

INFRASTRUCTURE ESCROW AGREEMENT

THIS INFRASTRUCTRE ESCROW AGREEMENT (this "Agreement") is made this 18th day of December, 2020 (the "Effective Date"), by and among PSL INDUSTRIAL OWNER, LLC, a Missouri limited liability company or assigns ("Owner"), CITY OF PORT ST. LUCIE, a municipal corporation of the State of Florida ("City"), and FIRST AMERICAN TITLE INSURANCE COMPANY ("Escrow Agent"). Each of Owner and City are referred to herein as a "Party" and collectively as the "Parties".

Article I. General Information

A. Owner:

PSL Industrial Owner, LLC
120 South Central Avenue, Suite 500
St. Louis, Missouri 63105
Attn: Nick Sansone
Phone: 314-727-6664
Email: nsansone@sansonegroup.com

B. City:

City of Port St. Lucie
121 S.W. Port St. Lucie Blvd.
Port St. Lucie, Florida 34984-5099
Attn: Wes McCurry, CRA Director
Phone: 772-871-7386
Email: wmccurry@cityofpsl.com

C. Escrow Agent:

First American Title Insurance Company
8182 Maryland Avenue, Suite 400
St. Louis, MO 63105
Attention: Michael P Roush
Phone: 314-898-1643
Email: mroush@firstam.com

D. Project Location:

Related Infrastructure in Tradition Commerce Park as described in, and to be constructed in accordance with the terms of that certain Sale Agreement (as hereafter defined).

E. Cash Deposit: \$3,791,361.05

Article II. Recitals

Section 2.01 Owner and the Port St. Lucie Governmental Finance Corporation (“GFC”) are parties to that certain Purchase and Sale Agreement dated as of October 30, 2020 (the “**Sale Agreement**”) with respect to approximately 21 acres of vacant land located at the northeast corner of SW Becker Road and SW Village Parkway in Tradition Commerce Park in Port St. Lucie, Florida (the “**Land**”).

Section 2.02 Owner intends to design, develop, construct, lease and operate an approximately 245,000 square foot distribution facility and all related infrastructure (the “**Facility**”) on the Land.

Section 2.03 Pursuant to the terms of the Sale Agreement, Owner, at Owner’s Cost, is responsible for the construction of certain infrastructure that will allow for the development of the Facility and will further provide access and the expedited development of future phases and adjoining land (as more defined in the Sale Agreement, collectively, “**Related Infrastructure**”).

Section 2.04 An ordinance known as The Port St. Lucie Subdivision Regulations, Florida, establishes procedures for the surveying and platting of the Land, and requires the installation of the Related Infrastructure and provides penalties for any failure by the Owner to complete the Related Infrastructure.

Section 2.05 A final plat of a subdivision of the Land shall not be recorded until Owner has installed the Related Infrastructure or has guaranteed to the satisfaction of the City such improvements will be installed.

Section 2.06 Owner has requested the recording of a certain plat of a subdivision in Port St. Lucie, Florida, to be known Southern Grove Plat No. 33 (the “**Plat**”).

Section 2.07 The Related Infrastructure is to be installed after recordation of said plat under guarantees posted with the City.

Section 2.08 City and Owner have a vested interest in making sure that the Related Infrastructure is performed, completed and paid for in a timely manner in order facilitate the use and occupancy of the Facility.

Section 2.09 As required under the terms of the Sale Agreement and the Port St. Lucie Subdivision Regulations Owner has deposited the Cash Deposit into the Account (as defined below) for the purpose of pre-funding the cost of the Related Infrastructure.

Section 2.10 For the benefit of Parties, Escrow Agent has agreed to provide a disbursing service as a means to distribute the funds held by Escrow Agent to pay for the Related Infrastructure.

Section 2.11 The Parties hereto agree that Escrow Agent will make disbursements for construction payments directly to City, Owner or their respective contractors, as applicable, consistent with each draw request in accordance with the terms and conditions set forth in this Agreement.

Article III. Appointment; Cash Deposit.

Section 3.01 **Appointment of Escrow Agent.** The Parties hereby appoint Escrow Agent for the purposes of holding and disbursing the Cash Deposit, and Escrow Agent hereby accepts such appointment and agrees to perform the duties of Escrow Agent hereinafter set forth, subject to the terms and conditions of this Agreement. Escrow Agent hereby agrees to act as such and to accept all amounts to be delivered to or held by Escrow Agent pursuant to the terms of this Agreement. Escrow Agent shall hold and safeguard the Account (as hereinafter defined) and the amounts on deposit therein during the term of this Agreement and shall hold, invest and disburse the Account in strict accordance with the terms and conditions hereof.

Section 3.02 **Delivery of Cash Deposit.** Owner will deliver to Escrow Agent, by wire transfer of immediately available funds, the Cash Deposit in two installments payable as follows: (i) \$2,025,691.10 shall be delivered on or before 2PM Eastern Standard Time on Monday, January 4, 2021; and (ii) \$1,765,669.95 shall be delivered on the date Owner closes on the purchase of the Land. Prior to or upon receipt of the Cash Deposit, Escrow Agent shall create and establish an FDIC insured, interest bearing deposit account (the "**Account**") into which the Cash Deposit shall be deposited, with the account in the name of Escrow Agent to be held by Escrow Agent for the purposes and on the terms herein stated. Escrow Agent shall be the sole signatory to the Account. Escrow Agent does hereby acknowledge delivery and receipt of the Cash Deposit and agrees to hold and disburse the Cash Deposit in accordance with the terms and conditions of this Agreement. For purposes of this Agreement, the amount of the Cash Deposit remaining in the Account from time to time shall be referred to herein as the "**Cash Deposit Amount**". The Cash Deposit is intended to cover hard and soft costs incurred with respect to the construction and installation of the Related Infrastructure (collectively, "**Project Expenses**").

Section 3.03 **Disbursement Procedures.**

- (a) Escrow Agent shall disburse funds from the Cash Deposit to Owner, in one or more installments, upon Escrow Agent's receipt of the following (collectively, "**Disbursement Deliveries**"):
 - (i) a request for payment of then due and owing Project Expenses (in each case, a "**Draw Request**"), containing (A) an updated project expense report; (B) an in-balance certification confirming that the remaining Cash Deposit Amount following such draw will be sufficient to cover the remaining Project Expenses and completion of the Related Infrastructure; (C) copies of invoices and/or paid receipts (collectively, "**Invoices**") from suppliers and contractors/subcontractors; and (D) if the Draw

Request seeks to draw upon any contingency allowances, a reasonably detailed explanation of the reason for the need to draw upon the contingency allowance;

(ii) written confirmation from the civil engineer for the Related Infrastructure, confirming that the work that is subject of the Draw Request has been completed in accordance with the plans and specifications for the Improvement work;

(iii) a certificate or notice of substantial completion signed by the contractor responsible for the performance of that portion of the Related Infrastructure that is the subject of the ending Draw Request in the form of AIA Document G702 for the Related Infrastructure work that is the subject of the Draw Request;

(iv) a conditional lien waiver (subject only to payment) from the contractor responsible for the performance of that portion of the Related Infrastructure that is the subject of the pending Draw Request evidencing that all Related Infrastructure work that is the subject of the Draw Request has been performed free and clear of liens and encumbrances;

(v) unconditional lien waivers from the contractor and subcontractors and material suppliers of any tier for payments received out of the previous Draw Requests; and

(vi) written confirmation from City approving any Draw Request submitted by Owner.

(b) Owner agrees, within one (1) year from and after the date of recording of the Plat (the "**Outside Completion Date**"), to complete the Related Infrastructure in accordance with the construction plans approved by the City Engineer, identified as Plans Prepared by Culpepper & Terpening Inc. on file with the City Engineer. If Owner shall fail to complete the Related Infrastructure on or before the Outside Completion Date, then after thirty (30) days advance written notice, the City may submit a written demand to Escrow Agent (in each case, a "**Payment Demand**") to the Escrow Agent and the Escrow Agent shall disburse funds from the Cash Deposit to the City, in one or more installments, to pay for the cost of construction and installation of the Related Infrastructure, including but not limited to, engineering, legal and contingent costs which the City may sustain as a result of the failure of Owner to carry out and execute all of the provisions of this Agreement, the Sale Agreement and the provisions of the Subdivision Regulations of the City of Port St. Lucie, Florida. Owner acknowledges and agrees that the City, at its option, shall have the right to construct and install, or pursuant to public advertisement and receipt of bids, cause to be constructed and installed the Related Infrastructure in case the Owner fails or refuses to do so in accordance with the terms of this Agreement. Owner understands and agrees that extensions of the Outside Completion Date will be granted for twelve (12) months after receipt of written request for extension, which requests by Owner are subject to the approval by the City of Port St. Lucie Council.

(c) Each disbursement pursuant to a Draw Request or Payment Demand shall be referred to herein as an "**Advance**". Payment of each Advance shall be made not more than ten (10)

days following Escrow Agent's receipt of a Draw Request or Payment Demand, as applicable.

- (d) The Party requesting a disbursement from the Cash Deposit shall deliver a copy of each Draw Request or Payment Demand, as applicable, to the other Party simultaneously with its submission to Escrow Agent. The non-requesting party shall approve or disapprove each Draw Request by written confirmation to Escrow Agent and the submitting Party within five (5) days following receipt of same. If the non-submitting party fails to provide a written approval or disapproval within said five (5) business day period, then the non-submitting party shall be deemed to have approved the Draw Request or Payment Demand, as applicable, and Escrow Agent shall be entitled to make the Advance without having received written approval from non-submitting Party. If the non-submitting Party disapproves a Draw Request or Payment Demand, as applicable, then the non-submitting Party's disapproval notice shall set forth in reasonable detail the reason for the disapproval. Upon receipt of a disapproval notice from the non-submitting Party, the submitting Party may address the non-submitting Party's objections and resubmit a revised Draw Request or Payment Demand, as applicable, to all parties, provided the five (5) day period for the non-submitting Party to respond to the revised Draw Request or Payment Demand, as applicable, shall be reduced to two (2) business days. This process will continue until the pending Draw Request or Payment Demand, as applicable, is approved or deemed approved. City and Owner shall at all times in their review of the Draw Requests and Payment Demands act reasonably and in good faith.
- (e) Upon substantial completion of the Related Infrastructure, the final Draw Request shall provide for the disbursement of the entirety of the Cash Deposit Amount, including, but not limited to, any remaining contingency amount.
- (f) Notwithstanding any other provision of this Agreement to the contrary, if Owner fails to close on the purchase of the Land for any reason, then (i) the Cash Deposit Amount shall be disbursed to Owner within three (3) business days after written notice from Owner; and (ii) the City may vacate the Plat.

Section 3.04 Date Down. Escrow Agent is not issuing any title policy with respect to the Related Infrastructure and will not be obligated to issue any date-down endorsements with respect to any Advance, provided that Escrow Agent shall complete a lien search on the parcel(s) underlying the Related Infrastructure with each Draw Request to confirm that there have been no liens filed against such parcel(s). If any liens have been filed, Owner and City shall cooperate to satisfy such lien claims, and no further amount of the Cash Deposit shall be disbursed until such liens have been satisfied.

Section 3.05 Escrow Fees. An Escrow charge of [\$0.00] shall be payable to Escrow Agent for each Draw Request. All Escrow charges shall be payable by Owner and shall be included in the initial Cash Deposit.

Section 3.06 Liability and Indemnification of Escrow Agent.

- (a) Escrow Agent shall not be liable to any Party, or any of its respective successors or permitted assigns, for any action or failure to act by Escrow Agent hereunder, except for Escrow Agent's own negligence or willful misconduct. Owner agrees to indemnify and hold harmless Escrow Agent, and any successor or permitted assign, from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees actually incurred, arising out of or in connection with this Agreement, except for claims based upon the negligence or willful misconduct of Escrow Agent.
- (b) Escrow Agent is entitled to rely upon any order, judgment, certification, demand, notice, instrument or other writing delivered to it hereunder without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity of the service thereof. Escrow Agent may act in reliance upon any instrument or signature believed by it to be genuine and may assume that any person purporting to give any notice or receipt or advice or to make any statement or executing any document in connection with the provisions hereof has been duly authorized to so do. If Escrow Agent is in doubt as to what action it should take hereunder, Escrow Agent is entitled to deposit that portion of the Escrow Amount as to which it has such doubt with a court of competent jurisdiction and interplead the other Parties for a determination of the matter. Escrow Agent shall not undertake such deposit and interpleader unless it has given the Parties written notice ten (10) days before such deposit and interpleader as to the intentions of Escrow Agent. The Parties agree to reimburse Escrow Agent from the Escrow Amount for any reasonable expenses actually incurred in the event Escrow Agent interpleads all or a portion of the Escrow Amount.

Article IV. Requirements; Authority

Section 4.01 **Authority.** By execution of this Agreement, and provided that all of the conditions precedent to each Advance as set forth in **Section 3.03** and otherwise in this Agreement, each of the Parties hereby authorize and direct the Escrow Agent, and the Escrow Agent hereby agrees, without the need for any further consent by Owner or any other Party, to follow the disbursement instructions as set forth in the Draw Request or Payment Demand, as applicable.

Section 4.02 **Duties.** The functions and duties assumed by Escrow Agent include only those described in this Agreement and Escrow Agent is not obligated to act except in accordance with the terms and conditions of this Agreement. Escrow Agent does not insure that the Related Infrastructure will be completed, nor does it insure that the Related Infrastructure, when completed, will be in accordance with plans and specifications, nor that sufficient funds will be available for completion, nor does it assume any liability for same.

Section 4.03 **No Fees.** All obligations, duties and requirements imposed upon or allocated to Owner or to City specific to and under this Agreement, shall be performed by each of the Owner and City at its respective sole cost and expense.

Article V. Owner Obligations/Default

Section 5.01 **Increase to Cash Deposit Amount.** In the event that the cost of the Related Infrastructure is increased by a change order approved under the terms of the Sale Agreement, Owner agrees to deposit additional funds required in connection therewith with Escrow Agent as part of the Cash Deposit Amount within five (5) business days following approval of such change order.

Section 5.02 **Default.** A Party shall be in default if it (i) disapproves any Draw Request or Payment Demand without good cause; or (ii) fails to perform any term, condition, covenant or obligation required under this Agreement for a period of thirty (30) days after written notice thereof. Upon the occurrence of any such default, the non-defaulting Party may sue for injunctive relief or to recover damages for any loss directly resulting from the breach. The obligations of Parties under this paragraph shall survive the termination of this Agreement.

Article VI. Assignment

Section 6.01 **Collateral Assignment.** A Party may collaterally assign its rights under this Agreement to any lender ("**Lender**") providing construction or permanent financing with respect to the Facility or the Related Infrastructure. The Parties and Escrow Agent hereby designate Lender as an additional third-party beneficiary of this Agreement having the right to enforce and receive the benefit or all rights of the assigning Party hereunder pursuant to the terms herein. Notwithstanding the foregoing, the Cash Deposit may only be expended as provided herein, for Related Infrastructure and shall not be paid to or on behalf of a Party or Lender for any other purpose.

Section 6.02 **Permitted Assignments.** A Party may assign this Agreement (i) to an entity controlled by or affiliated with such Party; (ii) to an affiliate of such Party; (iii) to an entity with respect to which such Party is the sponsor, managing member, general partner, or for which such Party or an affiliate thereof serves as the designated developer; or (iv) as otherwise permitted under the Sale Agreement.

Section 6.03 **No Assignment.** Except as expressly set forth in this Article VI, none of the Parties hereto may assign or transfer (voluntarily or involuntarily, whether by operation of law or otherwise) any of its rights or obligations under this Agreement without the prior written consent of the other Parties, which consent may be withheld in such Parties' sole discretion.

Article VII. Miscellaneous

Section 7.01 **Third-Party Beneficiary.** Except as set forth in Article VI, the Parties acknowledge, and agree that this Agreement is not intended by any of the undersigned to give any benefits, rights, privileges, actions, or remedies to any person, partnership, firm or corporation other than Escrow Agent, Owner and City as a third-party beneficiary or otherwise under any theory of law.

Section 7.02 **Term.** The term of this Agreement (the "**Term**") shall commence as of the Effective Date and shall terminate upon Escrow Agent's receipt of (a) a joint certificate from Owner and City confirming that (i) the Related Infrastructure have been substantially completed and all Project Expenses have been paid in full and all full and final lien waivers have been delivered to Escrow Agent, and (ii) all amounts due and payable under the Sale Agreement have been paid in full; and (b) written authorization to close the Account executed by Owner and City.

Section 7.03 **Reversion of Cash Deposit Amount.** In the event that, upon expiration of the Term, the Account holds funds not disbursed and Escrow Agent has received the joint written authorizations as contemplated in Section 7.02, then Escrow Agent shall be authorized to disburse any and all such funds to or at Owner's direction.

Section 7.04 **Resignation.** Escrow Agent may resign upon giving 10 days prior written notice to City and Owner. A successor escrow agent (the "**Successor**") shall be appointed by City and Owner within 10 days following the date of such resignation. Any appointed Successor must execute, acknowledge and deliver to its predecessor escrow agent (the "**Predecessor**") and City and Owner an instrument accepting such appointment and agreeing to the terms of this Agreement. The resignation of the Predecessor thereupon becomes effective and the Successor succeeds to the rights and duties of the Predecessor hereunder. The Predecessor will immediately deliver to the Successor the Escrow Amount, and all interest and other income earned thereon, and any documents then held by the Predecessor pursuant to this Agreement.

Section 7.05 **Adverse Claims.** In the event of any disagreement or the presentation of adverse claims or demands in connection with disbursement of the Cash Deposit Amount or Account, Escrow Agent is, at its option, entitled to refuse to comply with any such claims or demands during the continuance of such disagreement and may refrain from delivering any item affected hereby. In so doing, Escrow Agent shall not become liable to the other Parties hereto due to its failure to comply with any such adverse claim or demand. Escrow Agent is entitled to continue, without liability, to refrain and refuse to act: (a) until all rights of the adverse claimants have been finally adjudicated by a court having jurisdiction over the Parties and the items affected hereby, after which time Escrow Agent is entitled to act in conformity with such adjudication, or (b) until all differences have been adjusted by agreement and Escrow Agent has been notified thereof and has been directed in writing signed by Owner and City, at which time Escrow Agent is protected in acting in compliance therewith.

Section 7.06 **Further Assurances.** The Parties will execute and deliver such further instruments and do such further acts and things as may be required to carry out the intent and purpose of this Agreement.

Section 7.07 **Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto.

Section 7.08 **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Florida without regard to choice of law rules and venue will exclusively be in the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County, Florida.

Section 7.09 **Entire Agreement.** This Agreement constitutes the sole and entire agreement between the Parties with respect to the transactions contemplated herein, and except for the Assignment Agreements, there are no other agreements or understandings, oral or written, between the Parties with respect thereto. All previous negotiations and discussions have been fully integrated herein. This Agreement shall not be amended or modified except by writing signed by all the Parties hereto.

Section 7.10 **Notices.** Except as otherwise provided herein, any notice required or permitted to be given hereunder shall be in writing and deemed to be given (i) when hand delivered by a reputable courier service, or (ii) when delivered by a reputable overnight express service, or (iii) when sent as a pdf attachment to an electronic mail so long as no error message is received and a copy is sent also by one of the means described either in (i) or (ii) above; and all such notices being addressed to the parties at their respective addresses referenced below. Any Party shall have the right, from time to time, to change the address to which notices to it shall be sent by giving to the other Party or Parties at least ten (10) days prior notice of the changed address. The notice addresses for the Parties are as set forth in the Article I.

Section 7.11 **Waiver.** Any agreement on the part of a Party to any extension or waiver of any provision of this Agreement shall be valid only if set forth in an instrument in writing signed on behalf of such Party. A waiver by a Party of the performance of any covenant, agreement, obligation, representation or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, representation or warranty. A waiver by any Party of the performance of any act will not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or privilege hereunder operate as a waiver thereof.

Section 7.12 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart. The Parties hereto may

exchange executed counterparts of this Agreement by in portable document format (PDF) delivered by electronic mail.

Section 7.13 Costs and Attorneys' Fees. In the event a Party institutes legal action for an alleged breach of this Agreement by the other Party and a breach shall be established, the prevailing Party shall be entitled to recover, in addition to its actual damages, its reasonable costs and expenses, including reasonable attorneys' fees and court costs actually incurred, up to and limited to \$50,000.00. As used herein, the term "prevailing Party" shall have the reasonable and customary definition under Florida law.

Section 7.14 Sovereign Immunity. Nothing in this Agreement shall be considered to increase or waive any limits of liability or waive any immunity afforded to the City by Florida Statutes, case law, or any other source of Government Requirements.

Section 7.15 Waiver of Jury Trial. The Parties hereto each knowingly, voluntarily and intentionally waive any right which any of them have to a trial by jury with respect to any litigation or legal proceeding based upon or arising directly, indirectly or otherwise in connection with, out of, related to or from this Agreement, including by way of example but not limited to, any course of conduct, course of dealing, verbal or written statements, or acts or omissions of either party which in any way relate to this Agreement. The provisions of this Section shall survive the expiration of this Agreement.

Section 7.16 Time of Essence. Time is of the essence of this Agreement and of each and every term, covenant and condition herein.

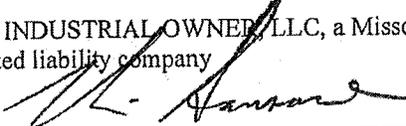
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IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered as of the date first set forth above.

Owner:

PSL INDUSTRIAL OWNER, LLC, a Missouri
limited liability company

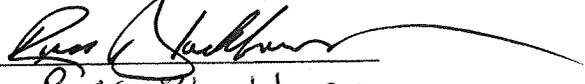
By:


Nicholas G. Sansone, President

City:

CITY COUNCIL OF PORT ST. LUCIE, FLORIDA

By:

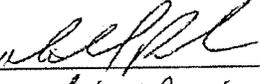

Name: Russ Blackburn

Title: City Manager

Escrow Agent:

FIRST AMERICAN TITLE INSURANCE
COMPANY

By:

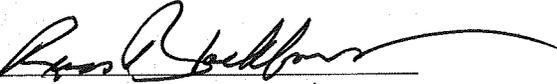

Name: Michael Roach

Title: Vice President Operations Manager + Underwriting Counsel

ACKNOWLEDGMENT BY AND CONSENT BY PORT ST. LUCIE GOVERNMENTAL FINANCE CORPORATION

The Port St. Lucie Governmental Finance Corporation, a Florida not for profit corporation, hereby acknowledges and consents that certain Infrastructure Escrow Agreement between the City of Port St. Lucie, a Florida municipal corporation and Sansone Port St. Lucie, LLC, a Missouri limited liability company.

PORT ST. LUCIE GOVERNMENTAL FINANCE CORPORATION

By: 

Name: Russ Blackburn

Title: CEO