

**MEMORANDUM OF UNDERSTANDING
REGARDING PUBLIC BENEFIT CONTRIBUTIONS**

THIS MEMORANDUM OF UNDERSTANDING (“Agreement”) is entered into as of _____, 2022 (“Effective Date”), by and between SAN BERNARDINO COUNTY, a public body, corporate and politic (“County”), and HOWARD INDUSTRIAL PARTNERS, LLC, a California limited liability company (“Land Owner”). County and Land Owner are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

This Agreement is made and entered into with regard to the following facts, each of which is acknowledged as true and correct by the Parties to this Agreement:

A. Concurrent with the approval of this Agreement, the County Board of Supervisors approved Land Owner’s applications for a Specific Plan, Conditional Use Permits and Vesting Parcel Maps (collectively and including any ancillary approvals, “Approvals”). The Specific Plan permits up to 3,235,836 square feet (SF) of industrial building space and the Conditional Use Permits allow development of three (3) industrial warehouse buildings (each a “Building”) on three (3) sites totaling 2,113,640 SF and a trailer parking lot on a fourth site. The Specific Plan covers approximately 213 acres of land in the County’s unincorporated Bloomington community (the “Project”). The County Board of Supervisors also certified an environmental impact report (“EIR”) analyzing the Project’s impacts on the environment pursuant to the California Environmental Quality Act (“CEQA”) and adopted a Mitigation and Monitoring Program, Findings of Fact, and a Statement of Overriding Considerations.

B. As set forth in the Findings of Fact and the Statement of Overriding Considerations, the County Board of Supervisors has found that the Project will result in substantial public benefits sufficient to outweigh its impacts on the environment. The Project’s public benefits include, but are not limited to, significant economic benefits for the Bloomington Community.

C. The purpose of this Agreement is to memorialize additional public benefits that Land Owner has voluntarily committed to provide as part of the Project, including, but not limited to, a yearly payment that will enhance County services in the Bloomington area, secured against the Project site by a recorded Declaration of Restrictions, in the form attached hereto as Exhibit 1 and incorporated herein by this reference.

D. The Agreement is in the best interests of the County, Land Owner and the community, and for good and valuable consideration, the County and Land Owner desire to enter into the Agreement pursuant to the following provisions.

AGREEMENT

NOW, THEREFORE, based on the forgoing Recitals, which are incorporated by reference as if fully set forth herein, the Parties hereto agree as follows:

1. Monetary Contribution for Enhancing County Services in Bloomington. Land Owner agrees to make an annual contribution in the amount of 34/100 Dollars (\$0.34) per net

usable square foot of each Building (“Community Enhancement Fee”) for the life of the applicable portion of the Project, until such time as the obligations under this Agreement with respect to such Building are terminated pursuant to the provisions of Section 18 of this Agreement. The Community Enhancement Fee shall be paid on or before January 15th of each year, commencing the first calendar year following the issuance of the certificate of occupancy for the applicable portion of the Project, at the address set forth in Section 9 hereof. The County shall use the Community Enhancement Fee for service enhancement activities for the Bloomington area, with the specific service enhancement activities to be determined by the County in its sole discretion. Allowable uses of the Community Enhancement Fee shall include, but not be limited to, law and code enforcement, recreational programming, park operations and maintenance and enhanced public safety specifically for Bloomington. Such payment obligation shall apply individually to each Building in an amount equal to the Community Enhancement Fee amount multiplied by the net usable square footage of each such Building. Land Owner shall have no obligation or liability regarding the disbursement of the Community Enhancement Fee by the County. Land Owner further agrees to secure the obligation to make the foregoing annual contribution for the life of the applicable portion of the Project for the term of this Agreement by executing and recording the Declaration of Restrictions, in the form attached hereto as Exhibit 1, against each portion of the Project site proposed for a Building (expressly excluding any portion of the site planned for trailer parking) prior to the issuance of the certificate of occupancy for such portion of the Project. Pursuant to Section 8 of the Declaration, Land Owner’s obligation to pay the Community Enhancement Fee shall terminate if the Property becomes subject to a Financing District. Land Owner expressly agrees that the recordation of the Declaration of Restrictions is a condition precedent to the issuance of the certificate of occupancy for such portion of the Project. Pursuant to and in accordance with Section 8 of this Agreement and Section 13 of the Declaration of Restrictions, the County shall execute Land Owner’s requested Estoppel Certificate acknowledging that the property is current with respect to its annual payment obligation set forth in this Section 1 (or specifying such defaults if any are claimed).

2. Contribution to Bloomington Infrastructure Improvement Fund. Land Owner agrees to make a lump sum payment of Two Dollars (\$2.00) per net usable square foot of each of the Buildings, which shall be paid to the County at the issuance of the certificate of occupancy for each such Building. This payment is in addition to the Community Enhancement Fee, infrastructure improvements and development impact fees (“DIF”) identified in, and required by, the Project’s approvals and the San Bernardino County Code.

3. Storm Drain. As an additional public benefit, the Land Owner has agreed to contribute up to Three Million Dollars (\$3,000,000) towards the County’s acquisition of the existing El Rivino Basin located off 5th Street and El Rivino (“El Rivino Basin”) if requested by County on or before December 31, 2023, and subject to paragraph (a) below; provided, however, that Land Owner shall not be obligated to pay the Three Million Dollars (\$3,000,000) until (i) any and all approvals related to the Project from all applicable governmental agencies have been obtained; and (ii) all appeal or challenge periods have lapsed with no appeals or challenges having been filed, or, if any such approval is timely appealed or challenged, then such appeal or challenge event has been fully and finally resolved in favor of such approval. Following the payment of the \$3,000,000, the County agrees to acquire the El Rivino Basin and accept maintenance and operations responsibility therefor. Additionally, at County’s request, Land Owner has assisted the County in conceptual designs and pricing of a regional storm drain system based upon 25 year

storm flows (“25 Year System”) and 100 year storm flows (the “100 Year System”). The County agrees that all applicable departments (e.g., Flood Control District, Public Works, Land Use Services, etc.) shall complete all reviews for approval of the 25 Year System by November 30, 2022 and shall use reasonable efforts to complete all reviews for approval of the 100 Year System by December 31, 2023; provided that the County shall have all rights to review and approve or disapprove all plans and other required submittals for the 25 Year System and 100 Year System prior to such dates in accordance with the County Code of Ordinances, and shall apply the same standards to and shall retain the same discretion over such matters as it has with respect to any other development applications submitted to the County. As depicted on Exhibit 2 attached hereto and as provided in either paragraphs (a) or (b), Land Owner shall only be responsible for payment of the cost of the portion of the storm drain system between the Project and the El Rivino Basin (“Land Owner Portion”). Subject to the Conditions of Approval of the Project, the County agrees that Land Owner’s ability to develop the Specific Plan area is only conditioned upon the completion of the Land Owner Portion. It is anticipated that the exact route of the Land Owner Portion between the Project and the El Rivino Basin may be altered before approval to save time and minimize construction costs, utility conflicts, and impacts to the public. In all events, the 25 Year Plan and the 100 Year Plan must be constructible in the County’s and Land Owner’s reasonable discretion, including, without limitation, not requiring blasting that could damage adjacent properties, avoiding major utility conflicts and designs that would result in significant timing delays (*i.e.*, inability to commence construction within 6 months of approval of the Plan). In the event the Plan cannot be constructed, the Land Owner shall present alternative option(s) to meet the drainage mitigation requirements, to the satisfaction of the County. The Parties acknowledge and agree that (i) there is no functioning storm drain system in the Crestmore area today, thus there is significant flooding in the area, (ii) the Project is largely retaining its storm water onsite within the Project, (iii) Land Owner is being asked to help solve an area-wide storm drain deficiency that it did not cause and is voluntarily contributing toward a solution above and beyond what is required by law, and (iv) the construction of even the 25 Year System will be a significant improvement over the current condition in the area.

a. 100 Year System Scenario: If the Land Owner is to construct the Land Owner Portion of the 100 Year System, Land Owner agrees to build the Land Owner Portion of the 100 Year System and shall pay one-third of the cost thereof, and the County shall pay two-thirds of the cost thereof. The cost of the 100 Year System is currently estimated at \$67,350,000, with Land Owner’s fair share cost of one-third (1/3) currently estimated at \$22,450,000, and the County’s fair share cost of two-thirds (2/3) currently estimated at \$44,900,000. In no event shall the total cost of the 100 Year System exceed Eighty Million Dollars (\$80,000,000) without the written approval of both the County and Land Owner and the Land Owner Portion shall be value engineered to keep the costs below such limit. Upon completion of the initial building phase of the Conditional Use Permit Properties, as depicted on Exhibit 3, as the same may be modified, the County will be obligated to reimburse Land Owner for two-thirds of the cost of the Land Owner Portion. Following the construction and inspection of the Land Owner Portion of the 100 Year System, the County agrees to accept maintenance and operations responsibility for such system and the El Rivino Basin. Notwithstanding anything else to the contrary herein, if the County is unable, prior to December 31, 2023, to approve the 100 Year System and secure and allocate funds to pay for its portion (*i.e.*, 2/3) of the Land Owner Portion of the 100 Year System based on estimated costs of the approved plan as of such date, Land Owner may proceed with the 25 Year System.

b. 25 Year System Scenario: If the Land Owner is to construct the Land Owner Portion of the 25 Year System, Land Owner agrees to build the Land Owner Portion of the 25 Year System at its sole cost and the County agrees to issue permits for Land Owner to construct the Land Owner Portion of the 25 Year System, subject to all rights to review and approve or disapprove all plans and other required submittals in accordance with the County Code of Ordinances. Based on an analysis prepared by Land Owner and acceptable to County, Land Owner Portion of the 25 Year System shall include not only the cost of the portion of the storm drain system between the Project and the El Rivino Basin but also include any required improvements to the El Rivino Basin that are reasonable necessary and directly attributable to the Project, subject to County approval of the plans for the 25 Year System and Project analysis of the El Rivino Basin.

i. Following the construction and inspection of the 25 Year System, the Land Owner agrees to guarantee the maintenance and operations responsibility for such system through the formation of a public entity (e.g., Special District). The public entity (e.g., Special District) that will maintain the drainage improvements and on-site detention basin shall be formed and operating to the satisfaction of San Bernardino County Special Districts, prior to the final inspection and occupancy of the first building within the Specific Plan area.

ii. Improvement Standards: Improvements for either the 100 Year System or 25 Year System, as applicable, shall be constructed in conformance with the plans approved by the County prior to the dates noted above.

4. Vacation of Roads and Abandonment of Land. The County agrees to cause the following actions to occur: (i) vacation and/or conveyance to Land Owner of Rose Avenue, Birch Street and Stallion Lane within the Specific Plan area; and (ii) abandoning and/or conveying to Land Owner the 15 foot wide by 400 foot long strip of land within the Project owned by the County as depicted on Exhibit 4 attached hereto (“Gap Parcel”).

5. Distribution and Transmission Lines. The County acknowledges and agrees that it has entered into that certain Settlement Agreement and Release dated May 5, 2020 with UST-CB Partners, L.P. (the “Settlement Agreement”) that would require UST-CB Partners, L.P. to improve Jurupa Avenue, which would include the undergrounding of utilities adjacent thereto. If the County relieves the other developer of the obligation to improve Jurupa Avenue and/or underground utilities adjacent to Jurupa Avenue, Land Owner shall also be automatically relieved of any obligation to underground utilities adjacent to Jurupa Avenue and the County shall, to the extent provided by the Project’s Conditions of Approval, reimburse Land Owner for its costs in improving Jurupa Avenue. The County shall use its best effort to require the other developer to coordinate the improvement of Jurupa Avenue so that Developer can install its Land Owner Portion of the Regional Storm System prior to such improvement. Furthermore, the County shall make no modification or amendment to the Settlement Agreement that would financially impact the Project without the prior written consent of Land Owner.

6. Vesting Tentative Map. The Parties acknowledge and agree that the Vesting Tentative Map application was deemed complete on November 24, 2021.

7. Local Hiring. For the initial leasing or sale of each Project Building, whichever occurs first, Land Owner shall require the lessee or purchaser of the Project Building to commit to

work with the County Workforce Development Department for recruitment of local Bloomington residents for the future jobs created by the development. After the first lease or sale of a Project Building, this Section 7 will have no further force and effect as to that Project Building.

8. Estoppel. The County shall, at any time and from time to time within ten (10) days' of its receipt of a written request from Land Owner, execute, acknowledge and deliver to the Land Owner a statement (a) certifying this Agreement, including all of the terms and conditions herein, are unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect); and (b) acknowledging that there are not, to the actual knowledge of the County, any uncured defaults on the part of the Land Owner (or specifying such defaults if any are claimed). Said written statement or deemed agreement shall be binding upon the County in favor of any persons relying on the statement in good faith.

9. Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to any of the Parties shall, unless otherwise required by law, be in writing and be deemed duly served and given (a) when personally delivered to the Party to whom it is directed, (b) when deposited to a regularly scheduled overnight delivery carrier for next day delivery, or (c) when sent by registered or certified U.S. Mail, postage prepaid, return receipt requested. Notices shall be addressed to the respective parties as set forth below or to such other address and to such other persons as the Parties may hereafter designate by written notice to the other party hereto:

Land Owner:

Howard Industrial Partners, LLC
2244 N. Pacific Street
Orange, California 92865
Attention: Timothy J. Howard
(714) 602-7345

With Copy To:

Howard Industrial Partners, LLC
2244 N. Pacific Street
Orange, California 92865
Attention: Michael Tyre
(714) 602-7345

Craig O. Dobler, Esq.
Dobler Law Group, Inc.
13249 Holmes Point Drive NE
Kirkland, WA 98034
(425) 823-5936

County:

San Bernardino County
Community Development & Housing Agency
385 N. Arrowhead Avenue, 3rd Floor
San Bernardino, CA 92415
Attn: Deputy Executive Officer

County Copy To:

San Bernardino County Counsel
385 N. Arrowhead Avenue, 4th Floor
San Bernardino, CA 92415

Send Community Enhancement Fees to:

San Bernardino County
Real Estate Services Department
385 N. Arrowhead Avenue, 2nd Floor
San Bernardino, CA 92415
Attn: Administrative Manager

Each notice shall be deemed delivered on the date delivered if by personal delivery or by overnight courier service, or on the date of receipt as disclosed on the return receipt if by mail. By giving to the other parties written notice as provided above, the Parties to this Agreement and their respective successors and assigns shall have the right from time to time, and at any time during the term of this Agreement, to change their respective addresses.

10. Integration. This Agreement represents and contains the entire agreement and understanding among the parties hereto with respect to the subject matter of this Agreement, as of the Effective Date, and supersedes any and all prior written and oral agreements and understandings. This Agreement may be amended or modified only through a writing executed by all the Parties.

11. Governing Law and Venue. This Agreement shall be deemed executed and delivered within the State of California. The rights and obligations of the Parties hereunder shall be governed, construed and enforced in accordance with the laws of the State of California. The venue for any dispute arising from or related to this Agreement, its performance, and its interpretation shall be the Superior Court of California, County of San Bernardino.

12. Severability. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

13. No Presumption Against Drafting Party. This Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any Party. The Parties acknowledge that this Agreement documents a negotiated agreement and it shall not be construed

or interpreted in favor of any Party due to the fact that one of the Party's attorneys drafted this Agreement.

14. Further Assurances. From and after the Effective Date, the Parties shall cooperate in good faith with the each other in taking such actions and executing such instruments as may be reasonably necessary to effectuate the purposes of entering into this Agreement and to perfect the rights granted hereunder.

15. Successors and Assigns. This Agreement shall be binding upon all successors and assigns of Land Owner that own any portion of the Project. If Land Owner assigns its entire or partial interest in this Agreement to a successor owner of all or a portion of the Project, Land Owner shall provide the County with written notice of such assignment and a copy of the assignment agreement. In order for Land Owner or any successor to be released of its obligations under this Agreement from and after the date of such assignment, the assignee in such written assignment and assumption agreement must agree, for the benefit of the County, to assume all obligations of the assignor hereunder with respect to the portion of the Project transferred from and after the date of such assignment.

16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement, with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and reattached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages. Duly executed signatures to this Agreement may be executed and/or delivered by electronic means, and signature pages executed and/or delivered by such methods shall be deemed equivalent to, and of the same force and effect as, original signature pages.

17. Tolling. If litigation is filed challenging the Approvals and/or the Project or the Approvals becomes suspended pending the outcome of an electoral vote on a referendum, then the term of the Approvals shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension (or as to Approvals, the date of the initial grant of such Approval) to the end of such litigation or suspension; provided that in no event shall the tolling exceed five years. To the extent applicable, this Section shall constitute an extension authorized by Government Code sections 66452.6 or 66463.5.

18. Termination. This Agreement shall have no force or effect if: (i) the land use entitlements are nullified in a final and non-appealable manner or if (ii) the Project is not ultimately constructed for any reason; provided that any Buildings or other portions of the Project that are constructed shall be and remain bound by this Agreement, including, but not limited to, satisfaction of all obligations in Section 3, notwithstanding the failure of other portions of the Project to be constructed. Additionally, this Agreement shall automatically terminate with respect to any portion of the Project upon the demolition of the applicable Building within such portion of the Project.

19. Time is of the Essence. Time is of the essence for each provision of this Agreement for which time is an element.

20. Defaults. A Party's failure to perform or observe any of the covenants, provisions or conditions contained in this Agreement on its part to be performed or observed shall constitute a default hereunder: (a) for monetary obligations, if such failure has not been cured within fifteen (15) days after the breaching party's receipt of written notice from the other party respecting such failure and such failure is not cured within such fifteen (15) day period; (b) for non-monetary obligations, if such failure can reasonably be cured within thirty (30) days after the breaching party's receipt of written notice from the other party respecting such failure and such failure is not cured within such thirty (30) day period; or (c) for non-monetary obligations, if such failure cannot reasonably be cured within said thirty (30) day period and the breaching party fails to promptly commence to cure such failure upon receipt of the other party's written notice with respect to the same, or thereafter fails to continue to make diligent and reasonable efforts to cure such failure.

21. Attorney's Fees. In the event that litigation is filed to interpret or enforce any provision of this Agreement, each party shall bear its own cost and attorney fees, regardless of who is the prevailing party in such litigation.

22. Indemnification Against Third Party Claims. The Land Owner hereby agrees to defend, indemnify, and save harmless the County, its Board of Supervisors, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, reasonable attorneys' fees, costs and fees of litigation) of every nature, kind or description, which may be brought by a third party against, or suffered or sustained by, the County, or its Board of Supervisors, commissions, officers, employees and agents, from and against any and all claims, suits, actions, commissions, officers, employees or agents to challenge the approval by the County of this Agreement or the Declaration of Restrictions entered or to be entered pursuant to this Agreement. In the event that any person should bring an action to attack, set aside, void or annul the County's approval of this Agreement or the Declaration of Restrictions entered or to be entered pursuant to this Agreement, the Land Owner shall defend, indemnify and hold harmless the County and/or its agents, officers and employees from any claim, action, or proceeding against the County and/or its agents, officers and employees with counsel selected by the Land Owner and reasonably approved by the County.

23. Board of Supervisors Approval. This Agreement is subject to, and shall have no force or effect until and unless first approved by the San Bernardino County Board of Supervisors.

IN WITNESS THEREOF, the Parties hereto have executed this Agreement as of the date first above written.

[Signature Page Continues on the Following Page]

LAND OWNER:

HOWARD INDUSTRIAL PARTNERS, LLC,
a California limited liability company

By: _____

Name: Michael J. Tyre

Title: Partner

APPROVED AS TO FORM FOR LANDOWNER:

Craig O. Dobler, Esq.

COUNTY:

SAN BERNARDINO COUNTY

Curt Hagman, Chairman,
Board of Supervisors
Dated:

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell,
Clerk of the Board of Supervisors

By _____
Deputy

APPROVED AS TO FORM FOR COUNTY:
TOM BUNTON
County Counsel

JASON SEARLES
Supervising Deputy County Counsel

EXHIBIT 1
DECLARATION OF RESTRICTIONS

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

San Bernardino County
Clerk of the Board
385 N. Arrowhead Ave., Suite #2
San Bernardino, CA 92415

SPACE ABOVE THIS LINE RESERVED FOR RECORDERS USE

DECLARATION OF RESTRICTIONS

This Declaration of Restrictions (this “Declaration”) is made as of _____, 2022, by Howard Industrial Partners, LLC, a California limited liability company (referred to herein as “Declarant”).

WHEREAS, Declarant is the owner of real property (the “Property”) situated in San Bernardino County (the “County”), State of California, as more particularly described in Exhibit “A”, attached hereto and by this reference incorporated herein; and

WHEREAS, Declarant has entered into a Memorandum of Understanding Regarding Public Benefit Contributions with the County, dated as of _____, 2022 (the “MOU”), with respect to the development of three (3) industrial warehouse buildings (each a “Building”) on three (3) sites totaling 2,113,640 SF and a trailer parking lot on a fourth site, covering approximately 213 acres of land in the County’s unincorporated Bloomington community (the “Project”); and

WHEREAS, the MOU provides that the Declarant will pay an annual charge intended for the benefit of the unincorporated community within the County commonly known as Bloomington; and

WHEREAS, Declarant affirms and declares that Declarant’s desire to burden the Property with an annual charge intended for the benefit of the unincorporated community within the County commonly known as Bloomington does not constitute an exaction imposed as a condition of development of the Property, but has been proposed by Declarant as an additional community benefit in connection with Declarant’s proposed development of the Project; and

WHEREAS, Declarant hereby encumbers the Property with the obligation to pay such annual charge;

NOW, THEREFORE, Declarant declares as follows:

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

2. Effective Date. This Declaration shall take effect on the first day of the month first following the date on which (a) all discretionary governmental approvals have been obtained for the Project; and (b) all applicable statutes of limitation to challenge the Project have been completed and/or resolved in favor of the approval. This Declaration shall have no force or effect if (i) the land use entitlements are overturned or rescinded or if (ii) the Project is not ultimately constructed for any reason.

3. Covenant Running with the Land. The covenants contained in this Declaration shall run with the land, shall be binding upon Declarant and each subsequent owner of the Property (each, an "Owner"), and their successors and assigns.

4. Creation of the Lien Upon the Property. Declarant and each subsequent Owner of the Property, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay, for the useful life of a Building constructed (subject to Section 7 below), to the County, as the beneficiary of the obligation hereunder (the "Beneficiary"), an annual charge in the amount of 34/100 Dollars (\$0.34) per net usable square foot of each Building ("Community Enhancement Fee") for the life of the applicable portion of the Project (the "Annual Charge"). The Annual Charge, together with interest, costs, and reasonable attorneys' fees payable under Section 5 below, shall be a charge on any portion of the land developed with a Building and shall be a continuing lien upon the Property against which such charge is made until such Building is demolished.

5. Purpose of Annual Charge. The charge paid pursuant to this Declaration shall be applied to the costs of services for the exclusive benefit of the unincorporated community of Bloomington, as provided in the MOU.

6. Collection of Annual Charge. The Annual Charge shall be collected, with respect to each Building based on the net usable square feet thereof, in a single annual installment, commencing upon the first calendar year following the issuance of the certificate of occupancy for the applicable portion of the Project, at the address set forth in the MOU. The due date shall be January 15th of each year.

7. Effect of Nonpayment of Charge; Remedies of the Beneficiary. If any charge hereunder is not paid within fifteen (15) days after the due date, a late charge of four hundred dollars (\$400.00) or ten percent (10%) of the delinquency, whichever is greater, may be imposed. Interest may accrue and be charged on all sums (including charges, penalties and reasonable costs of collection) which are more than thirty (30) days overdue, at the rate of twelve percent (12%) per annum, the maximum amount authorized by California law. In the event of a default on a payment of any charge, in addition to any other remedies herein or by law provided, the Beneficiary may enforce each such obligation as follows:

(a) By suit or suits at law to enforce each such charge obligation. Any request for judgment in any such action may include a sum for reasonable attorneys' fees and related costs.

(b) At any time after the delinquency of any charge, the Beneficiary may give notice to the defaulting Owner, which said notice shall state the date of the delinquency, the amount of the delinquency, the late fee and the interest charge for such delinquency, and make a demand

for payment thereof. If such delinquency, late fee and interest are not paid within thirty (30) days after delivery of such notice, the Beneficiary may elect to file a claim of lien against the Property of such delinquent Owner. Such claim of lien shall state (1) the name of the delinquent Owner or reputed Owner, (2) a description of the Property against which claim of lien is made, (3) the amount claimed to be due and owing (with any proper offset allowed), (4) that the claim of lien is made by the Beneficiary pursuant to the terms of these restrictions (giving the date of execution and the date, book and page reference of the recording hereof in the Office of the Recorder of the County of San Bernardino), and (5) that a lien is claimed against said described Property in an amount equal to the amount of the stated delinquency plus interest and late fees as applicable. Any such claim of lien shall be signed and acknowledged by an authorized office of the Beneficiary. Upon recordation of a claim of lien by the County Recorder, the lien claimed herein shall immediately attach and become effective as a continuing lien covering all subsequent delinquencies and attendant penalties. Any such lien may be foreclosed by the Beneficiary, its attorney, or any other person authorized by the Beneficiary, either by appropriate action in court or in the manner provided by law for the foreclosure of a mortgage under power of sale. Upon any such sale of the Property, a certificate of sale shall be executed and acknowledged by an authorized officer of the Beneficiary or by the person conducting the sale. A deed upon foreclosure shall be executed in like manner. The Beneficiary shall have the power to bid for the Property at the sale under its power of sale or at any court foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

No sale or transfer shall relieve the Property from liability for any charge(s) thereafter becoming due as from the lien thereof. Notwithstanding anything herein, to the extent California law addresses the lien priority issue, California law shall prevail.

8. Financing District Participation. If Owner agrees, without any obligation to do so, to participate in any Community Facilities District, Community Services District, Mello-Roos District or similar assessment or financing district that is established by the County or a County related entity subsequent to the date of the recording of this Declaration and is applicable to the Property (collectively, a “Financing District”) or such Financing District is approved over Land Owner’s objection, then this Declaration, including, without limitation, the obligation to pay the Community Enhancement Fee, shall automatically terminate without any action by either party but all provisions of the MOU other than the obligation to pay the Community Enhancement Fee shall survive such termination.

9. Condition To and Termination of this Declaration. This Declaration shall remain in full force and effect until and unless the earlier of (a) the date on which the Beneficiary shall record a release of this Declaration, (b) the termination or expiration of the entitlements with respect to any portion of the Property not developed, (c) with respect to any portion of the of the Property developed with a Building, the demolition of such Building. .

10. Waiver of Causes of Action. Declarant for itself and its agents, representatives, trustees, assignees, successors, and future Owners of the Property and each of them, hereby waives and forever relinquishes its right to allege a cause of action against the County or any department or division thereof, asserting that the Annual Charge provided for herein is an impermissible tax, assessment, fee, or charge or an exaction imposed as a condition of development of the Property or imposed as a condition of obtaining entitlements to develop the Property.

11. Successors and Assigns Bound. Declarant shall comply with these covenants, conditions and restrictions burdening the Property for the useful life of each Building, as applicable. Subject to the limitations contained in this Declaration and without modifying its terms, the provisions of this Declaration shall be enforced as equitable servitudes, and conditions, restrictions, and covenants running with the land, and shall be binding upon the agents, representatives, trustees, assignees, successors, and future owners of the Property and each of them, unless and until this Declaration is terminated as provided for herein.

12. Mortgagee Protection. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and effective against any Owner of the Property whose title thereof is acquired by foreclosure, trustee's sale or otherwise.

13. Estoppel. The Beneficiary shall, at any time and from time to time upon not ten (10) days' prior written notice from any Owner, execute, acknowledge and deliver to the requesting Owner a statement (a) certifying this Declaration, including all of the terms and conditions herein, are unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Declaration of Restrictions, as so modified, is in full force and effect); and (b) acknowledging that there are not, to the actual knowledge of the Beneficiary, any uncured defaults on the part of the requesting Owner (or specifying such defaults if any are claimed). The Beneficiary's failure to deliver such statement to the requesting Owner as required in this Section 13 shall be deemed to constitute the Beneficiary's agreement (a) that this Declaration is in full force and effect, without modification except as may be represented by this requesting Owner; and (b) that to the Beneficiary's knowledge, there are no uncured defaults in the performance of the requesting Owner. Said written statement shall be binding upon the Beneficiary in favor of any persons relying on the statement in good faith.

Declarant:

By: _____

Its: _____

EXHIBIT A
LEGAL DESCRIPTION

Portions of Lots 476 through 481, and Lots 483 through 487, and Lots 489 and 490, as shown by the map of subdivision of lands of the semi-tropic land and water company, in the community of Bloomington, in San Bernardino County, State of California, as per map recorded in Book 11, Page 12 of Maps, in the Office of the Recorder of said County.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California

County of _____

On _____ before me _____, Notary Public
(insert name and title of the officer)

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

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

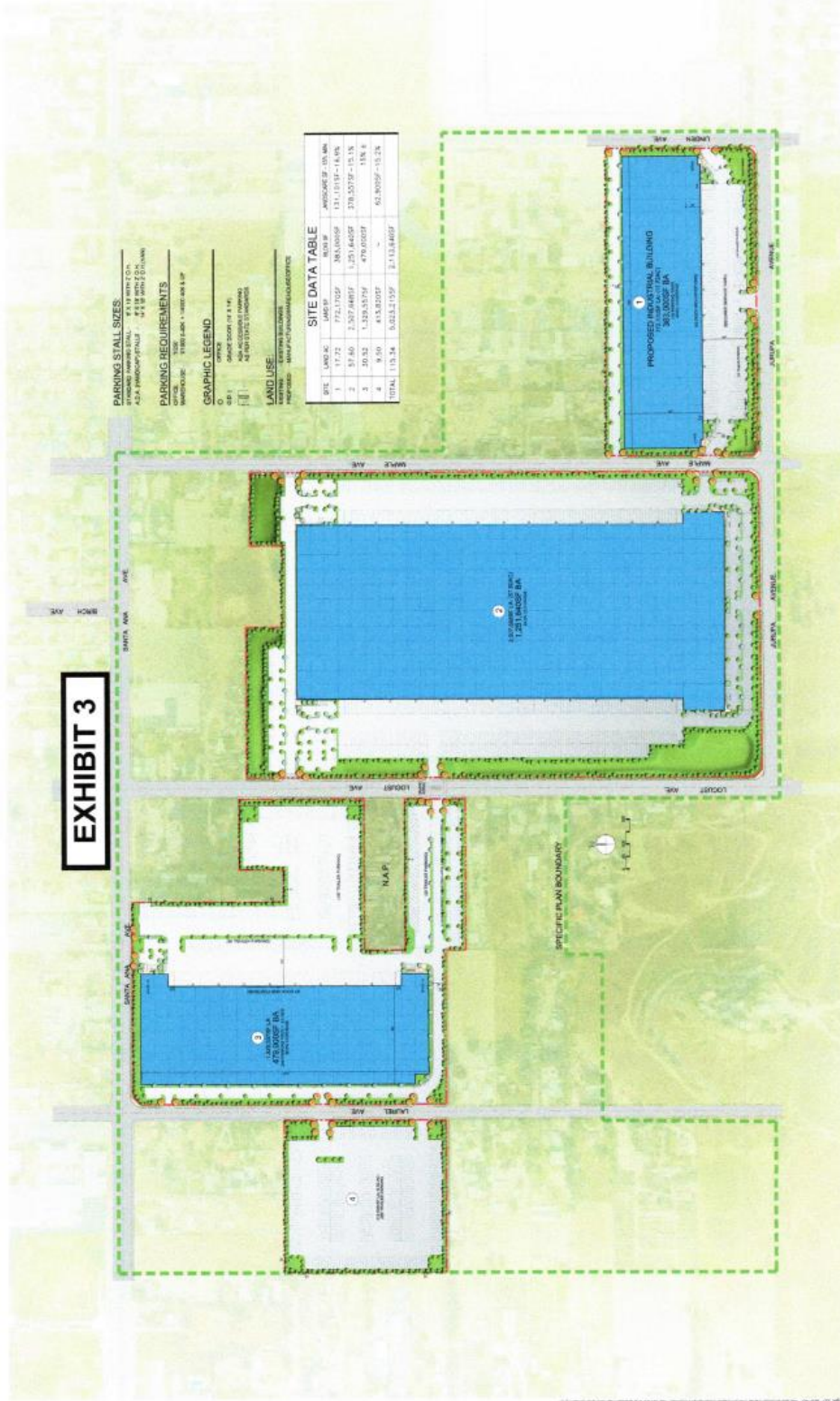
WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT 2
DEPICTION OF THE LANDOWNER PORTION



EXHIBIT 3 DEPICTION OF SPECIFIC PLAN AREA



DISCLAIMER: This plan is a conceptual site plan and is not intended to be used for any other purpose. It is not a legal document and does not constitute an offer of any financial product or service. It is subject to change without notice.

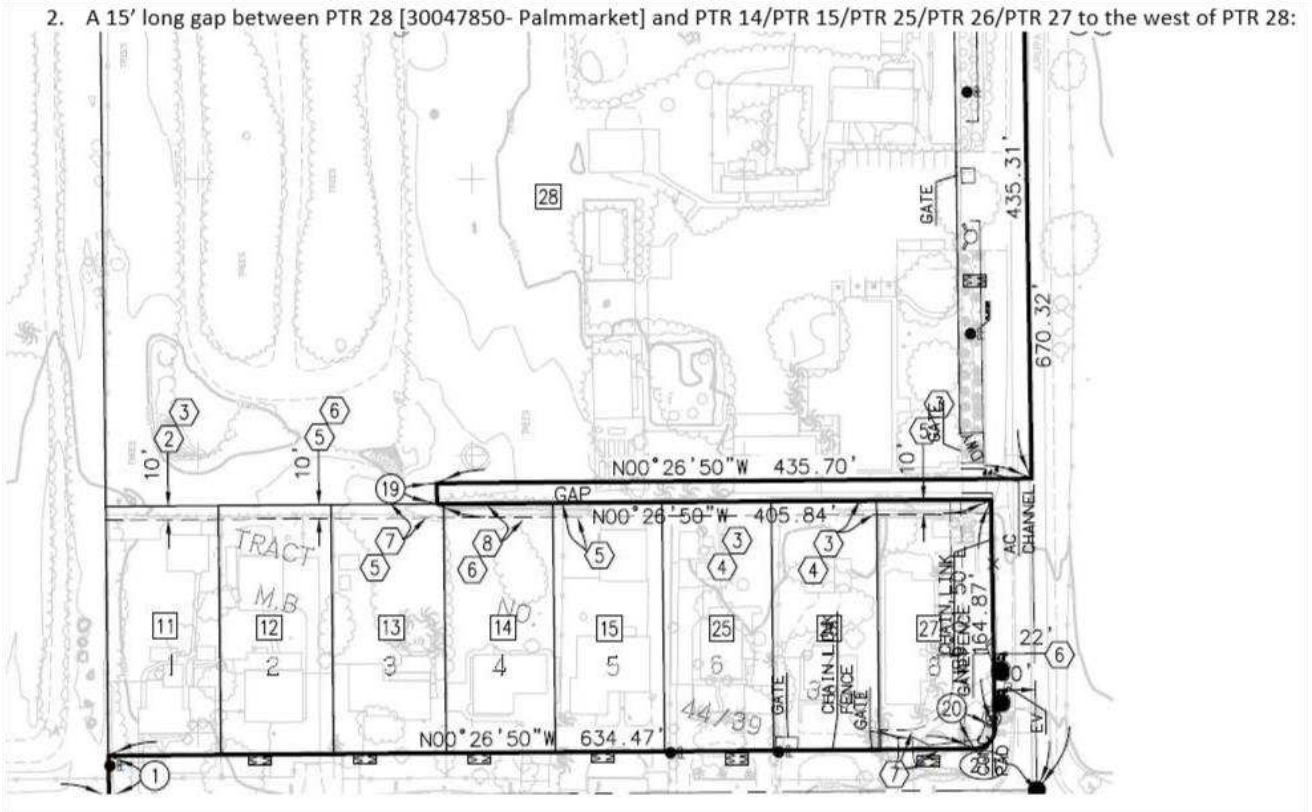
BLOOMINGTON BUSINESS PARK BLOOMINGTON, CA
Howard | Industrial Partners

CONCEPTUAL MASTER PLAN #2020-130-00
SCHEME 1 ALT MP

AO
Architectural
Office
10000 Santa Ana Blvd, Suite 100
Bloomington, CA 94623
Phone: (925) 835-1000
Fax: (925) 835-1001

EXHIBIT 4
DEPICTION OF COUNTY GAP PARCEL

2. A 15' long gap between PTR 28 [30047850- Palmmarket] and PTR 14/PTR 15/PTR 25/PTR 26/PTR 27 to the west of PTR 28:



5157642.2