RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Colusa
425 Webster Street
Colusa CA 95932

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 as of _____, 2022 (the "**Execution Date**"), by and between the **CITY OF COLUSA, a California municipal corporation** ("**City**") and **COLUSA RIVERBEND ESTATES L.P., a California limited partnership,** and **COURTNEY DUBAR (AND/OR ASSIGNEE(S))** (collectively, "**Owner**"). City and Owner are sometimes referenced together 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 California Government Code Sections 65864 *et seq*. ("**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 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. Owner owns approximately 85.60 acres in the City of Colusa located in the northeast corner of the City, bordered by the Sacramento River on the north, Clay Street on the south, and D Street on the west, known herein as "Parcel 1", "Parcel 2", "Parcel 3" and "Parcel 4", as depicted on **Exhibit A** and legally described on **Exhibit B** attached hereto and incorporated herein by this reference (the "**Property**").

D. Owner proposes to develop and operate a business park for cannabis cultivation and processing (the "**Cannabis Center**" or "**Project**") on approximately 85.60

acres of the Property, as described in **Exhibit C** attached hereto and incorporated herein by this reference.

E. The Cannabis Center will be developed in three (3) phases (each, a "Phase", together, "Phases") with approximately a total of 1,469,546 square feet of building space containing cultivation structures, drying and processing space, warehouses, manufacturing and research facilities, plus a drainage basin, which may be used for all or a combination of such activities as cannabis planting, growing, harvesting, drying, curing, grading, trimming, extracting, manufacture into cannabis products, testing, distribution and transportation. Phase 1 of the Project shall consist of the development of two (2) buildings totaling approximately 401,165 square feet ("**Phase 1**"); Phase 2 of the Project shall consist of the development of an additional four (4) buildings totaling approximately 560,000 square feet ("**Phase 2**"); and Phase 3 of the Project shall consist of the development of a final addition of four (4) buildings totaling approximately 522,680 square feet ("**Phase 3**") (for a total of approximately 1,483,845 square feet in ten (10) buildings); all subject to change.

F. The Cannabis Center shall operate in accordance with all applicable cannabis laws promulgated in the State of California and in effect on the Execution Date of this Agreement (collectively, the "California Cannabis Laws").

G. Owner may lease all or portions of the Cannabis Center (such lessees and/or their sublessees are identified here in as "**Tenants**"). Owner may also sell all or portions of the Cannabis Center to third parties ("**Buyers**"). Prior to operating a cannabis manufacturing facility, Tenants and Buyers shall be required to obtain a cannabis manufacturing facility regulatory permit from the City, but shall be allowed to operate under Owner's Special Use Permit (as defined below) and shall not be required to obtain a separate cannabis manufacturing special use permit. Where appropriate, Owner, Tenants and Buyers shall collectively be referred to in this Agreement as "**Developers**".

H. Developers will also be required to obtain licenses form the State of California the City's Cannabis Business Regulatory Permits, to the extent such licenses are required by the California Cannabis Laws and are being issued.

I. On June 6, 2017, the City Council of City adopted Ordinance No. 519 attached hereto as **Exhibit D** and incorporated herein by this reference amending the City Zoning Code and Municipal Code to permit cannabis-related activities and authorize issuance of cannabis-related permits, which among other things: (1) created a new "CM" Cannabis Manufacturing Combining District zoning district (the "**CM Combining District**"); (2) added a new Section 33.03 to the City Zoning Code authorizing issuance of Cannabis Manufacturing Special Use Permits; (3) added a new Article 21.5 to the Zoning Code providing regulations regarding Cannabis Manufacturing Special Use Permits; (4) added a new Chapter 12F to the Municipal Code authorizing issuance of Cannabis Manufacturing Facilities Regulatory Permits and providing regulations regarding such permits; and (5) added and

amended certain defined terms related thereto (collectively, (the "**City Cannabis Law**").

1. Owner has applied to City for the following approvals needed to develop and operate the Project: A General Plan Amendment **was approved and adopted July 16, 2019 Resolution 19-20** to change the land use designation of the Cannabis Center from "Low Density Residential" to "Industrial District" (the "**General Plan Amendment**").

2. Rezoning **has been approved** to change the zoning for the Cannabis Center from "Planned Development (P-D) District" to "Light Industrial (M-1) District" (the "**M-1 Rezoning**") (but not mentioning the CM District).

3. Lot line adjustment to merge and reconfigure eight legal parcels into four legal parcels, and to divide the Cannabis Center area into four parcels intended to develop the Project in Phases (the "**Lot Line Adjustment**").

4. Cannabis Manufacturing Special Use Permit for the Cannabis Center (the "**Special Use Permit**"), submitted with the design review application to the City on March 21, 2022.

5. Cannabis Manufacturing Facilities Regulatory Use Permit for the Cannabis Center (the "**Regulatory Permit**").

6. This Development Agreement for the Project.

J. As part of adopting the City of Colusa General Plan, City previously prepared and certified a Master Environmental Impact Report (the "**MEIR**") pursuant to California Public Resources Code §21000 *et seq.* (the California Environmental Quality Act or "**CEQA**") and Title 14 of the California Code of Regulations, Chapter 3, §15000 *et seq.* (the "**CEQA Guidelines**"). The MEIR evaluated environmental effects of development allowed under the General Plan and identified mitigation measures. The MEIR included analysis of a residential development proposed for the Property (the "**Prior Project**").

K. Pursuant to CEQA, City prepared a draft Initial Study ("**IS**") and proposed Mitigated Negative Declaration ("**MND**") for the Project (State Clearinghouse No. 2019029059, taking into consideration the MEIR's analysis of the Prior Project and incorporating mitigation measures from the MEIR to the extent applicable to the Project (the "**IS/MND**"). The IS/MND was made available for public review for the period February 13 to March 15, 2019, during which time City received comments. City subsequently considered the comments and prepared responses as appropriate.

L. City and Owner have agreed that, as a condition of allowing the Cannabis Center, and due to the unique circumstances of the proposed Project, Developers shall pay to the City an annual fixed fee per Phase of the Project, which will cover all permitted activities, including but not limited to, cultivation, manufacturing,

warehouse, distribution and sale (but no on-site dispensary), research and development, processing, nursery and administration.

M. Following recommendations by the Colusa Planning Commission adopted at its hearing on May 22, 2019, the Colusa City Council on July 16, 2019, held a duly noticed public hearing and took the following actions requested by Owner (the "**Initial Approvals**", and together with approval of this Agreement, the "**Project Approvals**"):

1. **Mitigated Negative Declaration.** After considering the public comments received by City and in compliance with CEQA, adopted Resolution No. 19-19: (a) adopting the MND as adequate under CEQA to consider approval of the Project Approvals; (b) adopting findings as required by CEQA supporting adoption of the MND; (c) accepting mitigation measures recommended by the MND; and (d) adopting a mitigation monitoring and reporting program ("**Mitigation Program**") to be applied to the Property and the Project.

2. **Rezoning.** Introduced Ordinance No. 537 (a) approving a General Development Plan Rezoning the Property to M1-PD to allow the Cannabis Center uses proposed by Owner and to the Cannabis Center Site (the "**Rezoning**"), which Ordinance No. 537 at its second reading was adopted by the City Council at a duly noticed public hearing on August 6, 2019 approving the Rezoning. As part of approving the Rezoning, the City Council acknowledged that adopting the City Cannabis Law allowing and regulating cannabis cultivation served to supersede earlier adopted Section 12E of the Municipal Code which purported to prohibit cannabis cultivation, even though Ordinance 519 did not expressly identify or delete Section 12E, so that the Project and the Project Approvals are not inconsistent with or in violation of the Municipal Code notwithstanding Section 12E remaining part of the Code.

3. **Cannabis Manufacturing Special Use Permit.** Adopted Resolution No. _____approving the Special Use Permit to allow the Cannabis Center uses proposed by Owner.

4. **Cannabis Manufacturing Facilities Regulatory Permit.** Adopted Resolution No. _____approving the Regulatory Use Permit to allow the Cannabis Center uses proposed by Owner.

N. On _____, the City Engineer approved the Lot Line Adjustment pursuant to the California Subdivision Map Act and City Code, which does not require action by the Planning Commission or City Council.

O. City has given public notice of its intention to adopt this Agreement and has conducted public hearings thereon pursuant to California Government Code §65867. 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 City's General Plan, zoning code and municipal ordinances.

P. City, in entering into this Agreement, acknowledges that certain City obligations hereby assumed shall survive beyond the terms of the present Council members, that this Agreement will serve to bind City and future 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 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 and the Council and have been found to be fair, just and reasonable. 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 obligation. Owner has represented to City that it would not consider or engage in the Project absent City approving this Agreement; *i.e.*, assuring Owner that it will enjoy the development rights.

Q. The City agrees that Owner's land use entitlements for the Project shall vest for the Term of this Agreement as described below.

R. After conducting a duly noticed hearing, on August 24, 2022 the Planning Commission of the City reviewed, considered and approved the Project and recommended approval of the execution of this Agreement to the City Council. The Planning Commission found the Project: consistent with the objectives, policies, general land uses and programs specified in the general plan; compatible with the uses authorized by the zoning code; is in conformity with the public necessity, public convenience, general welfare and good land use practices; will not be detrimental to the health, safety and general welfare of the city; will not adversely affect the orderly development of property or the preservation of property values; and will have a positive fiscal impact on the City.

S. After conducting a duly noticed hearing on _____, 2022, and after independent review and consideration, the City Council introduced Ordinance No. _____ to approve this Agreement (the "**Enacting Ordinance**"). On _____, 2022 (the "**Approval Date**"), the City Council held a duly noticed public hearing for a second reading, considered the adopted MND as it applied to this Agreement, and adopted Ordinance No. _____approving this Agreement and authorizing its execution. As part of its approval, the City Council made the findings required by the Development Agreement Statute and City Code with respect to this Agreement, and among other attributes found this Agreement and the Project: consistent with the objectives, policies, general land uses and programs specified in the general plan; compatible with the uses authorized in the zoning code; is in conformity with good land use practices; will not be detrimental to the health, safety and general welfare of the City; and is in the best interest of the City of Colusa and its residents. The City Council additionally conducted independent review and consideration of the potential environmental effects that might be caused by the

Project and this Agreement, and as part of the Project Approvals imposed mitigation measures to avoid or reduce potential impacts.

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 intend to be bound by same; the Parties further agree to the incorporation by reference herein of said Recitals, together with all definitions provided and exhibits referenced therein. This Agreement pertains to the Property as described in **Exhibit A** and shown in **Exhibit B**. Except as otherwise provided in Section 15 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 Property. In order to provide continued notice thereof, the Parties will record this Agreement with the Colusa County Recorder. The word "Owner" as previously defined and used herein shall include successor owners, apart from government or quasi-public agencies, of any portion of the Property. Should the size or orientation of any Property component specified above be changed in minor respects, *e.g.*, changed by a lot line adjustment, this Agreement shall not thereby be deemed to have been affected or invalidated, but the rights and obligations of the Parties and their successors 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 City nor Developers will be deemed to be the agent of the other for any purpose whatsoever. City and Owner hereby renounce the existence of any form of joint venture or partnership between or among them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developers joint venturers or partners.

3. Term. The effective date of this Agreement ("**Effective Date**") shall be thirty (30) days after the Approval Date as defined in Recital S. Except as otherwise specified herein, the term of this Agreement (the "**Term**") shall be forty (40) years from the Effective Date. The Term shall generally be subject to earlier termination or extension as hereinafter provided, however, notwithstanding any other term in this Agreement, including but not limited to delay from any cause or reason, the expiration of the Term of this Agreement shall be the 40th year from the Effective Date unless extended under the express provisions of section 3.2 below.

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 may take action causing a *de facto* Development Limitation. Consequently, the Term shall be extended for any delay arising from or related to any of the potential Development Limitations 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 Developers.

3.1.1. Litigation. Any third party-initiated litigation that arises from or is related to any City action or omission with respect to this Agreement, the Project Approvals 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. Any delay arising from or related to the act(s) or omission(s) any third party governmental agency, quasi-public entity or public utility, and beyond the reasonable control of Developers.

3.1.3. Force Majeure. Any delay resulting from war; insurrection; strikes; lock outs; picketing; other labor disputes; riots; floods; earthquakes; fires; other acts of mother nature; casualties; contamination; supernatural causes; acts of the "public enemy"; epidemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; inability to secure necessary labor, materials, supplies or tools; delays of any contractor, subcontractor or supplier; or any other causes beyond the reasonable control of Developers.

3.2. Term Extensions. The Term of this Agreement may be extended in either of the following ways:

3.2.1. Request of Owner. This Agreement's Term may be extended by the City Manager at his or her discretion and without need for a further formal amendment of this Agreement, for one (1) additional ten (10) year period following the expiration of the initial Term upon the occurrence of all of the following:

3.2.2. Written Notice. Owner shall give written notice to City of a request for the Term Extension no later than fifteen (15) days before the expiration of the Term; and

3.2.3. No Default by Owner. Owner shall not be in 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 notice from City of said default per this Agreement, or if Owner did in fact default as to this Agreement, upon notice from City, that Owner did cure said default during the period to cure provided herein to City's satisfaction.

3.2.4. Mutual Agreement of Parties. This Agreement's Term may be extended by mutual agreement of the Parties.

3.3. Termination of Agreement.

3.3.1. Upon the termination of this Agreement, either by expiration or otherwise, Developers shall have no right to engage in cannabis cultivation or

manufacturing at the Cannabis Center Site, except as may otherwise be allowed by then-applicable City ordinance, law or separate development agreement.

3.4. Project Approvals.

3.4.1. Term of Project Approvals. Notwithstanding anything to the contrary in the Applicable Law (as defined below), including without limitation the City Cannabis Law, each of the Project Approvals, including any Subsequent Approvals and including any approvals or permits obtained by Tenants and Buyers, shall vest for the longer of (a) the then-remaining Term of this Agreement as it may be extended or (b) the term of the particular approval.

3.4.2. Regulatory Permits Applications. Each Tenant and Buyer shall be required to obtain a separate Regulatory Permit, but shall be allowed to operate under Owner's Special Use Permit for the Term of this Agreement. With respect to regulatory permit applications by Tenants and Buyers, City expressly waives the following requirements, set forth in Chapter 12 F - 4.A of the Municipal Code of the City of Colusa (as may be amended from time to time):

1. Complete property ownership and lease details, where applicable. If the Business Owner is not the Premises Owner, the applications form must be accompanied with a notarized acknowledgment from the Premises Owner that Cannabis Operations will occur on its property.

2. A diagram and floor plan of the entire Premises, denoting all the use of areas proposed for Cannabis Operations, including, but necessarily limited to, cultivation, processing, manufacturing, testing, transportation, deliveries, and storage. The diagram and floor plan need not be prepared by a registered design professional, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the Premises to an accuracy of plus or minus twenty-four (24) inches.

3. The proposed security arrangements for ensuring the safety of persons and to protect the Premises from theft.

4. An accurate straight-line drawing prepared within thirty (30) days prior to the application depicting the building and the portion thereof to be occupied by the Cannabis Operation and the property line of any school as set forth in the Operational Requirements.

3.4.3. Automatic Renewal of Regulatory Permits. Notwithstanding any provision of Chapter 12 F - 4.E of the Municipal Code of the City of Colusa each Regulatory Permit for Tenants and Buyers shall continue in force and automatically renew annually without a written application for renewal, provided the permit holder has paid all renewal fees due and payable, unless the permit holder is found to be in default of the Agreement, violation of applicable State regulations or the Existing City Law (as defined below) after notice of such violation and a reasonable opportunity for cure (which cure period shall not be less than sixty (60) days), unless such cure is continuously and actively being pursued and the annual renewal fees have been paid.

3.4.4. Regulatory Permit Fees. Fees charged by City for the initial issuance or automatic annual renewal of a Regulatory Permit for Tenants and Buyers shall not exceed the amounts established by resolution of the City Council.

4. Cannabis Center City Compensation Payments. In consideration of City's entering into this Agreement and authorizing development and operation of the Project, the requirements for City services created by the Project, the City ensuring Developers' compliance with this Agreement, the California Cannabis Laws, the City Cannabis Law and the Applicable Law (as defined below), throughout the Term of this Agreement, Developers shall make the following payments to City:

4.1. Phasing of City Compensation Amounts. Developers shall pay compensation to the City according to the building development schedule upon completion of construction of each Phase of the Project, as shown in the example for Phase 1 below. The Project consists of three Phases and each building in each Phase of the Project will be assessed a fixed annual compensation (the "**City Compensation**") in the amount of $2.50 per square foot (the "**City Compensation Rate**") of Gross Building Area ("**GBA**"), subject to the adjustment process set forth in this Agreement. Gross Building Area means the total area of all floors, measured in square feet, of a building enclosed by the outside surface of exterior walls thereof. The square footage of the floor area of mezzanines shall be included in Gross Building Area. Payment of the City Compensation for each building will be due upon receipt from the City of a Notice of Completion for each building in each particular Phase, along with the issuance of all regulatory license(s) approval, and annually thereafter for the remaining Term of this Agreement. Note that each payment is in advance of any production at each greenhouse. An example Compensation Rate Schedule for Phase 1 is shown below.

Colusa Farms

Phase 1	Square Feet	City Compensation Rate	City Compensation
Building 1a	106,395	$2.50/SF	$265,987.50
Building 1b	77,426	$2.50/SF	$193,565
Building 2	217,344	$2.50/SF	$543,360
Total	401,165	$2.50/SF	$1,002,912.50

4.2. City Compensation Rate Adjustment Procedure. During the Term of this Agreement, the City Manager and Developer shall meet and confer, at least three (3) months prior to the date which is every 5th anniversary of the Term (each such date, a "**Rate Adjustment Date**"), to reconfirm or reestablish the City Compensation. Within six (6) months of the Effective Date of this Agreement the City and Developer shall establish by Operating Memorandum a determination of a baseline relationship between existing cannabis products sales volume per square foot of GBA, or other appropriate standard

as agreed to by the parties, and the City Compensation of $2.50/SF of GBA. This baseline ratio shall be the ongoing basis of establishing equitable City Compensation Rate during the Term of this Agreement; provided however, in no event shall the City Compensation Rate increase on any Rate Adjustment Date by more than three percent (3%) of the City Compensation Rate in effective on the immediately prior Rate Adjustment Date.

4.3. Requirement to Complete Construction of Phase 1. To vest the City Compensation Rate set forth in Section 4.1 above, Developer shall have received a Notice of Completion for at least 400,000 square feet of GBA on or before the 10th anniversary of the Effective Date of this Agreement.

4.4. Modification of City Compensation Rate if Phase 1 Not Completed. If Developer fails to receive a Notice of Completion for at least 400,000 square feet of GBA on or before the 10th anniversary of the Effective Date of this Agreement, then the City Compensation Rate set forth in Section 4.1 above shall no longer be valid and effective.

4.4.1. Developer shall then pay, on an annual basis, compensation to the City in the amount of two percent (3%) of the "Gross Annual Revenue", defined as the amount based on the annual gross sales of the licensed premises from cannabis products and, if applicable, the annual revenue received from manufacturing, packaging, labeling or otherwise handling cannabis or cannabis products for other licensees, in the 12 months preceding the date which is the anniversary date of the issuance of the City Regulatory Permit issued for the licensed premises.

4.4.2. On 10th anniversary of the implementation date of this section (if applicable), and every 10 years thereafter, City and Developer shall meet and confer on the 3% rate noted in subsection 4.4.1 above, and negotiate in good faith to reach an equitable adjustment of the 3% rate, either up or down or remaining the same, based on then current market conditions. Any such rate adjustment shall be approved by the City Council but is not considered to be, and need not be processed as, a formal amendment to this Agreement.

4.5. Distribution or Testing (No Fee). Gross receipts of Distributors or Testing Labs engaged in the business of purchasing cannabis from a Cultivator, or cannabis products from a Manufacturer, for sale to a dispensary or executing a contract made directly between a Cultivator /Manufacturer and a dispensary for purposes of distribution shall not be included in Owner's obligation to pay the City Compensation Rate set forth in Section 4.1 above.

4.6. No Double Taxation**.** No City Compensation shall be assessed for any sale of cultivated product to an on-site manufacturing operator.

4.7. Certification of Non-Income Tax Exemption. Owner certifies that Owner is not income tax exempt under State or Federal Law and that Owner will not file for such an exemption from the Internal Revenue Service or the Franchise Tax Board. Owner will also require each Tenant and Buyer to certify that the Tenant and

Buyer is not income tax exempt under State or Federal Law and will not file for such an exemption.

4.8. Annual Compensation Payments. Annual payments to the City shall be made as set forth in Section 4.8.1 below. The City Compensation shall be the only fee, tax, assessment or other charge owed by Developers and Owner regarding operation or use of the Cannabis Center, and specifically excluding any fee or tax the City might adopt or increase regarding cannabis-related activities and any periodic charge related to renewing or maintaining in effect the Special Use Permit. The following payment procedures shall apply during the operation of the Cannabis Center and the Term of this Agreement.

4.8.1. Annual Payments of the City Compensation of the fixed amount set forth in Section 4.1, as amended from time to time in accord with the procedures of Section 4.2, shall be made to the City within thirty (30) calendar days prior to each anniversary date of receipt by Owner of the Notice of for each building, on a building by building basis.

4.8.2. Annual Payments of City Compensation under Section 4.4, if applicable, are due and payable within ninety (90) calendar days following each Developers/Owner's or Tenant's submittal of their report of cultivation tax or cannabis excise tax to the California Department of Tax and Fee Administration ("**CDTFA**"), a copy of which shall be provided to the City. Any material misstatement or misrepresentation in the report submitted to CDTFA and the City and any failure to pay the City Compensation when due shall constitute events of default by that particular Developer subject to the default provisions of this Agreement.

4.9. Maintenance of Records. Developers shall maintain 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 Developers. Developers shall maintain such records in a form and location reasonably accessible to the City, following reasonable notice to Developers and/or any operator, for a period of at least five (5) calendar years following submission of the Certified Report to which the records apply.

4.10. Audit. Within thirty (30) calendar days following the end of each calendar year, the City may conduct an audit or arrange for a third-party independent audit, at Developers' expense, of Developers records regarding Certified Reports and the Bonus Payment. The City's Finance Director shall provide at least seven (7) business days written notice of the commencement of such audit to Developers, and shall reasonably attempt to schedule the audit so as to reduce the impact on operations as much as is feasible. Developers shall cooperate with the City in completing the audit. If the audit reveals that a Developer has underpaid the Bonus Payment, that Developer shall pay such underpaid amounts to the City within thirty (30) calendar days of receipt of written notice from the City's Director of Finance in addition to all costs of the audit, including city staff time and outside consultants. If the audit reveals that the Developer has overpaid any amount of the Bonus Payment, City shall provide written notification to

the Developer and shall credit such amount against the Developer's subsequent payments of the Bonus Payment until the overpaid amount has been resolved. Neither Owner nor any other Developer shall be liable for payments owed by another Developer.

4.11. Survival. The obligations of Developers, Owner and City under this Section 4 shall survive the expiration or any earlier termination, as applicable, of this Agreement.

5. Vested Rights/Use of the Property/Applicable Law/Processing.

5.1. Right to Develop and Operate. Owner shall have the vested right to develop and operate the Project on the Property in accordance with, and subject only to, the terms and conditions of this Agreement, the Project Approvals (as and when issued), and any amendments to any of them as shall, from time to time, be approved pursuant to this Agreement. For the Term of this Agreement, the City's ordinances, codes, resolutions, rules, regulations and official policies governing the development, construction, subdivision, occupancy and use of the Project and the Property including without limitation the Colusa General Plan, the Colusa Municipal Code, and the City Cannabis Law, shall be those that are in force and effect on the Approval Date (collectively, the "Applicable Law"). Notwithstanding anything to the contrary contained herein, this Agreement shall not supersede any other rights Owner may obtain pursuant to City's approval of a vesting tentative map for the Project or a portion of the Project.

5.2. Permitted Uses. The permitted uses of the Property, density and intensity of use of the Property, the maximum height, bulk and size of proposed buildings, the general provisions for reservation or dedication of land for public purposes and for the location and maintenance of on-site and off-site improvements and public utilities, and other terms and conditions of development and operation applicable to the Property and the Project, shall be those set forth in the Project Approvals and this Agreement.

5.3. Exceptions to Applicable Law. Notwithstanding anything to the contrary, the following exceptions and modifications to provisions in the Applicable Law shall apply to development and operation of the Property and Project.

5.3.1. Odor Control. City agrees that the odor control requirements of Section 12F-12 and Section 21.5.06(n) of the Zoning Code of the Municipal Code, adopted as part of the City Cannabis Law, will adequately control odors. Furthermore, City also acknowledges that the IS/MND in Section III(f) determined that odors from the Project would have a less than significant impact given cultivation will be indoors and buildings will have air filtration and ventilation systems to control odors.

5.4. Applicable Fees, Exactions and Dedications.
The City acknowledges and agrees that any typical development impact fees associated with the construction of buildings will be deferred until one year after receipt of the Notice of Completion by Developer for each building in a particular Phase. Furthermore, City acknowledges and agrees that development impact fees for any other

improvements on the Property shall be deferred until one year after receipt of the Notice of Completion by Developer of the first greenhouse.

5.4.1 This Agreement does not limit City's discretion to impose or require payment of fees, dedication of land, or construction of public improvements or facilities in connection with development of the Property that are identified as required to mitigate specific environmental and other impacts of a Subsequent Approval, so long as not inconsistent with the terms and conditions of this Agreement.

5.4.2 Nothing shall restrict the ability of City to impose conditions or fees on the issuance of building permits that lawfully could have been imposed as conditions of approval of an approved tentative map based on a finding that the condition or fee is necessary because (i) it is required in order to comply with state or federal law, or (ii) failing to impose the condition or fee would place occupants of the Project or the community in a condition dangerous to their health or safety.

5.5. New Taxes and Assessments. To the extent allowed by state or federal law, no new taxes, assessments or other charges not in force and effect as of the Approval Date shall be levied against the Property, the Project or Owner except as specified in this Agreement. No increase in an existing tax, assessment or other charge shall be levied, even if an increase already is specified or authorized in applicable City codes and regulations.

5.6. Construction Codes.

5.6.1. Uniform Codes Applicable. Notwithstanding the provisions of Section 5.2 above, to the extent Applicable Law includes requirements under the state or locally adopted building, plumbing, mechanical, electrical and fire codes (collectively the **"Construction Codes"),** the Construction Codes included shall be those in force and effect at the time Owner submits its application for the relevant building, grading, or other construction permits to City; provided, in the event of a conflict between such Construction Codes and the Project Approvals, the Project Approvals shall, to the maximum extent allowed by law, prevail.

5.6.2. Rules for Public Improvements. For construction of public infrastructure, the Construction Codes along with any ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to such construction shall be those in force and effect at the time of execution of the applicable improvement agreement between City and Owner, or at the time of permit approval if there is no improvement agreement.

5.7. New Rules and Regulations.

5.7.1. During the term of this Agreement, City may apply to the Property and the Project new or modified ordinances, resolutions, rules, regulations, standards, policies, conditions, specifications, new or amended general plan, specific plan and zoning provisions, new or amended fees or other exactions of the City which were not in force and effect on the Approval Date and thus not part of the Applicable Law

(collectively, **"New Rules"**) only if (a) the New Rule is consented to in writing by Owner in Owner's sole and absolute discretion; or (b) it is otherwise expressly permitted by this Agreement. If City adopts a New Rule, Owner in its sole and absolute discretion may elect to comply with and receive the benefits of any New Rule by providing written notice to City of said election, after which such New Rule shall thereafter become part of the Applicable Law for the remaining Term of this Agreement.

5.7.2. City shall not be precluded from applying any New Rules to the Project or the Property under the following circumstances, where the New Rules are:

(a) Specifically mandated by changes in state or federal laws or regulations adopted after the Approval Date pursuant to Government Code section 65869.5;

(b) Specifically mandated by a court of competent jurisdiction taking into consideration the vested rights protection provided by this Agreement and the Development Agreement Statutes;

(c) Changes to the Uniform Building Code or similar uniform construction codes, or to City's local construction standards for public improvements so long as such code or standard has been adopted by City and is in effect on a City-wide basis; or

(d) Required as a result of facts, events or circumstances presently unknown or unforeseeable that would otherwise have an immediate adverse risk on the health and safety of the surrounding community.

(e) The City is currently preparing amendments to Chapters 12.E,12.F and Section 21.5.06(n) of the Zoning Code of the City Municipal Code which will be of citywide applicability, and Developer agrees that any changes to Chapter 12.E and 12.F and Section 21.5.06(n) of the Zoning Code approved by the City Council prior to the date Developer applies for their first building permit will be applicable to the Project.

5.8. Other Emergency Restrictions. Notwithstanding anything to the contrary contained herein, if an ordinance, resolution, policy, directive or other measure is enacted or becomes effective, whether by action of City, by initiative, referendum, or otherwise, and if it imposes a building moratorium, a limit on the rate, timing, phasing or sequencing of development, a restriction on operations, or a voter-approval requirement which affects all or any part of the Property or Owner's ability to develop and operate the Project (collectively, "**Restrictions**"), City agrees that such Restrictions shall not apply to the Project, the Property, this Agreement, the Project Approvals or the Subsequent Approvals unless it is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code section 8558, provided that to the extent it applies to all or any part of the Project then the Term shall automatically be extended for a period of time equal to the period during which the Restriction applies.

5.9. Development of the Project; Phasing; Timing.

5.9.1. No Requirement to Develop. Notwithstanding any provision of this Agreement, City and Owner expressly agree that there is no requirement that Owner must initiate or complete any action, including without limitation development of the Project or any portion or phase of the Project, within any period of time set by City, and City shall not impose such a requirement on any Project Approval or Subsequent Approval except as needed to ensure that necessary infrastructure is completed in an orderly fashion. Nothing in this Agreement is intended to create nor shall it be construed to create any affirmative development obligations to develop the Project at all or in any particular order or manner, or liability in Owner under this Agreement if the development fails to occur. It is the intention of this provision that Owner be able to develop the Property in accordance with its own time schedules and the Project Approvals. City acknowledges that Owner at this time cannot predict when or the rate at which or the order in which portions or phases of the Project will be developed, and City recognizes that many factors affect such actions that may not be within Owner's control, including but not limited to market orientation and demand, interest rates and funding availability, and competition. Nothing in this Agreement shall exempt Owner from completing work required by a subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof, nor shall this Section 5.8 affect the Term of this Agreement or of any related Project Approvals or Subsequent Approvals.

5.9.2. No Restriction on Timing. City agrees that Owner shall be able to develop in accordance with Owner's own time schedule as such schedule may exist from time to time, and Owner shall determine which part of the Property to develop first, and in what sequence, and at Owner's chosen schedule. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' intent to avoid that result by acknowledging that Owner shall have the right to develop the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its subjective business judgment, and that the timing, rate or sequence of development and occupancy of the Project shall not be restricted or dictated by any means other than as specifically may be recognized in this Agreement.

5.10. Processing and City Discretion.

5.10.1. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, nor to limit the discretion of City or any of its officers or officials with regard to those Subsequent Approvals that require the exercise of discretion by City, provided that such discretion shall be exercised consistent with the vested rights granted by this Agreement, the Applicable Law and the Project Approvals, and City shall apply the Applicable Law as the controlling body of law.

5.10.2. Owner acknowledges that implementation of the Project will require City's consideration and approval of applications for Subsequent Approvals and that City will complete environmental review in connection with those Subsequent Approvals as required by CEQA and other applicable federal, state and local laws and regulations. City's environmental review of the Subsequent Approvals pursuant to CEQA shall utilize the MEIR and the MND to the fullest extent permitted by law; provided, however, nothing in this Agreement shall be deemed to limit the legal authority of City to conduct any environmental review required under CEQA or other applicable laws and regulations.

5.11. Regulation by Other Public Agencies. The Parties acknowledge that other public agencies not within City's control may possess authority to regulate aspects of development of the Property, and this Agreement does not limit such authority of other public agencies.

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

6.1. Implementation. Owner shall use commercial reasonable efforts to pursue the implementation of the Project as expeditiously as feasible, in the form approved by the City, subject to this Agreement, the Project Approvals and the Applicable Law.

6.2. Maintain & Operate Project. Developers shall maintain and operate the Project on the Property, once constructed, throughout the Term of this Agreement, in accordance with this Agreement, the Project Approvals, the Applicable Law, and all State and Federal laws.

6.3. Hold Harmless Owner shall defend (with counsel reasonably acceptable to City), indemnify and hold City and its councilpersons, officers, attorneys, agents, contractors, and employees (collectively, the "**Indemnified Parties**") 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 to the extent arising from the Project, this Agreement, the approval of the Project, and the activities of Tenants, their members, officers, employees, agents, contractors, invitees and any third parties on the Cannabis Center Site, from and against any challenges to the validity of this Agreement or other Project Approvals; provided, Owner shall have no such obligation arising from the negligence or wrongful misconduct of the Indemnified Parties. To the extent that Owner sells a portion of the Project to a Buyer, that Buyer and its successors in interest shall bear the responsibility of Owner under this Section 6.3 rather than Owner or any other Buyer. The obligations of Owner under this Section shall survive the expiration or any earlier termination, as applicable, of this Agreement.

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

7.1. Expeditious Services. City shall process applications and address questions and concerns raised by Developers' representatives at the "counter" at City Hall as expeditiously as reasonably possible. Upon a Developer's request, or if, in an exercise of 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 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 City, per City's applicable policies and procedures. City shall have absolute discretion in the selection of such Private Contractors; provided the Developer shall have the right to reject the use of one or more particular Private Contractors in its reasonable discretion, in which case City shall select another Private Contractor not rejected by the Developer.

7.2. Building Permits and Other Approvals and Permits. Subject to (a) Owner's compliance with this Agreement, the Project Approvals, the Applicable Law and the Construction Codes; and (b) payment of the Processing Fees pursuant to Section 5.4.3 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 in good faith expeditiously process and issue to Developers 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).

7.3. Procedures and Standards. The standards for granting or withholding permits or approvals required hereunder in connection with the development of the Project and the operation of the Cannabis Center 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 Applicable Law, but the procedures for processing applications for such permits or approvals shall be governed by such ordinances and regulations as may then be applicable to the extent not inconsistent with this Agreement.

7.4. Right to Rebuild. City agrees that Owner, in Owner's sole discretion, may renovate or rebuild the Project or portions thereof during the Term should it become necessary due to natural disaster, changes in seismic, flood or other requirements, fire, or other causes. Any such renovation or reconstruction shall comply with the terms of this Agreement, and may be subject to CEQA as may be required under applicable law.

8. Effect of Agreement.

8.1. 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 Owner the right and entitlement to develop the Project and use the

land pursuant to specified and known criteria and rules as set forth in the Project Approvals and Applicable Law, and to grant the City and the residents of the City certain benefits which they otherwise would not receive.

8.2. Binding on City/Vested Right of Owner. 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 taken by ordinance or resolution of the City Council, or by referenda, initiative, or otherwise. The Parties acknowledge and agree that by entering into this Agreement and relying thereupon, Owner has obtained, subject to the terms and conditions of this Agreement, a vested right to proceed with its development and operation of the Project as set forth in the Project Approvals and the Applicable Law, 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.

8.3. Future Conflicting Initiatives or Referenda. If any New Rule 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, such New Rule shall not apply to the Property or Project. The Parties, however, acknowledge that the City's approval of this Agreement and one or more of the Project Approvals are legislative actions subject to referendum.

9. Permitted Delays; Supersedure by Subsequent Laws.

9.1. Permitted Delays. In addition to any other provisions of this Agreement with respect to delay, Developers and City shall be excused from performance of their obligations hereunder during any period of delay caused by Force Majeure as defined in Section 3.1.3, litigation, acts or neglect of the other Party, any referendum elections held on the Enacting Ordinance or the Applicable Law, or any other matter affecting the Project or the approvals, permits or other entitlements related thereto, or restrictions imposed or mandated by governmental or quasi-governmental entities other than City, enactment of conflicting provisions of the Constitution or laws of the State of California or any codes, statutes, regulations or executive mandates promulgated thereunder (collectively, "**Laws**"), orders of courts of competent jurisdiction, or any other cause similar or dissimilar to the foregoing beyond the reasonable control of City or Developers, 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 shall be extended by the period of any delay hereunder.

9.2. Supersedure of Subsequent Laws or Judicial Action.

9.2.1. The provisions of this Agreement or of the Project Approvals shall, to the extent feasible, be modified or suspended as may be necessary to comply with any new state or federal law or regulation or an action of a state or federal agency ("**Non-City Law**") or decision issued by a court of competent jurisdiction (a "**Decision**"), enacted or made after the Effective Date which is determined to be applicable and

prevents or precludes compliance with one or more provisions of this Agreement or of a Project Approval (such Non-City Law or Decision, a "**Change in Law**").

9.2.2. Promptly after a Party learns of any such Change in Law, that Party shall provide the other Party written notice and a copy, together with a statement identifying how it conflicts with or affects the provisions of this Agreement or of a Project Approval. The Parties thereafter shall promptly 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 or the Project Approval, and shall make a reasonable attempt to modify or suspend this Agreement or the Project Approval to comply with such Change in Law in a manner that protects, to the greatest extent feasible, the vested rights of Owner under this Agreement. Each Party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or Project Approval. If the Parties cannot agree on a manner or method to comply with the Change in Law, the Parties may but shall not be required to engage in alternative dispute resolution.

9.2.3. During the interim until this Agreement or the Project Approval is so amended, or for the remainder of the Term if this Agreement or Project Approval is not so amended, the provisions at issue shall be deemed suspended but the remainder of this Agreement or Project Approval shall remain in full force and effect to the extent it is not inconsistent with such Change in Law and to the extent such Change in Law does not render such remaining provisions impractical to enforce; provided, Owner retains the right in Owner's sole discretion to terminate this Agreement and Owner's obligations hereunder in response to suspension of such provisions.

9.2.4. Owner and City shall have the right to challenge the new Change in Law preventing compliance with the terms of this Agreement or a Project Approval. In the event that such challenge is successful, this Agreement or the Project Approval shall remain unmodified and in full force and effect, except that the Term shall be extended, in accordance with Section 2.1 above, for a period of time equal to the length of time the challenge was pursued, to the extent such challenge delayed the implementation of the Project or delayed or temporarily halted or curtailed operation of the Cannabis Center.

10. Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between the City and the Developers. It is anticipated due to the term of this Agreement that refinements to the approvals may be appropriate with respect to the details of performance of the City and the Developers. To the extent allowable by law, the Developers 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 Developers find 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

Developers, 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 this 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. Where Tenants request Operating Memoranda, they shall be subject to review and approval by the Owner of the subject portion of the Project.

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

12. 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, all successors-in-interest of the Parties and constitute covenants that run with the Property. Owner, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns, may at any time during the Term, assign, convey, lease, sell or otherwise transfer all or any portion of its rights under this Agreement and under the Special Use Permit ("**Assignable Rights**") to a third party, a subordinate entity, or a related entity (an "**Assignee**") in its sole discretion and without the prior written consent of City in each instance but with prior notice to City; provided any such Assignee must fully comply with all applicable terms of this Agreement, including without limitation the requirement to obtain a Regulatory Permit. Without limiting the foregoing, Owner may lease portions of the Project to Tenants and/or sell portions of the Property to Buyers, who thereafter shall assume the obligations and enjoy the rights of this Agreement (except as this Agreement may reserve such rights or obligations to Owner). Any lease or sale agreement shall require Tenants and Buyers to cooperate with Owner, City and other Tenants and Buyers in all respects with matters pertaining to this Agreement.

13. Review for Compliance.

13.1. Periodic Review. Pursuant to Section 65865.1 of the Development Agreement Statutes, City shall engage in an annual review of this Agreement, on or before the anniversary of the Effective Date, in order to ascertain Owner's good faith compliance with its terms (the "**Periodic Review**"). Any initial finding of non-compliance will entitle Owner to reasonable good faith discussions with City staff to resolve the issue, and if necessary, a hearing before the City Council. In the event City fails to formally conduct such annual review, Owner shall be deemed to be in full compliance with the Agreement. If Owner sells a portion of the Property or Project to a Buyer, the Periodic Review as to that portion shall be between City and that Buyer (but with notice to Owner),

and any results of such Periodic Review shall only involve and affect that portion and that Buyer and not affect Owner or the remainder of the Property and Project.

14. Amendment or Cancellation.

14.1. Amendment of Agreement.

14.1.1. Modification Because of Conflict with State or Federal Laws. An amendment to this Agreement resulting from a Change in Law shall be governed by Section 12.2.

14.1.2. Amendment or Cancellation by Mutual Consent. This Agreement may be amended (in whole or part) in writing from time to time by mutual consent of the Parties and in accordance with the procedures of Government Code section 65868. Except as otherwise permitted herein, this Agreement may be canceled in whole or in part only by an action which complies with Government Code section 65868.

14.1.3. Amendment as to Portion of Property. When a Party that is successor to Owner as to a portion of the Property ("**Portion**") seeks such an amendment, then such Party may only seek amendment of this Agreement as directly relates to the Portion, and the Party or Parties owning the remainder of the Property shall not be required or entitled to be a signatory or to consent to an amendment that affects only the other Party's Portion so long as such amendment does not directly or indirectly affect the rights or obligations of the Parties owning the remainder of the Property. If any Portion of the Property is subject to a document which creates an association which oversees common areas and any construction or reconstruction on or of the same, then the association shall be deemed to be the "owner" of that Portion of the Property for the purpose of amending this Agreement. Notice shall be given to Owner and all Parties owning Portions of the Property of any attempt to amend this Agreement as to a Portion, who shall have the right to intervene based on the claim that the amendment will affect rights or obligations as to the remainder of the Property.

14.1.4. Administrative Agreement Amendments. Notwithstanding the provisions of Section 17.1.2, the City Manager or designee ("**Director**") may, except to the extent otherwise required by law, enter into certain amendments to this Agreement on behalf of City so long as such amendment does not substantially affect (a) the Term; (b) the permitted uses of the Property; (c) conditions, terms, restrictions or requirements for subsequent discretionary actions; (d) the density or intensity of use of the Property; (e) the maximum height or size of proposed buildings; or (f) monetary contributions by Owner as provided in this Agreement (an "**Administrative Agreement Amendment**"), and shall not, except to the extent otherwise required by law, require notice or public hearing before the Parties may execute an amendment hereto. The Director shall evaluate and apply the term "substantially affect" in the context of the Project as a whole.

14.1.5. Amendment Exemptions. No amendment of an Initial Approval or Subsequent Approval, whether done as an administrative amendment or otherwise, shall require an amendment to this Agreement. Instead, any such matter

automatically shall be deemed to be incorporated into the Project and vested under this Agreement when written and executed by the Parties.

14.1.6. Amendment Limitations. In consideration of the scope of benefits to City provided by this Agreement and the Project, any amendment to this Agreement shall only be subject to such new terms and conditions, including new exactions or other obligations, as are reasonably related to impacts on City directly attributable to such amendment.

14.2. Amendment of Project Approvals. To the extent permitted by law, any Initial Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner.

14.2.1. Administrative Project Amendments. Upon written request by Owner for an amendment or modification to an Initial Approval or Subsequent Approval, the Director shall determine (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole, and (b) whether the requested amendment or modification is consistent with this Agreement, Applicable Law, applicable Construction Codes, and State and Federal law. If the Director finds that the proposed amendment or modification satisfies the terms of this Section 15.2.1, and will result in no new significant environmental impacts not addressed and mitigated in the MND or mitigated by conditions to any Project Approval, it shall be determined to be an "**Administrative Project Amendment**" and the Director may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice or public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle or pedestrian circulation patterns or access points, minor variations in lot layouts, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure that do not substantially alter the design concepts of the Project, and minor adjustments to the Project site diagram or Property legal description shall be treated as Administrative Project Amendments.

14.2.2. Non-Administrative Project Amendments. Any request of Owner for an amendment or modification to an Initial Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment pursuant to Section 15.2.1 shall be subject to review, consideration and action pursuant to Applicable Law and this Agreement.

15. Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be either personally delivered (which may include delivery by means of professional overnight courier service which confirms receipt in writing [such as Federal Express or UPS]), sent by email, or sent by certified or registered mail, return receipt requested, postage prepaid to the following parties at the following addresses or numbers:

If to City: City of Colusa
Attention: City Manager
425 Webster Street
Colusa CA 95932
Email:
citymanager@cityofcolusa.com

With copy to:

Jones & Mayer, City Attorney
Attention: Ryan R. Jones, Esq.
6549 Auburn Blvd.
Citrus Heights, California 95621
Email: rjr@jones-mayer.com

If to Owner: COLUSA RIVERBEND ESTATES L.P., a California limited partnership,
and
COURTNEY DUBAR

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 Fax), if received before 5:00p.m. on a regular business day, otherwise on the next regular business day, so long is sender receives actual confirmation that the transmission was received; or ***(d)*** date of delivery as indicated on the return 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.

16. Breach and Remedies.

16.1. Notwithstanding any provision of this Agreement to the contrary, Developers shall not be deemed to be in default under this Agreement with respect to any obligation owed solely to City, and City may not terminate or modify Developers' rights under this Agreement, unless City shall have first delivered a written notice of any alleged default to Owner and the defaulting Developer that specifies the nature of such default. If such default is not cured by the defaulting Developer within sixty (60) days after receipt of such notice of default, or with respect to defaults that cannot be cured within such period, the defaulting Developer fails to commence to cure the default within thirty (30) days after receipt of the notice of default, or thereafter fails to diligently pursue the cure of such default, City may terminate the defaulting Developer's rights under this Agreement. Owner reserves the right but is not obligated to cure any default of a defaulting Developer so as to allow the Developer to remain in the Project with the rights and obligations of this Agreement.

16.1.1. Notwithstanding subsection 15.1, if a Tenant's default results in City terminating the Tenant's rights under this Agreement as to a portion of the Project occupied by the Tenant, Owner may reactivate such rights for the remaining Term either by occupying and operating the former Tenant's portion of the Project or by leasing it to another Tenant that qualifies under this Agreement. Recognizing the substantial benefit the City obtains through continued operation of the Project under this Agreement, Owner shall not be required to cure the former Tenant's default to exercise this right.

16.1.2. Notwithstanding subsection 15.1, if a Buyer's default results in City terminating the Buyer's rights under this Agreement as to a portion of the Project owned by the Buyer, Owner may reactivate such rights for the remaining Term by obtaining title to the former Buyer's portion of the Project and thereafter either operating such portion, leasing it to a Tenant, or selling it to another Buyer. Owner shall not be required to cure the former Buyer's default to exercise this right. Recognizing the substantial benefit the City obtains through continued operation of the Project under this Agreement,

16.2. Default by any Assignee or Owner's successor in interest shall affect only that portion of the Property owned by such Assignee or successor, and shall not cancel or diminish in any way Owner's rights with respect to any portion of the Property not owned by such Assignee or successor.

16.3. 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 a non-breaching Party for an alleged breach of this Agreement shall be remedied by injunctive relief or an appropriate action for specific enforcement of this Agreement, or to terminate this Agreement, and not by a claim or action for monetary damages against the breaching Party; provided, this limitation on damages shall not preclude actions to enforce payments of monies owed under this Agreement.

17. 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.

18. 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.

19. Attorneys' Fees. If the services of any attorney are required by any party to secure the performance of this Agreement or otherwise upon the breach or default of another party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provisions of this Agreement or the rights and duties of any person in relation to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.

Whenever provision is made in this Agreement for the payment of attorney's fees, such fees shall be payable whether the legal services are rendered by a salaried employee for the party or by independent counsel and shall include such fees as are incurred in connection with any pretrial proceeding, trial or appeal of the action. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

20. 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.

21. Execution of Agreement. The Parties shall sign this Agreement on or within five (5) business days of the Approval Date.

22. Estoppel Certificate. City shall, at any time and from time to time within ten (10) days after receipt of written notice from a 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 Property. Upon a Developer's written request, City shall issue a certificate of performance evidencing completion of any of the Developer's obligation(s) under this Agreement.

23. Encumbrances on Real Property.

23.1. Discretion to Encumber. The Parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property 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 Property or such portion. City acknowledges that the lenders providing such financing may require certain modifications, and City agrees, upon request, from time to time, to meet with Owner

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 Property or any portion thereof or any improvements thereon and its successors and assigns ("**Mortgagee**") shall be entitled to the following rights and privileges.

23.2. Lender Requested Modification/Interpretation. City acknowledges that the lenders providing financing to Developers may request certain interpretations and modifications of this Agreement. City therefore agrees upon request, from time to time, to meet with the Developers 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. Notwithstanding the above, no change to this Agreement requested by a Tenant or Buyer shall be made without the Owner's approval in its sole discretion.

23.3. 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 Property 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.

23.4. Mortgagee Not Obligated. Notwithstanding the provisions of Section 26.3, no Mortgagee will have any obligation or duty under this Agreement to perform the obligations of Owner or other affirmative covenants of Owner 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 Owner is a condition to the performance of a covenant by City, and the performance thereof shall continue to be a condition precedent to City's performance hereunder. No Mortgagee will be liable for any monetary defaults arising prior to its acquisition of title to the Property or any portion thereof. Uncured monetary defaults will terminate the rights under this Agreement and Mortgagee's right to operate, to the extent such default relates to all or a portion of the Property.

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

24. Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and their heirs, personal representatives, successors, and assigns, except as otherwise provided in this Agreement.

25. 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 the Superior Court of Colusa County, California.

26. 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.

27. 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 Parties to this Agreement ("**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 servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: *(a)* is for the benefit of and is a burden upon every portion of the Property; *(b)* runs with the Property and each portion thereof; and, *(c)* is binding upon each Party and each Successor during ownership of the Property or any portion thereof. From and after recordation of this Agreement, this Agreement shall impute notice to all persons and entities in accord with the recording laws of this State

28. 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.

29. 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 breach or 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, or be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

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

31. 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 Government Code Section 65868.5.

32. 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.

33. 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 unreasonable or unconscionable.

34. 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.

35. 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.

36. 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.

[*Remainder of page left blank. Signatures on following pages*]

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

"CITY"

CITY OF COLUSA, CA
a California Municipal Corporation

Date: _____, 2022

By: _____
Thomas Reische
Mayor

Attest:

By: _____
Shelly Kittle
City Clerk

Approved as to form:

JONES & MAYER

By: _____
Ryan R. Jones, Esq.
City Attorney

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

“OWNER”

COLUSA RIVERBEND ESTATES L.P., a California limited partnership,

Date: _____, 2022

By: _____
Managing Member

_____
COURTNEY DUBAR

.

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

EXHIBIT A

Depiction of the Property

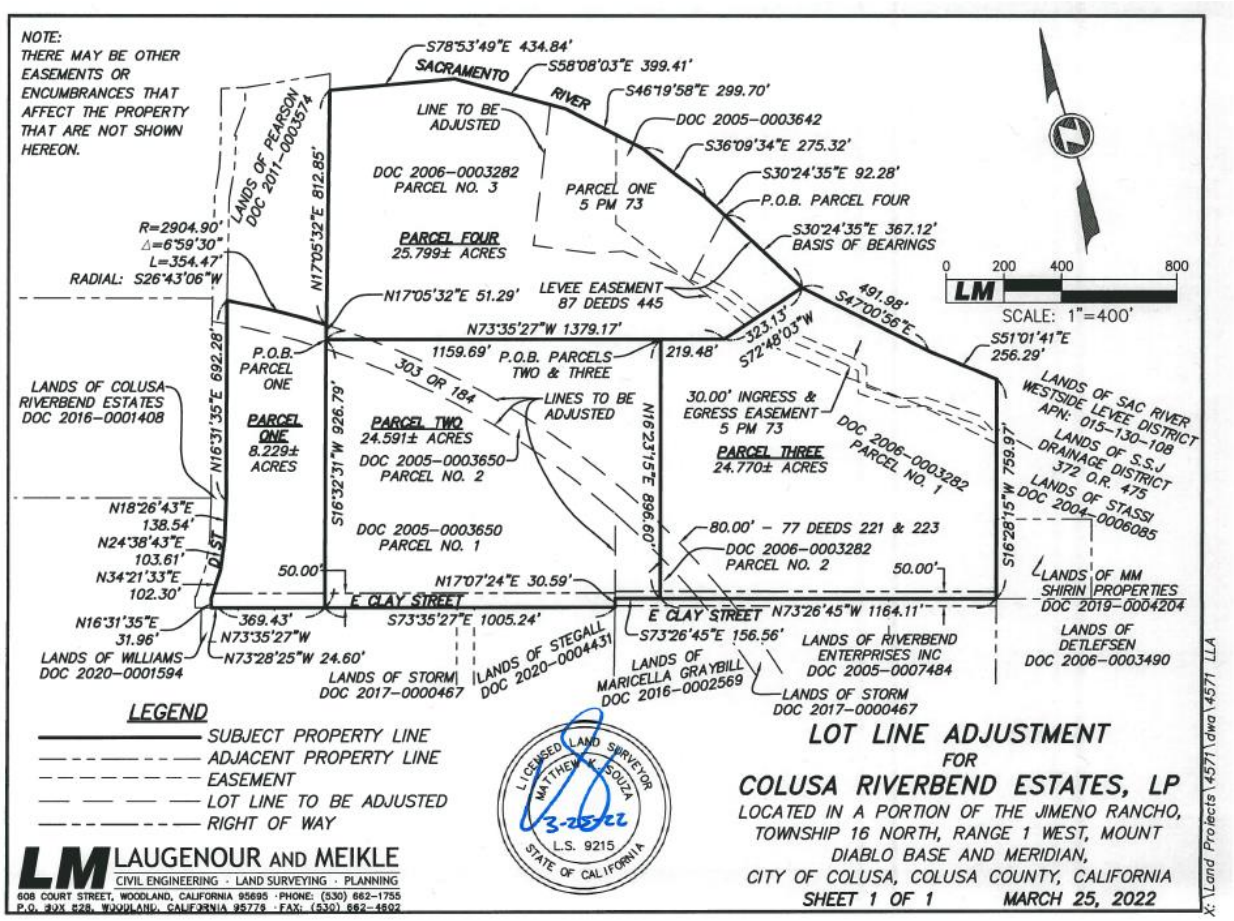

EXHIBIT B

Legal Description of the Parcels

[See Attached]

LAUGENOUR AND MEIKLE
CIVIL ENGINEERING · LAND SURVEYING · PLANNING

4571
March 25, 2022

EXHIBIT "A"
LAND DESCRIPTION
PARCEL ONE

THAT portion of real property situate in the City of Colusa, County of Colusa, State of California, and being a portion of the JIMENO RANCHO, Township 16 North, Range 1 West, Mount Diablo Base and Meridian, also being portions of Parcel No. 1 and Parcel No. 2, as described in Document No. 2005-0003650, said County Records, and being more particularly described as follows:

BEGINNING at a point on the Southwesterly projection of the Northwesterly line of Parcel No. 3, as described in Document No. 2006-0003282, said County Records, said point being distant the following three (3) courses and distances from the most Easterly corner of Parcel One as shown in Book 5 of Parcel Maps at Page 73, said County Records: 1) along the Northeasterly line of Parcel No. 1 as described in said Document No. 2006-0003282, South 30°24'35" East 367.12 feet; 2) leaving said Northeasterly line, South 72°48'03" West 323.13 feet; and 3) North 73°35'27" West 1,379.17 feet to the POINT OF BEGINNING; thence, from said POINT OF BEGINNING, South 16°32'31" West 926.79 feet to the Southerly line of said Parcel No. 1 as described in said Document No. 2005-0003650; thence, along said Southerly line the following two (2) courses and distances: 1) North 73°35'27" West 369.43 feet; and 2) North 73°28'25" West 24.60 feet to the Southwest corner of said Parcel No. 1; thence, along the West line of said Parcel No. 1 the following four (4) courses and distances: 1) North 16°31'35" East 31.96 feet; 2) North 34°21'33" East 102.30 feet; 3) North 24°38'43" East 103.61 feet; and 4) North 18°26'43" East 138.54 feet; thence, along said West line and the West line of said Parcel No. 2, North 16°31'35" East 692.28 feet to the Northwest corner of said Parcel No. 2; thence, along a non-tangent curve to the right concave Southwesterly, the radial line of said curve bears South 26°43'06" West, said curve having a radius of 2,904.90 feet, through a central angle of 06°59'30", and having an arc distance of 354.47 feet, to the most Westerly corner of said Parcel No. 3; thence, along the Southwesterly projection of the Northwesterly line of said Parcel No. 3, South 17°05'32" West 51.29 feet to the POINT OF BEGINNING.

Matthew K. Souza, L.S.

3-25-22
Date

LAUGENOUR AND MEIKLE
CIVIL ENGINEERING · LAND SURVEYING · PLANNING

4571
March 25, 2022

EXHIBIT "A"
LAND DESCRIPTION
PARCEL TWO

THAT portion of real property situate in the City of Colusa, County of Colusa, State of California, and being a portion of the JIMENO RANCHO, Township 16 North, Range 1 West, Mount Diablo Base and Meridian, also being portions of Parcel No. 1 and Parcel No. 2, as described in Document No. 2005-0003650, said County Records, and also being portions of Parcel No. 1, Parcel No. 2, and Parcel No. 3, as described in Document No. 2006-0003282, said County Records, and being more particularly described as follows:

BEGINNING at a point within said Parcel No. 1 as described in said Document No. 2006-0003282, said point being distant the following three (3) courses and distances from the most Easterly corner of Parcel One as shown in Book 5 of Parcel Maps at Page 73, said County Records: 1) along the Northeasterly line of said Parcel No. 1 as described in said Document No. 2006-0003282, South 30°24'35" East 367.12 feet; 2) leaving said Northeasterly line, South 72°48'03" West 323.13 feet; and 3) North 73°35'27" West 219.48 feet to the POINT OF BEGINNING; thence, from said POINT OF BEGINNING, North 73°35'27" West 1,159.69 feet; thence South 16°32'31" West 926.79 feet to the Southerly line of said Parcel No. 1 as described in said Document No. 2005-0003650; thence, along said Southerly line the following two (2) courses and distances: 1) South 73°35'27" East 1,005.24 feet; and 2) North 17°07'24" East 30.59 feet to the Southwest corner of said Parcel No. 2 as described in said Document No. 2006-0003282; thence, along the South line of said Parcel No. 2 as described in said Document No. 2006-0003282, South 73°26'45" East 156.56 feet; thence, leaving said South line, North 16°23'15" East 896.60 feet to the POINT OF BEGINNING.

Containing 24.591 acres of land, more or less.

The basis of bearings for this description is South 30°24'35" East, being the Northeasterly line of the Designated Remainder Parcel, as shown said Book 5 of Parcel Maps at Page 73, said County Records.

End of description.

Matthew K. Souza, L.S.

3-25-22
Date