

COLLATERAL ASSIGNMENT OF BUILD GRANT SUBAGREEMENT

Preparer Information: Thomas L. Flynn,
Brick Gentry P.C.
6701 Westown Parkway, Suite 100
West Des Moines, Iowa 50266
(515) 274-1450

**Assignor/Taxpayer
Information:** Des Moines Industrial, LLC
512 ½ East Grand Avenue
Des Moines, Iowa 50309

Assignee: Lincoln Savings Bank
1375 SW State Street
Ankeny, Iowa 50023

When Recorded Return To: Thomas L. Flynn,
Brick Gentry P.C.
6701 Westown Parkway, Suite 100
West Des Moines, Iowa 50266
(515) 274-1450

Book & Page Reference:

Legal Description: Exhibit A

COLLATERAL ASSIGNMENT OF BUILD GRANT SUBAGREEMENT

THIS COLLATERAL ASSIGNMENT OF BUILD GRANT SUBAGREEMENT (this “Assignment”) is made and entered into as of the ____ day of _____, 2020, by and among **DES MOINES INDUSTRIAL, LLC**, an Iowa limited liability company (collectively, “Assignor”), **DES MOINES AREA METROPOLITAN PLANNING ORGANIZATION**, a unit of local government pursuant to Iowa Code Chapter 28E (the “MPO”), and **LINCOLN SAVINGS BANK**, an Iowa state-chartered banking corporation (“Lender”).

Recitals

WHEREAS, Assignor and Lender have entered into that certain Loan Agreement (the “Loan Agreement”), dated as of the date hereof, relating to the development, construction and operation of a transload facility (the “Project”) upon the real estate described in Exhibit “A” attached hereto (the “Real Estate”);

WHEREAS, under the Loan Agreement, Lender has agreed to make two loans to Assignor in the respective principal amounts of \$11,736,497.00 and \$750,000.00 (the “Loans”), evidenced by promissory notes for like amounts (the “Notes”) of Assignor in favor of Lender and secured by the Collateral described in the Loan Agreement and other loan documents (collectively the “Loan Documents”);

WHEREAS, on September 9, 2020, Assignor and the MPO, entered into a Build Grant Subagreement (the “Build Grant Subagreement”) wherein, among other things, MPO agreed to pass through to Assignor the Build Grant (as described in the Build Grant Subagreement) in an amount not to exceed \$11,200,000 awarded to MPO by the Federal Railroad Administration (“FRA”) pursuant to a Grant Agreement dated September 3, 2020 (the “Grant Agreement”); and

WHEREAS, Lender has required, as a condition to making the Loans to Assignor, that Assignor assign its rights under the Build Grant Subagreement to Lender to secure the obligations of Assignor under the Loan Documents.

NOW, THEREFORE, in consideration of the recitals set forth above and incorporated herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby agrees as follows:

1. Capitalized Terms. Capitalized terms used herein but not otherwise defined herein shall have the meaning set forth in the Loan Documents.

2. Assignment. Assignor hereby assigns to Lender all of its right, title and interest in and to the Build Grant Subagreement, together with all documents and agreements attached as exhibits thereto, and all amendments, addenda and modifications thereof, whether made now or hereafter, to secure the obligations of Assignor under the Loan Documents. Lender acknowledges that this Assignment is subject to the terms and conditions of the Build Grant Subagreement. Nothing contained in this Assignment shall constitute a release of Assignor under the Build Grant Subagreement.

3. Assignor Representations and Warranties. Assignor hereby represents and warrants that there have been no prior assignments of its rights under the Build Grant Subagreement, that the Build Grant Subagreement is a valid and enforceable agreement, that neither the MPO nor Assignor is in default thereunder and that all covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date hereof. Assignor agrees not to sell, assign, pledge, mortgage or otherwise transfer or encumber its interest in the Build Grant Subagreement as long as this Assignment is in effect. Assignor hereby irrevocably constitutes and appoints Lender as its attorney-in-fact to demand, receive and enforce Assignor's rights under the Build Grant Subagreement for and on behalf of and in the name of Assignor or, at the option of Lender, in the name of Lender, with the same force effect as Assignor could do if this Assignment had not been made.

4. Present Assignment. This Assignment shall constitute a perfected, absolute and present assignment. Notwithstanding the foregoing or anything in this Assignment to the contrary, at any time prior to a Default (defined below), Lender grants to Assignor a revocable license to collect and receive the payments of the Build Grant, as they become due, under the Build Grant Subagreement, and to retain and use such payments for the construction, operation and maintenance of the Project, and to exercise all rights as Operator (as defined in the Build Grant Subagreement) under the Build Grant Subagreement, in each case subject to the terms hereof and of the Loan Documents.

5. Attorney-in-Fact. Upon the occurrence of a default or event of default under the Loan Documents (a "Default"), without affecting any of Lender's rights or remedies against Assignor under any other instrument, Assignor shall be deemed to have irrevocably appointed Lender as Assignor's attorney-in-fact to exercise any or all of Assignor's rights in, to and under the Build Grant Subagreement and to give appropriate receipts, releases and satisfactions on behalf of Assignor in connection with the performance by any party to the Build Grant Subagreement and to do any or all other acts in Assignor's name or in Lender's own name that Assignor could do under the Build Grant Subagreement with the same force and effect as if this Assignment had not been made. Upon notice of a Default by Lender to the MPO, the MPO shall make any payments due under the Build Grant Subagreement directly to Lender. In addition, Lender shall have the right to exercise and enforce any and all rights and remedies available after a default to a secured

party under the Uniform Commercial Code as adopted in the State of Iowa. If notice to Assignor of any intended disposition of collateral or of any intended action as required by law in any particular instance, such notice shall be deemed commercially reasonable if given in writing at least ten (10) days prior to the intended disposition or other action. Assignor hereby authorizes Lender to deliver a copy of this Assignment to any other party to the Build Grant Subagreement to verify the rights granted to Lender hereunder. All other parties under the Build Grant Subagreement are authorized and directed by Assignor to tender performance of its obligations under the Build Grant Subagreement to Lender upon presentation of a copy of this Assignment.

6. MPO Consent. The MPO hereby consents and agrees to the terms and conditions of this Assignment and agrees that the mortgage and security interest in the Collateral granted to the Lender in the Loan Documents is a permitted transfer and a permitted encumbrance under the Build Grant Subagreement. The MPO further represents and warrants to Lender that the Build Grant Subagreement is a valid agreement enforceable in accordance with its terms, that the MPO is not in default under the Build Grant Subagreement and that all of the MPO's covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date thereof. To the best knowledge of the MPO, (a) Assignor is not in default under the Build Grant Subagreement and (b) all of Assignor's covenants, conditions and agreements have been performed as required therein.

7. MPO Notice. The MPO agrees to provide notice as required by the Build Grant Subagreement, and that Lender shall have the right, but not the obligation, to cure such default within the time period set forth in the Build Grant Subagreement.

8. No Amendment. Assignor hereby agrees that no material change or amendment shall be made to terms of the Build Grant Subagreement without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed.

9. No Assignment. Lender hereby agrees that there shall be no further assignment of the Build Grant Subagreement without the prior written consent of the MPO or except in accordance with the Build Grant Subagreement.

10. No Waiver. This Assignment can be waived, modified, amended, terminated or discharged only explicitly in a writing signed by Lender and MPO. A waiver by Lender shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of Lender's rights or remedies hereunder. All rights and remedies of Lender shall be cumulative and shall be exercised singularly or concurrently, at Lender's option, and any exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other.

11. Continuing Obligations. No provision of this Assignment shall be deemed or construed to alter, amend or modify, in any way, the rights and obligations of the MPO contained in the Build Grant Subagreement.

12. Recording/UCC. Assignor authorizes Lender to file a notice of this Assignment with the Polk County Recorder's office as well as a UCC-1 Financing Statement with the Iowa Secretary of State giving notice to all third parties of Lender's collateral interest.

13. Negative Pledge. Assignor agrees that it will not voluntarily or involuntarily pledge, encumber or otherwise allow any lien to be placed upon its interests in the Build Grant Subagreement, except for the pledge granted to Lender hereunder.

14. Enforcement Costs. If Lender hires an attorney to assist it in enforcing its rights and remedies under this Assignment, Assignor agrees to pay the reasonable attorneys' fees and costs incurred by Lender.

15. Notice. Any notice, request, demand or other communication hereunder shall be deemed duly given if delivered or postage prepaid, certified or registered, addressed to the party as set forth below:

If to the MPO:

Des Moines Area Metropolitan Planning Organization
Attention: R. Todd Ashby, CEO/Executive Director
420 Watson Powell Jr. Way
Des Moines, Iowa 50309

If to Assignor:

Des Moines Industrial, LLC
Attn: Paul Cownie, Manager
512 E. Grand Avenue
Des Moines, IA 50309

If to Lender:

Lincoln Savings Bank
Attn: _____
13523 University Avenue
Clive, Iowa 50325

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa.

17. Counterparts. This Assignment may be executed in any number of counterparts and any party hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. This Assignment shall become binding when one or more counterparts taken together shall have been executed and delivered by the parties.

IN WITNESS WHEREOF, the parties have caused this Collateral Assignment of Build Grant Subagreement to be signed by their duly authorized representatives on the day and year first above written.

IMPORTANT: READ BEFORE SIGNING, THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

Assignor warrants that it has received a copy of this Assignment and further states that it understands fully the terms and conditions described herein.

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DES MOINES INDUSTRIAL, LLC, an
Iowa limited liability company

By: _____
Paul Cownie, Manager

STATE OF IOWA)
) ss
COUNTY OF POLK)

The foregoing instrument was acknowledged before me this ___ day of _____, 2020,
by Paul Cownie, the Manager of Des Moines Industrial, LLC, an Iowa limited liability company,
for and on behalf of said limited liability company.

Notary Public in the State of Iowa
My commission expires: _____

LINCOLN SAVINGS BANK, an Iowa state-chartered banking corporation

By: _____
Name: _____
Its: _____

STATE OF IOWA)
) ss
COUNTY OF POLK)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____ as _____ of Lincoln Savings Bank, an Iowa state-chartered banking corporation, for and on behalf of the Iowa state-chartered banking corporation.

Notary Public

Consented to by the Des Moines Area Metropolitan Planning Organization:

Des Moines Area Metropolitan Planning Organization

By: _____
R. Todd Ashby, CEO/Executive Director

STATE OF IOWA)
)SS:
COUNTY OF POLK)

On this ____ day of _____, 2020, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared R. Todd Ashby, to me personally known, and who, being by me duly sworn did state that he is the CEO/Executive Director of the Des Moines Area Metropolitan Planning Organization.

Notary Public in and for the State of Iowa

ACKNOWLEDGMENT AND CONSENT

The undersigned and duly authorized agent of the Federal Railroad Administration (“FRA”), does hereby acknowledge that the FRA has received and read a true and complete copy of the Collateral Assignment of Build Grant Subagreement (the “Assignment”) entered into by Des Moines Industrial, LLC (“Assignor”), Des Moines Metropolitan Planning Organization (“MPO”), and Lincoln Savings Bank (“Lender”) dated of even date herewith, and does hereby agree to be bound by the terms and conditions of the Assignment as they are applicable to FRA, including, but not limited to Assignor’s collateral assignment of the Build Grant Subagreement thereunder. FRA herein certifies to Lender that FRA has to date, and will continue through completion of the Project in accordance with the terms and conditions of the Grant Agreement distribute the Build Grant to MPO.

Dated this ____ day of _____, 2020.

Federal Railroad Administration

By: _____
Name: Jamie Rennert
Title: Director, Office of Railroad Policy & Development

STATE OF IOWA)
) SS
COUNTY OF POLK)

This instrument was acknowledged before me on this _____ day of _____, 2020 by Jamie Rennert, as Director, Office of Railroad Policy & Development of the Federal Railroad Administration.

Notary Public in the State of Iowa

EXHIBIT A

(Legal Description)