354  
Attn: Executive Director  
Telephone: (209) 525-6330  
Facsimile: (209) 525-6557

**with a copy to:** The Office of County Counsel  
1010 Tenth Street, Suite 6400  
Modesto, CA 95354  
Attention: County Counsel  
Telephone: (209) 525-6376  
Facsimile: (209) 525-4473

**Developer:** PCCP West Park, LLC  
111249 Gold Country Blvd, Suite 190  
Gold River, CA 95670  
Attn: Gerry Kamilos  
Phone: (916) 631-8440  
Facsimile: (916) 631-8445

**with a copy to:** Trainor Fairbrook  
980 Fulton Avenue  
Sacramento, CA 95825  
Attn: Charles W. Trainor  
Phone: (916) 929-7000  
Facsimile: (916) 929-7111

**14. Severability.** If any term or provision of this MOU or the application thereof shall, to any extent, be held to be invalid or unenforceable, such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this MOU or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable unless an essential purpose of this MOU would be defeated by loss of the invalid or unenforceable provision.

**15. Entire Agreement; Amendments in Writing; Counterparts.** This MOU contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral and written, between the Parties with respect to such subject matter. This MOU may be amended only by a written instrument executed by the Parties or

their successors in interest. This MOU may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**16. Successors and Assigns; No Third-Party Beneficiaries.** This MOU shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided however, that neither Party shall transfer or assign any of such Party's rights hereunder by operation of law or otherwise without the prior written consent of the other Party, and any such transfer or assignment without such consent shall be void. Subject to the immediately preceding sentence, this MOU is not intended to benefit, and shall not run to the benefit of or be enforceable by, any other person or entity other than the Parties and their permitted successors and assigns.

**17. Governing Law.** This MOU shall be governed by and construed in accordance with the laws of the State of California.

**18. Relationship of Parties.** The Parties agree that nothing in this MOU is intended to or shall be deemed or interpreted to create among them the relationship of buyer and seller, or of partners or joint venturers.

**19. Captions.** The captions used in this MOU are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.

**SIGNATURES ON THE NEXT PAGE**

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding effective as of the date first written above.

**AGENCY**

REDEVELOPMENT AGENCY OF THE COUNTY OF STANISLAUS, a public body, corporate and politic

By: \_\_\_\_\_  
Thomas Mayfield  
Chair of the Board of Directors

ATTEST:

By: \_\_\_\_\_  
Christine Ferraro Tallman  
Agency Secretary

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Kirk Ford  
Executive Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
John P. Doering  
Agency Counsel

**DEVELOPER**

PCCP WEST PARK, LLC, a Delaware limited liability company

By: WESTPARK HOLDINGS, LLC, a Delaware limited liability company, Administrative Member

By: \_\_\_\_\_  
Gerry N. Kamilos, co-Trustee of the Gerry and Karen Kamilos Family Trust u/t/a dated August 31, 1998, sole Member

**COUNTY**

COUNTY OF STANISLAUS, a political subdivision of the State of California

By: \_\_\_\_\_  
Thomas Mayfield  
Chair of the Board of Supervisors

ATTEST:

By: \_\_\_\_\_  
Christine Ferraro Tallman  
Clerk of the Board of Supervisors

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Richard W. Robinson  
Chief Executive Officer

APPROVED AS TO FORM:

By: \_\_\_\_\_  
John P. Doering  
County Counsel

**Exhibit List**

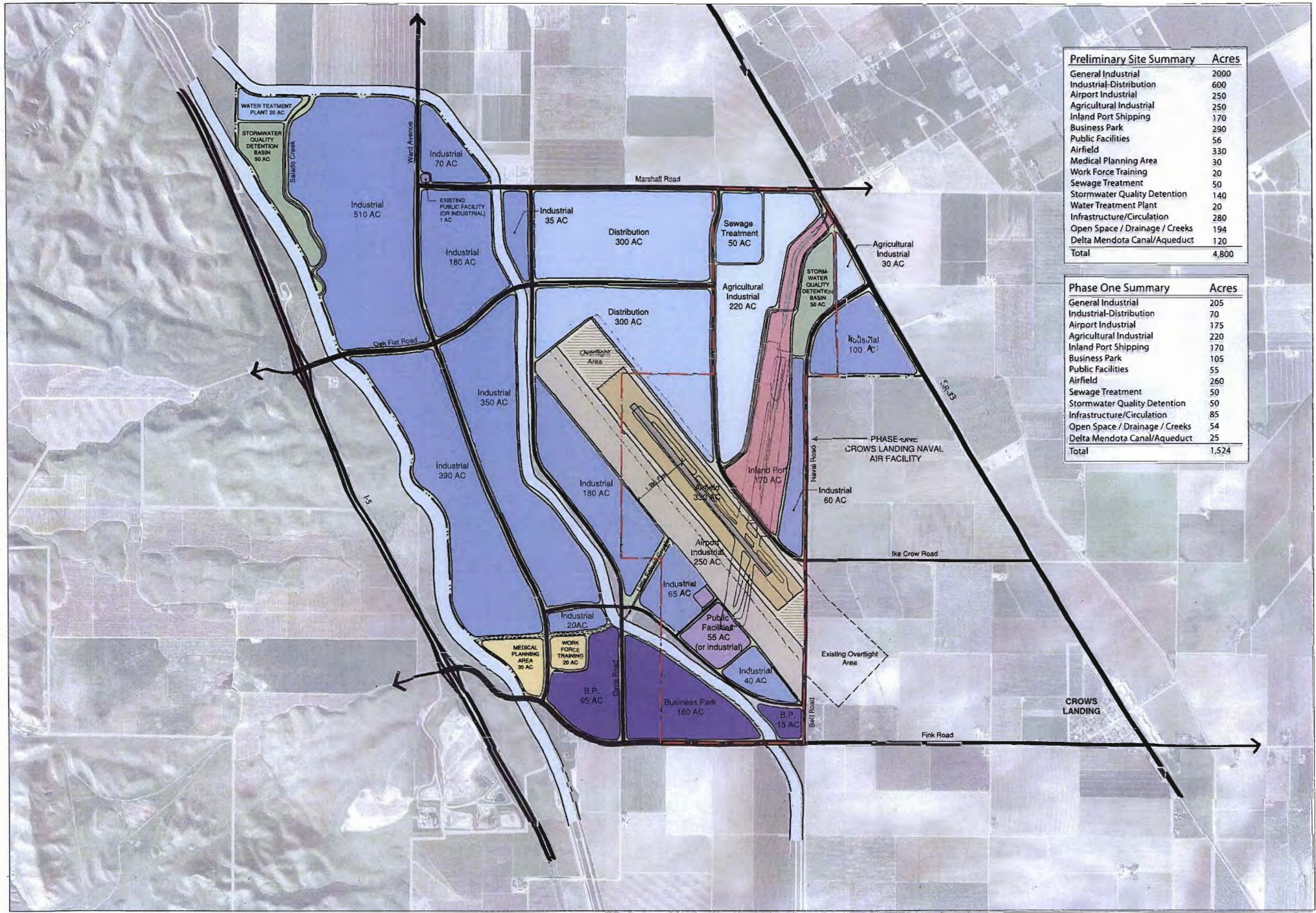
**EXHIBIT A**  
MAP OF THE PROPERTY

**EXHIBIT B**  
FORM OF DISPOSITION AND DEVELOPMENT AGREEMENT, LEASE RENT AND DEFAULT TERMS

**EXHIBIT C**  
PROJECT DESCRIPTION AND DEVELOPER MASTER PLAN

**EXHIBIT D**  
STANTEC REPORT OF PROBABLE INFRASTRUCTURE COSTS (2/20/2008)

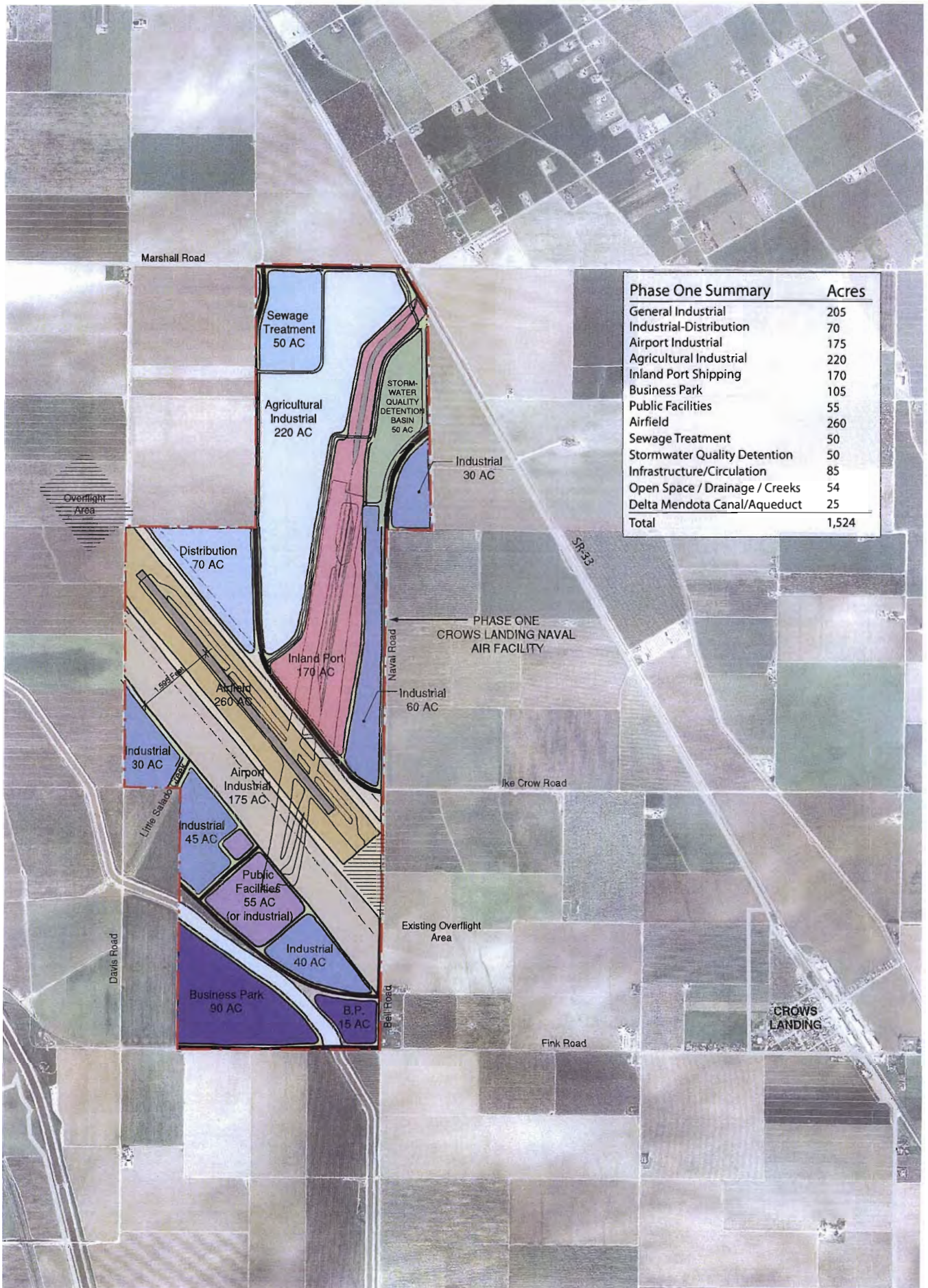
**EXHIBIT E**  
PROJECT PHASING: STEPS 1A – 1D



Preliminary Site Summary	Acres
General Industrial	2000
Industrial-Distribution	600
Airport Industrial	250
Agricultural Industrial	250
Inland Port Shipping	170
Business Park	290
Public Facilities	56
Airfield	330
Medical Planning Area	30
Work Force Training	20
Sewage Treatment	50
Stormwater Quality Detention	140
Water Treatment Plant	20
Infrastructure/Circulation	280
Open Space / Drainage / Creeks	194
Delta Mendota Canal/Aqueduct	120
<b>Total</b>	<b>4,800</b>

Phase One Summary	Acres
General Industrial	205
Industrial-Distribution	70
Airport Industrial	175
Agricultural Industrial	220
Inland Port Shipping	170
Business Park	105
Public Facilities	55
Airfield	260
Sewage Treatment	50
Stormwater Quality Detention	50
Infrastructure/Circulation	85
Open Space / Drainage / Creeks	54
Delta Mendota Canal/Aqueduct	25
<b>Total</b>	<b>1,524</b>

**West Park Conceptual Land Use Plan**  
Stanislaus County, CA



# West Park Conceptual Land Use Plan

Phase 1

0' 800' 1,600' 3,200'



EDAW AECOM

1-3-08

## DRAFT DISPOSITION AND DEVELOPMENT AGREEMENT TERMS

### ARTICLE ONE DEFINITIONS

1.1 As used in this Agreement, the following terms shall have the following meanings:

The term "Agency" shall mean the Redevelopment Agency of the County of Stanislaus, a public body, corporate and politic, having its offices at 1010 10th Street, Modesto, California 95354. The term "Agency" as used herein also includes any assignee of, or successor to, the rights, powers, and responsibilities of the Agency.

The term "Agency Documents" shall mean this Agreement, the Ground Leases, and the Memorandum of Ground Lease.

The term "CEQA" means the California Environmental Quality Act, Sections 21000 et seq. of the Public Resources Code and the CEQA Guidelines set forth at 14 California Code of Regulations Sections 15000 et seq.

The term "Construction Financing Plan" shall mean (1) each of Developer's cost breakdowns to be submitted to, and approved by, the Agency in accordance with the Schedule of Performance by major cost category, (2) a cash flow projection for the construction of that portion of the Project to be constructed on the applicable parcels, (3) the sources of necessary funds to pay, when due, the costs indicated in the cash flow projection and (4) evidence that the funds necessary to finance those costs have been firmly committed by Developer, equity investors, sublessees or lending institutions, as the case may be, subject to such conditions as are commercially reasonable under the circumstances.

The term "Construction Plans" shall mean collectively all of the construction documents upon which Developer and Developer's several contractors shall rely in building each component of the Project, including, but not necessarily limited to, final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as "working drawings") and a time schedule for construction.

The term "County" shall mean the County of Stanislaus, a public body, corporate and politic, having its offices at 1010 10th Street, Modesto, California 95354. The term "County" as used herein also includes any assignee of, or successor to, the rights, powers, and responsibilities of the County.

The term "Developer" shall mean PCCP West Park, LLC, a Delaware limited liability company, having its offices at \_\_\_\_\_, Delaware, \_\_\_\_\_. **(Need to add text to address the status of a tenant as the "Developer" in instances where the tenant has agreed to be bound by the terms of the DDA and Lease as they apply to the particular parcel of property.)**

The term "Escrow Account" shall mean an escrow account opened for the purpose of completing the disposition of the Property to the Developer.

The term "Final Development Plan" shall mean a description of the numerous components of the Project submitted to, and approved by, the Agency and County by Developer in accordance with the

Schedule of Performance. Each Final Development Plan shall be consistent with the General Plan and any applicable Specific Plan. The form of the Final Development Plan shall be substantially in the form set forth on Exhibit \_\_\_ and shall generally include elevations and site plans showing size and location of buildings, the number and location of parking spaces, the specific treatment and location of all landscaping amenities, the location of all pedestrian and automobile ingress and egress points, the proposed uses of the building and the location of related public streets and improvements.

The term "Ground Lease" shall mean an agreement by and between the Agency and the Developer, pursuant to which the Agency will lease the Property to Developer under the terms and conditions substantially in the form attached hereto as Exhibit \_\_\_.

The term "**Hazardous Materials**" shall mean means any substance, material, or waste which is or becomes regulated by any local, state or federal authority, agency or governmental body, including any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. (42 U.S.C. §6903); or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq., as the foregoing statutes and regulations now exist or may hereafter be amended.

The term "**Hazardous Materials Laws**" shall mean all federal, state and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials, including without limitation, the laws, statutes and regulations cited in the preceding definition, as they may be amended from time to time.

The term "Infrastructure Improvements" shall mean the development and construction of the public and private infrastructure components of the Project as summarized on Exhibit \_\_\_ on the Property and required by this Agreement, state law, County ordinances and the Redevelopment Plan, all funded by the Developer as set forth in Article Six of this Agreement.

The term "Master Financing Plan" shall mean Developer's plans for financing the construction and permanent financing of the Project, including, but not limited to, development and operating performas, all sources of funds necessary to pay, when due, the estimated costs of the Project, and evidence that such funds have been firmly committed by Developer, equity investors, sublessees, or lending institutions, as the case may be, subject only to commercially reasonable conditions .

The term "Preliminary Financing Plan" shall mean the preliminary financing plan for the Project delivered to the Agency by the Developer on \_\_\_\_\_, 2008, a copy of which is attached hereto as Exhibit \_\_\_\_.

The term "Private Improvements" shall mean those improvements described on Exhibit \_\_\_\_ attached to this Agreement to be paid for by Developer and installed and constructed by the Developer in accordance with the provisions of Article Six of this Agreement.

The term "Project" shall mean the lease of the Property by Developer and the development of the Property as described in the Project Description and each Final Development Plan and in accordance with the General Plan, any applicable Specific Plan and the Schedule of Performance. The Project will be constructed and developed in accordance with this Agreement and the Schedule of Performance.

The term "Project Description" shall mean the master planned development and construction of (i) a private rail inland port facility, which will consist of an intermodal storage yard for receiving inbound and dispatching outbound container trains, (ii) 105 acres for a business park, (iii) 70 acres for industrial distribution sites, (iv) 255 acres for general industrial purposes, (v) 175 acres for airport industrial purposes, (vi) 220 acres for agriculture industrial purposes, and (vii) infrastructure improvements serving the Property, which consist of water and sewage treatment facilities, including improvements to the Crows Landing Community, storm water detention basins, major and collector streets for circulation, drainage conduits, utilities, utility and roadway improvements to the airport, and railroad improvements, as more fully set forth in Exhibit \_\_ to this Agreement.

The term "Property or Properties" shall mean a component of, or all of approximately 1525 acres of real property, located within the County of Stanislaus, upon which the Project shall be developed. The following table sets forth the properties, which are more fully described in Exhibit \_\_\_\_, subject to this Agreement:

PROPERTY IDENTIFICATION		SITE SIZE	
PROPERTY ID	ASSESSORS PARCEL #	ACRES	SF
Parcel 1			
Parcel 2			
Parcel 3			
Parcel 4			
Parcel 5			
Parcel 6			
Parcel 7			
Parcel 8			
Parcel 9			
Parcel 10			

The term "Redevelopment Plan" shall mean the Redevelopment Plan for the \_\_\_\_\_ Project Area, which was approved by the Board of Supervisors of the County of Stanislaus by its adoption

of Ordinance No. \_\_\_\_\_ on \_\_\_\_\_, 2008, a copy of which is incorporated herein by reference and attached hereto as Exhibit \_\_\_\_.

The term "Schedule of Performance" shall mean that certain timeline for development of the Project attached hereto as Exhibit \_\_\_\_.

The term "Site Plan" shall mean that depiction or layout for use of land for each parcel comprising the Property that shall be constructed attached hereto as Exhibit \_\_\_\_.

## ARTICLE TWO REPRESENTATIONS

2.1 Incorporation of Recitals; Purpose of Agreement. The Parties acknowledge the truth of the Recitals set forth above, and all such Recitals are hereby incorporated into this Agreement. The purpose of this Agreement is to set forth the rights and obligations of the Parties with respect to (i) the conveyance, by lease, of the Agency Property to Developer, and (ii) Developer's construction and completion of the Project.

2.2 Developer's Representations. Developer represents and warrants as follows, and Developer covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact, condition or event, which with the passage of time, would cause or has caused any of the warranties and representations in this Section 2.2 to be untrue, Developer will give written notice of such fact, condition or event to Agency by no later than the close of business on the day following the date that Developer learns of such fact, condition or event, accompanied by documentation necessary to correct such failure. If not corrected to the satisfaction of Agency, the failure of any such representation or warranty to be true shall constitute a basis upon which Agency may in the exercise of Agency's sole discretion terminate this Agreement or exercise Agency's remedies hereunder. The representations and warranties set forth in this Article Two will survive the Lease Commencement Date for any parcel of the Property. Developer acknowledges that Agency has relied and will rely upon Developer's representations made herein, notwithstanding any investigation made by or on behalf of Agency.

A. Developer is a limited liability company duly organized and in good standing under the laws of the State of Delaware. All organizational documents Developer has delivered to the Agency are true and complete copies of the originals, as amended to the date of this Agreement. Developer has full right, power and lawful authority to undertake all obligations of Developer set forth herein, and the execution, performance and delivery of this Agreement by Developer has been duly authorized by all requisite actions. The persons executing this Agreement on behalf of Developer have been duly authorized to do so. This Agreement constitutes a valid and binding obligation of Developer.

B. Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any Developer's organizational documents or under any contract, agreement or order to which Developer is a party or by which it is bound.

C. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Developer to perform its obligations under this Agreement.

D. Neither Developer nor any member or manager of Developer is the subject of a bankruptcy proceeding.

### ARTICLE THREE DEVELOPER'S PRE-LEASE DISPOSITION REQUIREMENTS

3.1 Conditions Precedent. As a condition precedent to the Agency's obligation to lease part or all of the Property to Developer for Developer's commencement of construction of the Project, the conditions set forth in this Article Three must first be met within the times set forth therefore in the Schedule of Performance, unless such time limit is extended by the Agency at the discretion of its Executive Director.

3.2 Developer Lease of Property.

A. The Property in its entirety consists of approximately \_\_\_\_\_ acres of real property and currently consists of the \_\_\_ parcels (some of which are comprised of several smaller parcels) as set forth on Exhibit \_\_\_ attached hereto.

B. Developer shall lease the Property in accordance with the Schedule of Performance attached hereto as Exhibit \_\_\_, for the development and construction of the Project.

C. Approximately \_\_\_\_\_ acres of the land comprising the Property is currently owned by the United States of America. Agency shall use reasonable efforts to acquire such portions of the Property within the time set forth in the Schedule of Performance for lease of said portions of the Property to the Developer.

D. As shown on the Land Uses Map, five (5) acres adjacent to the Property shall be used for the West Stanislaus Fire Facility and two-hundred sixty (260) acres adjacent to the Project shall be used for the Airport. If not completed prior to the Effective Date, Agency shall use commercially reasonable efforts to establish separate parcels for the Airport and West Stanislaus Fire Facility by not later than January 1, 2010.

3.3 Final Development Plan.

A. Developer shall submit to the Agency, for approval by the Agency, separate Final Development Plans required for development of the Project. Each Final Development Plan shall be consistent with the General Plan, any applicable Specific Plan, Redevelopment Plan, the Project Description and the Schedule of Performance attached hereto, and shall include elevations and site plans showing size and location of buildings and infrastructure, the number and location of parking spaces for any proposed buildings, and (1) the specific treatment and location of all landscaping amenities, (2) the location of all pedestrian and automobile ingress and egress points, (3) the proposed uses of the buildings and (4) the location of other public or private streets and improvements for that portion of the Property included within the specific Final Development Plan. Any Final Development Plan that includes development of property outside of the Property ("**Developer Property**") shall be released for development and consistent with the requirements set forth in Section 6.3 of this Agreement, which shall include compliance with the obligations for the Crows Landing Community pursuant to Section 6.3.2(C). Notwithstanding the prior sentence, upon request by the Developer, the Agency and County may, in their absolute and sole

discretion, authorize development of a workforce training development on the Off-Site Property provided that businesses constructed on the Property have generated at least 1,000 jobs.

B. Upon approval by the Agency, each Final Development Plan shall be incorporated into this Agreement as a part of Exhibit \_\_\_\_.

C. Any subsequent material change, modification, revision or alteration of any approved Final Development Plan shall be submitted for approval by the Agency; and if such change, modifications, revisions or alterations are not approved, the approved Final Development Plan shall continue to control. Any proposed material change, modification, revision or alteration shall be approved or disapproved by the Agency within twenty (20) business days of submittal. If the Agency refuses or fails to approve or disapprove the revision, modification or alteration to the Final Development Plan within said twenty (20) business day period, the Agency shall, within thirty (30) business days after receipt of such submittal, provide the Developer with a written statement of the reasons the Agency refused or failed to approve such submittal. The statement from the Agency shall also contain the Agency's opinion of the action the Developer must take to obtain the Agency's approval. If the Agency fails to provide the Developer with the written statement described above, the submittal shall be deemed approved. In accordance with Section \_\_\_\_\_ of this Agreement, the Executive Director of the Agency may approve minor (i.e. not material) changes, modifications, revisions or alterations to the Final Development Plan provided that the Executive Director may only approve said amendments if the total development density and development FAR does not exceed the maximum potential density or FAR approved by the County for the Project and that the height does not exceed applicable County height regulations.

D. For the purpose of this Section 3.3, a material change, modification, revision or alteration to a Final Development Plan shall mean any increase or decrease of ten percent (10%) or greater in (a) the density approved; or (b) stories; or (c) size (measured by square feet); or (d) floor area ratio (FAR) to the approved project component.

3.4 Construction Plans. Developer shall submit to the Agency its Construction Plans for development of the Project. Construction Plans shall be based upon the related approved Final Development Plan and shall not materially deviate therefrom without the express written consent of the Agency. The Executive Director of the Agency, or his or her designee, may approve minor changes, modifications, revisions or alterations to the Construction Plans.

3.5 Master Financing Plan and Construction Financing Plans.

A. Within the timeframes set forth within the Schedule of Performance, Developer shall submit the Master Financing Plan to the Agency.

B. Unless included as part of the Master Financing Plan, at the time Developer is required to submit the Construction Plans to the Agency pursuant to Section 3.4 of this Agreement, Developer shall submit to the Agency the Construction Financing Plan within the timeframes set forth within the Schedule of Performance.

C. Sources of funds disclosed in either the Master Financing Plan or the Construction Financing Plan may include additional equity investments and/or loans provided such funding is from licensed financial or lending institutions, including pension funds and syndicating entities and individuals. A

financial or lending institution shall be deemed licensed if it is a bank, savings and loan institution, pension fund or Insurance Company licensed to do business in California. The Agency shall cooperate with Developer in providing information to prospective lenders and equity investors.

D. Upon receipt by the Agency of each proposed Master Financing Plan and Construction Financing Plan for the Project, the Agency shall promptly review it and shall approve it within fifteen (15) business days after submission if it conforms to the provisions of this Section. If the Agency refuses or fails to approve or disapprove any Master Financing Plan and/or the Construction Financing Plan for any portion of the Project within said fifteen (15) business day period, the Agency shall, within fifteen (15) business days after receipt of any such submittal, provide the Developer with a written statement of the reasons the Agency refused or failed to approve such submittal. The statement from the Agency shall also contain the Agency's opinion of the action the Developer must take to obtain the Agency's approval. If the Agency fails to provide the Developer with the written statement described above, the submitted plans shall be deemed approved.

The Agency's review of the Master Financing Plan or Construction Financing Plans shall be limited to determining if the contemplated financing will reasonably be available and will provide sufficient funds for the development and construction of the Project. Developer shall thereafter resubmit a revised Master Financing Plan or Construction Financing Plan, as the case may be, to the Agency for its approval within thirty (30) days of the Agency's notification of disapproval. The Agency shall either approve or disapprove said revised plan within fifteen (15) business days of re-submittal by Developer

E. Any material change, modification, revision or alteration of the approved Master Financing Plan or Construction Financing Plan must be first submitted to and approved by the Agency for conformity to the provisions of this Agreement. If not so approved, the approved plan shall continue to control. The Agency's review of such material change, modification, revision or alteration of the approved Master Financing Plan or Construction Financing Plan shall be limited to determining if the contemplated financing will reasonably be available and will provide sufficient funds for the purposes required to be included in the plan. For the purpose of this Section 3.5, a material change shall include, but is not limited to, a change in lender or equity provider, or a substantial increase or decrease in the amount of debt or equity contemplated for the Project; provided that a change in equity provider shall not constitute a material change so long as the operating agreement for the limited liability company includes a provision prohibiting the removal of PCCP West Park Holdings, LLC or Gerry Kamilos as the manager of the limited liability company without the written consent of the Agency.

3.6 County Approval. Following the approval of each set of Final Development Plans, the Developer shall diligently pursue and obtain all permits necessary for the construction of the Project pursuant to the Schedule of Performance. Developer acknowledges that execution of this Agreement by the Agency does not constitute land use approval by the County, does not limit in any manner the discretion of the Agency and/or the County in the approval process, pursuant to the Schedule of Performance, and does not relieve Developer from the obligation to obtain all necessary permits, including building permits. Developer shall promptly pay when due all customary and reasonable fees and charges of the County in connection with the processing and consideration of the County permits and approvals contemplated by this section. To the extent possible, the Agency will work with the Developer to obtain permits necessary for the Project from the County.

3.7 Reserved

3.8 CEQA Documentation. Developer shall prepare and submit to the Agency in accordance with the Schedule of Performance, such plans, specifications, drawings, and other information, as specified by the Agency or County, as are reasonably necessary for the Agency and County to perform the environmental review process required by CEQA. Developer shall provide the Agency and County any updated documentation of the Project in order to facilitate the Agency's and County's performance of the CEQA review process.

3.9 CEQA Review. Following execution of this Agreement, the Agency, shall diligently complete any required environmental review of the Project in accordance with CEQA and the time frames set forth in the Schedule of Performance. Developer acknowledges that the environmental review process under CEQA will involve preparation and consideration of additional information as well as consideration of input from interested organizations and individuals; that approval or disapproval of the Project following completion of the environmental review process is within the sole, complete, unfettered and absolute discretion of the Agency and County without limitation by or consideration of the terms of this Agreement; and that the Agency makes no representation regarding the ability or willingness of the Agency and/or County to approve development of the Project at the conclusion of the environmental review process required by CEQA, or regarding the imposition of any mitigation measures as conditions of any approval that may be imposed on the Project. The parties recognize that if as a result of the environmental review process the Project is not approved for development, both Agency and Developer each have an independent right to terminate this Agreement. In addition, Developer acknowledges that any required approvals by any other local, state or federal agency may require additional environmental review, and that any approval by Agency shall not bind any other local, state or federal agency to approve the Project or to impose mitigation measures which are consistent with the terms of this Agreement or with the terms of any mitigation measures required by Agency pursuant to Agency's environmental review. Agency agrees to cooperate with Developer to obtain all necessary approvals by providing all information and studies in the possession and control of Agency.

Nothing in this Agreement or otherwise shall bind or otherwise affect Agency's or County's discretion in:

- (1) requiring the preparation of any CEQA review document in accordance with CEQA and normal County land use entitlement procedures;
- (2) approving or rejecting such CEQA review in accordance with applicable CEQA standards;
- (3) making or declining to make any findings necessary under CEQA to grant the land use approvals and the proposed development of the Project contemplated by this Agreement and Developer's application for the land use approvals; or
- (4) imposing such mitigation measure(s) as condition(s) of the land use approvals as Agency deems appropriate under CEQA as a result of its consideration of the CEQA review documents.

3.10 Preleasing. Developer shall use commercially reasonable efforts with respect to marketing the Project to potential lessees. Developer hereby agrees to provide the Agency with semi-annual updates

regarding the marketing efforts and status of subleasing the Property and status of the lease of buildings owned by PCCP West Park, LLC and any affiliated or successor company .

#### ARTICLE FOUR AGENCY LEASE DISPOSITION OF PROPERTY

4.1 Phased Disposition. Agency will lease specific parcels of the Property in phases in accordance with the Schedule of Performance. Provided that Developer has satisfied the applicable requirements of this Agreement, Agency and Developer will (i) execute a ground lease substantially in the form of the Ground Lease to lease the Parcels to the Developer, and (ii) a ground lease substantially in the form of the Inland Port Ground Lease to lease the Inland Port Parcel to Developer. The Ground Lease and the Inland Port Ground Lease shall commence by no later than the earlier of January 1, 2010 or thirty (30) days after Developer obtains final, non-appealable entitlements for development of the Property, provided however, that Developer's obligation to pay rent and satisfy the obligations set forth in Section 6.3 may be extended pursuant to Section 13.2. In the event of an Entitlement Delay, Agency and/or County shall have the right to lease the Property for agricultural purposes and retain all rental payments for a minimum of three (3) years commencing on January 1, 2010, and for a maximum time equal to the Entitlement Delay period should it exceed three years. If Agency and/or County leases the Property, the lease shall include a property maintenance provision similar to that included in the current lease with the Pride of San Juan.

4.2 Conditions Precedent. Agency's obligation to lease each parcel to Developer pursuant to this Agreement is subject to satisfaction of the following conditions by the Developer:

- A. Developer has satisfied all applicable requirements set forth in Article Three and the Schedule of Performance; and
- B. Developer is not in default under any of the Agency Documents.

4.3 Lease of Property; Amendment of Leased Property. Provided that all conditions precedent set forth in this Agreement have been satisfied or waived, Agency shall lease to Developer, and Developer shall lease from Agency, the specific parcels of the Property in accordance with and subject to the terms, covenants and conditions of this Agreement and the Ground Lease and the Inland Port Ground Lease, subject only to: (a) the provisions and effect of the Redevelopment Plan, (b) the provisions and effect of the Agency Documents, (c) applicable general plan, specific plan, zoning, subdivision and building laws and regulations, (d) any lien for current taxes and assessments or taxes and assessments accruing subsequent to commencement of the term of the Ground Lease and the Inland Port Ground Lease, (e) the exceptions to title listed in Exhibit \_\_\_\_, (f) matters that would be apparent from an inspection of the Property, and (g) such other conditions, liens, encumbrances, restrictions, easements and exceptions as Developer may approve in writing, which approval shall not be unreasonably withheld. All of the foregoing are collectively hereinafter referred to as the "Permitted Exceptions."

The Ground Lease will allow the Parties, upon written request by Developer, to amend the property description of the Ground Lease for the purpose of establishing separate ground leases for certain portions of the Property (each a "New Ground Lease"), provided that (i) Developer has satisfied the obligations of this Agreement to the satisfaction of Agency with regard to the portion of the Property to be subject to a New Ground Lease, (ii) Developer is not in default under this Agreement or the Ground Lease, and

(iii) Developer obtains all necessary government approvals for subdividing the Property and Developer's leasehold interest. Each New Ground Lease shall: (i) not be subject to the obligations of this Agreement, (ii) not contain cross-defaults to this Agreement or the Ground Lease, (iii) be substantially in the form of and consistent with the Ground Lease and approved by Agency, (iv) not impair any existing sub-leases, and (v) contain a term that does not extend beyond the year 2109.

4.4 Memorandum of Lease. The date of commencement of the term of each Ground Lease shall be memorialized in a Memorandum of Ground Lease (the "**Memorandum of Lease**") to be recorded in the Official Records of Stanislaus County substantially in the form attached as an exhibit to the Ground Lease.

4.5 Rent. Developer shall pay rent for the Property pursuant to the Ground Lease and based on the following:

4.5.1 Base Rent. Commencing on January 1, 2010 ("**Rent Commencement Date**"), and on the first day of each month thereafter, Developer shall pay to Agency base rent for use and occupancy of the Property ("**Base Rent**") during the term of the Ground Lease in the amount of \$272,500 per year for the property not including the Inland Port and \$42,500 per year for the Inland Port property (170 acres), without deduction or offset whatsoever except as specifically provided in this Lease. Base Rent shall increase on each anniversary of the Rent Commencement Date by a percentage amount equal to the annual percentage increase of the producer price index ("**PPI**") for the County of Stanislaus for the prior twelve (12) month period (November 1 through October 31). In the event Developer fails to pay Base Rent by the close of business on the fifteenth (15th) day following the due date or Developer's check is returned by the financial institution on which it is drawn for insufficient funds, Developer shall pay Agency (i) four percent (4%) of the amount due for that payment period, which shall be included with the payment of Base Rent, and (ii) if such Base Rent is not paid within thirty (30) days after the payment due date, the outstanding amount due shall be subject to interest at an annual rate of seven percent (7%).

4.5.2 Percentage Rent for Property Excluding Inland Port Property. Commencing on the sixteenth (16th) anniversary of the Rent Commencement Date, Developer shall pay to Agency an amount equal to twenty percent (20%) of Gross Rent Receipts (as defined herein) during each Lease year as "**Percentage Rent**". Commencing on the forty-first (41st) anniversary of the Rent Commencement Date, Percentage Rent shall increase to an amount equal to forty percent (40%) of Gross Rent Receipts. Commencing on the seventy-first (71st) anniversary of the Rent Commencement Date, Percentage Rent shall increase to an amount equal to sixty percent (60%) of Gross Rent Receipts. Developer shall pay Percentage Rent to Agency quarterly on April 30th for the immediately preceding period of January 1 through March 31, July 30th for the immediately preceding period of April 1 through June 30, October 30th for the immediately preceding period of June 1 through September 30, and January 30th for the immediately preceding period of October 1 through December 31. As used in the Lease, the term "**Gross Rent Receipts**" shall mean the aggregate amount of all gross revenue of any kind or nature paid to or collected by Developer derived from subleases of the Property, excluding commercially reasonable common area maintenance payments, insurance premiums, taxes and assessments, but including without limitation, all rent, deposits forfeited, cancellation fees, proceeds of business interruption and similar insurance, proceeds of casualty insurance to the extent not applied to the repair or reconstruction of the Property, and condemnation awards: *[Distribution of condemnation proceeds shall be set forth in lease provisions to be prepared and shall be consistent with Agency and Developer each receiving an award consistent with the allocation of revenue to Agency and Developer payable pursuant to this Section]*. In the event Developer fails to pay Percentage Rent by the close of business on the fifteenth (15th) day following

the due date or Developer's check is returned by the financial institution on which it is drawn for insufficient funds, Developer shall pay Agency (i) four percent (4%) of the amount due for that payment period, which shall be included with the payment of Percentage Rent, and (ii) if such Percentage Rent is not paid within thirty (30) days after the payment due date, the outstanding amount due shall be subject to interest at an annual rate of seven percent (7%).

4.5.3 Participation Rent for Inland Port Property. Agency shall participate in the revenue of the Inland Port and earn six dollars (\$6) per \_\_\_\_\_ containers transported by rail to and from the Inland Port by Developer or Developer's affiliate ("**Participation Rent**") during each year commencing on tenth (10th) anniversary of the Rent Commencement Date [expected January 1, 2020] ("**Participation Commencement Date**"). Participation Rent shall increase annually on January 1 of each year by an amount equal to the annual percentage increase of the Rail PPI published by the U.S. Bureau of Labor Statistics for the prior twelve (12) month period (November 1 through October 31). Developer shall pay Participation Rent to Agency quarterly on April 30th for the immediately preceding period of January 1 through March 31, July 30th for the immediately preceding period of April 1 through June 30, October 30th for the immediately preceding period of June 1 through September 30, and January 30th for the immediately preceding period of October 1 through December 31. In the event Developer fails to pay Participation Rent by the close of business on the fifteenth (15th) day following the due date or Developer's check is returned by the financial institution on which it is drawn for insufficient funds, Developer shall pay Agency (i) four percent (4%) of the amount due for that payment period, which shall be included with the payment of Participation Rent, and (ii) if such Participation Rent is not paid within thirty (30) days after the payment due date, the outstanding amount due shall be subject to interest at an annual rate of seven percent (7%).

4.5.4 Extension of Rent Commencement Date. Upon written request by Developer, the Rent Commencement Date shall be extended as set forth in Section 13.2(C).

4.6 Escrow. Agency and Developer shall open escrow at the office of \_\_\_\_\_ Title Company located at \_\_\_\_\_, California, \_\_\_\_\_, or such other title company as the Parties may agree upon ("**Title Company**" or "**Escrow Agent**") in order to consummate the closing of escrow ("**Closing**") for the transactions contemplated hereby.

4.7 Costs of Closing and Escrow. Developer shall pay all title insurance premiums for policies Developer elects to purchase in connection with the lease of the Property and the financing of the Project, and all conveyance and recording fees, [transfer taxes], escrow fees and closing costs incurred in connection with the leasing of the Property and the financing of the Project. Property taxes and assessments, if any, shall be prorated as of the date of closing ("**Closing Date**" or "**Close of Escrow**"). Developer shall pay the cost of title insurance for Agency's lender's policy of title insurance.

4.8 Escrow Instructions; Deposit of Funds; Recordation of Documents. Agency and Developer shall provide Escrow Agent with a copy of this Agreement, which together with such supplemental instructions as Agency or Developer may provide and which are consistent with the intent of this Agreement or which are otherwise mutually agreed upon by Agency and Developer, shall serve as escrow instructions for the lease of Property.

4.9 Closing Date. Within the time period set forth in the Schedule of Performance, Developer shall deposit into escrow an amount equal to \_\_\_\_\_ and the Agency Documents, executed and

acknowledged as applicable. Provided that all conditions precedent to the lease of the Property have been satisfied or waived, Agency shall deposit into escrow executed copies of the Agency Documents to which Agency is a party. On the Closing Date the Escrow Agent shall cause the Memorandum of Lease to be recorded in the Official Records of Stanislaus County.

4.10 Review of Title. Prior to the Closing Date, Developer shall obtain and review a title report for the Property and shall notify Agency of any objections Developer has to exceptions to title ("**Title Exceptions**"). Developer's failure to object within such period shall be deemed to be approval of the condition of title to the Property. If Developer reasonably objects to any Title Exception other than a Permitted Exception, Agency shall use reasonable efforts at Agency's expense to remove from title or otherwise satisfy each such exception in a form that is reasonably satisfactory to Developer no later than fourteen (14) days prior to the Closing Date.

4.11 Conditions to Closing. In addition to the conditions precedent to Closing set forth in Article Three and elsewhere in this Article Four, the Closing is conditioned upon the satisfaction of the terms and conditions set forth in this Article Four.

4.11.1 Agency's Conditions to Closing. Agency's obligation to proceed with the Closing is subject to Developer's satisfaction or Agency's waiver of the following conditions:

a. No Default. There shall exist no condition, event or act which would constitute a material breach or default under this Agreement or any other Agency Document, or which, upon the giving of notice or the passage of time, or both, would constitute such a material breach or default.

b. Representations. All representations and warranties of Developer contained herein or in any other Agency Document or certificate delivered in connection with the transactions contemplated by this Agreement shall be true and correct in all material respects as of the Close of Escrow.

c. Execution and Recordation of Documents. Developer shall have executed and acknowledged and delivered to escrow the Agency Documents and all other instruments or documents required in connection with the transactions contemplated by the Agency Documents.

d. Authorization. Developer shall have provided Agency with certified copies of resolutions authorizing Developer's execution of the Agency Documents and such additional certificates as Agency shall reasonably require.

e. Satisfaction of Conditions Precedent. Developer shall have satisfied all of Developer's obligations set forth in Article Three.

4.11.2 Developer's Conditions to Closing. Developer's obligation to proceed with the Closing is subject to Agency's satisfaction or Developer's waiver of the following conditions:

a. No Default. Agency shall not be in default under the terms of this Agreement, and all representations and warranties of Agency contained herein shall be true and correct in all material respects.

b. Execution of Documents. Agency shall have executed and acknowledged the Ground Lease, the Memorandum of Lease, and any other documents required hereunder, and shall have delivered such documents into escrow.

c. Owner's Title Policy. The Title Company shall, upon payment of the premium therefor, be ready to issue an Owner's Title Insurance Policy for the benefit and protection of Developer ("**Title Policy**") showing a leasehold interest in the Property and the Improvements vested in Developer, subject only to Permitted Exceptions.

## ARTICLE FIVE CONDITION OF PROPERTY; ENVIRONMENTAL MATTERS

5.1 Access to Site; Inspections. During the period between the Effective Date and the date of commencement of the Ground Lease ("**Commencement Date**"), Agency shall provide Developer and agents, contractors and consultants with access to the Property for the purpose of conducting surveys, obtaining data and making tests necessary to investigate the soils and environmental condition of the Property and the condition of the existing improvements. Agency will require Developer to execute a right of entry agreement satisfactory to Agency prior to entry onto the Property for such purpose. Developer's inspection, examination, survey and review of the Property shall be at Developer's sole expense. Agency shall provide Developer with copies of any reports or studies in its possession related to any prior environmental investigation and/or remediation of the Property. Developer shall provide Agency with copies of all reports and test results promptly following completion of such reports and testing. Except as otherwise agreed upon by Agency in writing, Developer shall repair, restore and return the Property and any improvements thereon to their condition immediately preceding Developer's entry thereon at Developer's sole expense. Developer shall at all times keep the Property free and clear of all liens and encumbrances affecting title to the Property. Without limiting any other indemnity provisions set forth in this Agreement, Developer shall indemnify, defend (with counsel approved by Agency) and hold County and Agency and their respective elected and appointed officers, officials, employees, agents and representatives (all of the foregoing, collectively hereinafter the "**Indemnitees**") harmless from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense (including, without limitation, reasonable attorney's fees and costs of litigation) (all of the foregoing, collectively hereinafter "**Claims**") resulting from or arising in connection with entry upon the Property by Developer or Developer's agents, employees, consultants, contractors or subcontractors pursuant to this Section 5.1. Developer's indemnification obligations set forth in this Section 5.1 shall survive the Close of Escrow and the termination of this Agreement.

5.2 AS-IS Lease. Developer acknowledges and agrees that: (i) prior to the Closing Date, in Developer's discretion, Developer shall inspect the Property and the improvements located thereon, and shall examine the legal, environmental, zoning, land use, seismic, title, survey and physical characteristics and condition thereof; (ii) by leasing the Property, Developer shall be deemed to have approved of all such characteristics and conditions; (iii) the Property and the improvements thereon are to be leased to, and accepted by Developer in their condition as of the date of commencement of the Ground Lease "AS IS," "WHERE IS" AND WITH ALL FAULTS with no warranty expressed or implied regarding the condition of the soil, its geology, or the presence of known or unknown faults or Hazardous Materials (except to the extent that the Agency is aware of but does not disclose such conditions), and no patent or latent defect or deficiency in the condition of the Property or the improvements thereon whether or not known or

discovered, shall affect the rights of either Agency or Developer hereunder. Developer shall rely solely upon its own independent investigation concerning the physical condition of the Property and its compliance with applicable statutes, ordinances, rules and regulations. Agency shall have no responsibility for site preparation, demolition, or any other removal or replacement of improvements on the Property.

If following commencement of the term of the Ground Lease, the condition of the Property is not in all respects entirely suitable for the uses to which the Property will be put pursuant to this Agreement, then it shall be the sole responsibility and obligation of Developer to correct any soil, subsurface or structural conditions, reconstruct any improvements, and otherwise put the Property in a condition suitable for the Project to be developed pursuant to this Agreement. The Developer hereby waives any right to seek reimbursement from the Agency for costs Developer incurs in connection with the correction of any physical condition on the Property.

5.3 Release of Claims. Developer hereby waives, releases and discharges forever Indemnitees from all present and future Claims arising out of or in any way connected with the condition of the Property or the improvements located thereon, any Hazardous Materials on, under, in or about the Property, or the existence of Hazardous Materials contamination due to the generation of Hazardous Materials from the Property, however they came to be placed there, except that arising out of the gross negligence or willful misconduct of Indemnitees.

Developer is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR  
As such relates to this Section 4.3, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

\_\_\_\_\_  
Developer Initials

5.4 Developer's Post-Closing Obligations; Environmental Indemnification.

5.4.1 Developer's Covenants. Developer hereby covenants and agrees that:

A. Developer shall not knowingly permit the Project or the Property or any portion of either to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence or release of Hazardous Materials in, on, under, about or from the Project or the Property with the exception of Hazardous Materials and other materials (i) customarily used in construction, rehabilitation, use or maintenance of industrial and/or commercial property, (ii) directly related to the business operations of the use of the Property contemplated by this Agreement and (iii) used, stored and disposed of in compliance with Hazardous Materials Laws.

B. Developer shall keep and maintain the Project and the Property and each portion thereof in compliance with, and shall not cause or permit the Project or the Property or any portion of either to be in violation of, any Hazardous Materials Laws.

C. Upon receiving actual knowledge of the same, Developer shall immediately advise Agency in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer, the Project, or the Property pursuant to any applicable Hazardous Materials Laws; (ii) any and all claims made or threatened by any third party against the Developer, the Project or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; (iii) the presence or release of any Hazardous Materials in, on, under, about or from the Project or the Property; or (iv) Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project classified as "Border Zone Property" under the provisions of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in connection therewith, that may in any way affect the Property pursuant to any Hazardous Materials Laws or cause it or any part thereof to be designated as Border Zone Property. (The matters set forth in the foregoing clauses (i) through (iv) are hereinafter referred to as "**Hazardous Materials Claims**"). The Agency and/or County shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claim, and to have its reasonable attorney's fees in connection therewith paid by the Developer.

D. Without the Agency's prior written consent, which shall not be unreasonably withheld or delayed, Developer shall not take any remedial action in response to the presence of any Hazardous Materials in, on, under, or about the Project (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the Agency agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claim.

5.4.2 Environmental Indemnity. Developer shall indemnify, defend (with counsel approved by Agency) and hold Indemnitees harmless from and against all Claims resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal after the commencement of the term of the Ground Lease or otherwise arising as a result of actions taken by Developer or Developer's agents, employees or contractors, of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property, or (ii) the failure of Developer, Developer's employees, agents, contractors, subcontractors, or any person acting on behalf of any of the foregoing to comply with Hazardous Materials Laws. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws.

5.4.3 No Limitation. Developer hereby acknowledges and agrees that Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 5.4.2 above, are in no way limited or otherwise affected by any information the Agency or the County may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Materials, whether the Agency or the County obtained such information from the Developer or from its own investigations, unless such information was known to the Agency or the County at the time of execution of this Agreement and/or the time of the close of escrow for the conveyance of the Property to the Developer but not disclosed to Developer.

**ARTICLE SIX  
CONSTRUCTION OF IMPROVEMENTS AND OTHER REQUIREMENTS  
AFTER DISPOSITION OF THE PROPERTY**

6.1 Schedule of Performance. Developer shall commence and complete construction of the Project and shall satisfy all other obligations of Developer under this Agreement within the time periods set forth in the Schedule of Performance and Section 6.3 herein except as such time periods may be extended in accordance with Section 13.2 of this Agreement, or upon mutual written consent of the Agency and the Developer which consent shall not be unreasonably withheld. Without limiting the foregoing, Developer shall commence construction within the times set forth in the Phasing Step Diagrams and Section 6.3, and shall diligently prosecute to completion the construction of the Inland Port, Infrastructure Improvements sufficient to allow commencement of the Inland Port operations by not later than the earlier of thirty-six (36) months following commencement of work or the deadline required by the CTC, unless an extension is approved by Agency. Each party shall use diligent and commercially reasonable efforts to perform the obligations to be performed by such party pursuant to this Agreement within the times periods set forth herein, and if no such time is provided, within a reasonable time, designed to permit issuance of a final [certificate of occupancy] by the date specified in this Section 6.1, and in Section 6.3.

6.2 Cost of Ground Lease and Construction. Except as expressly set forth herein or in another instrument executed by Agency, Developer shall pay all of Developer's direct and indirect costs and expenses incurred in connection with the lease of the Property, including without limitation appraisal fees, title reports and any environmental assessments Developer elects to undertake. Except as expressly set forth herein or in another instrument executed by Agency, all costs of designing, developing and constructing the Project and compliance with the Project approvals, including without limitation all Infrastructure Improvements and Private Improvements required by this Agreement and the County in connection therewith, shall be borne solely by Developer and shall not be an obligation of the Agency.

6.3 Construction of the Project. Unless modified by operation of Section 6.7 of this Agreement, all works of construction and development of the Project shall be done in accordance with each Final Development Plan and the related Construction Plans approved pursuant to Article Three above and the Schedule of Performance. The development of the Property and construction of the Project shall be consistent with the Phases A through D described in this Section, unless such obligations are extended in accordance with Section 13.2 of this Agreement. Developer shall not commence development of a particular phase prior to satisfying the obligations of each phase described in this Section. Unless required by the County, Developer shall, to the extent practicable for engineering purposes, locate the sewer plant outside of the Property boundaries for the purpose of maximizing the amount of taxable property to generate tax increment revenue.

6.3.1 Phase A. Developer shall develop the property located on the Phase A Map, attached hereto as Exhibit \_\_\_ and incorporated herein by this reference ("**Phase A Map**"), and develop and/or complete the following:

A. Preparation of Program and Project Level Environmental Impact Report (EIR). By no later than June 30, 2011, Developer shall take all actions necessary, including submission of all necessary reports and documents and payment of funds necessary for preparation of an EIR (at the Program level for the entire proposed development and project level for all development on the Property.

B. Fire Facility. Developer shall design, obtain permits, construct and pay for a West County Fire Facility located on the Airport Industrial area of the Property, as shown on the Preliminary Site Plan, and in accordance with the requirements set forth in the West Stanislaus Fire District letter dated March 3, 2007, attached hereto as Exhibit \_\_\_ and incorporated herein by this reference. Developer shall complete construction of the West County Fire Facility prior to any certificate of occupancy for industrial space.

C. Inland Port Facility. By December 31, 2011, Developer, by itself or with a development partner, shall complete design and engineering for construction of the Inland Port. Thereafter, Developer, by itself or with a development partner, shall obtain permits and construct the Inland Port located on the Property, as shown on the Preliminary Site Plan, and in accordance with the following minimum requirements: (i) land improvement for the storage and handling of containers, including pavement, storm water control, fire protection, electrical service and lighting, (ii) structures for administrative and security functions, (iii) information and terminal operating system, (iv) facilities for lift equipment maintenance and repair including rail lift and ground support equipment, (v) facilities for chassis and container inspection and repair as determined by terminal services offering, (vi) all other terminal improvements necessary to for the acceptance and delivery of containers under a 24 hour/7day week continuous operation, and (vii) structures and facilities will need to maintain compliance with all applicable governances. By no later than December 31, 2013, Developer shall commence construction of the Inland Port, unless said deadline is extended in accordance with Section 13.2 or by the CTC.

D. Phase A Infrastructure Improvements. Provided that Developer has completed the obligations set forth in subparagraphs A through C above to the satisfaction of Agency, Developer shall design, obtain permits, construct and pay for all Infrastructure Improvements, as summarized in Exhibit \_\_\_, for ninety-three (93) acres of the Property ("**Agency Phase A Property**") and two-hundred fifty (250) acres of property adjacent to the Agency Phase A Property ("**Developer Phase A Property**"), and shown on the Phase A Map.

E. Private Improvements – Agency Property. Provided that Developer has completed the obligations set forth in subparagraph D above to the satisfaction of Agency, Developer shall design, obtain permits, commence construction for a spec building(s) consistent with the Master Plan Land Use designation and consisting of no less than 250,000 square feet located on the Agency Phase A Property.

F. Private Improvements – Developer Property. Provided that Developer has completed the obligations set forth in subparagraph E above to the satisfaction of Agency, Developer may design, obtain permits, construct and pay for industrial buildings and/or space located on the Developer Phase A Property. Developer shall complete construction and obtain final building permit approval(s) for the building described in Section 6.3.1.E and that are ready for tenant improvements prior to obtaining a certificate of occupancy for any building on Developer's property.

6.3.2 Phase B. Provided that Developer has developed the Phase A Property and completed the obligations set forth in Section 6.3.1 to the satisfaction of Agency, Developer shall commence development of the property located on the Phase B Map, attached hereto as Exhibit \_\_\_ and incorporated herein by this reference ("**Phase B Map**"), and develop and/or complete the following:

A. Phase B Infrastructure Improvements. By no later than December 31, 2019, Developer shall design, obtain permits, construct and pay for all Infrastructure Improvements, as

summarized in Exhibit \_\_\_\_, for \_\_\_\_\_ (\_\_\_\_) acres of the Property ("**Agency Phase B Property**") and shown on the Phase B Map.

B. Airport. By no later than December 31, 2019, Developer shall pay for and complete construction of Infrastructure Improvements related to the County's general aviation airport facility (the "**Airport**") necessary for a General Aviation designation from Caltrans. Notwithstanding the foregoing, Developer may pay to Agency one million five hundred thousand dollars (\$1,500,000) in lieu of completing the said improvements to the Airport. Developer shall provide Agency with a plan to promote general aviation at the Airport and shall use best efforts to promote and market the Airport (the "**Airport Marketing Plan**").

C. Crows Landing Community. Developer has agreed to construct or pay for the full costs of improvements to wastewater, sewer and potable water infrastructure improvements, including any lateral extensions to the Property boundary for sewer and wastewater and actual connections to private property for potable water, for the benefit of the Crows Landing Community. Developer shall design, obtain permits, pay for and construct the wastewater, sewer and potable water infrastructure improvements described herein for use by the Crow Landing Community, including actual connection to all private property (provided that each private property owner gives Developer consent to construct such water connections), as summarized in Exhibit \_\_\_\_ ("Crows Landing Improvements"). The parties agree that the improvements are intended to serve the community as it exists as of April 22, 2008. Agency may, but has no obligation to, reimburse Developer only for the Crows Landing Improvements with a portion of Tax Increment Revenue, if available, provided that the Crows Landing Improvements benefit the Property and the Crows Landing Community.

D. Private Improvements – Agency Property. Provided that Developer has completed the obligations set forth in subparagraphs A through C above to the satisfaction of Agency, Developer shall design, obtain permits, construct and pay for a spec industrial, distribution or business park building space consisting of no less than 250,000 square feet located on the Agency Phase A or B Property. Notwithstanding the foregoing, Developer shall have no obligation under this subparagraph D, provided that not less than 1,000,000 square feet of development has occurred on the Property.

E. Infrastructure Improvements – Developer Property. Provided that Developer has completed the obligations set forth in subparagraphs B through D above to the satisfaction of Agency, Developer may commence Infrastructure Improvements (including grading and utilities) for two hundred seventy-five (275) acres of Developer property located adjacent to the Developer Phase A Property and shown on the Phase B Map ("**Developer Phase B Property**").

F. Private Improvements – Developer Property. Provided that (i) Developer has completed the obligations set forth in subparagraphs A through D above to the satisfaction of Agency and (ii) not less than 219 acres of leaseable Property, excluding the Inland Port, is subject to a sublease, Developer may design, obtain permits, construct and pay for industrial buildings and/or space located on the Developer Phase B Property.

6.3.3 Phase C. Provided that Developer has developed the Phase B Property and completed the obligations set forth in Section 6.3.2 to the satisfaction of Agency, Developer shall commence development of the property located on the Phase C Map, attached hereto as Exhibit \_\_\_\_ and incorporated herein by this reference ("**Phase C Map**"), and develop and/or complete the following:

A. Crows Landing Improvements. By no later than December 31, 2019, Developer shall complete the Crows Landing Improvements.

B. Phase C Infrastructure Improvements. By no later than December 31, 2023, Developer shall design, obtain permits, pay for and complete construction of all Infrastructure Improvements, as summarized in Exhibit \_\_\_\_, for \_\_\_\_\_ (\_\_\_\_) acres of the Property ("**Agency Phase C Property**") and shown on the Phase C Map.

C. Private Improvements – Agency Property. Developer shall design, obtain permits, pay for and commence construction of a spec industrial, distribution or business park building space consisting of no less than 250,000 square feet located on the Agency Phase B Property. Notwithstanding the foregoing, Developer shall have no obligation under this subparagraph C, provided that Developer provides evidence to Agency that (i) not less than 2,250,000 square feet of development has occurred on the Property and (ii) not less than 500,000 square feet of development has occurred on the Phase B Property.

D. Infrastructure Improvements – Developer Property. Provided that Developer has completed the obligations set forth in subparagraphs A through C above to the satisfaction of Agency, Developer may commence Infrastructure Improvements (including grading and utilities) for two hundred seventy-five (275) acres of Developer property located adjacent to the Developer Phase B Property and shown on the Phase C Map ("**Developer Phase C Property**").

E. Private Improvements – Developer Property. Provided that (i) Developer has completed the obligations set forth in subparagraphs A through C above to the satisfaction of Agency and (ii) not less than 438 acres of leaseable Property, excluding the Inland Port, is subject to a sublease, Developer may design, obtain permits, construct and pay for industrial buildings and/or space located on the Developer Phase C Property.

6.3.4 Phase D. Provided that Developer has developed the Phase C Property and completed the obligations set forth in Section 6.3.3 to the satisfaction of Agency, Developer shall commence development of the property located on the Phase D Map, attached hereto as Exhibit \_\_\_\_ and incorporated herein by this reference ("**Phase D Map**"), and develop and/or complete the following:

A. Phase D Infrastructure Improvements. By no later than December 31, 2027, Developer shall design, obtain permits, pay for and complete construction of all Infrastructure Improvements, as summarized in Exhibit \_\_\_\_, for \_\_\_\_\_ (\_\_\_\_) acres of the Property ("**Agency Phase D Property**") and shown on the Phase D Map.

B. Private Improvements – Agency Property. Developer shall design, obtain permits, pay for and commence construction of a spec industrial, distribution or business park building space consisting of no less than 250,000 square feet located on the Agency Phase C Property. Notwithstanding the foregoing, Developer shall have no obligation under this subparagraph B, provided that Developer provides evidence to Agency that (i) not less than 3,500,000 square feet of development has occurred on the Property and (ii) not less than 250,000 square feet of development has occurred on the Phase B Property.

C. Private Improvements – Developer Property. Provided that (i) Developer has completed the obligations set forth in subparagraphs A through B above to the satisfaction of Agency and (ii) not less than 613 acres of leaseable Property, excluding the Inland Port, is subject to a sublease, Developer may design, obtain permits, construct and pay for Infrastructure Improvements and development of Developer property shown on the Phase C Map.

6.4 Construction Plans. Developer shall submit to County's [Building Department] the Construction Plans for the Project or phase of the Project within the time period specified in the Schedule of Performance. The Construction Plans shall be based upon the approved Project Description, the Final Development Plan, [the Design Documents] and the Project approvals, including any conditions of approval issued in connection therewith, and any other plans or development approvals issued by the County for the Project, and shall not materially deviate therefrom without the express written consent of Agency. Provided that the Construction Plans are consistent with the requirements of this Agreement, approval of the Construction Plans by County shall be deemed approval thereof by Agency.

6.5 Permits and Approvals. Following the Developer's receipt of Agency and/or County approval of each set of Final Development Plans and the Construction Plans for the Project, Developer shall apply for and make commercially reasonable efforts to obtain issuance of all necessary building permits for the Project. Agency staff shall render all reasonable assistance to Developer to obtain such building permits. Developer shall pay the County's usual and customary plan check and permit fees. Developer shall be responsible for acquisition and maintenance of all permits, licenses and other authorizations required in connection with renovation and operation of the Project and for payment of all development and other fees associated with the Project. All contractors, subcontractors and material suppliers involved in the development of the Project will be required to obtain a County business license and to pay all applicable fees and taxes in connection therewith.

6.6 Construction Plans Must Be Approved; Construction in Accordance with Plans and Approvals. Developer shall not commence construction of each phase of the Project until Developer has received approval of the Construction Plans by the County [Building Department] and all applicable building permits have been issued. Developer shall construct the Project in accordance with the approved Construction Plans and all other permits and approvals granted by the County and/or the Agency pertaining to development of the Project. Developer shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Property or the Project. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Project shall be performed by licensed contractors, engineers or architects, as applicable.

6.7 Change in Construction Plans. If Developer desires to make any material change in the Construction Plans, Developer shall submit the proposed changes to the Agency and County for approval, which approval shall not be unreasonably withheld or delayed if the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement, the Project Description, the Project approvals and the Conditions of Approval. For purposes of this Section 6.7, a "material change" means \_\_\_\_\_. Unless such proposed change is rejected within five (5) business days, Agency shall be deemed to have approved such change. If rejected within such time period, the previously approved Construction Plans shall continue to remain in full force and effect.

Any change in the Construction Plans required in order to comply with Applicable Law shall be deemed approved, so long as such changes do not substantially, nor materially, change the architecture, design, function, use, or other amenities of the Project as shown on the latest approved Construction Plans.

6.8 Defects in Plans. Neither Agency nor County shall be responsible to Developer or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Developer shall indemnify, defend (with counsel approved by Agency) and hold harmless the Indemnitees from and against any Claim for damage to property or injury to or death of any person arising out of or in any way relating to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Developer's indemnification obligations set forth in this Section shall survive the termination of this Agreement and the recordation of a Certificate of Completion. It is further agreed that Agency and County do not, and shall not, waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency or County, or Developer's deposit with Agency of any of the insurance policies described in this Agreement.

6.9 Equal Opportunity. During the construction of the Project there shall be no discrimination on the basis of race, religion, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in work on the Project. Developer shall direct its contractors and subcontractors to refrain from discrimination on such basis.

6.10 Prevailing Wage Policy. Developer shall carry out and shall cause its contractors to carry out the construction of the Project in conformity with all applicable laws and regulations, including without limitation, all applicable federal and state labor laws and standards. To the extent applicable to the Project, Developer and its subcontractors and agents, shall comply with California Labor Code Section 1720 et seq. and regulations adopted pursuant thereto ("**Prevailing Wage Laws**") and shall be responsible for carrying out the requirements of such provisions. Developer shall indemnify, defend (with counsel approved by Agency), protect and hold harmless the Indemnitees from and against any and all Claims whether known or unknown, and which directly or indirectly, in whole or in part, are caused by, arise from, or relate to, or are alleged to be caused by, arise from, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Agency, County or Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that Agency and County do not, and shall not, waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency or County, or Developer's deposit with Agency of any of the insurance policies described in this Agreement. Throughout the work of renovation of the Project, Developer shall make certified payrolls from the general contractor and all subcontractors available upon Agency request.

6.11 Performance and Payment Bond(s).

A. Prior to commencement of any phase of the Project, Developer shall cause Developer's contractor to deliver to Agency copies of payment bond(s) and performance bond(s) or other surety

instrument, acceptable to Agency in its sole discretion, issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction for such phase of the Project or a portion of the phase of the Project with prior written approval by the Agency. The bonds shall name the Agency and the County as co-obligees.

B. In lieu of such performance and payment bonds, Developer may submit evidence satisfactory to the Agency of the Developer's ability to commence and complete the construction of the Project in the form of an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution, with signature authority of the Agency required for any withdrawal, a completion guaranty in a form and from a guarantor acceptable to Agency, or set-asides of Mello-Roos or other revenue bonds sufficient for the purposes of this Section. Such evidence must be submitted in approvable form in sufficient time to allow the Agency to review and approve the information within the time specified in the Schedule of Performance.

## 6.12 Insurance.

6.12.1 Required Insurance. Prior to initiating work on any phase of the Project and continuing through the issuance of the [Certificate of Completion], Developer shall ensure that the following requirements are satisfied:

A. General Liability Insurance. Prior to initiating work on the Project and continuing throughout the term of the Ground Lease, Developer and all contractors working on behalf of Developer on the Project shall maintain a commercial general liability policy in the amount of Five Million Dollars (\$5,000,000) combined single limit per occurrence, or such other policy limit as Agency may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds.

B. Automobile Insurance. Throughout the term of the Ground Lease, Developer and all contractors working on behalf of Developer shall maintain comprehensive automobile liability coverage in the amount of Two Million Dollars (\$2,000,000), combined single limit including coverage for owned and non-owned vehicles and shall furnish or cause to be furnished to Agency evidence satisfactory to Agency that Developer and any contractor with whom Developer has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Automobile liability policies shall name the Indemnitees as additional insureds.

C. Builder's Risk Insurance. Upon commencement of any construction and continuing until issuance of a Certificate of Completion, Developer and all contractors working on behalf of Developer shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost for such applicable phase of the Project located on the Property. Said all-risk insurance shall be on a replacement cost basis naming Agency as loss payee. Upon completion of the construction of the Project, Developer shall maintain property insurance covering all risks of loss (other than earthquake), including flood (if required) for 100% of the replacement value of each phase of the Project with deductible, if any, in an amount acceptable to Agency, naming Agency as loss payee.

D. Worker's Compensation. Developer will deliver or cause to be delivered to Agency evidence satisfactory to Agency that Developer and all contractors with whom Developer has

contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation as required by law.

E. **Environmental Liability.** To be prepared as part of final DDA.

F. **Special Risk Insurance.** To be prepared as part of the final DDA.

6.12.2. Additional Requirements. Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII or such other rating as approved by Agency. The Commercial General Liability and comprehensive automobile policies required hereunder shall name County and Agency and their respective officers, officials, agents, employees, and representatives as additional insureds. Builder's Risk and property insurance shall name Agency and County as loss payees as their interests may appear. Prior to commencement of construction work, Developer shall furnish Agency with certificates of insurance in form acceptable to Agency evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify County and Agency of any material change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation, termination or non-renewal. Coverage provided by Developer shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by Agency or County, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the County and Agency. Developer shall furnish the required certificates and endorsements to Agency within the time provided in the Schedule of Performance, and shall provide Agency with certified copies of the required insurance policies upon request of Agency.

6.13 Certificate of Completion. Promptly after completion of construction of the Project in accordance with this Agreement and upon County's issuance of a certificate of occupancy for the Project, upon request of Developer, the Agency will provide an instrument so certifying in substantially the form attached hereto as Exhibit \_\_\_ ("**Certificate of Completion**"). Such Certificate of Completion shall constitute conclusive determination of satisfactory completion of construction of the applicable phase of the Project. Such Certificate of Completion shall be in such form as will enable it to be recorded among the official records of Stanislaus County. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust securing money loaned to finance the Project or any part thereof, shall not be deemed a notice of completion under the California Civil Code, and shall not be deemed a determination that the obligations of Developer which continue beyond the completion of construction of the Project (including without limitation the obligations imposed pursuant to Article \_\_\_ hereof [refers to use of the Property]) have been fulfilled.

6.14 Compliance with Laws. Developer shall carry out the construction of the Project in conformity with all applicable state, local and federal laws, ordinances, rules and regulations, including all applicable state and federal labor laws and standards, applicable provisions of the California Public Contracts Code, the County zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the County Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq. (all of the foregoing, "**Applicable Laws**").

6.15 Indemnity. Developer shall defend (with counsel approved by Agency), indemnify and hold harmless the Indemnitees from and against any and all present and future Claims arising from or in connection with Developer's failure to comply with all Applicable Laws and regulations relating to the renovation of the Project, including, without limitation, all applicable federal and state labor laws and standards, or in any other manner relating to development of the Project, or Developer's activities or performance under this Agreement whether such activities or performance be by Developer or by anyone directly or indirectly employed or contracted with by Developer and whether such Claim shall accrue or be discovered before or after termination of this Agreement. Developer's indemnity obligations under this Section 6.15 shall not extend to Claims resulting solely from Indemnitees' gross negligence or willful misconduct.

6.16 Liens and Stop Notices. Developer shall not allow to be placed on the Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Developer. If a claim of a lien or stop notice is given or recorded affecting the Project, Developer shall within forty-five (45) days of such recording or service: (a) pay and discharge the same; or (b) effect the release thereof by recording and delivering to the party entitled thereto a surety bond in sufficient form and amount or provide other assurance satisfactory to Agency that the claim of lien or stop notice will be paid or discharged.

6.17 Right of Agency to Satisfy Liens on the Property. If Developer fails to satisfy or discharge any lien or stop notice on the Property pursuant to Section 6.16 above, Agency shall have the right, but not the obligation, to satisfy any such liens or stop notices at Developer's expense and without further notice to Developer. In such event Developer shall be liable for and shall immediately reimburse Agency for such paid lien or stop notice. Alternatively, Agency may require Developer to immediately deposit with Agency the amount necessary to satisfy such lien or claim pending resolution thereof. Agency may use such deposit to satisfy any claim or lien that is adversely determined against Developer. Developer shall file a valid notice of cessation or notice of completion upon cessation of the construction of the Project for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the Property or the Project. Agency may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that Agency deems necessary or desirable to protect its interest in the Property and the Project.

6.18 Agency Rights of Access. Developer shall permit Agency through its officers, agents, or employees, during normal business hours, and accompanied by a representative of Developer, to enter upon the Property and/or Project following 24-hours written notice from Agency (except in the case of emergency in which case Agency shall provide such notice as may be practical under the circumstances) (a) to inspect the work of construction to determine that the same is in conformity with the requirements of this Agreement and the Agency Documents, and (b) following completion of construction, to inspect the ongoing operation and management of the Project to determine that the same is in conformance with the requirements of this Agreement, provided that Agency does not unlawfully interfere with the rights of tenants.

6.18.1 Agency Disclaimer. Developer acknowledges that Agency is under no obligation, and Agency neither undertakes nor assumes any responsibility or duty, to Developer or to any third party to in any manner review, supervise, or inspect the progress of construction work or the operations of the Project. Developer and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers and all other matters relating to the construction and operation of the

Project. Any review or inspection undertaken by the Agency is solely for the purpose of determining whether Developer is properly discharging its obligations to Agency, and shall not be relied upon by Developer or any third party as a warranty or representation by the Agency as to the quality of the design or construction of the Project or otherwise.

6.19 Progress Reports. During the construction of the Project, Developer shall provide Agency with written reports each January 1, April 1, July 1 and October 1 (commencing with the first such calendar quarter after commencement of any construction activity for the Project). Said reports shall provide the information required by Sections 6.3 and 6.10 of this Agreement and Section 3.10 on a semi-annual basis. Until construction of the Project has been completed, Developer authorizes Agency to have full access to all building inspection reports and other information to assist Agency in reviewing the actual progress of construction. Developer shall allow Agency to review construction documents and records maintained by Developer in the ordinary course of the construction as may be reasonably requested by Agency.

## ARTICLE SEVEN AGENCY ASSISTANCE

7.1 Financial Assistance. To assist with the development and construction of the Infrastructure Improvements, Agency shall provide financial assistance to Developer using net tax increment revenue generated solely from the Property pursuant to Section 33670 of Redevelopment Law after any statutory payments, Low and Moderate Income Housing Fund deposits and payment of administrative fees required by Redevelopment Law ("**Tax Increment Revenue**"). Pursuant to the terms and conditions more particularly set forth in the Reimbursement Agreement, Agency shall partially reimburse Developer for certain "Qualifying Costs" (as defined in the Reimbursement Agreement) of the Infrastructure Improvements as follows: (i) for Qualifying Costs not related to the Airport or the Crows Landing Community, Agency shall reimburse Developer an amount not to exceed eighty percent (80%) of Agency's annual Tax Increment Revenue; and (ii) at the request of Developer, Agency may, in its sole discretion, reimburse Developer for Qualifying Costs related to the Crows Landing Community provided that Agency can make the appropriate findings required to Section 33445(a) of Redevelopment Law and if any Tax Increment Revenue remains after reimbursement for Qualifying Costs described in (i) or (ii) described hereof.

7.2 Formation of Assessment District. Developer may cause to be formed for the purpose of financing the construction of the Infrastructure Improvements and municipal services and facilities, all as described in Exhibit attached hereto, any Community Facilities District, Community Services District, Landscape and Lighting District and/or Business Improvement District (herein, collectively, "**Financing Districts**") pursuant to the provisions of California law, provided that Developer waives any objection to the formation of each Financing District. Developer agrees that Financing Districts may include all or a portion of \_\_\_\_\_.. Developer may further request Agency to facilitate the imposition of a special tax by the County for the costs of such ongoing costs of the Infrastructure Improvements and municipal services and facilities. The Developer agrees to cause bonds, payable solely from revenues received by the County from assessments imposed within the District, to be issued in [one or more] series in accordance with the Schedule of Performance.

7.3 Impact Fees. Agency hereby agrees to participate or facilitate the participation of the County in the State Communities Infrastructure Program to provide funding for or reimbursement of impact fees related to the Project.

## ARTICLE EIGHT USE OF THE PROPERTY

8.1 Uses. Developer covenants and agrees for itself and its successors and assigns that for the duration of the Ground Lease, the Property shall be used for the purposes specified in this Agreement, and that for the term of the Ground Lease, the Property shall be used for business park, commercial and/or industrial uses in accordance with the terms and conditions thereof and with all Applicable Laws. The covenants against discrimination specified in Section 8.6 of this Agreement shall be perpetual, and the covenants pertaining to use and maintenance of the Property, the Infrastructure Improvements and the Private Improvements shall be in effect for the duration of the Ground Lease.

8.2 Inland Port Operations. Developer acknowledges and agrees that the operations of the Inland Port are a vital component of the development of the Property and that the public health, safety and welfare require that operations of the Inland Port be of the highest and best quality. The operations of the Inland Port shall be monitored and audited by a committee formed, at a minimum, amongst the Agency, County, Developer, and other members approved by Agency ("**Inland Port Committee**") as set forth in this Section.

8.2.1 Composition of the Inland Port Committee. The Inland Port Committee shall be composed of the following representatives: (i) three members representing the County and Agency (ii) two members representing the Developer, and (iii) one non-voting ex-officio member approved by Agency. The Inland Port Committee may include additional members approved by Agency. An Agency member shall chair the Inland Port Committee, coordinate meeting times, dates and location, and facilitate all meetings of the Inland Port Committee. Meetings of the Inland Port Committee shall be subject to the Brown Act (Government Code Section 54950 et seq.).

8.2.2 Third-Party Inland Port Operators. The Parties agree that a third-party operator, or several third-party operators if warranted by the Inland Port Committee, shall be selected to operate, manage and/or maintain the Inland Port or any portion thereof ("**Third-Party Operator**"). The Inland Port Committee will develop all requests for proposals, requests for qualifications or other documents necessary for soliciting proposals from Third-Party Operator candidates. The Inland Port Committee shall review and evaluate all Third-Party Operator candidates based on the following minimum services and qualifications:

A. Terminal Operations. Experience and capability to provide Inland Port terminal operations and services that are comparable and compatible with the Port of Oakland at all levels, provide the highest standards for port operations comparable to the Port of Oakland, and that are consistently and regularly upgraded commensurate with the application of technologies adopted by the Port of Oakland, and include, but not limited to, the following tasks: (i) gate processing, (ii) yard inventory control, (iii) operations oversight, (iv) real time terminal information control and dissemination, (v) container management including delivery, receiving, customs and freight controls, (vi) measure, record, and distribute, service performance data as an indicator of terminal performance, value and consistency, (vi) provide security and safety compatible with provisions established at the Port of Oakland, and in compliance with applicable federal, State and local guidelines and regulations, including those of the U.S. Department of Homeland Security,

(vii) manage overall activities and direct staff and vendors in the performance of required facility operations, and (viii) maintain permits and licenses necessary for all facility operations.

B. Rail Lift Operations. Experience and capability to provide Inland Port rail lift operations and services at performance thresholds that are compatible with the rail transportation services provided between the Port of Oakland and the West Park Inland Port and management of staff and equipment used in the loading and unloading railcars, removing and placing containers on chassis and the management and maintenance of all equipment associated with such activities, including, but not limited to, the following: (i) lift container on and off railcars, (ii) lift container on and off chassis, (iii) management and measurement of lift operations, (iv) program train loading including origin/destination reporting, (v) facilitate real-time lift activity reporting, (vi) comply with railcar loading and inspection practices as required under all rail related service agreements, (vii) comply with security and safety requirements established at the Port of Oakland, including those imposed under any rail service provider agreement, and (viii) procure, maintain and repair rail lift and ground support equipment.

C. Rail Lift Facilities. Experience and capability to develop, inspect and maintain (i) rail lift facilities including track, pavement and other civil infrastructure, (ii) railcar and locomotive storage facilities, (iii) track connections to the rail service corridor, (iv) all rail structures within the Inland Port facility, (v) structures and improvements necessary to support rail lift operations in support of requirements listed under Inland Port Rail Lift Operations.

D. Rail Transportation. Experience and capability to provide rail transportation management services for train movements between the Port of Oakland and the Inland Port based on train size and service frequency as determined and limited by rail facilities at the Port of Oakland, mainline rail corridor restrictions and rail facilities at the Inland Port. Services include schedule and movement information management, commodity security and safety services comparable and compatible to the Port of Oakland, and coordination of rail services with competing users of the main rail line corridor over which the Inland Port rail service operates. A Third-Party Operator candidate must demonstrate experience with the following: (i) train service scheduling and rail corridor train movement performance management, (ii) train service coordination with competing main rail corridor services (iii) coordination between rail corridor service and Port and Inland Port rail lift operations including train turnaround (unload/reload) time, (iv) train equipment inspection and repair including initial train testing prior to departures, (v) mainline train handling and terminal switching, (vi) rail equipment selection including railcars and locomotives to be used in this service, (vii) capacity planning including container volume management, and rail corridor use, (viii) train operations reporting and operating controls including dispatching and signal control. Must have Working knowledge of railroad operating rules and experience coordinating equipment operating activities. General knowledge of relevant FRA, FDA, AAR, and EPA rules, regulations and guidelines.

E. Commercially Reasonable Quality. Demonstrate that the services described in paragraphs (A) through (D) have been provided at a "commercially reasonable quality" to other similar port operations and/or facilities. "Commercially reasonable quality" shall be evidenced by the following: (i) industry and management experience based on the number of years of experience, containers and/or railcars handled annually, and currently managed ports, (ii) safety performance based on factors such as personal injury frequency rate, number of general liability incidences and costs of such incidences, number of equipment liability incidences, number of workmen's compensation claims and related costs, and number of derailments or lost containers, (iii) adopted safety procedures and programs and demonstrated improvements to safety performance, (iv) knowledge of federal, state and local laws and regulations related

to port operations, (v) maintenance of any licenses or permits required for the Inland Port, and (vi) references or recommendations from owners of similar ports and/or facilities, which may be either actively or previously managed by such candidate.

The Inland Port Committee may modify the foregoing services and/or qualifications pursuant to the specific market, customer or transportation needs of the Inland Port. Agency shall have final approval of any requests for proposals, requests for qualifications or other related documents. The Inland Port Committee shall meet as needed for the purposes of this Section 8.2.3.

8.2.4 Approval of Third-Party Operator. The Inland Port Committee will review, evaluate, and rank all proposals submitted by Third-Party Operator candidates and will recommend not more than three (3) (unless only two operators apply) Third-Party Operator candidates based upon the criteria set forth in Section 8.2.3 as final candidates for selection by Developer. Developer shall select a Third-Party Operator from the recommended list.

8.2.5 Subsequent Third-Party Operator. If any Third-Party Operator is terminated or voluntarily no longer operates and manages the Inland Port during the term of the Ground Lease, the Parties agree that the selection procedures set forth in this Section 8.2 shall be followed for the selection of each subsequent Third-Party Operator.

8.2.6 Inland Port Oversight. Prior to commencement of operations at the Inland Port, the Third-Party Operator shall develop and identify initial and ongoing practices and relationships for safe, effective and efficient operations at the Inland Port, subject to review and approval by the Inland Port Committee. During the term of the Lease for the Inland Port, the Inland Port Committee shall annually review and evaluate the performance of the Inland Port Operations and the Third-Party Operator, the financial performance of the Inland Port and establish or modify performance standards that shall be consistent with and at least comparable to those of the Port of Oakland. Based upon said review and evaluation, the Inland Port Committee will provide Agency with recommendations regarding improvements or performance standards.

### 8.3 Commercial/Industrial/Business Park Leasing.

8.3.1 Tenants. Developer shall provide Agency with the name and line of business for each prospective tenant prior to entering into a lease with such tenant for a space in or at the Property. Agency shall not have any approval rights over the identity of a tenant or the terms of any such lease; provided however, Developer shall not enter into a lease with, or otherwise permit the occupancy of any portion of the Property by, any person or business engaged or proposed to be engaged at such site prohibited by the County Code. Developer shall provide the information required by this Section 8.3 to Agency no less than 10 days prior to the execution of any lease for any portion of the Property or any Improvements located thereon in order to provide the Agency with reasonable time to review such lease for conformity with the County Code and the limitations set forth in this Section. Developer shall use commercially reasonable efforts (defined below) to attract business park, commercial and/or industrial tenants in furtherance of the goals and objectives of the Redevelopment Plan and this Agreement.

8.3.2 Commercial/Industrial/Business Park Space/Vacancies. In order to assist Agency in accomplishing the objectives of the Redevelopment Plan, Developer shall use commercially reasonable efforts to ensure that the Property's business park, commercial and/or industrial spaces are fully leased at

all times during the term of the Ground Lease. By no later than six (6) months after the Effective Date, Developer shall provide for Agency review, a formal marketing plan describing the commercially reasonable efforts Developer shall employ for leasing any commercial and/or industrial spaces. **“Commercially reasonable efforts”** shall include, at a minimum, the employment of a commercial/industrial leasing agent reasonably approved by the Agency; a marketing program that regularly targets national businesses as well as state and local businesses; and after the commencement of construction the provision of a quarterly report (every three months) to Agency summarizing the marketing efforts undertaken by Developer for the previous three months including a list of potential tenants contacted, contact person, use, date(s) contacted, size, and status of discussion (e.g. term sheet, draft lease, etc.).

8.3.3 Prohibited Uses. Developer shall not use or lease the Property, the Infrastructure Improvements or any Private Improvements for the purpose of storage or disposal of any (i) Hazardous Materials, (ii) “solid waste” as defined in Section 40191 of the California Public Resources Code, (iii) “Medical waste” as defined in Section 117690 of the California Health and Safety Code, (iv) Radioactive waste, substances, products and/or materials regulated pursuant to the Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code), or any other materials, substances, products and/or waste Agency reasonably declares hazardous to the health and welfare of the County. Notwithstanding the foregoing, Developer may use or allow the use of the foregoing materials, substances, products and/or waste on the Property, provided that such use is directly related to, and only incidental to, the business operations of the proposed uses of the Property and Developer complies the requirements set forth in this Article Eight.

8.4 Maintenance. Developer shall maintain the Property, the Infrastructure Improvements, the Private Improvements and related landscaping and common areas in accordance with the County Code in a manner consistent with community standards, and shall comply with all applicable federal, state and local laws and regulations pertaining to the Property. Developer covenants that prior to completion of the Project, the portions of the Property undergoing construction shall be maintained in a neat and orderly condition to the extent practicable and in accordance with industry health and safety standards. Developer shall maintain the Property, the Infrastructure Improvements and the Private Improvements in good repair and working order, and in a neat, clean and orderly condition, including the walkways, driveways, and landscaping, and from time to time make all necessary and proper repairs, renewals and replacements.

In the event that there arises at any time prior to the expiration of the term of the Ground Lease, a condition in contravention of the above maintenance standard, then Agency shall notify Developer in writing of such condition, giving Developer thirty (30) days from receipt of such notice to cure such condition. In the event Developer fails to cure or commence to cure the condition within the time allowed, Agency shall have the right to perform all acts necessary to cure such condition, or to pursue such other remedy available to Agency and to receive from Developer Agency's cost in taking such action. The parties further mutually understand and agree that the rights conferred upon Agency expressly include the right to enforce or establish a lien or other encumbrance against the Property. The foregoing provisions shall be a covenant running with the land until the expiration of the term of the Ground Lease, enforceable by Agency, its successors and assigns. Nothing in the foregoing provisions shall preclude Developer from making any alterations, additions, or other changes to the Project, provided that such changes comply with this Agreement and each approved Final Development Plan, and with all necessary land use, building permits, and other approvals from the County.

8.5 Taxes and Assessments. Developer shall pay all real and personal property taxes including possessory interest taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the Property, or payable by Developer, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that the Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

8.6 Non-Discrimination and Mandatory Language in All Subsequent Deeds, Leases and Contracts. Developer covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project or the Property, nor shall Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, occupancy of tenants, lessees, subtenants, sublessees or vendees in the Project. The foregoing covenants shall run with the land. All deeds, leases or contracts made or entered into by Developer, its successors or assigns, as to any portion of the Property or the Private Improvements shall contain the following language:

- A. In deeds: "Grantee herein covenants by and for himself of herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of a person, or of a group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, 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 him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenant shall run with the land."
- B. In leases: "The lessee herein covenants by and for the himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

- C. In contracts: "The contractor herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this contract 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 any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein transferred nor shall the contractor or any person claiming under or through the contractor establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the property herein transferred. The foregoing provisions shall be binding upon and shall obligate the contractor and any subcontracting parties, successors, assigns and other transferees under the contract."

Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to this Section 8.6.

8.7 Failure to Perform. Developer's failure to perform the obligations set forth in this Article Eight will be a default under this Agreement subject to the remedies provided in Article Twelve. The provisions of this Article Eight will survive the Closing and will not be deemed merged into any instrument of conveyance delivered at the Closing.

## ARTICLE NINE RESIDENTIAL USE RESTRICTIVE COVENANT

9.1 No Residential Use. As set forth in Section 8.1, Developer covenants and agrees for itself and its successors and assigns that for the duration of the Ground Lease, the Property shall be used for the purposes specified in this Agreement, and that for the term of the Ground Lease, the Property shall be used for commercial, industrial and business park uses in accordance with the terms and conditions thereof. Developer covenants and warrants that the Property and the Developer Property shall not be used for residential use except for residential uses that are incidental to the primary use of the property and only when approved by the County. Said incidental residential uses may include a caretaker unit, living quarters for a fire protection facility, or other similar residential units incidental to commercial, business or industrial uses. Developer hereby agrees that any development agreement (pursuant to Government Code Section 65864 *et seq.*) related to the entitlements for the Property or the Developer Property shall contain a provision pursuant to which Developer shall not seek or apply for a general plan land use designation or zoning for residential development for the term of said development agreement.

9.2 Tax Increment Reimbursement; Damages. In addition to any rights and/or remedies available to Agency provided in Section \_\_\_\_, if Developer is in default of its obligations under Section 9.1, Developer shall pay to Agency the following:

A. Reimbursement of Tax Increment. Developer shall reimburse Agency for all amounts paid by Agency to Developer for the costs of the Infrastructure Improvements not related to the Airport or the Crows Landing Community as set forth in Article Seven, including seven percent (7%) interest thereon.

B. Liquidated Damages. [To be prepared as part of the final DDA.]

## ARTICLE TEN CHANGES IN DEVELOPER

10.1 Identity of Developer; Changes Only Pursuant to this Agreement. Developer and its principals have represented that they possess the necessary expertise, skill and ability to carry out the development of the Project on the Property pursuant to this Agreement. The qualifications, experience, financial capability and expertise of Developer and its principals are of particular concern to Agency. It is because of those qualifications, experience, financial capability and expertise that Agency has entered into this Agreement with Developer. PCCP West Park, LLC and Gerry Kamilos, each in their own capacity, shall actively participate in the development and operations of Property and any matters related thereto for not less than thirty (30) years after the Effective Date. No voluntary or involuntary successor in interest to Developer shall acquire any rights or powers under this Agreement, except as hereinafter provided.

10.2 Prohibition on Transfer. Prior to the expiration of the term of the Ground Lease, Developer shall not, except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively "**Transfer**") of the whole or any part of the Property, the Project, the Improvements or this Agreement without the prior written approval of the Agency, such approval not to be unreasonably withheld. Any such attempt to assign this Agreement without Agency's consent shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, prior to the expiration of the term of the Ground Lease, except as expressly permitted by this Agreement, Developer shall not undergo any significant change of ownership without the prior written approval of Agency, which shall not be unreasonably withheld. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Developer, taking all transfers into account on a cumulative basis.

10.3 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent:

- A. the granting of temporary easements or permits to facilitate development of the Property;
- B. the dedication of any property interests required pursuant to this Agreement;
- C. the sublease of the Private Improvements for business park, commercial or industrial tenants; or
- D. assignments creating security interests for the purpose of financing the construction or permanent financing of the Project or the Property pursuant to the approved Master Financing Plan (subject to the requirements of Article Eleven) or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest.

10.4 Requirements for Proposed Transfers. Agency may, in the exercise of its sole discretion, approve a transfer of this Agreement, the leasehold estate in the Property or portion thereof only if all of the following requirements are met (provided however, the requirements of this Section 10.4 shall not apply to Transfers described in clauses (A) through (D) of Section 10.3):

A. the proposed transferee demonstrates to the Agency's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by Agency to competently complete developer and construction of the Project or any portion thereof and to otherwise fulfill the obligations undertaken by Developer under this Agreement;

B. Developer and the proposed transferee shall submit for Agency review and approval all instruments and other legal documents proposed to effect any Transfer of this Agreement, the Property or interest therein together with such documentation of the proposed transferee's qualifications and development capacity as the Agency may reasonably request;

C. Developer and the proposed transferee shall submit for Agency review and approval copies of the proposed transferee's corporate formation and governance documents (transferee's articles of incorporation and bylaws; LP-1 and partnership agreement; or articles of organization and operating agreement, as applicable);

D. pursuant to an assignment and assumption agreement acceptable to Agency, the proposed transferee shall expressly assume all of the rights and obligations of Developer under Agency Documents arising after the effective date of the Transfer, assume all obligations of Developer arising prior to the effective date of the Transfer (unless Developer expressly remains responsible for such obligations) and comply with all Applicable Laws, including such land uses for the Property;

E. the Transfer shall be effectuated pursuant to a written instrument satisfactory to the Agency in form recordable in the Official Records of Stanislaus County; and

F. in the event of a default by an approved transferee, Developer shall cure or remedy any default by such transferee and shall remain responsible for all obligations pursuant to this Agreement and the Ground Lease.

Consent to any proposed Transfer may be given by Agency's Executive Director unless the Executive Director, in his or her discretion, refers the matter of approval to Agency's governing board. Notwithstanding the foregoing, Agency shall not unreasonably withhold its consent to a Transfer made to a Developer Controlled Affiliate. For purposes hereof, a "Controlled Affiliate" shall mean an entity that controls, is controlled by, or is under common control with Developer, and "control" means the ownership of fifty percent (50%) or more of the ownership interests in said entity.

10.5 Effect of Transfer without Agency Consent. In the absence of specific written agreement by the Agency, no Transfer by Developer shall be deemed to relieve the Developer or any other party from any obligation under this Agreement. Without limiting any other remedy Agency may have under this Agreement, or under law or equity, this Agreement may be terminated by Agency if without the prior written approval of the Agency, Developer assigns or Transfers this Agreement or Developer's leasehold interest in the Property prior to the Agency's issuance of a Certificate of Completion.

**ARTICLE ELEVEN  
SECURITY FINANCING AND RIGHTS OF HOLDERS**

11.1 Mortgages and Deeds of Trust for Development. Mortgages and deeds of trust or any other reasonable security instrument are permitted to be placed on the Property, but only for the purpose of securing loans approved pursuant to the approved Financing Plan for the purpose of financing the costs of the design and rehabilitation of the Project and other expenditures necessary for development and permanent financing of the Project pursuant to this Agreement. Developer covenants and agrees, on behalf of itself and its successors and assigns, that it shall not enter into any conveyance for such financing without the prior written approval of Agency's Executive Director. As used herein, the terms "mortgage" and "deed of trust" shall mean all other appropriate security interests used in financing real estate construction and land development.

11.2 Holder Not Obligated to Construct Project. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated to complete development and construction of the Project or any portion thereof or to guarantee such completion. Nothing in this Agreement shall be deemed to or be construed to permit or authorize any such holder to devote the Property to any uses or to construct any improvements thereon other than those uses, Infrastructure Improvements or Private Improvements provided for or authorized by this Agreement.

11.3 Notice of Default; Right to Cure. Whenever Agency delivers any notice of default or demand to Developer with respect to the commencement, completion, or cessation of the work of construction of the Infrastructure Improvements and/or the Private Improvements, Agency shall concurrently deliver a copy of such notice to each holder of record of any mortgage or deed of trust secured by the Property, provided that Agency has been provided an address for such notices. Agency shall have no liability to any such holder for any failure by Agency to provide notice to such holder. Each such holder shall have the right, but not the obligation, at its option, within sixty (60) days after Agency's delivery of the copy of the notice, to cure or remedy or, if the default is of a nature that it cannot be cured within such time period, to commence to cure or remedy any default hereunder. In the event possession of the Property (or portion thereof) is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the rehabilitation of the Improvements (beyond the extent necessary to conserve or protect such improvements or work already done) without first having expressly assumed in writing Developer's obligations to the Agency under this Agreement. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the Infrastructure Improvements and/or Private Improvements, as the case may be, to which the lien or title of such holder relates. Any such holder properly completing the Improvements shall be entitled to a Certificate of Completion upon compliance with the requirements of this Agreement.

11.4 Failure of Holder to Complete the Project. In any case where six (6) months after occurrence of an Event of Default by the Developer in completion of construction of the Project, the holder of record of any mortgage or deed of trust, has not exercised its option to complete construction of the Project, or having first exercised its option to undertake such rehabilitation, has not proceeded diligently with such work,

Agency shall be afforded those rights against such holder it would otherwise have against Developer under this Agreement. In addition, Agency shall have the right prior to foreclosure or transfer of deed in lieu of foreclosure to purchase the mortgage or deed of trust by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest and other charges properly payable under the mortgage or deed of trust. If the ownership of the Property has vested in the holder, Agency, shall have the right for sixty (60) days after such vesting to acquire the Property from the holder upon payment of an amount equal to the sum of the following:

- A. The unpaid mortgage or deed of trust debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- B. All expenses with respect to foreclosure;
- C. The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent ownership or management of the Property (or portion thereof);
- D. The costs of any improvements made by such holder; and
- E. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by Agency.

11.5 Right of Agency to Cure Defaults. In the event of a breach or default by Developer under a mortgage or deed of trust secured by Developer's leasehold interest in the Property, and the holder of any mortgage or deed of trust has not exercised its option to cure the default, Agency may cure the default, without acceleration of the subject loan, following prior notice thereof to Developer. In such event, Developer shall be liable for, and Agency shall be entitled to reimbursement from Developer for all costs and expenses incurred by Agency associated with and attributable to the curing of the default or breach. Agency shall also be entitled to record a lien upon Developer's leasehold estate in the Property to the extent of such incurred costs and disbursements.

11.6 Holder to be Notified. The provisions of this Article Eleven shall be incorporated into the relevant deed of trust or mortgage to the extent deemed necessary by, and in form and substance reasonably satisfactorily to Agency, or shall be acknowledged by the holder of such instrument prior to its creating any security right or interest in the Property or any interest or estate therein.

11.7 Estoppel Certificates. Either Developer or Agency may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party (i) this Agreement is in full force and effect and a binding obligation of the parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, such notice shall describe the nature and amount of any such default. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. The Agency Executive Director is authorized to execute any certificate requested by Developer hereunder.

**ARTICLE TWELVE  
DEFAULT; REMEDIES**

12.1 Fault of Developer. The occurrence of any of the following shall constitute a Developer Event of Default:

(a) The Developer fails to exercise good faith and diligent efforts to satisfy, within the time and in the manner set forth in this Agreement, one or more of the conditions precedent to the Agency's obligation to lease the Property to the Developer set forth in Article Three and the Schedule of Performance (as such may be extended pursuant to mutual agreement of the Parties)

(b) A Developer Event of Default arises under the Lease and remains uncured beyond any applicable cure period;

(c) Prior to the issuance of a Certificate of Completion, an Event of Default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Agency Property or part thereof and remains uncured beyond any applicable cure period such that the holder of such security instrument has exercised or given notice of its intent to exercise the right to accelerate repayment of such loan;

(d) Absent any enforced delay pursuant to Section 13.2, Developer fails to commence or complete the following: (i) procure in a timely manner a building permit or other approvals for the Project or abandons any further attempts there is a reasonably likelihood that such permit or the proper authority would otherwise issue other approvals in a timely manner and in substance satisfactory to Developer, (ii) construction of the Project pursuant to Article Six within the times set forth in the Schedule of Performance, or once construction has commenced, Developer abandons or suspends construction of any Project component prior to completion of all construction for a period of sixty (60) days, or (iii) any obligation set forth in Steps A through D of the Schedule of Performance and pursuant to such times set forth therein;

(e) A Transfer occurs, either voluntarily or involuntarily, in violation of Article Ten;

(f) Developer fails to maintain insurance on the Property and the Project [Project to be defined] as required pursuant to Section 6.12, and Developer fails to cure such default within 10 days.

(g) Following conveyance of the Property to Developer, subject to Developer's right to contest the following charges pursuant to Section 8.5 if Developer fails to pay taxes or assessments due on the Property or the Project [Project to be defined] or fails to pay any other charge that may result in a lien on the Property or the Project [project to be defined], and Developer fails to cure such default within 10 days.

(h) Any representation or warranty contained in this Agreement or in any financial statement, certificate or report submitted to the Agency in connection with this Agreement or any other Agency Document proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the Agency;

(i) A court having jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for either of the Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of the Developer;

(j) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(k) The Developer shall have voluntarily suspended its business or Developer's limited liability company shall have been dissolved or terminated; or

(l) Developer fails to enter into a Memorandum of Understanding with Union Pacific Railroad and/or other related private railroad ("Rail MOU") prior to the deadline established by the CTC for baseline agreements; or

(m) If Developer defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 12.1 and unless a different cure period is specified for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which Agency shall have given written notice of the default to Developer; provided however, if a nonmonetary default is of a nature that it cannot be cured within 30 days, a Developer Event of Default shall not arise hereunder if Developer commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than 120 days after receipt of notice of the default.

Upon Developer's default under this Agreement, the Agency shall provide written notice of the purported breach, and unless a different cure period is specified above or in the case of a Developer Event of Default arising under clauses (c) through (k) above, Developer shall have thirty (30) days after the date upon which Agency shall have given written notice of the default to Developer to cure such default; provided however, if a nonmonetary default is of a nature that it cannot be cured within 30 days, a Developer Event of Default shall not arise hereunder if Developer commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than 120 days after receipt of notice of the default. In the event Developer fails to cure a monetary or non-monetary default within the cure periods set forth in this paragraph, then this Agreement, and any rights of the Developer or any assignee or transferee in this Agreement pertaining thereto or arising therefrom with respect to the Agency, may, at the option of the Agency and pursuant to the right to cure as provided in Section 12.1, be terminated by the Agency by written notice thereof to the Developer.

12.2 Fault of Agency. Provided that the Developer has satisfied its obligations hereunder, the following events shall constitute an Agency Event of Default:

(a) The Agency, without good cause, fails to convey the Property to Developer within the time and in the manner set forth in Article Four, and Developer is otherwise entitled by this Agreement to such conveyance; or

(b) The Agency breaches any other material provision of this Agreement and fails to cure such breach within any applicable cure period.

Upon the occurrence of any of the above-described events, Developer shall first notify the Agency in writing of its purported breach or failure, giving the Agency thirty (30) days from receipt of such notice to cure or, if cure cannot be accomplished within thirty (30) days, to commence to cure such breach, failure, or act. In the event the Agency does not then so cure within thirty (30) days, or if the breach or failure is of such a nature that it cannot be cured within thirty (30) days, the Agency fails to commence to cure within thirty (30) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the Developer shall be afforded all of its rights at law or in equity, by taking all or any of the following remedies: (1) terminating this Agreement by delivery of written notice to Agency (provided, however, that the provisions of Sections 5.1, 5.4.2, 6.8, 6.10, 6.15, 13.1 and 13.19 shall survive such termination); and (2) prosecuting an action for specific performance. Notwithstanding anything to the contrary contained herein, in no event shall damages be awarded against Agency upon the occurrence of an Agency Event of Default or upon termination of this Agreement.

12.3 Legal Actions; Specific Performance; Limitation on Damages. Upon the occurrence of a Developer Event of Default and the expiration of the applicable cure period, Agency shall have the right, in addition to any other rights or remedies provided in this Agreement and subject to any applicable restrictions set forth in this Agreement, to institute an action at law or in equity to seek specific performance of the terms of this Agreement, or to cure, correct, prevent or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Any such legal actions will be filed in the Superior Court of Stanislaus County, California.

12.4 Remedies Cumulative. The rights and remedies of the parties hereunder are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either Party will not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default.

12.5 Acceptance of Service of Process. In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency will be made by personal service upon the Executive Director of the Agency or in such other manner as may be provided by law. In the event that any legal action is commenced by the Agency against the Developer, service of process on the Developer will be made by personal service upon Developer's agent for service of process of the Developer or in such other manner as may be provided by law.

12.6 Inaction Not a Waiver of Default. No failure or delay by either Party in asserting any of its rights or remedies hereunder shall operate as a waiver of any default or of any such right or remedy, nor deprive such Party of its right to institute and maintain any action or proceeding which it may deem necessary to

protect, assert or enforce any such rights or remedies. Without limiting the generality of the foregoing, the failure or delay by either Party in providing a notice of default shall not constitute a waiver of any default.

### ARTICLE THIRTEEN GENERAL PROVISIONS

13.1 No Brokers. Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transactions contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the close of escrow and the expiration or earlier termination of this Agreement.

13.2 Enforced Delay; Economic Infeasibility; Entitlement Delays; Extension of Times of Performance.

A. Subject to the limitations set forth below, performance by either Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Party, acts or failures to act of the County or any other public or governmental agency or entity (other than the acts or failures to act of Agency which shall not excuse performance by Agency), or any other cause beyond the affected Party's reasonable control. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Party within ten (10) days of receipt of the notice. Neither Party shall unreasonably withhold consent to an extension of time pursuant to this Section.

B. Agency and Developer acknowledge that adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete construction of the Infrastructure Improvements shall not constitute grounds of enforced delay pursuant to paragraph (A) hereof. Developer may request an extension of time, not to exceed twelve (12) months in each instance, for the commencement of the construction of Infrastructure Improvements on a particular parcel or for a particular phase if, no later than sixty (60) days prior to the commencement date of such Infrastructure Improvements is scheduled to start in accordance with the Schedule of Performance, Developer has submitted a written request to Agency accompanied by evidence reasonably satisfactory to Agency demonstrating that the Infrastructure Improvements and the Private Improvements to be constructed are not economically feasible at such time due. Such evidence shall include mutually acceptable third-party supporting information, documenting such factors as costs, costs of funds, lease activity, net absorption rates, occupancy rates, rental rates, containers handled by the Inland Port and any other relevant factors impacting the economic feasibility of the parcel in question and comparing such factors at the time of the request for extension to the same factors at the Effective Date. If such factors are materially worse than on the Effective Date, as evidenced by such third-party supporting information, then Agency shall not unreasonably withhold its consent to a request by Developer for an extension of time in accordance with the provisions of this Section.

C. Upon written request by Developer, the Rent Commencement Date, the times set forth in Section 6.3 and the times set forth in the Schedule of Performance shall be extended as set forth in this paragraph C, provided that, after Developer obtains its entitlements (including certification of a Final EIR) for development of the Property, Developer provides evidence that the development and/or construction of the Property may not commence because of litigation, referendum or a delay allowed pursuant to this Section 13.2 related to said entitlements (“**Entitlement Delays**”). Subject to the foregoing sentence, Developer shall commence the payment of Base Rent and each obligation pursuant to the DDA and Schedule of Performance by no later than the earlier of three (3) years after the Rent Commencement Date or resolution of the Entitlement Delays that permits the commencement of the development and/or construction of the Property. Upon expiration of said 3-year extension, the Rent Commencement Date and the commencement of obligations set forth in Schedule of Performance and Section 6.3 will be extended for a maximum of an additional four (4) years, provided that any litigation related to Developer’s entitlements is appealed.

D. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Developer and Agency (acting in the discretion of its Executive Director unless he or she determines in his or her discretion to refer such matter to the governing board of the Agency).

13.3 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- a. personal delivery, in which case notice is effective upon delivery; or
- b. nationally recognized overnight courier, with charges prepaid or charged to the sender’s account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

**Agency:**                         Redevelopment Agency of the County of Stanislaus  
 1010 Tenth Street, Suite 6800  
 Modesto, CA 95354  
 Attention: Executive Director  
 Telephone: (209) 525-6333  
 Facsimile: (209) 525-6226

**with a copy to:**                 The Office of County Counsel  
 1010 Tenth Street, Suite 6400  
 Modesto, CA 95354  
 Attention: County Counsel  
 Telephone: (209) 525-6376  
 Facsimile: (209) 525-4473

**Developer:**                       PCCP West Park, LLC

111249 Gold Country Blvd, Suite 190  
Gold River, CA 95670  
Attn: Gerry Kamilos  
Phone: (916) 631-8440  
Facsimile: (916) 631-8445

**with a copy to:** Trainor Fairbrook  
980 Fulton Avenue  
Sacramento, CA 95825  
Attn: Charles W. Trainor  
Phone: (916) 929-7000  
Facsimile: (916) 929-7111

13.4 Inspection of Books and Records. Upon request, Agency has the right at all reasonable times to inspect on a confidential basis the books, records and all other documentation of Developer pertaining to its obligations under this Agreement. Developer also has the right at all reasonable times to inspect the books, records and all other documentation of Agency pertaining to its obligations under this Agreement. Said rights of inspection shall terminate upon the issuance of a Certificate of Completion with respect to Agency's inspection of Developer's books and records.

13.5 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

13.6 Waivers; Modification.

A. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party.

B. This Agreement may be amended or modified only by a written instrument executed by the Parties. Agency and Developer mutually agree to consider reasonable requests for amendments to this Agreement (including any of the Attachments hereto) that may be made by any of the Parties hereto, lending institutions or bond counsel or financial consultants to Agency, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein. The Executive Director is hereby authorized to execute any such amendments to this Agreement on behalf of Agency not otherwise requiring approval of the Agency Board of Directors or the County Board of Supervisors, as the case may be, pursuant to California Community Redevelopment Law.

13.7 Binding on Successors. Subject to the restrictions on Transfers set forth in Article Ten, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and

assigns. Any reference in this Agreement to a specifically named party shall be deemed to apply to any permitted successor and assign of such party who has acquired an interest in compliance with this Agreement or under law.

13.8 Survival. All representations and covenants made by Developer hereunder and Developer's indemnification obligations pursuant to Sections 5.1, 5.4.2, 6.8, 6.10, 6.15, 13.1 and 13.19 shall survive the expiration or termination of this Agreement and the issuance and recordation of a Certificate of Completion.

13.9 Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

13.10 Action or Approval. Whenever action and/or approval by Agency is required under this Agreement, Agency's Executive Director or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the Executive Director determines in his or her discretion that such action or approval requires referral to Agency's Board for consideration.

13.11 Entire Agreement. This Agreement, including Exhibits \_\_\_\_\_ through \_\_\_\_\_ attached hereto and incorporated herein by this reference, together with the other Agency Documents contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof.

13.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party. Any executed counterpart of this Amendment may be delivered to the other Party by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

13.13 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

13.14 No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

13.15 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

13.16 Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of Agency or County shall be personally liable to Developer or its successors in interest in the event of any

default or breach by Agency or for any amount which may become due to Developer or its successors in interest pursuant to this Agreement.

13.17 Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a "business day" means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of California.

13.18 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of Stanislaus County or in the Federal District Court for the Eastern District of California.

13.19 General Indemnification. Developer shall indemnify, defend (with counsel approved by Agency) and hold harmless Indemnitees from all Claims (including without limitation, attorneys' fees) arising in connection with any claim, action or proceeding to attack, set aside, void, or annul any approval by the County or the Agency or any of its agencies, departments, commissions, agents, officers, employees or legislative body concerning the Project or this Agreement except to the extent caused by County's or Agency's gross negligence or willful misconduct. The Agency will promptly notify Developer of any such claim, action or proceeding, and will cooperate fully in the defense. The Agency and County may, within the unlimited discretion of each, participate in the defense of any such claim, action or proceeding, and if the Agency or County chooses to do so, Developer shall reimburse Agency and County for reasonable attorneys' fees and expenses incurred.

13.20 Good Faith; Cooperation. The Parties recognize that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement or the Ground Lease, and the Parties hereby agree that it is their intention that this Agreement and the Ground Lease shall operate fairly between them and without detriment to the interests of either of them, and that, if during the term of this Agreement or the Ground Lease either Party believes that this Agreement or the Ground Lease is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness. The Parties recognize and agree that further actions and approvals and entitlements may be necessary to effectuate the intentions of the Parties and to carry out the goals of this Disposition and Development Agreement and the Ground Lease. Therefore, the Parties hereto pledge to cooperate, assist and act in good faith to accomplish such further actions as may be required to carry out both agreements.

## CROWS LANDING NAVAL AIR FACILITY

## Draft Lease Rent Provision

1.1. Base Rent (Property Excluding the Inland Port). Commencing on January 1, 2010 ("**Rent Commencement Date**"), and on the first day of each month thereafter, Tenant shall pay to Landlord base rent for use and occupancy of the Property ("**Base Rent**") in the amount of Two Hundred Seventy-Two Thousand Dollars (\$272,250) per year, without deduction or offset whatsoever except as specifically provided in this Lease. Base Rent shall increase on January 1 of each year. The Base Rent increase shall be calculated based on the annual percentage increase of the Producer Price Index ("**PPI**"), as published by the U.S. Bureau of Labor Statistics, for the County of Stanislaus for the prior twelve (12) month period (November 1 through October 31).

Base Rent (Inland Port Property). Commencing on January 1, 2010 ("**Rent Commencement Date**"), and on the first day of each month thereafter, Tenant shall pay to Landlord base rent for use and occupancy of the Property ("**Base Rent**") in the amount of Forty Two Thousand Five Hundred Dollars (\$42,500) per year, without deduction or offset whatsoever except as specifically provided in this Lease. Base Rent shall increase on January 1 of each year. The Base Rent increase shall be calculated based on the annual percentage increase of the Producer Price Index ("**PPI**") for the County of Stanislaus, as published by the U.S. Bureau of Labor Statistics, for the prior twelve (12) month period (November 1 through October 31).

1.1.1 Payment; Late Payment Penalty. Base Rent shall be due and payable to Landlord at the address shown in Section or such other place as Landlord may designate in writing. Tenant recognizes that late payment of any Base Rent will result in extra administrative expense to Landlord. In the event Tenant fails to pay Base Rent by the close of business on the fifteenth(15th) day following the due date or Tenant's check is returned by the financial institution on which it is drawn for insufficient funds, Tenant shall pay Landlord (i) four percent (4%) of the amount due for that payment period, which shall be included with the payment of Base Rent, and (ii) if such Base Rent is not paid within thirty (30) days after the payment due date, the outstanding amount due shall be subject to interest at an annual rate of seven percent (7%). Tenant's failure to pay Base Rent shall constitute a default under this Lease. The provisions of this paragraph shall not be construed to grant Tenant a grace period and shall in no way relieve Tenant of the obligation to pay any amount of Base Rent on or before the date on which it becomes due, nor do the terms of this paragraph in any way affect Landlord's remedies pursuant to Section in the event any Base Rent is unpaid after the date due.

1.1.2 Base Rent Commencement Date. Upon written request by Tenant to Landlord, the Rent Commencement Date shall be extended, provided that, after Developer obtains its entitlements for development of the Property, Tenant provides evidence that the development and/or construction of the Property may not commence because of litigation, referendum or a delay allowed pursuant to Section 13.2 of the DDA related to said entitlements ("**Entitlement Delays**"). Subject to the foregoing sentence, Tenant shall commence the payment of Base Rent no later than the earlier of three (3) years after the Rent Commencement Date or resolution of the Entitlement Delays that permits the commencement of the development and/or construction of the Property. Upon expiration of said 3-year extension, the Rent Commencement Date will be extended for a maximum of an additional four (4) years, provided that any litigation related to Tenant's entitlements is appealed.

1.2 Additional Rent. Tenant shall pay as rent all sums, Impositions (as defined in Section \_\_\_\_ below), costs, expenses, and other payments with Tenant in any of the provisions of this Lease assumes or agrees to pay (collectively, "**Additional Rent**"). If Tenant fails to timely pay any Additional Rent, Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided for herein or by law in the case of non-payment of rent, subject to the terms and conditions of this Lease.

1.3 Participation Rent; Percentage Rent. In addition to Base Rent, and without any deduction therefore, Tenant shall pay to Landlord Participation Rent and Percentage Rent as set forth in this Section 1.3. Tenant shall furnish Landlord with a detailed statement of the number of containers transported by rail to and from the Inland Port and Gross Rent Receipts and each component thereof and all items included in the calculation thereof at the time Tenant makes such payment, which statement shall be certified by an authorized officer or principal of Tenant having knowledge thereof.

1.3.1 Participation Rent (Applicable to Inland Port Property). Landlord shall participate in the revenue of the Inland Port and earn six dollars (\$6) per \_\_\_\_\_ container transported by rail to or from the Inland Port by Tenant or Tenant's affiliate ("**Participation Rent**") during each year commencing on tenth (10th) anniversary of the Rent Commencement Date [expected January 1, 2020] ("**Participation Commencement Date**"). Participation Rent shall increase annually on January 1<sup>st</sup> of each year by an amount equal to the annual percentage increase of the Rail Transportation PPI published by the U.S. Bureau of Labor Statistics for the prior twelve (12) month period (November 1 through October 31). Tenant shall pay Participation Rent to Landlord quarterly on April 30th for the immediately preceding period of January 1 through March 31, July 30th for the immediately preceding period of April 1 through June 30, October 30th for the immediately preceding period of June 1 through September 30, and January 30th for the immediately preceding period of October 1 through December 31. In the event Tenant fails to pay Participation Rent by the close of business on the fifteenth (15th) day following the due date or Tenant's check is returned by the financial institution on which it is drawn for insufficient funds, Tenant shall pay Landlord (i) four percent (4%) of the amount due for that payment period, which shall be included with the payment of Participation Rent, and (ii) if such Participation Rent is not paid within thirty (30) days after the payment due date, the outstanding amount due shall be subject to interest at an annual rate of seven percent (7%).

1.3.2 Percentage Rent (Applicable to All Property Excluding Inland Port Property). Commencing on the sixteenth anniversary of the Rent Commencement Date, Tenant shall pay to Landlord an amount equal to twenty percent (20%) of Gross Rent Receipts (as defined herein) during each Lease year as "**Percentage Rent**". Commencing on the forty-first (41st) anniversary of the Rent Commencement Date, Percentage Rent shall increase to an amount equal to forty percent (40%) of Gross Rent Receipts. Commencing on the seventy-first (71st) anniversary of the Commencement Date, Percentage Rent shall increase to an amount equal to sixty percent (60%) of Gross Rent Receipts. Tenant shall pay Percentage Rent to Landlord quarterly on April 30th for the immediately preceding period of January 1 through March 31, July 30th for the immediately preceding period of April 1 through June 30, October 30th for the immediately preceding period of June 1 through September 30, and January 30th for the immediately preceding period of October 1 through December 31. As used in this Lease, the term "**Gross Rent Receipts**" shall mean the aggregate amount of all gross revenue (excluding common area maintenance payments, insurance premiums, taxes and assessments) of any kind or nature paid to or collected by Tenant derived from subleases of the Property, as set forth in Article \_\_\_\_ of this Agreement, including without limitation, all rent, deposits forfeited, cancellation fees, proceeds of business interruption and similar insurance, proceeds of casualty insurance to the extent not applied to the repair or reconstruction of the

Property, and condemnation awards: *[Distribution of insurance and condemnation proceeds shall be set forth in lease provisions to be prepared and shall be consistent with Landlord and Tenant each receiving an award consistent with the allocation of revenue to Landlord and Tenant payable pursuant this Section of this Lease]*. In the event Tenant fails to pay Percentage Rent by the close of business on the fifteenth(15th) day following the due date or Tenant's check is returned by the financial institution on which it is drawn for insufficient funds, Tenant shall pay Landlord (i) four percent (4%) of the amount due for that payment period, which shall be included with the payment of Percentage Rent, and (ii) if such Percentage Rent is not paid within thirty (30) days after the payment due date, the outstanding amount due shall be subject to interest at an annual rate of seven percent (7%).

1.3.3 Maximization of Containers Transported and Rent. Tenant agrees at all times during the term of this Lease to use its best efforts to use its skill and diligence to produce the maximum number of containers transported to and from the Inland Port and to sublease the Property to the fullest extent commercially feasible, consistent with prudent business judgment, good business practice and the requirements of this Lease and the parties' objectives of maintaining and operating the Property in a first-class condition and manner at all times. Without limiting the generality of the foregoing, Tenant shall satisfy the requirements that all rents chargeable to sublessees be commercially reasonable, as well as the other requirements for subleases set forth in Article \_\_\_\_\_, unless otherwise expressly agreed to in writing by Landlord. .

1.4 Landlord Audits. The receipt by Landlord of any statement pursuant to this Article One or any payment by Tenant or acceptance by Landlord of any Base Rent, Participation Rent or Percentage Rent for any period shall not bind Landlord as to the correctness of such statement or such payment. Within two (2) years after the receipt of any such statement, Landlord or any designated agent or employee of Landlord shall be entitled to audit the Gross Rent Receipts, Participation Rent, Percentage Rent and all books, records and accounts pertaining thereto. Such audit shall be conducted during normal business hours upon 48 hours advance notice at the principal place of business of Tenant and other places where records are kept. Any audit undertaken under this Section 1.4 shall be completed within sixty (60) days of the commencement thereof, subject to extensions of time for any periods of delay by any Third Party due to no fault of Landlord or its auditors, and in no event later than two (2) years after Landlord's receipt of the statement or statements being audited. Immediately after the completion of an audit, Landlord shall deliver a copy of the results of such audit to Tenant. If it shall be determined as a result of such audit that there has been a deficiency in payment, such deficiency shall become immediately due and payable with interest at the Lease Interest Rate, determined as of and accruing from the date that said payment should have been made. In addition, if Tenant's statement for any Lease Year shall be found to have understated Participation Rent, Percentage Rent, or Gross Rent Receipts by more than five percent (5%) and Landlord is entitled to any additional Participation Rent or Percentage Rent, as a result of said understatement, then Tenant shall pay, in addition to the interest charges referenced hereinabove, all of Landlord's reasonable costs and expenses, including costs and expenses of both staff and outside consultants, connected with any audit or review of Tenant's accounts and records.

1.5 Dispute Resolution. Disputes regarding the amount of Participation Rent or Percentage Rent payable pursuant to the terms of this Article One shall be resolved by mediation and arbitration conducted as provided in this Section 1.5. No other disputes shall be subject to mediation and arbitration, unless the parties otherwise agree in writing.

Upon the occurrence of any dispute, as evidenced by written notice of either party to the other, the parties shall meet and confer in good faith as necessary for a period of not less than thirty (30) days following such notice to seek to resolve such dispute. The parties may employ the services of a mutually acceptable professional mediator. Any dispute resolution arising from such meetings shall be evidenced in a written instrument executed by the parties, which shall thereafter bind the parties as their final resolution of the dispute. If, following the informal dispute resolution process of not less than thirty (30) days set forth in this paragraph, the dispute has not been and cannot be so resolved in the reasonable judgment of both parties evidenced in writing to the other, the dispute shall be submitted to arbitration in accordance with the following provisions of this Section 1.5.

Arbitration shall be conducted in the County of Stanislaus, California in accordance with Sections 1280 through 1294.2 of the California Code of Civil Procedure. However, to the extent that there is any conflict between the provisions of this subsection and such statute, the provisions of this Section shall govern. The arbitrator(s) shall be bound by and shall strictly adhere to all decisional, statutory and other rules, regulations or laws of California in reaching a decision on the merits of any controversy submitted for arbitration. Failure to adhere to such laws shall be grounds to vacate the arbitration award in whole or in part pursuant to Section 1286.2(d) of the California Code of Civil Procedure.

Judgment upon the arbitration award may be entered in any court having jurisdiction. The parties hereby consent to the personal jurisdiction of the Superior Court of Stanislaus County, State of California, for the purposes of confirming, correcting or vacating any such award.

Within thirty (30) days after written notice given by either party, stating that a dispute has not been and cannot be resolved in accordance with the informal resolution process described in the first paragraph of this Section and demanding arbitration of any arbitrable issue, the parties shall agree upon a single neutral arbitrator to hear and determine the dispute. Any arbitrator chosen by either party pursuant to this Section shall have experience in the area central to the dispute. If such an arbitrator is not selected by mutual agreement within such 30-day period, then within an additional twenty (20) days, each party shall (1) appoint one person to hear and determine the dispute, and (2) notify the other party of the appointment. The two persons so chosen will select, within twenty (20) days after the later of the two appointments, a third, neutral arbitrator, and their majority decision will be final and conclusive upon both parties. If the two arbitrators do not or cannot select the third, neutral arbitrator within such 20-day period, either Landlord or Tenant may, within ten (10) days thereafter, apply to the presiding judge of the Superior Court of Stanislaus County who shall appoint the third, neutral arbitrator. If either party fails to designate its arbitrator in a timely manner, then the arbitrator designated by the one party will act as the sole arbitrator and will be deemed to be the single, mutually approved arbitrator to resolve the controversy.

The costs of the arbitration and the compensation of the arbitrator(s) will be borne by the losing party or when allocated between the parties in such proportions as the arbitrator(s) decides.

The arbitrator or arbitrators shall furnish to Landlord and Tenant a written decision sixty (60) days after the last or only arbitrator was selected. Any decision shall be signed by the single arbitrator or by a majority of arbitrators, as the case may be.

1.6 Quarterly Transaction Reports. No later than the first day of the month succeeding each January 1, April 1, July 1 and October 1, commencing on the Commencement Date, Tenant shall submit to Landlord quarterly transaction reports (each a "**Transaction Report**") in the form set forth in Exhibit to this Lease, together with a certificate certifying that the information contained in such Transaction Report is true and correct as of the date of delivery.

## CROWS LANDING NAVAL AIR FACILITY

### Draft Lease: Event of Default; Termination

16.1 Event of Default. Tenant shall be in default under this Lease upon the occurrence of any of the following ("Events of Default"):

(a) Monetary Obligation. Tenant at any time is in default hereunder as to any monetary obligation (including without limitation, Tenant's obligation to pay taxes and assessments due on the Property or part thereof, subject to Tenant's rights to contest such charges pursuant to Section \_\_\_\_\_), and such default continues for ten (10) business days after Tenant receives Notice of Default (as defined in Section 16.2.1);

(b) Insurance. Tenant fails to obtain and maintain any policy of insurance required pursuant to this Lease, and Tenant fails to cure such default within ten (10) business days following receipt of Notice of Default;

(c) Abandonment. [Non-Inland Port Property] Tenant abandons the Property. Abandonment, as used herein, includes but is not limited to Tenant's failure to market in a commercially reasonable manner any portion of the Property which is available for development and not yet subject to a sub-lease.

Abandonment. [Inland Port Property] Tenant abandons the Property. Abandonment, as used herein, includes but is not limited to (1) Tenant's failure to market in a commercially reasonable manner any portion of the Property which is available for development and not yet subject to a sub-lease, and (2) Tenant's failure to operate the Inland Port for a continuous period of \_\_\_\_\_ months following commencement of operation of the Inland Port except to the extent that such failure to operate is caused by force majeure.

(d) Bankruptcy. Tenant files a voluntary petition in bankruptcy or files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof, or makes any general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due;

(e) Reorganization. A court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Tenant seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree remains unvacated and unstayed for an aggregate of ninety (90) days from the first date of entry thereof, or any trustee receiver or liquidator of Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof is appointed without the consent or acquiescence of Tenant and such appointment remains unvacated and unstayed for an aggregate of ninety (90) days, such ninety (90) day period to be extended in all cases during any period of a bona fide appeal diligently pursued by Tenant;

(f) Attachment. A writ of execution or attachment or any similar process is issued or levied against all or any part of the interest of Tenant in the Property and such execution, attachment or similar process is not released, bonded, satisfied, or vacated or stayed within ninety (90) days after its entry or levy, such ninety (90) day period to be extended during any period of a bona fide appeal diligently pursued by Tenant;

(g) Transfer. Tenant transfers all or any portion of Tenant's interest in this Lease, the Property or part thereof in violation of the provisions of Article hereof and fails to rescind such Transfer within fifteen (15) business days after written notice from Landlord;

(h) Nonmonetary Obligations. Tenant is in default in any other of its promises, covenants or agreements contained herein, and such default shall continue for thirty (30) days after Tenant receives Notice of Default specifying the particulars of such default, unless Tenant commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith;

(i) Liens. Tenant's failure to satisfy the requirements of Section hereof within the time periods specified;

(j) DDA. Tenant's failure to satisfy the obligations or conditions pursuant to the DDA, including, but not limited to, failure to complete construction of the Project [*project to be defined in the schedule of performance but at minimum will include all physical improvements set forth in the Step A through D charts*] during each Step as set forth in the Schedule of Performance; or

(k) Failure to Sub-Lease or Develop Property. Tenant's failure to sub-lease or develop or have sub-leased or developed (at a minimum density of sixty percent (60%) percent of the allowed floor area ratio) seventy percent (70%) of the Leaseable Property for business park, commercial or industrial purposes by no later than December 31, 2045. Leaseable Property on which buildings have been constructed but which are not sub-leased as of December 31, 2045 shall be deemed developed property for purposes of this subsection. If, on the date prior to December 31, 2045, Tenant has satisfied the provisions of this subsection 16(k), Landlord and Tenant agree to amend this lease to remove such default provision.

## 16.2 Notice and Opportunity to Cure.

16.2.1 Notice of Default. Unless expressly provided otherwise in this Lease, no default by a party shall be deemed to have occurred under this Lease unless another party first delivers to the nonperforming party a written request to perform or remedy (the "**Notice of Default**"), stating clearly the nature of the obligation which such nonperforming party has failed to perform, and stating the applicable period of time, if any, permitted to cure the default.

16.2.2 Failure to Give Notice of Default. Failure to give, or delay in giving, Notice of Default shall not constitute a waiver of any obligation, requirement or covenant required to be performed hereunder. Except as otherwise expressly provided in this Lease, any failure or delay by either party in asserting any rights and remedies as to any breach shall not operate as a waiver of any breach or of any such rights or remedies. Delay by either party in asserting any of its rights and remedies shall not deprive such party of

the right to institute and maintain any action or proceeding which it may deem appropriate to protect, assert or enforce any such rights or remedies.

16.2.3 Statutory Notice. Any notice given pursuant to Section 16(a), 16(b) or 16(k) shall be deemed to be the required statutory notice under Section 1161 of the California Code of Civil Procedures. Any other Notice of Default delivered hereunder shall require an additional statutory notice, not sooner than thirty (30) days after deliver of the initial Notice of Default, before any action for termination of this Lease may be commenced by Landlord.

### 16.3 Remedies Upon Default.

16.3.1 Landlord's Remedies. Upon the occurrence of any Event of Default and in addition to any and all other rights or remedies of Landlord hereunder and/or provided by law, but subject in all events to the rights and remedies of Leasehold Mortgagees under Article hereof, Landlord shall have the right to terminate this Lease and/or Tenant's possessory rights hereunder, in accordance with applicable law to re-enter the Property and take possession thereof and of the Improvements, and except as otherwise provided herein, to remove all persons and property therefrom, and to store such property at Tenant's risk and for Tenant's account, and Tenant shall have no further claim thereon or hereunder. Also, upon the occurrence of any Event of Default, Landlord may, at its option, but subject in all events to the rights and remedies of Leasehold Mortgagees under Article hereof, enforce all of its rights and remedies under this Lease, including the right to recover the Rent from tenant and Sub-Tenants as it becomes due hereunder. In no event shall this Lease be treated as an asset of Tenant after any final adjudication in bankruptcy except at Landlord's option so to treat the same but no trustee, receiver, or liquidator of Tenant shall have any right to disaffirm this Lease. With regards to any default pursuant to Section 16.1(k) above, Landlord may terminate the lease with Tenant and recover the property. For any portion of the Property subject to sublease as of December 31, 2045, Landlord shall recover the Property subject to any sub-leases existing as of the date of termination, provided that said sub-leases conform to the requirements of this Lease [*Ground Lease will contain provisions regarding Mortgagee Protection and types of sub-leases honored upon default*].

16.3.2 Remedies Upon Abandonment. If Tenant should breach this Lease and abandon the Property, Landlord shall, in addition to the Remedies available pursuant to Section 16.3.1, be entitled to recover from Tenant all costs of maintenance and preservation of the Property, and all costs, including attorneys' and receiver's fees incurred in connection with the appointment of and performance by a receiver to protect the Property and Landlord's interest under this Lease.

16.3.3 Landlord Right to Continue Lease. In the event of any default under this Lease by Tenant (and regardless of whether or not Tenant has abandoned the Property), this Lease shall not terminate (except by an exercise of Landlord's right to terminate under Section 16.3.1) unless Landlord, at Landlord's option, elects to terminate Tenant's right to possession or, at Landlord's further option, by the giving of any notice (including, without limitation, any notice preliminary or prerequisite to the bringing of legal proceedings in unlawful detainer) to terminate Tenant's right to possession. For so long as this Lease continues in effect, Landlord may enforce all of Landlord's rights and remedies under this Lease, including, without limitation, the right to recover all rent and other monetary payments as they become due hereunder. For the purposes of this Lease, the following shall not constitute termination of Tenant's right to possession: (a) acts of maintenance or preservation or efforts to relet the Property; or (b) the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease.

16.3.4 Right to Injunction; Specific Performance. In the event of a default by Tenant under this Lease, that remains uncured beyond any applicable grace periods permitted hereunder, Landlord shall have the right to commence an action against Tenant for damages, injunction and/or specific performance. Tenant's failure, for any reason, to comply with a court-ordered injunction or order for specific performance shall constitute a breach under this Lease.

16.3.4 Right to Receiver. Following the occurrence of an Event of Default, if Tenant (and all Leasehold Mortgagees) fails after receipt of a Notice of Default to cure the default within the time period set forth in this Lease, Landlord, at its option, may have a receiver appointed to take possession of Tenant's interest in the Property with power in the receiver (a) to administer Tenant's interest in the Property, (b) to collect all funds available in connection with the operation of the Property, and (c) to perform all other acts consistent with Tenant's obligations under this Lease, as the court deems proper. Landlord's rights under this Section 16.4.2 shall be subject to the rights of all Leasehold Mortgagees.

16.3.5 Damages Upon Termination. Should Landlord elect to re-enter the Property, or should Landlord take possession pursuant to legal proceedings or to any notice provided by law, this Lease shall thereupon terminate, and Landlord may recover from Tenant:

(a) the worth at the time of award of the unpaid Rent which is due, owing and unpaid by Tenant to Landlord at the time of termination; and

(b) the worth at the time of award of the amount by which the unpaid Rent which would have come due after termination until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided; and

(c) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss which Tenant proves could be reasonably avoided; and

(d) all other amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things are likely to result therefrom, including all costs (including attorneys' fees) of repossession, removing persons or property from the Property, repairs, reletting and reasonable alterations of the Property in connection with reletting, if any.

All computations of the worth at the time of award of amounts recoverable by Landlord under subparagraphs (a), (b), and (d) above shall be computed by allowing interest at a rate equal to the rate of interest most recently announced by Bank of America, N.T. & S.A., (or any successor bank) at its principal office in San Francisco as its "reference rate" serving as the basis upon which effective rates of interest are calculated for those transactions making reference thereto, but in no event in excess of the maximum rate of interest permitted under applicable law. The worth at the time of the award recoverable by Landlord under (c) above shall be computed by discounting the amount otherwise recoverable by Landlord at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus 1%, or at such lower discount rate as may hereafter be specified by applicable California statute. Any award of damages against Tenant hereunder shall be offset by Rent that Landlord receives as the result of such default.

16.5 Remedies Cumulative. No remedy in this Article XVI shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Lease may be exercised from time to time and as often as occasion may arise or as may be deemed expedient, subject to any limitations referred to hereinabove.

16.5 No Election of Remedies. The rights given in this Article XVI to receive, collect or sue for any rent or rents, moneys or payments, or to enforce the terms, provisions and conditions of this Lease, or to prevent the breach or nonobservance thereof, or the exercise of any such right or of any other right or remedy hereunder or otherwise granted or arising, shall not in any way affect or impair or toll the right or power of Landlord upon the conditions and subject to the provisions in this Lease to terminate Tenant's right of possession because of any default in or breach of any of the covenants, provisions or conditions of this Lease beyond the applicable cure period.

16.6 Survival of Obligations. Nothing herein shall be deemed to affect the right of Landlord under Article \_\_\_\_\_ of this Lease to indemnification for liability arising prior to the termination of the Lease for personal injuries or property damage, nor shall anything herein be deemed to affect the right of Landlord to equitable relief where such relief is appropriate. No expiration or termination of the Term by operation of law, or otherwise, and no repossession of the Property or any part thereof shall relieve Tenant of its previously accrued liabilities and obligations hereunder, all of which shall survive such expiration, termination or repossession. Tenant's indemnification obligations pursuant to Sections \_\_\_\_\_ and Article \_\_\_\_\_ shall survive the expiration or termination of this Lease.

16.7 No Waiver. Except to the extent that Landlord may have agreed in writing, no waiver by Landlord of any breach by Tenant of any of its obligations, agreements or covenants hereunder shall be deemed to be a waiver of any subsequent breach of the same or any other covenant, agreement or obligation, nor shall any forbearance by Landlord to seek a remedy for any breach by Tenant be deemed a waiver by Landlord of its rights or remedies with respect to such breach.

## Alternative - Lease Modification Provision

- A. Lease Modification Arising from Failure to Sub-Lease Property. The Parties acknowledge that it is impractical in this Lease to provide for every contingency or account for the economic performance of the Project contemplated during the entire term of this Lease. Further, Tenant recognizes that a material benefit of this Lease is Landlord's Rent Participation in the sub-lease of the Property and that Tenant's inability to sub-lease and/or develop the Property will negatively impact Landlord. If upon the 30th anniversary of the Lease Commencement Date more than fifty percent (50%) of the leaseable Property (1089 acres) remains undeveloped (i.e. building have not been constructed) ("**Undeveloped Property**"), Tenant agrees, upon written request by Landlord, to execute an amendment to this Lease pursuant to which the Undeveloped Property will revert back to Landlord. Landlord will receive the Undeveloped Property subject to any sub-leases, encumbrances or obligations of Tenant.
- B. Lease Modification Arising from Changes in Federal, State and County Law. Tenant also agrees, upon written request by Landlord, to execute any amendments to this Lease which are necessary for Landlord or Tenant to comply with any new federal or state laws or regulations or non-discriminatory County regulations adopted to implement state or federal law or regulation. This provision shall not apply to the extent that any new federal or state law or regulation exempts (or "grandfathers") existing development or operations from application of the law.