

## **DEPOSIT/REIMBURSEMENT AGREEMENT**

### **City of Bell All Processing Costs for the Proposed Development, Construction and Operation of the Bandini Industrial Center Project**

**THIS DEPOSIT/REIMBURSEMENT AGREEMENT** ("Agreement") is entered into by and between the **CITY OF BELL**, a Charter City ("City"), and **XEBEC BUILDING COMPANY, INC.** a corporation doing business in California ("Developer").

### **RECITALS**

**WHEREAS**, Developer has applied to City for a Tentative Parcel Map and a Conditional Use Permit to authorize the construction and operation of the new Bandini Industrial Center Project at 5553 Bandini Boulevard, generally located on the north side of Bandini Boulevard between Pennington Way and Yeager Way in the City of Bell, California.

**WHEREAS**, The Project will include construction and operation of a 490,000 square foot warehouse distribution building with 188 vehicular parking spaces, 71 dock doors and 78,000 square feet of landscaping on a 21.26 acres parcel, of which 3.7 acres is in the City of Vernon ("the Project").

**WHEREAS**, The Project was approved on May 16, 2012 by the City, subject to certain conditions of approval.

**WHEREAS**, Condition No. A5 of Resolution No. 2012-44-PC approving the Tentative Parcel Map requires that a trust account subject to a deposit agreement approved by the City Attorney's office be established for all deposits and fees required in all applicable conditions of approvals and for the compliance and implementation of same.

**WHEREAS**, the Project requires an environmental review as required by the California Environmental Quality Act ("CEQA") and compliance of environmental mitigation and conditions of approval, the retention and costs of attorneys' fees, the retention and costs of professional consultants, the costs of work performed by City staff, and all other reasonable processing costs related to review and inspection of Developer's proposal and application for development of the Project and implementation of conditions of approval.

**WHEREAS**, Developer understands all work performed by the City related to the Project will be under the direction of City, but at Developer's expense; and

**WHEREAS**, Developer acknowledges that the Developer has an obligation to fully reimburse the City for City's costs: (i) related to the preparation, review, adoption of the CEQA document, compliance of environmental mitigation measures and conditions of approval and any costs associated with defending the CEQA documents and implementation of mitigation measures, including attorneys fees, as set forth in this Agreement, (ii) related to the processing of the Project, including all attorneys' fees, the retention and costs of professional consultants, the costs of work performed by City staff, and all other reasonable processing costs related to review and inspection of Developer's Project (Collectively "Project Costs"); and

**WHEREAS**, City and Developer now desire to specify the terms of such reimbursement, including the cash deposits to be made by Developer as provided herein.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants set forth herein, and for other consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

#### **Section 1. Deposit.**

(a) Initial Deposit. Developer shall provide to City an initial deposit of Twenty Thousand Dollars (\$20,000) (the "Initial Deposit"), to be used by the City to pay for the Project Costs. The Initial Deposit shall be made within three (3) business days following the execution of this Agreement by Developer. The Initial Deposit, as well as any subsequent Replenishment Deposit(s) described in Section 1(b), below (collectively, the "Deposit"), may be commingled with other funds of City for purposes of investment and safekeeping.

(b) Replenishment Deposit(s). Subject to the provisions of this Agreement, Developer hereby agrees that whenever the amount of the Deposit declines to \$5,000 or less, the City Manager of City may in writing request the additional deposit of an amount necessary to return the Deposit balance to \$20,000 (a "Replenishment Deposit"). Developer shall deliver a Replenishment Deposit to City within ten business (10) days following such written request.

(c) Additional Deposit. In addition to replenishment of the Deposit, City reserves the right to determine that the Deposit is insufficient. In such case, Developer shall pay City a lump sum deposit in the amount estimated by City to be sufficient to cover the additional expenses within the time established in subsection (b). Thereafter, the replenishment triggers under subsection (a) above and shall be 25% of the aggregate Deposit sum.

(d) Suspension of Work. Any work on the Project will be suspended if the Deposit is not timely replenished or supplemented.

(e) Records. City shall at all times maintain records as to the expenditure of the Deposit. City shall promptly provide Developer with copies of each statement of invoice received from Attorneys or Consultants upon the Developer's request.

**Section 2. Use of Deposit.** The Deposit shall be administered as follows:

(a) **Reasonable and Actual Costs.** City shall use the Deposit to pay for the reasonable and actual Project Costs. "Project Costs" include but are not limited to costs (i) related to the compliance of environmental mitigation measures and conditions of approval and any costs associated with defending the CEQA documents and implementation of mitigation measures, including attorneys fees, as set forth in this Agreement, (ii) related to the processing of the Project, including the retention and costs of all engineering, traffic, soils, planning, and other professional consultants; the costs of work performed by City staff; and all other reasonable processing costs related to review, approval and permitting of Developer's Project.

(b) **Return of Deposit.** Within seven (7) business days following the termination of this Agreement, City shall return any then-unexpended portion of the Deposit to Developer, without interest, less any amount owed to the City to the Developer and with an accounting pursuant to Section 6 as to how the funds have been expended.

**Section 3. Termination.** This Agreement shall be in full force and effect and shall terminate when (i) the Developer's application has been reviewed, processed, and approved and all permits have been issued and all required implementing agreements and actions have been completed or (ii) the Project has been disapproved or otherwise terminated.

**Section 4. Agreement Not Debt or Liability of City.** It is hereby acknowledged and agreed that this Agreement is not a debt or liability of City. City shall not in any event be liable hereunder other than to return the unexpended and uncommitted portions of the Deposits as provided in Section 2, above, and provide an accounting under Section 6 below. City shall not be obligated to advance any of its own funds with respect to the Project Costs. No official, officer, employee or agent of City shall, to any extent, be personally liable hereunder.

**Section 5. Conflicts of Interest.**

(a) **Consultants Work for City.** City has sole discretion to direct the work and evaluate the performance of the employees and contractors assigned to work on the application, and City retains the right to terminate or replace at any time any such person. Any documents prepared hereunder or any approvals granted shall reflect the independent judgment of City. Accordingly, even though the funds provided, hereunder shall be utilized to retain engineers, planning, financial or other consultants to prepare studies or reports for the Project, such consultants shall work solely for City and shall not take direction or guidance from Developer.

(b) Selection and Payment by City. City has sole discretion to select which of its employees and consultants are assigned to work on the application. City has sole discretion to determine the amount of compensation paid to employees and/or consultants assigned to work on the application. City, not Developer, shall pay employees and/or consultants assigned to work on the application from a City account.

(c) No Employment by Developer. Developer represents and warrants that for the 12 months period preceding the submission of its application for the Project, it has not entered into any arrangement to pay financial consideration to, and has not made any payment to, the City's Consultants or any of their agents or employees and/or for a period of one (1) year after final resolution of Developer's application for the Project, neither Developer, nor any of its representatives, agents or other persons acting in concert with Developer, shall enter into any financial relationship with the City's Consultants, their agents or employees, or with any City official, agent or employee. Nor, during such period, shall Developer propose to enter into any future relationship with the Consultants, their agents or employees, or with any City official, agent or employee. Developer further warrants that it has not entered into any arrangement to pay financial consideration to, and has not made any payment to, any City official, agent or employee that would create a legally cognizable conflict of interest as defined in the Political Reform Act (California Government Code Sections 87100 et seq.).

(d) Communications with Consultants. Generally, Developer may only communicate with Consultants retained hereunder through City staff although with the permission of Director. Consultant may ask questions of and provide information directly to Consultant. In no case may Developer Consultant as to how to undertake or prepare the work product of Consultant.

(e) Waiver. Notwithstanding that Developer provides funding for the performance of the reports and studies provided hereunder, City remains free to exercise its independent judgment in the approval of the Project and Developer waives any right to claim based upon this Agreement or the funding provided herein that the City has any obligation to approve any development application processed pursuant hereto.

**Section 6. Accounting.** In addition to City's delivery obligation under Section 1 of this Agreement, City's Finance Director shall provide Developer with a written accounting of moneys expended under this Agreement within thirty (30) business days of receipt by the Finance Director of a written request therefore submitted by an authorized officer of Developer. No more than one accounting will be provided in any calendar month and the cost of providing the accounting shall be charged to the Deposits.

**Section 7. Notices.** Any notices, requests, demands, documents, approvals or disapprovals given or sent under this Agreement from one party to another (collectively, "Notices") may be personally delivered, transmitted by facsimile ("fax") transmission, email,, overnight courier, or deposit with the United States Postal Service for mailing, postage prepaid, to the address of the other party as stated in this Section. Notices shall be sent as follows:

Developer: Xebec Building Company, Inc.  
3010 Old Ranch Parkway, Suite 470  
Seal Beach, CA 90740  
Attention: Todd Moysychyn, CFO  
e-mail: toddm@xbc-inc.com

Copy to: Xebec Building Company, Inc.  
3010 Old Ranch Parkway, Suite 470  
Seal Beach, CA 90740  
Attention: Greg Hook, Director of Construction  
e-mail: greggh@xbc-inc.com

City: City of Bell  
6250 Pine Avenue  
Bell, CA 90201  
Attention: Chief Administrative Officer

Copy to: Aleshire & Wynder, LLP  
18881 Von Karman Avenue, Suite 1700  
Irvine, California 92612  
Telephone: (949) 223-1170  
Attn: Dave J. Aleshire, City Attorney  
e-mail: [daleshire@awattorneys.com](mailto:daleshire@awattorneys.com)

Each such Notice shall be deemed delivered to the party to whom it is addressed (i) if personally served or delivered, upon delivery, (ii) if given by email, upon the sender's receipt of an appropriate answerback or other written acknowledgement (iii) if given by fax, upon the sender's receipt of an appropriate answerback or other written acknowledgement, (iv) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, (v) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (vi) if given by any other means, upon delivery at the address specified in this Section.

**Section 8. Litigation.** In the event that either party shall commence any legal action or proceeding to enforce or interpret this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees. The venue for any litigation shall be Los Angeles County. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the drafting party. This Agreement shall be governed by and interpreted under the laws of the State of California.

**Section 9. Severability.** If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

**Section 10. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

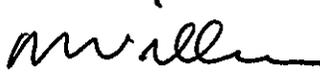
**Section 11. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original.

**Section 12. Authority.** The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

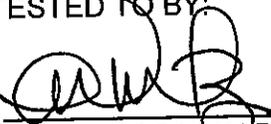
**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first written above.

DATED: 8/22/12

**CITY OF BELL**  
a Charter City

By:   
DOUGLAS WILLMORE  
Its: City Manager

ATTESTED TO BY:

By:   
REBECCA VALDEZ, City Clerk

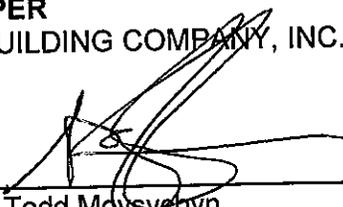
APPROVED AS TO FORM:

**ALESHIRE & WYNDER, LLP**

By:   
DAVID J. ALESHIRE  
Its: City Attorney

DATED: \_\_\_\_\_

**DEVELOPER**  
XEBEC BUILDING COMPANY, INC.

By:   
A. Todd Moysichyn  
Its: Chief Financial Officer

## ACKNOWLEDGMENT

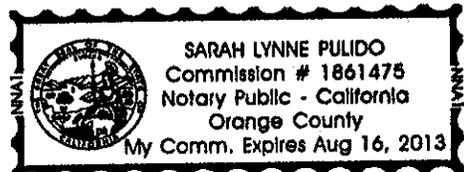
State of California  
County of Orange

On August 22, 2012 before me, Sarah Lynne Pulido, Notary Public  
(insert name and title of the officer)

personally appeared Arthur Todd Moysychyn  
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 Sarah Lynne Pulido (Seal)