

ENVIRONMENTAL INDEMNITY AGREEMENT

This Environmental Indemnity Agreement (“Agreement”) is made by and between the INLAND VALLEY DEVELOPMENT AGENCY, a joint powers authority (the “Agency”) and SBD Corporate Center II, LLC, a California limited liability company (the “Purchaser”), and the San Bernardino County Fire Protection District (“Lessee”).

Recitals

A. Pursuant to a Quitclaim Deed recorded on December 2, 2004 as document No. 2004-0890746 the Agency acquired from The United States of America that certain real property consisting of approximately 211,701 square feet of land located at 1111 E. Mill Street and further described on Exhibit “A” (the “Real Property”) improved with a building consisting of approximately 79,834 square feet (the “Building”). The Building and Real Property are collectively referred to herein as the “Property”.

B. Agency and Purchaser entered into that certain Disposition and Development Agreement dated December 26, 2019 (the “DDA”) for the sale of the Property to Purchaser.

C. Pursuant to the terms of the DDA, Agency will enter into a Lease Agreement with Lessee for the Property. The Lease Agreement has been negotiated by Purchaser and will be fully assumed by Purchaser upon the transfer of the Property to Purchaser pursuant to the DDA with Agency having no further obligations under the Lease after assignment to Purchaser.

D. The Property has been held by Agency as investment Property and has been vacant and never occupied during Agency’s ownership of the Property.

E. The Building when transferred to Agency pursuant to the Quitclaim Deed contained asbestos and lead based paint. The Quitclaim Deed by which the Property was transferred to the Agency further describes prior releases of materials on the Property which may constitute hazardous substances. The Agency has conducted remediation of asbestos and lead based paint during its ownership as described on Exhibit “B” attached hereto.

F. Purchaser and Lessee acknowledge that Agency previously provided copies of the following environmental reports attached as Exhibit “C” and that they have reviewed the same prior to entering into this Agreement:

(1) Project Manual DFAS Building No. 2 Rehabilitation Project, Seismic Retrofit, EDA Grant No. 07-49-06572, dated March 2015;

(2) IVDA Board Meeting December 9, 2015 Agenda Item No. 8 Authorizing Change Order No. 1 in the Amount of \$16,934, Authorizing The Filing of Notice of Completion for the DFAS Building No. 2 Rehabilitation Project, Seismic; And Authorize the Release of Construction Retention to Drake & Sons Contractor, Incorporated Pursuant to the U.S. Department of Commerce , Economic Development Administration Grant No. 07-49-06572;

(3) Economic Development Administration Final Acceptance Report for Project # 07-49-06572, dated Feb 1, 2016;

(4) Notice of Completion filed by Inland Valley Development Agency in County of San Bernardino Official Records as Document No. 2015-0542565 on December 11, 2015;

(5) DFAS Building No. 2 Rehabilitation Project Phase 1 – Seismic Retrofit Plans prepared by Miller Architecture consisting of 6 pages;

(6) Inland Valley Development Agency DFAS Building #2 Abatement and Demolition Project EDA Grant #07-49-06572 Project #6046 Plans prepared by Vanir Construction Management, Inc consisting of 22 pages;

(7) Drake And Sons Construction Company, Inc. DFAS Building No. 02 Abatement and Demolition Project Close Out and Warranty Package including Building Permit Final, Hazardous Waste Hauling Manifests and Asbestos Final Air Clearance Report dated August 23, 2013 prepared by Envirocare Consulting, Inc.

G. As part of the sale of the Property, the Agency has agreed to give Purchaser and Lessee a limited indemnity agreement as described herein for any environmental contamination occurring on the Property during the Agency's ownership of the Property. [Bond Trustee will be a third party beneficiary of the indemnity agreement as further provided herein.]

NOW THEREFORE, in consideration of ten dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Agency hereby agrees as follows:

1. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:

1.1 The term "**Environmental Laws**" means any and all present and future federal, state and local laws (whether under common law, statute, ordinance, rule, regulation or otherwise), court or administrative orders or decrees, requirements of permits issued with respect thereto, and other requirements of governmental authorities relating to the environment or to any Hazardous Substance (including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601, et seq.), as heretofore or hereafter amended from time to time, and the applicable provisions of the California Health and Safety Code and the California Water Code.

1.2 The term "**Environmental Losses**" means all losses, liabilities, damages, demands, claims, actions judgments, causes of action, assessments, penalties, costs or expenses, including cost of performing remediation incurred by any Indemnatee with respect to the Property arising out of or as a result of: (i) the presence of any Hazardous Substance on the Property first arising or occurring during Agency's ownership of the Property; (ii) any violation of any applicable

Environmental Laws relating to the Property or to the ownership, use, occupancy or operation thereof first arising or occurring during Agency's ownership of the Property; or (iii) any investigation, inquiry, order, hearing, action, or other proceeding by or before any governmental agency in connection with any Hazardous Substance first arising or occurring during Agency's ownership of the Property.

1.3 The term "**Hazardous Substance**" means (i) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", "infectious waste", "toxic substance", "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or "EP toxicity" and (ii) any petroleum product.

1.4 The term "**Hazardous Substances Contamination**" means contamination of the building, facilities, soil, groundwater, surface water, air or other elements on, of or under any other property as a result of Hazardous Substances in violation of Environmental Laws released from or emanating from the Property during the Agency's ownership of the Property.

2. **Indemnity Agreement.**

2.1 **Indemnity.** Agency hereby agrees to indemnify, protect, defend and hold Purchaser and Lessee, and each of their respective members, managers, officers, agents and employees (individually an "**Indemnitee**" and collectively "**Indemnitees**"), harmless from and against any and all Environmental Losses related to Hazardous Substances first originating or occurring upon the Property during the Agency's ownership of the Property. This indemnity expressly excludes any obligation or responsibility by the Agency for any Environmental Losses arising out of any Hazardous Substances existing on the Property prior to the time of Agency's acquisition of fee title to the Property pursuant to the Quitclaim Deed.

2.2 **Notice of Potential Claim.** Indemnitee shall promptly provide written notice to Agency of any fact, circumstance, or matter which comes to Indemnitee's attention that may be subject to a claim for indemnification under this Agreement (a "**Potential Claim**"), which notice shall (i) identify the nature and source of such Potential Claim, including how and when Indemnitee first obtained knowledge of the Potential Claim, and (ii) copies of any study or document in Indemnitee's possession related to the Potential Claim.

2.3 **Cooperation.** Indemnitee agree to cooperate with Agency in investigating any Potential Claim, including allowing Agency to undertake tests or studies to identify and determine the source, nature, and/or scope of such Potential Claim. Indemnitee shall not settle or otherwise compromise for payment any claim for which indemnification is provided hereunder without the prior written approval of Agency, which approval shall not be unreasonably withheld, conditioned or delayed.

2.4 **Third Party Beneficiary.** Upon execution of the Lease Agreement referenced in Recital C above, the _____ shall be a third party beneficiary

of this Agreement with the fully right and authority to enforce the terms and provisions of this Agreement as an Indemnitee.

3. **Asbestos and Lead Based Paint Remediation.** As indicated in Recital E above, the Building when transferred to Agency contained asbestos and lead based paint. Agency undertook remediation of asbestos and lead based paint as described in Exhibit "B". However, Purchaser and Lessee should anticipate that residual amounts of asbestos and lead based paint remain in the Building and they are advised to conduct further testing or studies prior to undertaking any construction within the Building. Asbestos and lead based paint existed in the Building prior to the transfer to Agency and are thus expressly excluded from the indemnification obligations of Agency under this Agreement.

4. **General Provisions**

4.1 **Headings.** The Section titles in this Agreement are not a part thereof and shall have no effect upon the construction or interpretation of any part hereof.

4.2 **Time.** Time is of the essence with regard to all provisions of this Agreement in which performance is a factor.

4.3 **Representations and Warranties.** Agency unconditionally represent and warrant to the Purchaser and the Lessee, to Agency's best knowledge, as follows as of the date hereof:

a) No Hazardous Substances. No Hazardous Substances in violation of Environmental Laws have been released upon the Property during the Agency's ownership of the Property. The Property is not affected by any Hazardous Substances Contamination occurring during the Agency's ownership of the Property. Except as disclose herein and in the environmental reports attached hereto as Exhibit C, the Agency has no knowledge of Hazardous Substances on or under the Property.

b) No Violation of Law. The condition of the Property during the Agency's ownership of the Property does not violate any Environmental Laws. The use of and operations conducted on the Property by Agency have not violated any Environmental Laws.

c) Permits and Licenses. All notices, permits, licenses, or similar authorizations (collectively, "Environmental Permits"), if any, required under Environmental Laws to be obtained or filed in connection with the present ownership, operation, or use of the Property, including, without limitation, the present generation, treatment, storage, disposal, or release of any Hazardous Substances into the environment, have at all relevant times been duly obtained or filed. No use of or operation conducted on the Property by Agency during its ownership thereof is in violation of any Environmental Permit applicable to the Property, Agency, or such use or operation. All such Environmental Permits, if any, are complete and in full force and effect.

d) No Hazardous Substances Use. The Agency has not, during the Agency's ownership of the Property, undertaken, caused, permitted, authorized, or suffered the presence, use, manufacture, handling, generation, transportation, storage, treatment, discharge, release, burial, or disposal of any Hazardous Substances on, under, from or about the Property or the transportation of any Hazardous Substances to or from the Property in violation of Environmental Laws.

4.4 ***Security Interests.*** Agency will permit [Lender] to join and participate, as a party if it so elects, in any legal proceedings or actions with respect to the Property in connection with any Environmental Laws or Hazardous Substances for which an indemnity obligation is provided by Agency hereunder..

4.5 ***Prior Agreements.*** This Agreement contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Agreement and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto, together with the prior written consent or acknowledgement of the Lessee. This Agreement shall not be effective or binding on any party until fully executed by both parties hereto.

4.6 ***Mediation.*** Before filing any litigation or making any administrative claim, the parties agree to engage in nonbinding mediation for a minimum of thirty (30) days. The mediator shall be selected by mutual agreement or, if no agreement can be reached, by the Presiding Judge, San Bernardino Superior Court, upon petition by either party. The mediation shall be conducted at the discretion of the mediator or pursuant to rules adopted by the parties. The mediation shall be conducted in San Bernardino County, California. The cost of mediation shall be borne equally by Agency and the Indemnitee(s), with each shall pay one-half of any estimated fees required by the mediator in advance. Before the date of mediation, each side shall provide the mediator and the other party with a statement of its position and copies of all supporting documents. No one who has ever had any business, financial, family or social relationship with any party to this Agreement shall serve as mediator unless the related party informs the other party of the relationship and the other party consents in writing to the use of that mediator.

4.7 ***Notices.*** All notices, certificates, requests, demands and other communications provided for hereunder or under this Agreement shall be in writing and shall be (a) personally delivered; (b) sent by registered United States mail; (c) sent by overnight courier of national reputation; or (d) transmitted by facsimile or other telecommunication, in each case addressed to the party to whom notice is being given at its address as set forth below and, if transmitted by facsimile or other telecommunication, transmitted to that party at its facsimile number or email address as may hereafter be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section; provided that notices by facsimile or email shall be confirmed by the recipient by facsimile or email response to the sender. All such notices, requests, demands and other communications shall be deemed to have been given on (i) the date received if personally delivered; (ii) when deposited in the mail if delivered by mail; (iii) the date sent if sent by overnight courier; or (iv) the date of transmission if delivered by facsimile.

If to Agency Inland Valley Development Agency
1601 East Third Street, Suite 100
San Bernardino, California 92408
Attention: Executive Director
Email: mburrows@sbdairport.com

with a copy to: Mirau, Edwards, Cannon, Lewin & Tooke
1806 Orange Tree Lane, # C
Redlands, California 92374
Attention: Michael Lewin, Esq.
mlewin@mechlaw.com

If to the Purchaser: SBD Corporate Center II, LLC
215 North D Street, Suite 304
San Bernardino, California 92401
Attention: Mr. Frank Schnetz
Email: _____

SBD Corporate Center II, LLC
4221 Wilshire Blvd. Suite 380
Los Angeles, California 90010
Attention: Jian Torkan
Email: _____

with a copy to: Kutak Rock LLP
777 South Figueroa Street, Suite 4550
Los Angeles, California 90017
Attention: Sam S. Balisy
Email: _____

If to Lessee: San Bernardino County Fire Protection District
157 W. 5th Street
San Bernardino, California 92415

With a copy to: San Bernardino County Counsel
385 N. Arrowhead Avenue, 4th Floor
San Bernardino, California 92415

4.8 **Choice of Law.** This Agreement shall be governed by the laws of the State of California, exclusive of conflict of law provisions.

4.9 **Assignment and Interpretation.** This Agreement shall be binding upon the Agency, its successors and assigns and shall inure to the benefit of and shall be enforceable by

each Indemnitee, its successors, endorsees and assigns. As used herein, the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

4.10 ***Execution in Counterparts.*** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, Agency and Purchaser have executed this Agreement to be effect on and as of the close of escrow for the transfer of the Property to Purchaser.

AGENCY

Inland Valley Development Agency
a joint powers authority

Date: _____

By: _____
Michael Burrows, Chief Executive Office

ATTEST:

Jennifer Farris,
Clerk of the Board

APPROVED AS TO FORM:

Mirau, Edwards, Cannon, Lewin & Tooke, LLP

Michael Lewin

PURCHASER

SBD Corporate Center II, LLC, a California limited
liability company

Date: _____

By: _____

Title: _____

LESSEE

SAN BERNARDINO COUNTY FIRE
PROTECTION DISTRICT

Date: _____

By

EXHIBIT A

Description of Property

EXHIBIT B

Remediation of Asbestos and Lead Based Paint

EXHBIT C

Environmental Reports