

## RIGHT OF FIRST REFUSAL

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, by and between THE \_\_\_\_\_ COUNCIL as the authorized agent for and on behalf of **Springfield Business Development Corporation** (hereinafter "Seller") and \_\_\_\_\_, a \_\_\_\_\_ corporation (hereinafter "Purchaser").

WHEREAS, **Springfield Business Development Corporation** is the owner of the Property;

WHEREAS, Pursuant to that certain **Partnership Industrial Center West Development Agreement** executed on **July 2, 2001** and amended by that certain First Amendment to **Partnership Industrial Center West Development Agreement** executed on **April 17, 2003** (as amended the "Development Agreement"), the parties to the Development Agreement granted various powers to a board called the \_\_\_\_\_ (as referred to herein as the "Seller");

WHEREAS, Under and in accordance with the Development Agreement, Springfield Business Development Corporation delegated to the Seller the sole authority to convey the Property; and

WHEREAS, Purchaser is interested in having a first right of refusal to purchase:

\_\_\_\_\_ (\_\_\_\_) acres, more or less, commonly known as **Partnership Industrial Center West**, Lot \_\_\_\_ (\_\_\_\_), (collectively, the "Property"), as each lot is more specifically described on Exhibit A, or any portion of the Property.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION the receipt and sufficiency being acknowledged, it is agreed:

1. Seller hereby grants Purchaser a right of first refusal on the Property or any portion of the Property in accordance with the terms below ("Right of First Refusal").

2. If during \_\_\_\_\_ (\_\_\_\_) days from the date of this Agreement, Seller receives either a bona fide written offer by a willing third party to purchase all or part of the Property which

Seller intends to accept, or a purchase agreement which Seller intends to enter into (collectively,

"Offer"), Seller shall give written notice to Purchaser at the address provided below accompanied by a copy of such Offer at least fifteen (15) days before the date of contemplated sale.

3. Within fifteen (15) business days after receipt of the written notice, Purchaser shall have the right to notify Seller that it is exercising its Right of First Refusal and will purchase the Property pursuant to a purchase agreement which incorporates the terms and conditions of the Offer. Notwithstanding the terms of the Offer, however, the purchase price of the Property shall be \_\_\_\_\_ (Rs. \_\_\_\_\_) per acre, and Purchaser shall only be required to purchase that portion of the Property which it identifies to Seller in its notice of intent to purchase. Closing of the sale to Purchaser shall be made in accordance with the commercially reasonable closing practices of the Partnership Industrial Center West to the extent that such are customary for the general area. Purchaser's written notice of its exercise of its Right of First Refusal shall be given to the President of the Administrative Council of the Partnership Industrial Center West, with a copy to the Director of Economic Development of City

Utilities at the addresses provided below.

4. If Purchaser fails to exercise its Right of First Refusal within the time stated above, this Right of First Refusal shall have no more force and effect.

5. Within three (3) days after the effective date (the date of complete execution and delivery of this Agreement), Purchaser shall deposit with Seller the sum of \_\_\_\_\_ (Rs. \_\_\_\_\_) as "Earnest Money". If the sale is closed, the Earnest Money shall be applied toward the Purchase Price. If Purchaser decides not to purchase said Property or this Right of First Refusal expires unexercised after \_\_\_\_\_ (\_\_\_) days, Seller shall retain \_\_\_\_\_ (Rs. \_\_\_\_\_) of the Earnest Money.

6. Time is of the essence of this Agreement.

7. Notices. Any notice, request or demand herein provided for or given hereunder, if given by the parties hereto, shall be effective (a) when delivered in person to the recipient named below, (b) one day after timely deposit with a responsible overnight courier to the recipient

named below, or (c) five days given if mailed by postage paid, certified mail return receipt requested as follows:

Seller:

Purchaser: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

With Required Copy to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

8. Miscellaneous.

(a) Entire Agreement. This Agreement is the entire Agreement among the parties and, when executed by the parties, supersedes all prior agreements, understandings and communications, either verbal or in writing, between the parties with respect to the subject matter contained herein.

(b) Amendments. This Agreement may not be amended, modified or changed except by written instrument signed by all of the parties.

(c) Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective heirs, legal representatives, successors and permitted assigns. Seller acknowledges that if Purchaser determines that it desires to expand its operations onto the Property, that Purchaser will assign this Right of First Refusal to a developer so that the developer could subject to certain contingencies, including an acceptable incentives

offering by the state and local government, construct a facility for Purchaser's operations. Therefore, This Right of First Refusal shall be fully assignable, and Purchaser shall have the right to assign this Right of First Offer to the developer of its choice, provided only that Purchaser shall notify Seller of the name and notice address of such assignee.

(d) Captions. All captions and headings are inserted for the convenience of the parties and shall not be used in any way to modify, limit or otherwise affect this Agreement.

(e) Counterparts. This Agreement may be executed simultaneously or in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(f) Waiver. Any failure by a party to comply with any obligation, agreement or condition herein may be expressly waived in writing by each of the other parties, but such waiver or failure to insist upon strict compliance with such obligation, agreement or conditions shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

(g) Governing Law. This Agreement shall be governed by, and construed in accordance with, the internal domestic laws of the State of [STATE], without reference to choice of law principles.

(i) Severability. If any term, provision or condition of this Agreement is determined by a court or other judicial or administrative tribunal to be illegal, void or otherwise ineffective or not in accordance with public policy, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

(j) Interpretation. In the event of a dispute or disagreement arising under this Agreement, this Agreement shall be interpreted in accordance with its fair meaning and shall not be interpreted for or against any party on the ground that such party drafted or caused to be drafted this Agreement.

(k) Recording Notice. Purchaser shall have the right to record a notice of this Agreement in the appropriate registry, at its costs and Seller agrees to execute such notice, in recordable form, upon request.

IN WITNESS WHEREOF, this First Right of Refusal has been made the date and year written below.

PURCHASER: SELLER:

\_\_\_\_\_ THE PARTNERSHIP INDUSTRIAL

CENTER WEST ADMINISTRATIVE

COUNCIL

By: \_\_\_\_\_ By: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_