

DEVELOPMENT AGREEMENT

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Calexico
608 Heber Avenue
Calexico, CA 92231

Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Recording Fee Exempt per Government Code § 6103

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into this _____ (th) day of _____, 2018 (the "Execution Date"), by and between the **CITY OF CALEXICO, a California municipal corporation** (the "City") and **TRINITY PROPERTY COMPANY LLC, a Nevada limited liability company** (the "Developer"). The City and the Developer are sometimes collectively referenced herein as the "Parties". In instances when a provision hereof applies to each of the Parties individually, either may be referenced as a "Party". The Parties hereby jointly render the following statement as to the background facts and circumstances underlying this Agreement.

RECITALS

- A. The State of California enacted Sections 65864 *et seq.* of its Government Code ("Development Agreement Statutes") to authorize municipalities to enter into development agreements with those having an interest in real property to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development in connection with the development of real property within their jurisdiction.
- B. The purpose of the Development Agreement Statutes is to authorize municipalities, in their discretion, to establish certain development rights and uses in real property for a period of years regardless of intervening changes in land use regulations, to vest certain rights in the Developer, and to meet certain public purposes of the local government.
- C. As authorized by the Development Agreement Statutes, the City has adopted Chapter 16.52 of its Municipal Code establishing the procedures and requirements for the consideration of development agreements with the City.

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- D. The Developer currently owns a fee simple interest in real property considered in this Agreement, which has a development area of approximately 8.5 acres in size, bordered by Enterprise Boulevard on the east, Sunset Boulevard on the west, West Cole Boulevard on the south, and vacant land to the north (the "Land").
- E. All of the parcels within the Land are located within an area known as the Portico Industrial Park (collectively, the "Site"). Within the Site exists one building located at 2421 Enterprise Boulevard, City of Calexico, County of Imperial, State of California identified as Assessor's Parcel Number ("APN") 059-018-000 ("2421 Enterprise Boulevard"). Also, included in the Site is vacant land identified by APNs 059-343-003, 059-343-006, 059-343-014, and 059-343-016. The Site is more fully described in **Exhibit A** and shown on the map in **Exhibit B**, both exhibits being attached hereto and incorporated herein by this reference.
- F. The Developer intends to develop and improve the Site (all of which is located within the Cannabis Overlay Zone in the City of Calexico) for Cannabis Cultivation, Manufacturing, and Distribution Facilities, which shall be undertaken in two phases (the "Project"). Phase 1 of the Project, which is depicted on **Exhibit C**, consists of improving 2421 Enterprise Boulevard (a) to accommodate cultivation and manufacturing operations in the existing building and (b) for a transportation and distribution facility with a transportation office(s) to be constructed on a parcel carve-out north of the existing building at 2421 Enterprise Boulevard. Phase 2 of the Project consists of constructing an additional three cultivation and manufacturing buildings on vacant land located along Sunset Boulevard, identified on the map in **Exhibit D**. Both Exhibits C and D are attached hereto and incorporated herein by this reference. The proposed Project includes a total of 353,480 square feet of Commercial Cannabis Cultivation, Manufacturing, and Distribution Facilities. The square footage of the Project can fluctuate by increasing or decreasing to account for changes in the law to maintain compliance and efficiency.
- G. All told, the Project includes and shall not be limited to, development, construction, and improvement on the Site, generally described as follows:
- (a) Improvements to an existing building, consisting of approximately 33,112-square-feet, on 2.21 acres at 2421 Enterprise Boulevard, which is to be used to cultivate and manufacture cannabis.
 - (b) The construction of a building, consisting in size of approximately 38,500-square-feet, with a ground floor and mezzanine on 2.00 acres located on

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EXHIBIT B



Google

NEW PARCEL
TRANSPORTATION
COMPANY
10,000 SF

PROPOSED
PARCEL - 1
87,127 SF
2.00 AC.

BUILDING - B
29,000 SF GND.
9,500 SF MEZ.
38,500 SF TOT.
73 SPACES (1/513 SF)

PROPOSED
PARCEL - 2
87,282 SF
2.00 AC.

BUILDING - C
41,300 SF GND.
7,000 SF MEZ.
48,300 SF TOT.
57 SPACES (1/878 SF)

PROPOSED
PARCEL - 3
87,218 SF
2.00 AC.

BUILDING - D
38,750 SF GND.
7,000 SF MEZ.
45,750 SF TOT.
62 SPACES (1/782 SF)

BUILDING - A
2421 ENTERPRISE
95,875 SF
2.21 AC.

33,112 SF TOT.
53 SPACES (1/625 SF)

EXISTING
BUSINESS

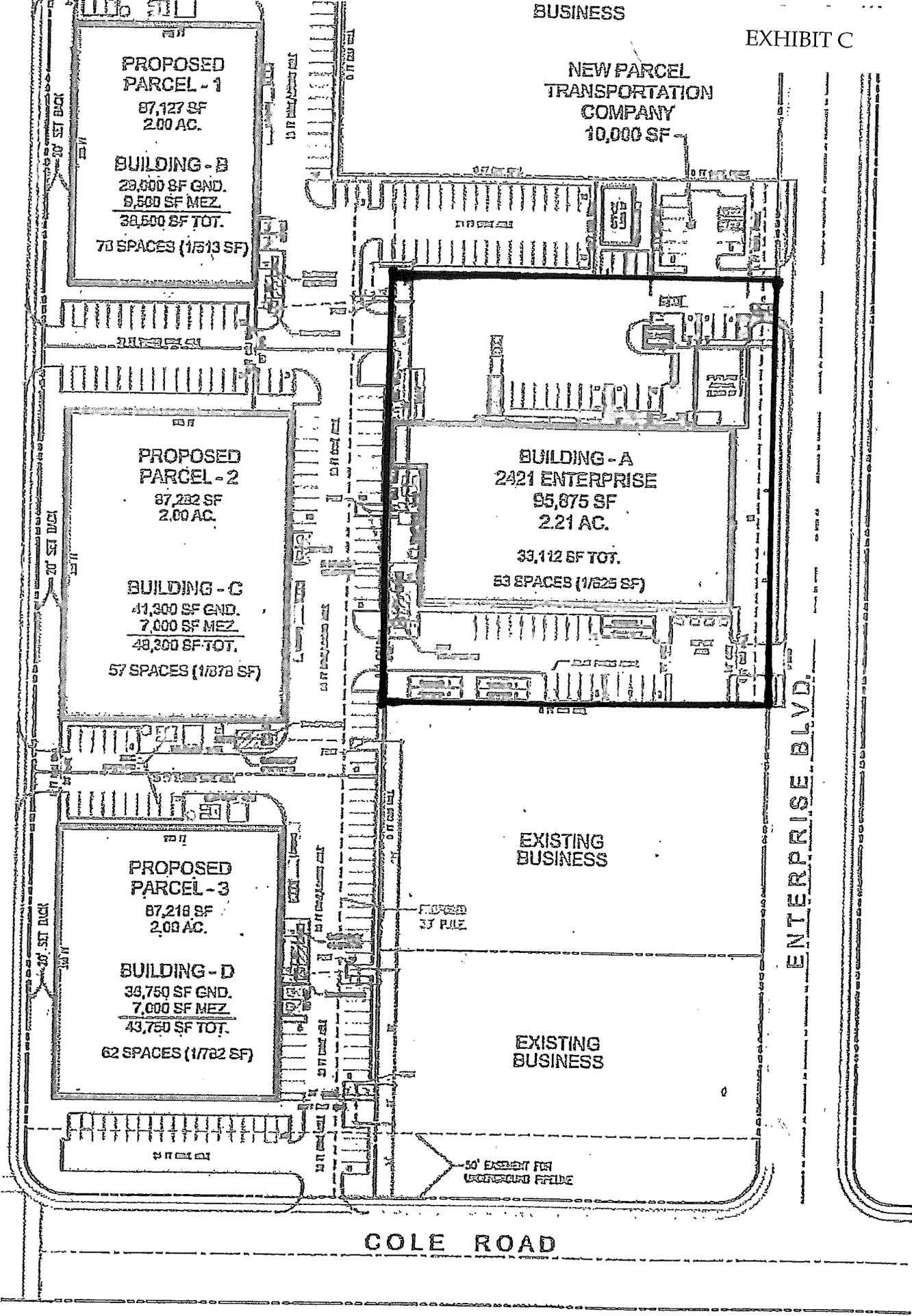
EXISTING
BUSINESS

PROPOSED
37' RULE

50' EASEMENT FOR
WORKING FRONT

ENTERPRISE BLVD.

COLE ROAD



VACANT LOT

EXISTING BUSINESS

EXISTING BUSINESS

NEW PARCEL
TRANSPORTATION
COMPANY
10,000 SF

PROPOSED
PARCEL - 1
87,127 SF
2.00 AC.

BUILDING - B
29,000 SF GND.
9,500 SF MEZ.
38,500 SF TOT.
78 SPACES (1513 SF)

PROPOSED
PARCEL - 2
87,282 SF
2.00 AC.

BUILDING - C
41,300 SF GND.
7,000 SF MEZ.
48,300 SF TOT.
57 SPACES (11878 SF)

PROPOSED
PARCEL - 3
87,218 SF
2.00 AC.

BUILDING - D
38,750 SF GND.
7,000 SF MEZ.
43,750 SF TOT.
62 SPACES (11782 SF)

BUILDING - A
2421 ENTERPRISE
95,875 SF
2.21 AC.

33,112 SF TOT.
53 SPACES (11625 SF)

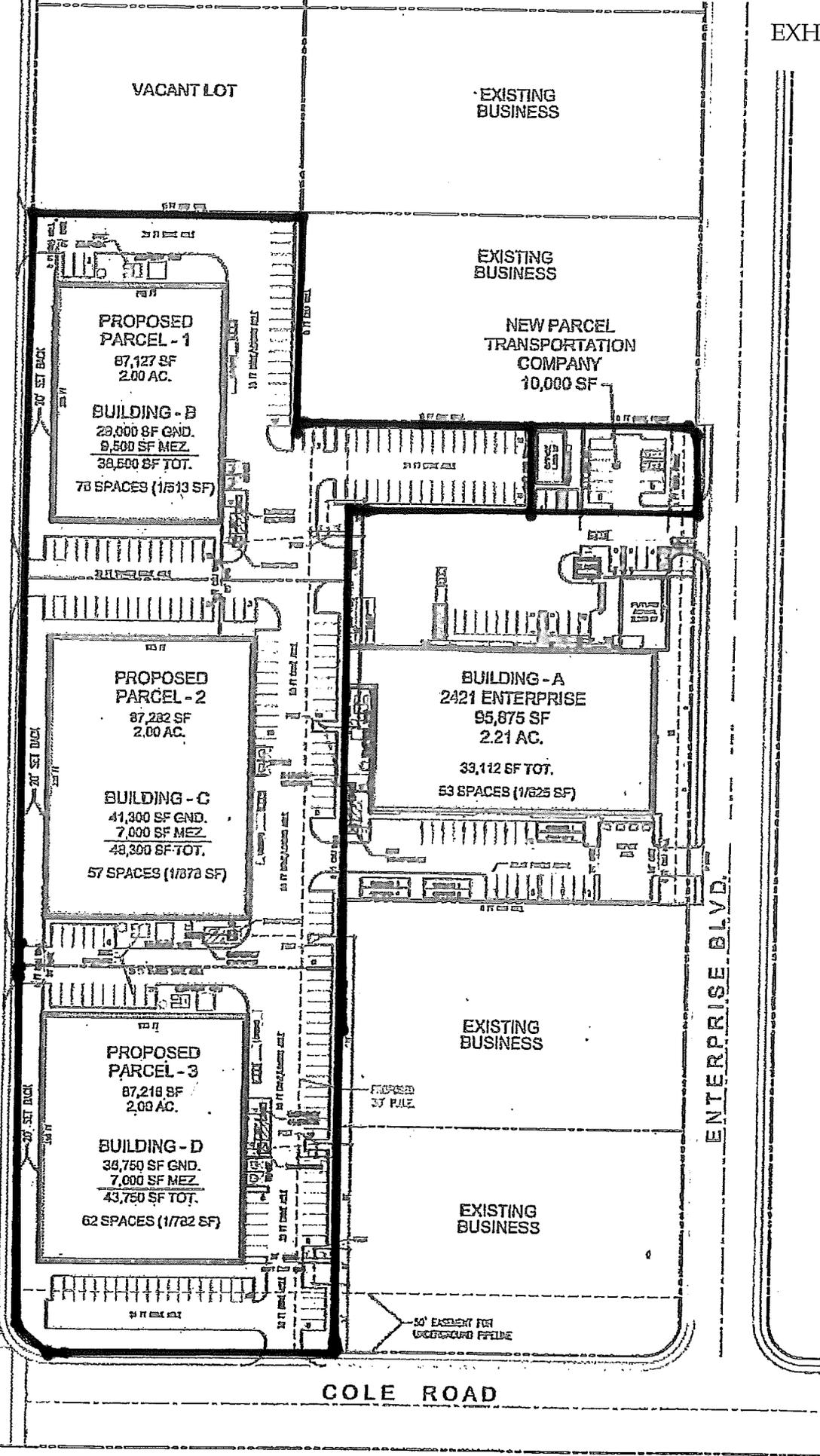
EXISTING BUSINESS

EXISTING BUSINESS

ENTERPRISE BLVD.

COLE ROAD

50' EASEMENT FOR UNDERGROUND PIPELINE



APN 059-343-003 and 059-343-014, which is to be used to cultivate and manufacture cannabis.

- (c) The construction of a building, consisting in size of approximately 48,300-square-foot, on 2.00 acres located on APN 059-343-006, which is to be used to cultivate and manufacture cannabis.
 - (d) The construction of a building, consisting in size of approximately 43,750-square-foot, on 2.00 acres located on APN 059-343-016, which is to be used to cultivate and manufacture cannabis.
 - (e) A 10,000-sq. ft. (0.23 acre) parcel carved out of 2421 Enterprise Boulevard, which is to be used for the construction of a distribution facility with a transportation office(s).
- H. Each such Commercial Cannabis Activity, operation, business, or other undertaking on the Site shall operate in accordance with the California State Compassionate Use Act (Health & Safety Code § 11362.5), the Medical Marijuana Program Act (Health & Safety Code §§ 11362.7 *et seq.*), the Control, Regulate and Tax Adult Use of Marijuana Act of 2016 (“AUMA”), and the Medicinal and Adult-Use Regulation and Safety Act (“MAUCRSA”), as amended, or superseded, including regulations promulgated thereunder, and any additional California state law or other law or regulation related to Commercial Cannabis Activity (collectively “State Cannabis Law”). The capitalized term “State Cannabis Law” is intended to be interpreted in the most possible broadest sense and shall include any law applicable to any activity, operation, business, or undertaking arising out of, connected to, or related to cannabis manufacturing, cannabis cultivation, cannabis based and related products, cannabis transportation, or cannabis delivery, currently permitted under the law, whether express or implied, or subsequently allowed, howsoever promulgated, and under any new law, statute, ordinance, regulation or otherwise (collectively, “Permitted Uses”). “Commercial Cannabis Activity” for the purposes of this Agreement, includes the cultivation, manufacturing and distribution of cannabis and cannabis products.
- I. The Developer intends to develop the Site for any and all Permitted Uses and permit facilities for Commercial Cannabis Activity and related general office facilities (collectively, the “Commercial Cannabis Activity Facility”) on the Site consistent with State Cannabis Law, all other applicable California law, and the Project Approvals (defined hereinafter).

- J. The Project will include cultivating and manufacturing medicinal and/or adult use cannabis and cannabis products and distribution of the same under State Cannabis Law but will not include the retail sale of cannabis and cannabis products to individuals at the Site.
- K. It is the intention of Developer to enter into agreements, by way of lease, license, concession, or otherwise, with distinct and separate Persons for Permitted Uses on the Site as provided for herein.
- L. "Persons" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such, where the context so permits. "Entity" shall mean any general partnership (including a limited liability partnership), limited partnership (including a limited liability limited partnership), limited liability company, corporation, joint venture, trust, business trust, cooperative or association, any trust or other business organization.
- M. Prior to engaging in any Permitted Uses under the State Cannabis Law on the Site, including a Commercial Cannabis Activity Facility, the Developer shall be required or shall cause such Persons so engaged in any of the Permitted Uses on the Site to obtain (a) all required state licenses, approvals, and/or permits under State Cannabis law and (b) a Commercial Cannabis Activity regulatory permit from City pursuant to City ordinance.
- N. On or about November 15, 2017, the City approved an Architectural Review/Uniform Application, AR/UA #2017-10 (the "AR/UA"). An Environmental Initial Study recommending the adoption of an Environmental Impact Report (the "EIR") was prepared and distributed to responsible agencies for review and comment pursuant to the guidelines of the California Environmental Quality Act ("CEQA"). On _____, 2018, the City also adopted the EIR addressing the environmental impacts of the foregoing entitlements. The Developer previously applied to the City for this Agreement. This Agreement, the AR/UA, and the EIR shall collectively be referred to as the "Project Approvals".
- O. The Project is designed to integrate seamlessly into the City of Calexico's General Plan Goals and Policies for Industrial Districts, including the latest provisions for Commercial Cannabis Activity. The Project initially proposes to include five (5) buildings (totaling approximately 353,480 square feet) suitable for industrial/warehouse and office uses, together with common parking, landscaping, and security fencing.

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- P. On July 5, 2017, City adopted Ordinances 1177 and 1178 permitting Commercial Cannabis Activity Facilities in strict compliance with the State Cannabis Law under certain conditions and provisions (the "Enacting Ordinance"). The City has since updated and will continue to update its Enacting Ordinance in light of changing circumstances, City Council direction, and updates in State Cannabis Law.
- Q. On November 8, 2016, California voters approved Proposition 64 or AUMA, and in 2017, the Governor of California signed MAUCRSA into law. Except as otherwise expressly prohibited herein, the Parties intend through this Agreement that the Developer shall have the right to engage in and permit Persons to engage in and conduct any Commercial Cannabis Activity (with the exception of any cannabis retail business type, including, but not limited to retailers, non-storefront retailers, and microbusinesses, where cannabis is sold directly to individual consumers) referred to herein as Permitted Uses, and operate the Commercial Cannabis Activity Facility, as allowed by State Cannabis Law (including AUMA and MAUCRSA) or any other law or initiative adopted in California, including local Ordinance, pertaining to Commercial Cannabis Activity.
- R. The City and the Developer have agreed that, as a condition of allowing the Project, and due to the unique circumstances of the proposed Project, the Developer shall pay a semi-annual Production Fee, as well as a semi-annual Facility Fee, as hereinafter defined, which fees shall abate if the City adopts a tax on Commercial Cannabis Activity.
- S. All procedures of CEQA (Sections 21000 *et seq.* of the California Public Resources Code) and the CEQA guidelines (Sections 15000 *et seq.* of Chapter 3 of Title 14 of the California Code of Regulations) have been satisfied based on an initial study as a result of which certain additional focused studies evaluating the environmental impacts of the Project have been completed, and the City has made certain findings and determinations that this Agreement and the Project is supported by the EIR in compliance with the requirements of CEQA.
- T. The City has provided proper public notice of its intention to adopt this Agreement and has conducted public hearings thereon pursuant to Section 65867 of the California Government Code and Chapter 16.52 of the City's Municipal Code. The City has found that the provisions of this Agreement and its purposes are consistent with the objectives, policies, general land uses, and programs specified in the City's General Plan, zoning code, and municipal ordinances.
- U. The City, in entering into this Agreement, acknowledges that certain City obligations hereby assumed shall survive beyond the terms of the present City

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Council members, that this Agreement will serve to bind City and future City Councils to the obligations hereby undertaken, and that this Agreement shall limit the future exercise of certain governmental and proprietary powers of City. By approving this Agreement, the City Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than defer its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by City staff, the Planning Commission, and the City Council and have been found to be fair, just, and reasonable. The City has concluded that the pursuit of the Project will serve the best interests of its citizens and that the public health, safety, and welfare are best served by entering into this Agreement. The Developer has represented to the City that it would not consider or engage in the Project absent City approving this Agreement; *i.e.*, assuring the Developer that they will enjoy the development rights given in this Agreement. The City Council specifically finds that this Agreement satisfies each and every one of the required findings in Section 16.52.100 of the City's Municipal Code.

- V. The City agrees that Developer's land use entitlements for the Project shall vest for the term of this Agreement, including any extensions allowed hereunder or otherwise extended, as described below, including, but not limited to, the right to cultivate, manufacture, process, transport and distribute cannabis in compliance with State Cannabis Law and local ordinances and any of the Permitted Uses contemplated hereby.
- W. After conducting a duly noticed hearing on August 6, 2018, in conjunction with Section 16.52.100 of the City's Municipal Code, the Planning Commission of the City reviewed, considered and approved the AR/UA; a contingency with regard to this Agreement. The Planning Commission found the Project (a) consistent with the objectives, policies, general land uses and programs specified in the General Plan; (b) compatible with the uses authorized in the Cannabis Overlay Zone; (c) is in conformity with the public necessity, public convenience, general welfare and good land use practices; (d) will not be detrimental to the health, safety, and general welfare of the City; (e) will not adversely affect the orderly development of property or the preservation of property values; and (f) will have a positive fiscal impact on the City.
- X. After conducting a duly noticed hearing on August 6, 2018, the Planning Commission adopted Resolution No. _____ recommending approval of the execution of this Agreement to City Council.

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Y. After conducting a duly noticed hearing on _____, 2018, in conjunction with Section 16.52.110 of the City's Municipal Code, and after independent review and consideration, the City Council approved the execution of this Agreement. The City Council found the Project (a) consistent with the objectives, policies, general land uses, and programs specified in the General Plan; (b) compatible with the uses authorized in the Cannabis Overlay Zone; (c) is in conformity with good land use practices; (d) will not be detrimental to the health, safety, and general welfare of the City; (e) and is in the best interest of the City of Calexico and its residents.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. Binding Effect of Agreement. The Parties agree that the Recitals above are true and correct and are hereby incorporated herein as part of this Agreement to which the Parties, and each of them, intend to be bound by same; together with all definitions provided and exhibits referenced therein. This Agreement pertains to the Site as described in Exhibit A and shown in Exhibit B. Except as otherwise provided in Section 14 of this Agreement, the burdens of this Agreement are binding upon, and the benefits of this Agreement inure to, all successors-in-interest of the Parties and constitute covenants which run with the Site. In order to provide continued notice thereof, the Parties will record this Agreement with the Imperial County Recorder. The word "Developer" as previously defined and used herein shall include successor owners, apart from government or quasi-public agencies, of any portion of the Site. Should the size or orientation of any Site component specified above can be changed in a minor respect, e.g., a lot line adjustment, this Agreement shall not be deemed to have been affected or invalidated in light of any such minor change and the rights and obligations of the Parties and their successors after any such minor change shall remain as provided herein.

2. Relationship of the Parties. It is hereby specifically understood and acknowledged that the Project is a private project and that neither the City nor the Developer will be deemed to be the agent of the other for any purpose whatsoever. The City and the Developer hereby renounce the existence of any form of joint venture, association, or partnership between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and the Developer joint venturers, association participants, partners or otherwise.

3. Term. Except as otherwise specified herein, the term of this Agreement (the "Term") is fifteen (15) years from the Execution Date. The Term may be subject to earlier termination or extension as hereinafter expressly provided.

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3.1 Term Extension – Third Party Issues. Notwithstanding the Parties' expectation that there will be no limit or moratorium upon the Project's development or the issuance of building or other development related permits (a "Development Limitation") during the Term, the Parties understand and agree that various third parties or other circumstances may arise or take action causing a de facto Development Limitation. Consequently, the Term shall be extended for the commensurate period of any delay arising from or related to any of the potential Development Limitations including, but not limited, to those circumstances that follow in the subsections below for a time equal to the duration of that delay occurring during the Term. No Development Limitation may arise or result from an action or omission by the Developer or Persons contemplated by this Agreement, except for an action or proceeding seeking declaratory relief to clarify and determine the rights and obligations of the Parties or by anyone asserting a beneficial interest or right of a Party hereto.

3.1.1 Litigation. A Development Limitation shall include any third party-initiated litigation that arises from or is related to any City action or omission with respect to this Agreement or any subsequent City approval required in connection with the Project's development, or third-party initiated litigation having the actual effect of delaying the Project's development. This extension period related hereto shall include any time during which appeals may be filed or are pending.

3.1.2 Government Agencies. A Development Limitation shall include any delay arising from or related to the act(s) or omission(s) any third-party governmental agency, quasi-public entity, or public utility.

3.1.3 Force Majeure. A Development Limitation shall include any delay resulting from riot, war, acts of terrorism, an event during the Term creating radioactive or toxic/hazardous contamination, a catastrophic earthquake, flood, fire, or other physical natural disaster, excluding weather conditions regardless of severity, strikes, or industrial disputes at the national level effecting development involved personnel not employed by the Developer, its subcontractors, and affecting an essential portion of the Project's development, excluding any industrial dispute that is specific to development taking place as a part of the Project.

3.2 Term Extensions. This Agreement's Term shall be automatically extended for two (2) additional five (5) year periods, each a "Term Extension" and each commencing contemporaneous with the expiration of the initial Term and each succeeding Term Extension, upon and subject to:

(a) No Default by Developer. Unless otherwise provided in this Agreement, Developer shall not be in a continuing and uncured default with respect

to any provision of this Agreement or any subsequent agreement or understanding between the Parties arising from or related to this Agreement, having received written notice from City of said default per this Agreement and not having cured same or if Developer did in fact default as to this Agreement, upon notice from the City, that Developer did cure said default during the period to cure provided herein to the City's reasonable satisfaction.

3.3 Termination of Agreement. Upon the termination of this Agreement, either by expiration of the Term, expiration of any Extension Term(s), or otherwise, the Developer shall have no right to engage in Commercial Cannabis Activity at the Site, except as may otherwise be allowed by City ordinance or law.

4. Defined Terms. As used in this Agreement, the following terms shall have the meanings hereinafter set forth:

4.1 Certified Report. "Certified Report" shall mean a detailed document prepared by the Developer on a form acceptable to the City's Director of Finance to report to the City of the Cultivation and Manufacturing by the Developer, as defined herein, in the Project during each semi-annual period, as defined herein. Each Certified Report shall be certified as true and correct by a duly authorized officer of the Developer. The City may also require certification by such Persons engaged in a Permitted Use as contemplated by this Agreement.

4.2 Production Fee. "Production Fee" shall mean a semi-annual fee remitted to the City by the Developer based on gross wholesale receipts from Manufacturing, for any six months or the prorated portion in which the business commences operations, and the semi-annual fee shall be based at three percent (3%) such gross wholesale receipts. The Production Fee shall be paid at the end of the semi-annual period in which commercial cannabis manufacturing activity is being conducted. "Manufacturing" includes the production, preparation, or compounding of manufactured cannabis or cannabis products either directly or indirectly by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or re-labels its container. The Developer or Persons on the Site, as the case may be, who are directly engaged in Manufacturing are considered to be a "Manufacturer".

4.3 Distribution (No Fee). There shall be no payments required based on the gross receipts of distributors, which include anyone engaged in the business of purchasing cannabis from a cultivator, or cannabis products from a Manufacturer, for sale

to a retailer or executing a contract made directly between a cultivator or Manufacturer and a retailer for purposes of distribution.

4.4 Certification of Non-Income Tax Exemption. The Developer certifies that the Developer is not income tax exempt under state or federal law and that Developer will not file for such an exemption from the Franchise Tax Board or the Internal Revenue Service. The Developer will also require all Persons on the Site to certify that they or it are not income tax exempt under state or federal law and will not file for such an exemption.

4.5 Facility Fee. "Facility Fee" shall mean a semi-annual fee remitted to the City by the Developer in the amount based on square footage of the Site Canopy space directly used by the Developer or such Persons for cultivation and the market based wholesale price of cannabis. "Canopy" means the designated aggregate benching area(s) in square footage at the Site that will contain mature cannabis plants at any point in time. The fee will fluctuate quarterly with the average wholesale price per pound index of cannabis flowers and is shown in the table, below. The Facility Fee shall be paid semi-annual concurrent with the Production Fee on a calendar basis and be pro-rated to any operational month the Site, or a portion of the Site, is completed and is used for purposes of cannabis cultivation. The wholesale price will be derived from a mutually agreed upon market specific index (e.g., BDS Analytics for Southern California or another similar professional market assessment company such as New Frontier Data) and will be the mean average of the prior three months' of available index data. Parties agree that no such index currently exists and until such index or indices are established and available at commercially reasonable rates or if the Parties cannot agree on a mutually agreed upon market specific index the Parties agree that the I price shall be set and continue at one-thousand six hundred dollars (\$1,600.00) per pound.

Table 1: Cultivation – Market Price and Projected Canopy Space

Market Price (\$ per Pound)	Facility Fee (\$/Square Foot)
500 – 1,000	10
1,001 – 1,500	13
1,501 – 2,000	16
2,000 – 2,500	19
2,501 – 3,000	22

4.6 Compliance by Person. The Developer or such Persons on the Site, as the case may be, engaged in any activity contemplated by this Agreement shall be subject to State Cannabis Law, other state law, and local ordinances. The Developer shall require and cause each such Person of any portion of the Site to cooperate with the Developer and be subject to this Agreement between the Developer and the City and governed thereby in all respects with matters pertaining to this Agreement.

4.7 Land Use Regulations. "Land Use Regulations" shall mean all ordinances, resolutions, codes, rules, regulations, and official policies of the City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement, and construction, and initial occupancy standards and specifications applicable to the Project. "Land Use Regulations" do not include any City ordinance, resolution, code, rule, regulation, or official policy governing:

4.7.1 The conduct or taxation of businesses, professions, and occupations applicable to all businesses, professions, and occupations in the City;

4.7.2 Other than as provided in this Agreement, taxes and assessments of general application upon all residents of the City, provided that the taxes and assessments are not imposed for the purpose of taxing the right, power, or privilege of developing or improving land (*e.g.*, excise tax) or to directly finance the acquisition or dedication of open space or any other public improvement in respect of which the Developer is paying any fee or providing any improvement pursuant to this Agreement;

4.7.3 The control and abatement of nuisances;

4.7.4 The granting of encroachment permits and the conveyance of rights and interests which provides for the use of, access to, or the entry upon public property, as may be approved by mutual agreement between the Developer and the City; and

4.7.5 The exercise of the power of eminent domain.

4.8 Existing Land Use Regulations. "Existing Land Use Regulations" means all Land Use Regulations in effect as of the approval date of this Agreement, including the Project Approvals.

5. Fee Payments.

5.1 Fee Payments. In consideration of the City's entering into this Agreement and authorizing the development and operation of the Project, the requirements for City services created by the Project, the City insuring Developer's compliance with this Agreement, State Cannabis Laws, and the City's municipal ordinances, throughout the Term of this Agreement, the following payments shall be made to City:

5.1.1 Production Fee Payments by the Developer. The Developer shall pay semi-annual payments of the Production Fee to the City as specified in Sections 4.2 and 6 herein. The obligations of the Developer under this Section shall survive the expiration or any earlier termination, as applicable, of this Agreement, but the Production Fee under this Agreement shall cease if a City-wide tax on Commercial Cannabis Activity is imposed.

5.1.2 Facility Fee Payments by the Developer. Semi-annual payments of the Facility Fee shall be paid by the Developer to the City as specified in Sections 4.5 and 6 herein. The obligations of the Developer under this Section shall survive the expiration or any earlier termination, as applicable, of this Agreement, but the Facility Fee under this Agreement shall cease if a City-wide tax on Commercial Cannabis Activity is imposed.

5.1.3 Development Agreement Fees and Exactions by Developer. The Project shall be subject to the Chapter 16.52 of the City's Municipal Code requiring a development agreement fee and processing fee in an amount as to be set by resolution of the City Council. In addition, the Developer is required to enter into a reimbursement agreement with City, as required by Section 17.11.1050 of the City's Municipal Code.

6. Payment Procedures. The following procedures shall apply during the operation of the Project:

6.1 Remittance of Production Fee/Certified Reports. Within forty-five (45) calendar days following the end of each six (6) month period during the Term of this Agreement commencing with the first operational six (6) months in which the Project has commenced, the Developer shall submit the Certified Report to the City's Finance Director and a payment for the Production Fee for that operational semi-annual period as identified in the Certified Report. The Developer shall pay Production Fees to City on a semi-annual basis without exception. Any material misstatement or misrepresentation in

the Certified Report and any failure to pay Production Fees when due shall constitute an event of default by Developer subject to the default provisions of this Agreement.

6.2 Remittance of Facility Fee. The Facility Fee shall be paid semi-annually concurrent with the Production Fee on a calendar basis and be pro-rated to any operational month the Site, or a portion of the Site, is completed and is used for purposes of cannabis cultivation.

6.3 Maintenance of Records. The Developer shall maintain, or cause such Persons engaged in Commercial Cannabis Activity on the Site to maintain, as the case may be, complete records of their operations to substantiate and document the content of each Certified Report. Such records shall include, without limitation, invoices and payments taken by the Developer or Persons, as the case may be, of the Commercial Cannabis Activity Facility. The Developer shall maintain or require such Persons engaged in Commercial Cannabis Activity on the Site to maintain such records in a form and location reasonably accessible to the City, following reasonable notice to the Developer, for a period of at least four (4) calendar years following the Developer's submission of the Certified Report to which the records apply.

6.4 Audit. Within forty-five (45) calendar days following the end of two calendar quarters, the City may conduct an audit or arrange for a third-party independent audit, at the Developer's expense, of Developer's records regarding Certified Reports and Production and Facility Fees. The City's Finance Director shall provide at least seven (7) business days written notice of the commencement of such audit to the Developer and shall schedule the audit so as to not unreasonably interfere with on-site operations. The Developer, and such Persons on the Site engaged in Commercial Cannabis Activity, shall cooperate with the City in completing the audit. If the audit reveals that the Developer or such Persons, as the case may be, has underpaid the Production and/or Facility Fee, the Developer shall pay or cause such Persons on the Site engaged in Commercial Cannabis Activity to pay the underpaid amounts to the City within thirty (30) calendar days of receipt of written notice from the City's Director of Finance. If the underpaid amount is more than five percent (5.00%) of the amount due, the Developer shall additionally pay all costs of the audit, including City staff time and any amount of the Production and/or Facility Fee, as applicable. If the audit reveals that the Developer or such Persons, as the case may be, has overpaid the Production and/or Facility Fee, the City shall provide written notification to the Developer and shall credit such amount against the Developer's or Person's, as the case may be, subsequent semi-annual payments of Production and Facility Fees until the overpaid amount has been resolved.

6.5 Site Inspection. From time to time, the City has the right to inspect each facility on the Site for the purpose of monitoring operations, checking quantities, and

verifying volumes of product during operating hours or any time deemed appropriate to insure accurate records. The City must give notice at least two (2) business days' written notice prior to any inspection.

7. Covenants of Developer. During the Term of this Agreement, the Developer hereby covenants and agrees with the City as follows:

7.1 Implementation. The Developer shall use good faith efforts to pursue the implementation of the Project as expeditiously as feasible, in the form approved by the City, subject to all applicable laws, this Agreement (including, without limitation, Section 8.2 below) and the City's Municipal Code.

7.2 Maintain & Operate Project. Throughout the Term of this Agreement, the Developer shall maintain and operate the Project on the Site, or cause such Persons engaged in Commercial Cannabis Activity on the Site, once constructed in accordance with the Project Approvals and all City and state laws.

7.3 Hold Harmless. The Developer shall defend (with counsel reasonably acceptable to the City), indemnify and hold the City and its Councilpersons, officers, attorneys, agents, contractors, and employees harmless from and against all losses, costs, and expenses (including, without limitation, reasonable attorneys' fees and costs), damages (including, without limitation, consequential damages), claims, and liabilities arising from the Project, this Agreement, the approval of the Project, and the activities of the Developer, its members, officers, employees, agents, contractors, invitees, and any third parties on the Site, from and against any challenges to the validity of this Agreement or other Project Approvals. The obligations of the Developer under this Section shall survive the expiration or any earlier termination, as applicable, of this Agreement.

8. Covenants of City. During the Term of this Agreement, the City hereby covenants and agrees with the Developer as follows:

8.1 Expeditious Services. The City shall process applications and address questions and concerns raised by the Developer's representatives at the "counter" at City Hall as expeditiously as reasonably possible. Upon the Developer's request, or if, in an exercise of the City's own discretion, City staff determines that it cannot comply with this Section, City shall expeditiously engage the services of private contract planners, plan checkers, or inspectors ("Private Contractors") to perform such services as may be necessary to assist in processing the Project plans as described herein. Compensation of such Private Contractors shall be at the Developer's sole cost and expense, inclusive of any administrative cost to the City of integrating services by

Private Contractors into the Project's development processing. The Developer shall pay such costs and expenses of Private Contractors via reimbursement to the City, per City's applicable policies and procedures. The City shall have absolute discretion in the selection of such Private Contractors.

8.2 Vested Rights. During the Term of this Agreement, the Developer shall have the vested right and entitlement to develop and operate the Project in accordance with the Existing Land Use Regulations, in addition to any Commercial Cannabis Activity operating standards found in the City's Municipal Code (the "Operating Standards"), which may be amended or otherwise promulgated after the date of this Agreement in the City's reasonable discretion to reasonably minimize or eliminate safety hazards. The Parties acknowledge that neither the City nor the Developer can at this time predict when or the rate at which or the order in which parts of the Project will be developed. Notwithstanding anything to the contrary in this Agreement or otherwise, the Developer shall have the vested right to develop the Project in such order, in such phases, at such rate and at such times as the Developer deems appropriate in the exercise of its subjective good faith business judgment, provided that Developer is in compliance with the Project Approvals.

8.3 Building Permits and Other Approvals and Permits. Subject to (a) Developer's compliance with this Agreement, the Project Approvals, the Existing Land Use Regulations, City Building Ordinances, and the Operating Standards and (b) payment of the usual and customary fees and charges of general application charged for the processing of such applications, permits and certificates and for any utility connection, or similar fees and charges of general application, the City shall process and issue to the Developer promptly upon application therefore all necessary use permits, building permits, occupancy certificates, regulatory permits, licenses, and other required permits for the construction, use, and occupancy of the Project, or any portion thereof, as applied for, including connection to all utility systems under the City's jurisdiction and control (to the extent that such connections are physically feasible and that such utility systems are capable of adequately servicing the Project).

8.4 Procedures and Standards. The standards for granting or withholding permits or approvals required hereunder in connection with the development of the Project shall be governed as provided herein by the standards, terms, and conditions of this Agreement and the Project Approvals, and to the extent not inconsistent therewith, the Existing Land Use Regulations, but the procedures for processing applications for such permits or approvals (including the usual and customary fees of general application charged for such processing) shall be governed by such ordinances and regulations as may then be applicable.

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8.5 Construction Hours. The Parties recognize that Section 8.64.042 of the City's Municipal Code sets construction hours within the City and allows for other hours of construction when there are unusual conditions, with the consent of the City Manager, or his or her designee, upon recommendation of the City's Building Director or the City Engineer. The Developer may submit a construction schedule to the city manager, or his or her designee, that may include construction twenty-four (24) hours per day. The City may limit the hours of construction based on noise, interference with neighbors, or other community impacts.

9. Effect of Agreement.

9.1 Grant of Right. This Agreement shall constitute a part of the Enacting Ordinance, as if incorporated by reference therein in full. The Parties acknowledge that this Agreement grants the Developer the right and entitlement to develop the Project and use the Site pursuant to specified and known criteria and rules as set forth in the Project Approvals and Existing Land Use Regulations, and to grant the City and the residents of the City certain benefits, which they otherwise would not receive.

9.2 Binding on the City / Vested Right of the Developer. This Agreement shall be binding upon the City and its successors in accordance with and subject to its terms and conditions notwithstanding any subsequent action of the City, whether by example taken by ordinance, regulation or resolution of the City Council, by referendum, initiative, or otherwise. The Parties acknowledge and agree that by entering into this Agreement and relying thereupon, the Developer has obtained, subject to the terms and conditions of this Agreement, a vested right to proceed with its development of the Project during the Term as set forth in the Project Approvals and the Existing Land Use Regulations, and the timing provisions of Section 3, and the City has entered into this in order to secure the public benefits conferred upon it hereunder which are essential to alleviate current and potential problems in the City and to protect the public health, safety, and welfare of the City and its residents, and this Agreement is an essential element in the achievement of those goals.

9.3 Future Conflicting Local Laws. If any City law, including ordinances, resolutions, rules, regulations, standards, policies, conditions, and specifications (collectively, "City Law") is enacted or imposed by a citizen-sponsored initiative or referendum, or by the City Council directly or indirectly in connection with any proposed initiative or referendum, which City Law would conflict with this Agreement, such City Law shall not apply to the Site or Project. The Parties, however, acknowledge that the City's approval of this Agreement and the Project Approvals are legislative actions subject to referendum in accordance with California law.

9.3.1 Without limiting the generality of the foregoing, no moratorium or other limitation whether relating to the rate, timing, phasing, or sequencing of development affecting subdivision maps, building permits, or other subsequent approvals shall apply to the Project. The Developer agrees and understands that the City does not have authority or jurisdiction over another public agency's authority to grant a moratorium or to impose any other limitation that may affect the Project.

10. Specific Criteria Applicable to Development of the Project.

10.1 Applicable Ordinances. Except as set forth in the Project Approvals and subject to the provisions of Section 10.2 below, the Existing Land Use Regulations shall govern the development of the Site hereunder and the granting or withholding of all permits or approvals required to develop the Site; provided, however, that: (a) the Developer shall be subject to all changes in processing, inspection, and plan-check fees and charges imposed by City in connection with the processing of applications for development and construction upon the Site so long as such fees and charges are of general application and are not imposed solely with respect to the Site or the Project; (b) the Developer shall abide by building ordinances in effect at the time of such applications; (c) development impact fees to be paid by the Developer shall be those in effect at the time permits are issued subject to those fees; and (d) the development shall be consistent with current Operating Standards.

10.2 Amendment to Applicable Ordinances. Any change to the Existing Land Use Regulations that conflicts with the Project Approvals shall nonetheless apply to the Project if, and only if (a) it is consented to in writing by the Developer in its sole and absolute discretion; (b) it is determined by the City and evidenced through findings adopted by the City Council that the change or provision is reasonably required in order to prevent an existing condition dangerous to the public health or safety; (c) it is required by changes in state law or by the enforcement of federal law; (d) it consists of changes in, or new fees, permitted by Section 5; or (e) it is otherwise expressly permitted by this Agreement. The City has adopted Operating Standards that govern this type of use, which regulations, and any amendments thereto adopted after the Execution Date which are permitted under Section 8.2 above, shall apply to the Project.

10.3 Applicability of Zoning Amendments. In the event that the Existing Land Use Regulations are amended by the City in a manner which provides more favorable Site development standards for the Project Site or any part thereof than those in effect as of the Execution Date, the Developer shall have the right to notify the City in writing of its desire to be subject to all or any such new standards for the remaining term of this Agreement. If the City agrees, by resolution of the City Council, such new standards shall become applicable to the Project, which the Parties may adopt by way of

an Operating Memoranda in Section 11 herein. Should the City thereafter amend such new standards, upon the effective date of such amendment, the original new standards shall continue to apply to the Project as provided above, but the Developer may notify the City in writing of its desire to be subject to all or any such amended new standards and City shall agree in the manner above provided to apply such amended new standards to the Project.

10.4 Permitted Delays. In addition to any other provisions of this Agreement with respect to delay, the Developer and the City shall be excused from performance of their obligations hereunder during any period of delay caused by acts of mother nature, civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, damage to or prevention of work in process by reason of fire, floods, earthquake, or other casualties, litigation, acts or neglect of the other Party, changes in "Laws" to include (a) any referendum elections held on the Enacting Ordinance, the Project Approvals (or any other approvals, permits, or other entitlements related to the Site or the Project), or the Existing Land Use Regulations (or any other ordinance effecting the Project), (b) restrictions imposed or mandated by governmental or quasi-governmental entities, (c) enactment of conflicting provisions of the constitutions or laws of the United States of America or the State of California or any codes, statutes, regulations, or executive mandates promulgated thereunder, orders of courts of competent jurisdiction ("Decisions"), or any other cause similar or dissimilar to the foregoing beyond the reasonable control of the City or the Developer, as applicable. Each Party shall promptly notify the other Party of any delay hereunder as soon as possible after the same has been ascertained. The time of performance of such obligations, including the Term, as applicable, shall be extended by the period of any delay hereunder.

10.5 Superseding or Subsequent Laws or Judicial Action.

10.5.1 The provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with any new Law or Decision, enacted or made after the Execution Date which prevents or precludes compliance with one or more provisions of this Agreement. Promptly after enactment of any such new Law, or issuance of such Decision, the Parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. In addition, the Developer and/or the City shall have the right to challenge the new Law or the Decision preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect, except that the Term shall be extended, in accordance with Section 3.1 above, for a period of time equal to the length of time the challenge was pursued, to extent such challenge delayed the implementation of the Project.

10.5.2 The Parties recognize that California adopted, through ballot initiative, AUMA and may adopt through initiative or legislative action other laws and regulations pertaining to either medical or adult use of cannabis. The Parties intend through this Agreement that the Developer or such Persons pursuant to contract with the Developer for the purpose of engaging in Permitted Uses, shall have the right to cultivate, produce, manufacture, and distribute cannabis as allowed by current State Cannabis Law, pertaining to Commercial Cannabis Activity. To the extent the changes in California law change the legal process or structure by which cannabis cultivators, producers, manufacturers, or distributors can or may operate (e.g., for-profit vs. non-profit entities, size of licensees, etc.), the Parties intend this Agreement to be flexible to allow such changes and may alter the procedures specified herein, by Operating Memoranda as defined below, or otherwise, as may be necessary.

11. Operating Memoranda and Administrative Variations.

11.1 Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between the City and the Developer. It is anticipated due to the length of the Term that refinements and minor changes to the approvals may be appropriate with respect to the details of performance of the City and the Developer. To the extent allowable by law, the Developer shall retain a certain degree of flexibility as provided herein with respect to all matters, items, and provisions covered in general under this Agreement. When and if the Developer finds it necessary or appropriate to make changes, adjustments, or clarifications, the Parties shall enter into memoranda (“Operating Memoranda”) approved by the Parties in writing, which reference this Section of the Agreement. Operating Memoranda are not intended to constitute an amendment to this Agreement but mere ministerial clarifications; therefore, public notices and hearings shall not be required. The City Attorney shall be authorized upon consultation with the Developer, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute an amendment to the Agreement which requires compliance with the provisions of this Agreement pertaining to amendments. The authority to enter into such Operating Memoranda is hereby delegated to the City Manager, and the City Manager is hereby authorized to execute any Operating Memoranda hereunder without further City Council action.

12. CEQA. All procedures of CEQA have been satisfied based on an initial study as a result of which certain additional focused studies evaluating and mitigating where necessary the environmental impacts of the Project have been completed, and the City has made certain findings and determinations that this Agreement and the Project can be supported by an Environmental Impact Report (“EIR”) in compliance with the requirements of CEQA.

13. Building Permits. Nothing set forth herein shall impair or interfere with the right of the City to require the processing of building permits as required by law relating to any specific improvements proposed for the Project pursuant to the applicable provisions of the City's Municipal Code, inclusive of such California and International Codes as have been adopted in accordance therewith, that are in effect at the time such permits are applied for; provided, however, no such permit processing shall authorize or permit the City to impose any condition on and/or withhold approval of any proposed improvement the result of which would be inconsistent with this Agreement.

14. Assignment and Transfer of Rights. Except as otherwise provided in this Section, the burdens of this Agreement are binding upon, and the benefits of this Agreement inure to, assignees of Developer and all successors-in-interest of the Parties and constitute covenants that run with the Site. The Developer, for itself, its heirs, distributes, executors, administrators, legal representatives, successors and assigns, shall not, at any time during the Term, assign, convey, lease, license, grant concessions, sell, or otherwise transfer all or any portion of its rights or interests under this Agreement ("Assignable Rights") to a third party, a subordinate entity, or a related entity (make an "Assignment") without the prior written consent of the City. In each instance, which consent may be withheld, in the City's sole discretion. Any assignment in violation of this Section will be void.

15. Review for Compliance. Pursuant to Section 65865.1 of the California Government Code, the City shall engage in an annual review this Agreement, on or before the anniversary of the Execution Date, in order to ascertain the Developer's good faith compliance with its terms. In the event City fails to formally conduct such annual review, Developer shall be deemed to be in full compliance with the Agreement.

16. Amendment or Cancellation. This Agreement may be amended or canceled in whole or in part only by mutual consent of the Parties or in the manner provided in Sections 65865.1 and 65868 of the California Government Code.

17. Provide Notice. Should a Party form the opinion that a law or regulation preempts or frustrates of this Agreement, the Party shall provide the other Party with written notice of such law or regulation, a copy of such law or regulation, and a statement identifying how such law regulation conflicts with the provisions of this Agreement.

18. Meet and Confer. Upon notice by one Party to another as to preemption or frustration of this Agreement by law or regulation, the Parties shall promptly meet and confer in good faith and make a reasonable attempt to modify or suspend this Agreement to comply with such applicable law or regulation. If the Parties cannot agree on a manner

or method to comply with such law or regulation, the Parties may, but shall not be required to, engage in alternative dispute resolution.

19. Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be either personally delivered (which shall include delivery by means of professional overnight courier service which confirms receipt in writing such as Federal Express or UPS), sent by telecopier or facsimile ("Fax") machine capable of confirming transmission and receipt, or sent by certified or registered mail, return receipt requested, postage prepaid to the following parties at the following addresses or numbers:

If to the City:

City of Calexico
608 Heber Avenue
Calexico, CA 92231
Attention: City Manager

With copy to: Best, Best & Krieger, LLP, City Attorney

74760 Highway 111
Suite 200
Indian Wells, CA 92210
Attention: Carlos Campos, Esq.

If to the Developer:

Trinity Property Company, LLC
2421 Enterprise Boulevard
Calexico, CA 92231

Attention: James R. Irwin, Jr.

With copy to: Donald Rezak

825 S. Barrington Avenue
Los Angeles, CA 90049

Notices sent in accordance with this Section shall be deemed delivered upon the: (a) date of delivery as indicated on the written confirmation of delivery (if sent by overnight courier service); (b) date of actual receipt (if personally delivered by other means); (c) date of transmission (if sent by email or telecopier, so long as sender receives actual confirmation that the transmission was received); or (d) date of delivery as indicated on the return

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receipt (if sent by certified or registered mail, return receipt requested). Notice of change of address shall be given by written notice in the manner detailed in this Section.

20. Breach and Remedies. Notwithstanding any provision of this Agreement to the contrary, the Developer shall not be deemed to be in default under this Agreement with respect to any obligation owed solely to the City, and the City may not terminate or modify the Developer's rights under this Agreement, unless the City shall have first delivered a written notice of any alleged default to the Developer that specifies the nature of such default. If such default is not cured by Developer within thirty (30) calendar days after receipt of such notice of default, or with respect to defaults that cannot be cured within such period, the Developer fails to commence to cure the default within ten (10) calendar days after receipt of the notice of default thereafter fails to diligently pursue the cure of such default, the City may terminate the Developer's rights under this Agreement but not before issuing a final notice to cure allowing Developer five (5) calendar days to cure any persistent default. Default by any assignee or the Developer's successor in interest shall affect only that portion of the Site owned by such assignee or successor and shall not cancel or diminish in any way the Developer's rights with respect to any portion of the Site not owned by such assignee or successor. In the event that a breach of this Agreement occurs, irreparable harm is likely to occur to the non-breaching Party and damages will be an inadequate remedy. To the extent permitted by law, therefore, it is expressly recognized that injunctive relief and specific enforcement of this Agreement are proper and desirable remedies, and it is agreed that any claim by the Developer against the City for an alleged breach of this Agreement shall be remedied by injunctive relief or an appropriate action for specific enforcement of this Agreement and not by a claim or action for monetary damages.

21. Entire Agreement. This Agreement and the Exhibits herein contain the entire integrated agreement among the Parties. The Parties intend that this Agreement state their agreement in full to each and every one of its provisions. Any prior agreements, understandings, promises, negotiations, or representations respecting the matters dealt with herein or the duties of any Party in relation thereto, not expressly set forth in this Agreement, are agreed by all Parties to be null and void.

22. Severability. If any term, provision, condition, or covenant of this Agreement, or the application thereof to any Party or circumstance, shall to any extent be held invalid or unenforceable, the remainder of the instrument, or the application of such term, provision, condition, or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. To the extent that any provision or term in this Agreement is unenforceable or invalid, the Parties may in good faith mutually amend the agreement in writing to effectuate the purpose contemplated by this Agreement.

23. Attorneys' Fees. In the event any Party hereto brings an action or proceeding for a declaration of the rights of the Parties, for injunctive relief, for an alleged breach or default, for any other action arising out of or related to this Agreement, or the transactions contemplated hereby (or institutes a reference or arbitration proceeding as may expressly be permitted by the terms of this Agreement), the prevailing Party in any such action shall be entitled to an award of actual attorneys' fees and costs incurred in such action or proceeding, without regard to any rule of court or schedule of such fees maintained by the court, in addition to any other damages or relief awarded, regardless of whether such action proceeds to final judgment.

24. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which constitute one and the same instrument.

25. Execution of Agreement. The Parties shall sign this Agreement on or within five (5) business days of approval.

26. Estoppel Certificate. The City shall, at any time and from time to time within ten (10) calendar days after receipt of written notice from the Developer so requesting, execute, acknowledge, and deliver to the Developer a statement in writing: (a) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect); and (b) acknowledging that there are no uncured defaults on the part of the Developer hereunder or specifying such defaults if any are claimed. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Site. Upon the Developer's written request, the City shall issue a certificate of performance evidencing completion of any of the Developer's obligations under this Agreement.

27. Encumbrances on Real Property.

27.1 Discretion to Encumber. The Parties hereto agree that this Agreement shall not prevent or limit the Developer, in any manner, at the Developer's sole discretion, from encumbering the Site or any portion thereof or any improvements thereon then owned by such person with any mortgage, deed of trust, or other security device ("Mortgage") securing financing with respect to the Site or such portion. The City acknowledges that the lenders providing such financing may require certain modifications, and the City agrees, upon request, from time to time, to meet with the Developer and/or representatives of such lenders to negotiate in good faith any such request for modification. City further agrees that it will not unreasonably withhold its consent to any such requested modification. Any mortgagee or trust deed beneficiary of the Site or any portion thereof or any improvements thereon and its successors and assigns ("Mortgagee") shall be entitled to the following rights and privileges.

27.2 Lender Requested Modification / Interpretation. The City acknowledges that the lenders providing financing to the Developer may request certain interpretations and modifications of this Agreement. The City therefore agrees upon request, from time to time, to meet with the Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. The City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement, provided, further, that any modifications of this Agreement are subject to the provisions of this Agreement relative to modifications or amendments.

27.3 Mortgage Protection. This Agreement shall be superior and senior to the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Site or any portion thereof by a Mortgagee (whether pursuant to a Mortgage, foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise) shall be subject to all of the terms and conditions of this Agreement.

27.4 Mortgagee Not Obligated. Notwithstanding the provisions of Section 27.2, no Mortgagee will have any obligation or duty under this Agreement to perform the obligations of the Developer or other affirmative covenants of the Developer hereunder, or to guarantee such performance, except that to the extent that Mortgagee opts to receive the benefits of the Agreement, including the right to operate, any covenant to be performed by the Developer is a condition to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to the City's performance hereunder. No Mortgagee will be liable for any monetary defaults arising prior to its acquisition of title to the Site or any portion thereof. Rather, uncured monetary defaults will terminate the Agreement and Mortgagee's rights hereunder.

27.5 Written Notice of Default. Each Mortgagee shall be entitled to receive written notice from the City of any default by the Developer under this Agreement, if such default is not cured within thirty (30) calendar days, provided such Mortgagee has delivered a written request to the City for such notice. Each Mortgagee shall have a further right, but not the obligation, to cure such default for a period of thirty (30) calendar days after receipt of such notice of default. Any non-curable defaults of the Developer of any obligation owed solely to the City arising prior to Mortgagee's acquisition of title to the Site or any portion thereof shall be waived; provided, however, the non-payment of money shall not be deemed a non-curable default.

28. Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and, subject to the City's written consent pursuant to Section 16, their heirs, personal representatives, successors, and assigns, except as otherwise provided in this Agreement.

29. Governing Law and Venue. This Agreement and the legal relations between the Parties shall be governed by and construed in accordance with the laws of the State of California. Furthermore, the Parties agree to venue in Imperial County, California.

30. Mutual Covenants. The covenants contained herein, including those contained in the Recitals herein, are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

31. Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Site or any portion thereof and all successors to the Parties (collectively, "Successors"). Furthermore, the rights and remedies, together with the benefits and burdens of this Agreement of each Party to this Agreement, shall be coextensive with those of its Successors. All provisions of this Agreement shall be enforceable as equitable servitude's and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Site: (a) is for the benefit of and is a burden upon every portion of the Site; (b) runs with the Site and each portion thereof; and, (c) is binding upon each Party and each Successor during ownership of the Site or any portion thereof. From and after recordation of this Agreement, the Agreement shall be deemed notice and shall impute notice to all persons and entities in accord with the recording laws of this state.

32. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their Successors and Assignees. No other person or entity shall have any right of action based upon any provision of this Agreement.

33. Waiver. Failure by a Party to insist upon the strict performance of any of this Agreement's provisions by the other Party or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

34. Time of Essence. Time is of the essence in the performance of the requirements of this Agreement as to which time is an element.

35. Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the County Recorder by the City Clerk within the period required by Section 65868.5 of the California Government Code.

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36. Headings. The headings in this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.

37. Jointly Drafted. It is agreed among the Parties that this Agreement was jointly negotiated and jointly drafted by the Parties and their respective counsel, and that it shall not be interpreted or construed in favor of or against any party solely on the ground that it drafted the Agreement. It is also agreed and represented by all Parties that said Parties were of equal or relatively equal bargaining power and that in no way whatsoever shall this Agreement be deemed to be a contract of adhesion or be deemed to be unreasonable or unconscionable.

38. Independent Legal Counsel. Each Party acknowledges that it has been represented by independent legal counsel of its own choice throughout all of the negotiations that preceded the execution of this Agreement or has knowingly and voluntarily declined to consult legal counsel, and that each Party has executed this Agreement with the consent and on the advice of such independent legal counsel.

39. Further Cooperation. The Parties herein agree to execute any and all agreements, documents, or instruments as may be reasonably necessary in order to fully effectuate the agreements and covenants of the Parties contained in this Agreement, or to evidence this Agreement as a matter of public record, if required to fulfill the purposes of this Agreement. The Parties further agree to mutually cooperate with one another in carrying out the purposes of this Agreement.

40. Enforceability. This Agreement shall not become binding and shall have no force and effect whatsoever until such time as it has been fully executed by and delivered to all of the parties hereto.

41. Construction. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. As used in this Agreement, the term "or" shall be deemed to include the term "and/or" and the singular or plural number shall be deemed to include the other whenever the context so indicates or requires. Further, the term "herein" or "hereof" shall mean this Agreement and not any particular section or component. Unless otherwise indicated, all references to "sections" are to sections of this Agreement.

[Signatures on following pages]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Execution Date.

"CITY"

CITY OF CALEXICO, CA
a California Municipal Corporation

Date: _____, 2018

By: _____
Lewis Pacheco
Mayor

Attest:

By: _____
Gabriela T. Garcia
City Clerk

Approved as to form:

Best, Best & Krieger, LLP

By: _____
Carlos Campos, Esq.
City Attorney

"DEVELOPER"

Date: _____, 2018

Trinity Property Company, LLC
a Nevada limited liability company

By: _____
Name: James Irwin
Its: Manager

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ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }
COUNTY OF _____}

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }
COUNTY OF _____}

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary