

PARCEL MAP 71920
SUBDIVISION IMPROVEMENT AGREEMENT
by and between
CITY OF BELL
And
FIRST INDUSTRIAL, L.P.

**PARCEL 71920
SUBDIVISION IMPROVEMENT AGREEMENT**

THIS SUBDIVISION IMPROVEMENT AGREEMENT (this "Agreement") is entered into this 7th day of November, 2012, by and between the CITY OF BELL, a municipal corporation of the State of California ("City") and FIRST INDUSTRIAL, L.P., a Delaware limited partnership, ("Subdivider").

RECITALS

A. Subdivider is the owner of the property contained in Parcel 71920, has an approved tentative map and will record a final subdivision map (the "Map") for Parcel 71920 in the City of Bell, County of Los Angeles, State of California (the "Property" or "Parcel 71920"). Information regarding Parcel 71920, including recording information is listed on **Exhibit "A"** hereto.

B. Subdivider, by the Map, has offered for dedication to City for public use of the streets and easements shown on the Map. City desires to accept the streets and easements shown on the Map for public use, and certain other improvements described in this Agreement.

C. Subdivider has delivered to City and City has approved plans and specifications and related documents for certain "Works of Improvement" (as hereinafter defined) which are required to be constructed and installed in order to accommodate the development of the Property. The Works of Improvement may be allocated, or phased, with respect to the Map, such that specific subsets of the Works of Improvement are required to be completed for the Map, as required by the conditions of approval ("Conditions of Approval"), as set forth in **Exhibit "B"**.

D. Pursuant to the California Subdivision Map Act and City Ordinances, Subdivider is required to furnish adequate security to ensure the construction and completion of the Works of Improvement required by the Map. Subdivider is requesting that City accept security as set forth herein and the City has determined to accept such security for the Works of Improvement as provided herein.

E. Subdivider's agreement to construct and install the Works of Improvement pursuant to this Agreement and its offer of dedication of the streets, easements and other improvements and facilities, as shown on the Map, are a material consideration to City in approving the final subdivision map for the Property and permitting development of the Property to proceed. The Works of Improvement in this agreement are in general the demolition, grading and drainage and related improvements.

F. A future agreement will cover the balance of the Works of Improvement for Parcel 71920.

COVENANTS

Based upon the foregoing Recitals which are incorporated herein by reference and in consideration of City's approving the Map for the Property and permitting development of the Property to proceed, Subdivider agrees to timely perform all of its obligations as set forth herein.

1. Construction Obligations.

1.1. Works of Improvement. Subdivider agrees, at its sole cost and expense, to construct or install or cause to be constructed or installed improvements related to demolition, grading, and other improvements as allocated to Parcel 71920 covered by the Map and all of the remaining Conditions of Approval related to demolition, grading and drainage on the tentative map, collectively referred to as the "Works of Improvement." The Works of Improvement shall be performed or caused to be performed by Subdivider in accordance with the Conditions of Approval as set forth in **Exhibit B** and in a manner reasonably acceptable to the City Engineer (or his/her designee) and in full compliance with all rules, regulations and codes of City and the terms of this Agreement and any plans ("Plans") for the Works of Improvement approved by the City Engineer.

Subdivider shall complete a functional or operable improvement or facility, even though the Plans may not specifically call out all items of work required for the contractor to complete its tasks, incidental appurtenances, materials, and the like. If any omissions are made in information necessary to carry out the full intent and meaning of the Plans, Subdivider or its contractor shall immediately notify its design engineer who will seek approval of the City Engineer for furnishing of detailed instructions. In the event of any doubt or question arising regarding the true meaning of any of the Plans, reference shall be made to the City Engineer or City Council, if Subdivider disputes the City Engineer's detailed instructions.

The Plans shall be supplemented by such working or shop drawings as are necessary to adequately control the work. Without the City Engineer's prior written approval, no change shall be made by Subdivider or Subdivider's contractor to any plan, specification, or working or shop drawing after it has been stamped as approved.

1.2. Survey Monuments. Before final approval of street improvements, Subdivider will place survey monuments, as shown on the Map in accordance with the provisions of the State Subdivision Map Act and the Subdivision Ordinance of the City. Subdivider shall provide security for such obligation as provided in Section 4.1 and, after setting the monument (s), Subdivider shall furnish the City Engineer of the City written notice of the setting of said monuments, and written proof of having paid the engineer or surveyor for the setting of said monument (s).

1.3. Performance of Work. Subdivider shall furnish or cause to be furnished, at Subdivider's sole cost (unless otherwise specifically provided herein), all materials, labor, tools, equipment, utilities, transportation, and incidentals required to perform Subdivider's obligations under this Agreement.

1.4. Changes in the Work. The City Engineer, without invalidating this Agreement and without notification to any of the sureties or financial institutions referenced in Section 4, may order extra work or may make changes by altering or deleting any portion of the Works of Improvement as specified herein or as deemed necessary or desirable by the City Engineer as determined necessary to accomplish the purposes of this Agreement and to protect the public health or safety. It is mutually understood that it is inherent in the nature of the work contemplated by this Agreement that some changes in the Plans may be necessary during the course of construction to adjust them to field conditions and to assure the protection of the public health or safety. The City Engineer shall notify Subdivider or Subdivider's contractor in writing (by Correction Notice) at the time a determination has been made to require changes in the work. No field changes performed or proposed by Subdivider or its contractor shall be binding on City unless approved in writing by the City Engineer.

1.5. Defective Work. Subdivider shall cause its contractor to repair, reconstruct, replace, or otherwise make acceptable any work found by the City Engineer to be defective.

1.6. No Warranty by City. The Plans for the Works of Improvement have been prepared by or on behalf of Subdivider or its consultants or contractors, and City makes no representation or warranty, express or implied, to Subdivider or to any other person regarding the adequacy of the Plans or related documents.

1.7. Authority of the City Engineer. In addition to the authority granted to the City Engineer elsewhere in this Agreement, the City Engineer shall have the authority, which shall reasonably be exercised, to decide all questions which may arise as to the quality and acceptability of materials furnished and work performed.

1.8. Documents Available at the Job Site. Subdivider shall cause its contractor to keep a copy of all approved Plans at the job site on a phase by phase basis as those portions of the Property are improved, and shall give access thereto to the City's inspectors and engineers at all times.

1.9. Inspection. Subdivider shall have an authorized representative on the job site at all times during which work is being done who has full authority to act for Subdivider, or its design engineer, and Subdivider's contractors regarding the Works of Improvement. Subdivider shall cause its contractor to furnish the City with every reasonable facility for ascertaining whether or not the Works of Improvement as performed are in accordance with the requirements and intent of this Agreement, including the Plans. If the City inspector requests it, the contractor at any time before acceptance of the Works of Improvement shall remove or uncover such portions of the finished work as may be directed which have not previously been inspected. After examination, the contractor shall restore said portions of the work to the standards required hereunder. Inspection or supervision by the City shall not be considered as direct control of the individual workmen on the job site. City's inspector shall have the authority to stop any and all work not in accordance with the requirements contained or referenced in this Agreement.

The inspection of the work by City shall not relieve Subdivider or the contractor of any obligations to fulfill this Agreement as herein provided, and unsuitable materials or work may be rejected notwithstanding that such materials or work may have been previously overlooked or accepted.

1.10. Compliance With Law. In addition to the express provisions of this Agreement and the Plans, Subdivider shall cause construction of the Works of Improvement to be completed in accordance with all other applicable federal, state, and local laws, ordinances, rules, regulations and policies.

1.11. Suspension of Work. In case of suspension of work for any cause whatever, Subdivider and its contractor shall be responsible for all materials and shall store them properly if necessary and shall provide suitable drainage protection and erect temporary structures where necessary.

1.12. Maintenance of Job Site and Works of Improvement. City shall not be responsible or liable for the maintenance or care of the job site or the Works of Improvement. Subdivider shall maintain all the job site and Works of Improvement in a state of good repair until they are completed by Subdivider and approved and accepted by City, and until the security for the performance of this Agreement is released. Maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements.

All grading, landscaping, and construction activities shall be performed in a manner to control erosion and prevent flooding problems. The City Engineer shall have the authority to require erosion plans to prescribe reasonable controls on the method, manner, and time of grading, landscaping, and construction activities to prevent nuisances to surrounding properties. Plans shall include without limitation temporary drainage and erosion control requirements, dust control procedures, restrictions on truck and other construction traffic routes, noise abatement procedures, storage of materials and equipment, removal of garbage, trash, and refuse, securing the job site to prevent injury, and similar matters.

It shall be Subdivider's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Subdivider fails to properly prosecute its maintenance obligation under this section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Subdivider and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the conditions of the job site or Works of Improvement.

1.13. Final Acceptance of Works of Improvement. After Subdivider's contractor has completed all of the Works of Improvement allocable to Parcel 71920, Subdivider shall then request a final inspection of the work for Parcel 71920. City shall inspect the Works of Improvement within seven (7) days of Subdivider's request. If items are found by the inspector to be incomplete or not in compliance with this Agreement or any of the requirements contained or referenced herein, City will inform the contractor of such items within five (5) days of inspection, in writing. After the contractor has completed these items, the procedure shall then be the same as specified above for the contractor's initial request for final inspection. If items are found by City's inspector to be incomplete or not in compliance after two (2) "final" inspections, City may require the contractor, as a condition to performing further field inspections, to submit in writing a detailed written statement of the work performed subsequent to the date of the previous inspection which was found to be incomplete or not in compliance at

that time. City may also require Subdivider to pay all costs associated with any field inspections conducted after two (2) final inspections.

No inspection or acceptance pertaining to specific parts of any particular Work of Improvement shall be construed as final acceptance of any part until the overall final acceptance by City is made. Final acceptance shall not constitute a waiver by City of defective work subsequently discovered.

The date on which the Works of Improvement will be considered as complete shall be that date on which the City accepts the improvements and authorizes the City Clerk to record a Notice of Completion with respect thereto. A separate Notice of Completion may be recorded for each phase of Parcel 71920.

1.14. Permits. Subdivider, at Subdivider's expense, shall obtain all permits and licenses, give all notices and pay all fees required by law for the construction of the Works of Improvement. City shall promptly process all permits and licenses.

2. Time For Performance.

2.1. Commencement and Completion Dates. Subject to Sections 2.2 and 2.3 below, Subdivider shall (i) commence with construction and installation of the Works of Improvement for Parcel 71920 in a logical sequence as reasonably approved by the City ("Commencement Date"), and once construction or development of Parcel 71920 is actually started ("Commencement Date"); (ii) complete or cause to be completed all of the Works of Improvement associated with Parcel 71920 no later than one year (the "Completion Deadline Date") after the Commencement Date.

2.2. Phasing Requirements. The allocation of Works of Improvement and anticipated sequencing for Parcel 71920 is set forth on **Exhibit "B"** hereto. Notwithstanding the provisions of Section 2.1, City reserves the right to control and regulate completion of specific Works of Improvement as required to comply with applicable City ordinances, regulations, rules and policies relating to the timely provision of public services and facilities. In addition to whatever other remedies City may have for Subdivider's failure to satisfy such phasing requirements, as the same now exist or may be amended from time to time, Subdivider acknowledges City's right (i) to withhold the issuance of further building permits for Parcel 71920 until the associated phasing requirements are satisfied (ii) proceed against the security provided in Section 4.1, and/or (iii) proceed with reversion to acreage pursuant to Section 2.5. Prior to issuance of building permits, Subdivider shall provide satisfactory evidence that all applicable requirements that are a condition to issuance of building permits have been satisfied. Such requirements may include the payment of fees, construction of improvements, or both.

2.3. Force Majeure. Notwithstanding the provisions of Section 2.1, Subdivider's time for commencement and completion of the Works of Improvement shall be extended for the period of any enforced delay caused due to circumstances beyond the control and without the fault of Subdivider, including to the extent applicable adverse weather conditions, flood, earthquakes, strikers, lockouts, acts or failures to act of a public agency (including City), required changes to the Works of Improvement required by City, and similar causes; provided, however, that the period of any enforced delay hereunder shall not include any period longer than ten (10) days prior to City's receipt of a written notice from Subdivider or its

Contractor detailing the grounds for Subdivider's claim to a right to extend its time for performance hereunder and meeting this requirement hereof.

2.4. Continuous Work. After commencement of construction of the Works of Improvement (or separable portion or phase thereof), Subdivider shall cause such work to be diligently pursued to completion, and shall not abandon the work for a consecutive period of more than thirty (30) days, events of force majeure excepted.

2.5. Reversion to Acreage. In addition to whatever other rights City may have due to Subdivider's failure to timely perform its obligations hereunder, Subdivider recognizes that City reserves the right to revert the Property to acreage subject to the limitations and requirements set forth in California Government Code Sections 66499.11-66499-203/4. In this regard, Subdivider agrees that if the Works of Improvement have not been completed on or before November 30, 2013 and if City thereafter initiates proceedings to revert the Property to acreage, any improvements made by or on behalf of Subdivider after the date City initiates such action may not be considered in determining City's authority to revert the Property to acreage.

2.6. Time of the Essence. Time is of the essence of Subdivider's and City's performance of all of their respective obligations under this Agreement.

3. Labor.

3.1. Labor Standards. Subdivider shall be responsible for causing all contractors and subcontractors performing any of the Works of Improvement to comply with all applicable federal and state labor standards, including to the extent applicable the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor.

3.2. Nondiscrimination in Employment. The Subdivider covenants and agrees for itself, its successors and assigns and any successor-in-interest to the Property or part thereof, that all persons employed by or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by Subdivider without regard to race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth, or related medical condition, medical condition (cancer related) or physical or mental disability in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 200, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. § 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, et seq., the Immigration Discrimination in Employment Act of 1967, 29 U.S.C. § 621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b, et seq., 42 U.S.C. § 1981, the California Fair Employment and Housing Act, California Government Code § 12900, et seq., the California Equal Pay Law, California Labor Code § 1197.5, California Government Code § 11135, the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., and all other anti-discrimination laws and regulations for the United States and the State of California as they now exist or may hereafter be amended.

3.3. Licensed Contractors. Subdivider shall cause all of the Works of Improvement to be constructed by contractors and subcontractors with valid California Contractors licenses for the type of work being performed and having City business licenses.

3.4. Workers' Compensation. Subdivider shall cause every contractor and subcontractor performing any of the Works of Improvement to carry Workers' Compensation Insurance as required by the Labor Code of the State of California and shall cause each such contractor and subcontractor to submit to City a Certificate of Insurance verifying such coverage prior to such contractor or subcontractor entering onto the job site.

4. Security.

4.1. Required Security.

(a) Performance. Subdivider will furnish to City the following bonds, or other security reasonably acceptable to City as provided in California Government Code Section 66499 as such section may be amended, and satisfying the requirements of the applicable provisions of this Section 4 with respect to that phase (hereinafter "Security Instruments"):

(i) A Security Instrument securing Subdivider's faithful performance of all of the Works of Improvement ("Faithful Performance Security Instrument"), in the amount of one hundred percent (150%) of the estimated construction costs for Parcel 71920, as described in Section 1.1 and **Exhibit "B."**

4.2. Form of Security Instruments. All Security Instruments shall be in the amounts required under Section 4.1, as applicable, shall meet the following minimum requirements and otherwise shall be in a form provided by City or otherwise approved by the City Attorney:

(a) Bonds. For Security Instruments provided in the form of bonds, any such bonds must be issued and executed by an insurance company or bank authorized to transact surety business in the State of California. Any insurance company acting as surety shall have a minimum rating of A-IX, as rated by the current edition of Best's Key Rating Guide published by A.M. Best's Company, Oldwick, New Jersey, 08858. Any bank acting as surety shall have a minimum rating of AA, as rated by Moody's or Standard & Poor's.

(b) General Requirements For All Security Instruments. Payments under any Security Instrument shall be required to be made (and, with respect to bonds, litigation shall be required to be instituted and maintained) in the County of Los Angeles, State of California (and the Security Instrument shall so provide).

(i) Each Security Instrument shall have a minimum term of one (1) year after the deadline for Subdivider's completing the Works of Improvement, in accordance with Section 2.1 (other than liens on property, which shall have no defined term or expiration date).

(ii) Each Security Instrument shall reference Subdivider's obligations under this Agreement, shall be irrevocable, and shall include as an additional secured obligation the responsibility to compensate City for all of City's attorneys' fees and litigation expenses reasonably incurred in enforcing its rights under the Security Instrument.

(iii) Each Security Instrument shall provide that changes may be made in the Works of Improvement pursuant to the terms of this Agreement without notice to any issuer or surety and without affecting the obligations under such Security Instrument.

(iv) A final executed original of each Security Instrument shall be delivered to the City Clerk within three (3) days of execution of said Security Instrument.

4.3. Subdivider's Liability. While no action of Subdivider shall be required in order for City to realize on its security under any Security instrument, Subdivider agrees to cooperate with City to facilitate City's realization under any Security Instrument, and to take no action to prevent City from such realization under any Security Instrument. Notwithstanding the giving of any Security Instrument or the subsequent expiration of any Security Instrument or any failure by any surety or financial institution to perform its obligations with respect thereto, Subdivider shall be liable for performance under this Agreement and for payment of the cost of the labor and materials for the improvements required to be constructed or installed hereby and shall, within ten (10) days after written demand therefore, deliver to City such substitute security as City shall require satisfying the requirements in this Section 4.

4.4. Release of Security Instruments.

(a) City shall release the Faithful Performance Security Instrument for Parcel 71920 when all of the following have occurred:

(i) Subdivider has made written request for release and provided evidence of satisfaction of all other requirements in this section;

(ii) the Works of Improvement have been accepted and a Notice of Completion has been recorded; and

(iii) subject to the following sentences after passage of the time within which lien claims are required to be made pursuant to Article 3 (commencing with Section 3114) of Chapter 2 of Title 15 of Part IV of Division 3 of the California Civil Code or as such may be amended. If lien claims have been timely filed, City shall hold the Labor and Materials Security Instrument until such claims have been resolved, Subdivider has provided a statutory bond, or otherwise as required by applicable law.

(b) City shall within ten (10) days release any Lien when the items in Section 4.5(a) have occurred. In such a situation, City shall promptly execute and record a release of the Lien.

5. Cost of Construction and Provision of Inspection Service.

5.1. Subdivider Responsible for All Costs of Construction. Subdivider shall be responsible for payment of all costs incurred for construction and installation of the Works of Improvement.

5.2. Payment To City For Costs. Subdivider shall compensate City for all of City's costs reasonably incurred (i) in having its authorized representative make the usual and customary inspections of the Works of Improvement, (ii) for all design, plan check and evaluation of any proposed or agreed-upon changes in the work, and (iii) attorney costs for preparation of all necessary documents. In addition, Subdivider shall make such customary payments and deposits prior to the inspections of the Works of Improvement. The procedures for deposit and payment of such fees shall be as established by the City. In no event shall Subdivider be entitled to additional inspections or a final inspection and acceptance of any of the

Works of Improvement until all City fees and charges have been fully paid, including without limitation, charges for applicable penalties and additional required inspections.

6. Acceptance of Offers of Dedication. Subdivider shall provide irrevocable offers of dedication for all property on which the Works of Improvement are to be located, and all other rights of way or easements required by the Conditions of Approval for the benefit of the public. The City Council shall pass an appropriate resolution or resolutions accepting all offers of dedication shown on each Map for the Property, upon completion and acceptance by City of the Works of Improvement. Such resolutions shall authorize the City Clerk to execute the Certificate made a part of the Map regarding said acceptance of the offer of dedication.

7. Warranty of Work. Subdivider shall guarantee all Works of Improvement against defective materials and workmanship for a period of one (1) year from the date of the Notice of Completion is recorded for Parcel 71920. If any of the Works of Improvement should fail or prove defective within said one (1) year period due to any reason other than improper maintenance, or if any settlement of fill or backfill occurs, or should any portion of the Works of Improvement fail to fulfill any requirements of the Plans, Subdivider, within fifteen (15) days after written notice of such defects, or within such shorter time as may reasonably be determined by the City in the event of emergency, shall commence to repair or replace the same together with any other work which may be damaged or displaced in so doing. Should Subdivider fail to remedy defective material and/or workmanship or make replacements or repairs within the period of time set forth above, City may make such repairs and replacements and the actual cost, including but not limited to costs of materials, labor, contractors, architects, engineers, consultants, and attorneys, as well as fifteen percent (15%) overhead factor to pay City's administrative and associated costs will be paid for by the Subdivider. The warranty provided herein shall not be in lieu of, but shall be in addition to, any warranties or other obligations otherwise imposed by law. Upon expiration of this warranty period, Subdivider shall have no liability which may arise concerning operation and use of the Works of Improvement. Subdivider agreements with designers, contractors and subcontractors shall have substantially similar warranties making City a third party beneficiary.

8. Default.

8.1. **Enforcement.** If Subdivider refuses or fails to obtain prosecution of the Works of Improvement, or any severable part thereof, with such diligence as will ensure its completion within the time specified in this Agreement, or any extensions thereof, or fails to obtain completion of the work within such time, or if Subdivider is adjudged a bankrupt, makes a general assignment for the benefit of creditors, or if a receiver is appointed by reason of Subdivider's insolvency or default under a deed of trust, or if Subdivider, or any of the Subdivider's contractors, subcontractors, agents or employees, should violate any of the provisions of this Agreement, the City Engineer or City Council may serve written notice upon Subdivider and Subdivider's surety, if any has been selected pursuant to this Agreement, of breach of this Agreement, or of any portion thereof, and default of Subdivider ("Default

Notice”). The Default Notice must set forth the nature of the breach or failure and the actions, if any, required by Subdivider to cure such breach or failure. Subdivider shall be deemed in “default” under this Agreement, where: (i) said breach or failure can be cured, but the Subdivider has failed to fully cure within thirty (30) days after the date of the Default Notice (subject to the provisions below), or (ii) a monetary default remains uncured for ten (10) days (or such lesser time as may be specifically provided in this Agreement).

8.2. Breach of Agreement, Performance by Surety. In the event of any Default Notice, Subdivider’s surety, if any has been selected pursuant to this Agreement, shall have the duty to take over and complete the Works of Improvement. If the surety, within fifteen (15) days after the serving upon it of such Default Notice, does not give the City written notice of its intention to take over the performance of the contract, does not commence performance thereof within thirty (30) days after notice to the City of such election, does not diligently complete performance, or suspends or abandons performance for thirty (30) days after having commenced such performance, then the City may take over the Work of Improvement and prosecute the same to completion, by contract or by any other method the City may deem advisable, for the account and at the expense of Subdivider, and Subdivider’s surety if any has been selected pursuant to this Agreement, shall be liable to the City for any cost or damages occasioned the City thereby, including interest at the rate permitted by law from the date the City demands payment of such cost, and including reasonable attorney’s fees incurred by the City in enforcing Subdivider’s obligations pursuant to this Agreement.

8.3. Breach of Agreement: Holders other than Surety. In the event the Security Instrument is other than a bond, at the expiration of the period for cure provided in the Default Notice provided pursuant to Section 8.1 above, and if cure has not been completed, City may do the following:

(a) If security is the real property, City may take the enforcement actions specified in the deed of trust, covenants and conditions, or other recorded instrument to establish and collect the lien.

(b) If the security is a cash deposit with the City or instrument of credit with a financial institution, City shall have the right to withdraw such sums as the City finds necessary to pay the actual cost of performing the Work of Improvement, including but not limited to costs of materials, labor, contractors, architects, engineers, consultants, and attorneys, as well as fifteen percent (15%) overhead factor to pay City’s administrative and associated costs. Subdivider shall have no right to approve or prevent withdrawal but shall have the right to sue City for damages or injunctive relief if City’s withdrawal of the monies is unjustified.

8.4. Breach of Agreement; Actions by City. Following Default Notice and Subdivider’s failure to timely cure a default, and if the surety fails to perform under Section 8.2, or, if no surety, then if City elects to levy on any other security under Section 8.3, then in such event, the City, without liability for so doing, may take possession of, and utilize in completing the Work of Improvement of such materials, appliances, plant and other property belonging to Subdivider as may be on the job site of the Work of Improvement and necessary therefore.

8.5. Additional Subdivision Remedies for Breach. In addition to any other remedies set forth in this Agreement for breach or default of this Agreement by Subdivider, the City may, in its discretion, elect to use the Subdivision Map Act remedies including causing to

be filed for record with the County Recorder a notice of intention to record a notice of violation of the terms of this Agreement.

8.6. **Remedies Not Exclusive.** In any case where this Agreement provides a specific remedy to City for a default by Subdivider hereunder, such remedy shall be in addition to, and not lieu of, City's right to pursue any other administrative, legal, or equitable remedy to which it may be entitled.

8.7. **Attorney's Fees and Costs.** In the event that Subdivider or City fails to perform any obligation under this Agreement, Subdivider or City agrees to pay all costs and expenses incurred by Subdivider or City in securing performance of such obligations, including costs of suit and reasonable attorney's fees. In the event of any dispute arising out of Subdivider's or City's performance of its obligations under this Agreement or under any of the Security Instruments referenced herein, the prevailing party in such action, in addition to any other relief which may be granted, shall be entitled to recover its reasonable attorney's fees and costs. Such attorney's fees and costs shall include fees and costs on any appeal, and in addition a party entitled to attorney's fees and costs shall be entitled to all other reasonable costs incurred in investigating such action, taking depositions and discovery, retaining expert witnesses, and all other necessary and related costs with respect to the litigation. All such fees and costs shall be deemed to have accrued on commencement of the action and shall be enforceable whether or not the action is prosecuted to judgment.

9. **Indemnity.** During the one (1) year warranty period established in Section 7 of this Agreement, Subdivider agrees to indemnify, defend, and hold harmless City and City's officers, employees, and agents from and against any and all claims, liabilities, losses, damages, causes of action, and obligations arising out of Subdivider's performance of or failure to perform the construction and installation of the Works of Improvement in accordance with the requirements contained or referenced in this Agreement. Said indemnity obligation shall apply to personal injury, death, property damage, economic loss, and any other monetary damage or penalty to which City may be subjected, including without limitation, attorneys' fees and costs and the costs of realizing on any Security Instrument provided by Subdivider pursuant to the terms hereof.

10. **Insurance.** Subdivider shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) **Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent).** A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) **Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent).** A policy of comprehensive automobile liability insurance

written on a per occurrence for bodily injury and property damage in an amount not less than either (i) bodily injury liability limits of \$100,000 per person and \$300,000 per occurrence and property damage liability limits of \$150,000 per occurrence or (ii) combined single limit liability of \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Subdivider's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Subdivider shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Subdivider has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City.

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City Manager or other designee of the City due to unique circumstances.

11. General Insurance Requirements. All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Subdivider's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Subdivider shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 10 to the Contract Officer. No work or services under this Agreement shall commence until the Subdivider has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

national origin or ancestry of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(i) In deeds: "The grantee herein covenants by and for himself or 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, any person or group of persons on account of race, color, creed, religion, sex, marital status, handicap, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

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

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

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

12.2. Assignment; Successors and Assigns. This Agreement may be assigned by Subdivider to any party upon prior written consent of the City, which consent may not be unreasonably withheld. This Agreement shall be binding upon all successors and assigns to Subdivider's right, title, and interest in and to the Property and any portion thereof, so that all rights and obligations set forth in this Agreement shall run with the Property subject to each and all of the Maps.

12.3. No Third Party Beneficiaries. This Agreement is intended to benefit only the parties hereto and their respective successors and assigns. Neither City nor Subdivider intend to create any third party beneficiary rights in this Agreement in any contractor, subcontractor, member of the general public, or other person or entity.

12.4. Entire Agreement; Waivers and Amendments. This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all

negotiations and previous agreements between the parties with respect to all or any part of the subject matter hereof, except as may be expressly provided herein. All waivers of the provisions of this Agreement must be in writing and signed by an authorized representative of the party to be charged, and all amendments hereto must be in writing and signed by the appropriate representatives of both parties.

12.5. Cooperation and Good Faith. This Agreement contemplates a series of actions, approvals and other administrative decisions to implement its provisions and construct the Works of Improvements. The parties hereto shall cooperate reasonably and in good faith to timely achieve the purposes of this Agreement for the mutual benefit of the City and Subdivider.

12.6. Authority to Enter Agreement. Each party executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

[SIGNATURES ON FOLLOWING PAGE]

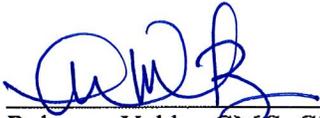
"CITY"

CITY OF BELL, CALIFORNIA, a municipal corporation



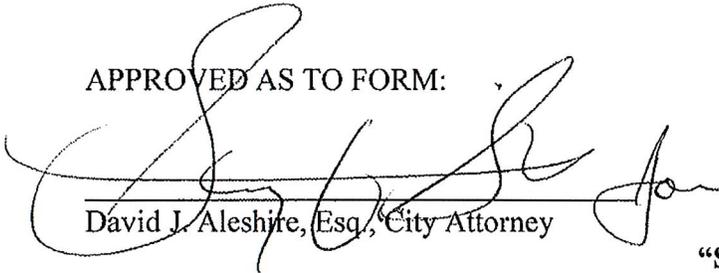
Doug Willmore, City Manager

ATTEST:



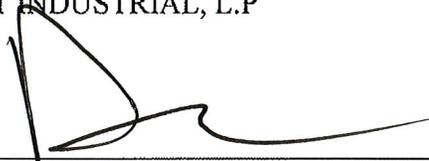
Rebecca Valdez CMC, City Clerk

APPROVED AS TO FORM:



David J. Aleshire, Esq., City Attorney

"SUBDIVIDER"
FIRST INDUSTRIAL, L.P



Ryan McClean, Senior Regional Director
898 N. Sepulveda, Suite 750
El Segundo, CA, 90245

ACKNOWLEDGMENT

State of California
County of Los Angeles)

On December 4, 2012 before me, Linda M Bauer, a Notary Public
(insert name and title of the officer)

personally appeared Ryan McClean -----,
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 Linda M. Bauer (Seal)

EXHIBIT "A"

SUBDIVISION IMPROVEMENT AGREEMENT – PARCEL 71920

Legal Description of Property

