



BUILDING AMERICA®

August 4, 2023

Power Industrial Owner LLC
Attn: Jill Lauckner or Riley Miller
711 High Street
Des Moines, Iowa 50392

RE: Union Pacific Railroad Company (“UP”) Right of Entry Agreement (“ROE”)
With Power Industrial Owner LLC, dated 12/1/22 – Mesa, AZ

Dear Ms. Lauckner or Ms. Miller:

With respect to the detention basin contemplated in the ROE, please be advised that the Surface Transportation Board has begun its review of potential environmental impacts from UP’s proposed rail project. While the Board’s review is pending, no work on the detention basin or anywhere on UP’s rail corridor can be conducted until the Board’s review is completed or the Board has otherwise approved the work. Additionally, the proposed location for the detention basin has been determined to be a culturally sensitive area. As a result, even after the Board completes its review, excavation and certain other activities at this proposed location may require special processes.

UP has learned that Power Industrial has entered onto UP property and completed some or all of the work needed to construct the detention basin contemplated under the ROE. Please be advised Power Industrial must cease any work on UP property until further notice from UP. If any equipment or other materials of Power Industrial remain on UP property, please contact Stephanie Tingley of UP to coordinate removal of the equipment and materials. Any removal must be coordinated with UP, and an archeological expert directed by the Board must be on site to monitor the removal.

UP finds no record that Power Industrial provided UP with prior notice as required by the ROE. Once UP initiated the Board’s environmental review of UP’s proposed rail project, as noted above work on the UP property required Board approval. Had UP received the required prior notice from Power Industrial, UP would have advised Power Industrial of the restrictions on activities on the UP property. By acting without Board approval, it appears to UP that Power Industrial failed to complete the work in compliance with all applicable federal, state and local laws, regulations and enactments, as required by the ROE. In response to the excavation by Power Industrial, the Board is requiring UP to take a number of measures, at significant expense to UP. The full extent of these measures and the corresponding cost is not yet known, but UP expects to hold Power Industrial responsible for its failure to comply with the terms of the ROE.

UP reserves all of its rights and remedies under the ROE and applicable law.

Sincerely,

Greg Brigham

Greg Brigham
General Director – Real Estate

cc: Newport Commercial Partners, LLC
Attn: Brett Shaves
8700 E. Pinnacle Peak Rd., Suite 201
Scottsdale, AZ 85255