

DEVELOPMENT AGREEMENT WITH PACIFIC BAY CAPITAL GROUP

This Agreement ("**Development Agreement**") is entered into and effective as of _____, 2019 ("**the Effective Date**") by and between the County of San Benito, a political division of the State of California ("COUNTY") and Pacific Bay Capital Group, LLC, a California Limited Liability Company ("DEVELOPER or "Pacific Bay").

RECITALS

A. Nature and Purpose of Development Agreements

The Legislature enacted Government Code Sections 65864 et seq. ("**Development Agreement Statute**") in response to the lack of certainty in the approval of development projects, which can result in a waste of resources, and discourage investment in and commitment to planning that would maximize the efficient utilization of resources. The Development Agreement Statute is designed to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development.

Pursuant to the Development Agreement Statute which authorizes the COUNTY to enter into a property development agreement with any person having legal or equitable interest in real property, the COUNTY adopted the Development Agreement Ordinance, Chapter 19.11 of the San Benito County Code (hereafter "Code"), establishing procedures and requirements under which the COUNTY may enter into a Development Agreements in order to establish certain development rights in such property. This Development Agreement has been processed in accordance with those procedures.

B. Government Code and County Code Required Elements:

1. Description of Property.

All that certain land, improvements, easements, and appurtenances related thereto situated in the unincorporated area of the County of San Benito, State of California, described as 7800 Lake Road, CA 95023, more commonly known as Assessor's Parcel Number 013-050-028, the legal description and a map of which is set forth in Exhibit A" and incorporated herein by this reference. (hereinafter "Property" or "Project Site"),

2. Developer's Interest in Real Property.

DEVELOPER, name and address which is set forth herein, has a legal or equitable interest in the "Property". DEVELOPER represents that it will assure through separate instruments that all persons or entities holding legal or equitable interests in the Project Site shall be bound by this Development Agreement.

DEVELOPER warrants that the Property is currently owned and operated as a commercial horse facility with peripheral field crop farming uses. DEVELOPER is in the process of acquiring the Property from its current ownership.

3. Project

DEVELOPER proposes to develop the Property to include any cultivation generally allowed by the San Benito County Code and for the following hemp activities to be done through a conditional use permit: a commercial/industrial hemp production facility, which will include but not be limited to cultivation, nursery/starters/transplanting, manufacturing, compounding and formulating, laboratory testing, processing of hemp related food products and other hemp items, and distribution and transportation activities within the Property, and to other retailers off-site (collectively, the "Project").

4. Environmental Review

This project has been reviewed pursuant to a Negative Declaration.

5. Project Approvals

To ensure that the COUNTY remains responsive and accountable to its residents while pursuing the benefits of this development agreement, the COUNTY accepts the restraints on its police powers contained in this Agreement only to the extent and for the duration required to achieve the COUNTY's objectives and to offset such restraints, seeks public benefits from the DEVELOPER that go beyond those obtained by traditional County controls and conditions imposed on development project applications.

The San Benito County Board of Supervisors (hereinafter "BOARD") has found that, among other things, this Development Agreement is consistent with its General Plan and has been reviewed and evaluated in accordance with the Development Agreement Statute and Chapter 19.11.

"Project Approvals" are defined in Section 1.1(o) below. They include this Development Agreement together with a conditional use permit which is required to allow manufacturing/processing of hemp on the Project Site. ("Use Permit"). Both the Development Agreement and the Use Permit must remain in effect in order for the DEVELOPER to continue operating under the Use Permit at the Project site. If there are any inconsistencies between the Project Approvals and this Development Agreement, this Development Agreement shall govern.

6. Planning Commission Hearing and Recommendations

On June 19, 2019, the San Benito County Planning Commission (hereinafter "PLANNING COMMISSION") voted to approve the Use Permit. Additionally, the PLANNING COMMISSION, which is the body designated by the County of San Benito as the planning agency for purposes of development agreement review pursuant to Government Code Section 65867, held a duly noticed public hearing and adopted a resolution recommending that the BOARD approve the Development Agreement. Following the public hearing, the PLANNING COMMISSION, determined that the Project, the Initial Project Approvals, and the Agreement are, as a whole and taken in their entirety, consistent with the COUNTY's General Plan and the Zoning Code.

7. Board Hearing and Findings

On July 23, 2019, the BOARD, having receiving the PLANNING COMMISSIONS's recommendations, held a duly noticed hearing and passed an ordinance approving this Development Agreement ("Enacting Ordinance"), and authorizing the Chairman of the BOARD to execute this Agreement, and finding that the Agreement is consistent with the General Plan and Zoning Code in accordance with Government Code section 65867.5. The BOARD further determined that the Project as defined herein required no further analysis under CEQA based on the Negative Declaration approved for the Project. The Board further found that this Development Agreement is fair, just, reasonable, and best serves the public health, safety and welfare of its citizens. A copy of the ordinance is attached as **Exhibit B, Attachment 2 to the June 19, 2019 PC Report**).

8. Intent of Parties

COUNTY and DEVELOPER have, in good faith, negotiated the terms and conditions of this Development Agreement, and have determined that use of a development agreement is appropriate for development of the PROJECT in accordance with the Project Approvals. COUNTY desires to enter into this Development Agreement because it will eliminate uncertainty in planning and provide for the orderly development of the Project, ensure the maximum efficient utilization of resources within the COUNTY, and otherwise achieve the goals and purposes of the Development Agreement Statute. In exchange for these benefits to the COUNTY, together with the other public benefits derived from development of the PROJECT, DEVELOPER desires to enter into this Development Agreement to receive the assurance that it may proceed with development of the Project in accordance with the Project Approvals, as set forth more fully below. The Parties intend through this Agreement to allow DEVELOPER to develop and operate the PROJECT in accordance with the terms of this Agreement. It is noted that the COUNTY is in the process of developing its policies, rules and regulations for the commercial cultivation of industrial hemp within the jurisdictional boundaries of the County.

NOW, THEREFORE, with reference to the foregoing recitals which are incorporated herein and made a part of this Development Agreement, and in consideration of the mutual promises, obligations and covenants contained herein and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, DEVELOPER and COUNTY agree as follows:

AGREEMENT

ARTICLE I

DEFINITION OF TERMS

Section 1.1 DEFINITIONS

As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this section unless the context otherwise requires:

(a) **"CEQA"** means the California Environmental Quality Act, Public Resources Code Section 21000 and following.

(b) **"COUNTY"** shall mean the County of San Benito, and when applicable, shall its Boards, Commissions, agents, officers and employees.

(c) **"Cultivation"** means any activity involving the propagation, planting, growing, and harvesting.

(d) **"Days"** mean calendar days. If the last day to perform an act under this Development Agreement is a Saturday, Sunday or legal holiday of the State of California, said act may be performed on the next succeeding calendar day that is not a Saturday, Sunday or legal holiday of the State of California and in which the offices of COUNTY are open to the public for business.

(e) **"Effective Date"** means the date upon which the ordinance adopting the Development Agreement takes effect (e.g. the date first written above). The Development Agreement shall not be effective and shall not be recorded until DEVELOPER closes its purchase on the subject property and becomes owner of record.

(f) **"Existing Rules"** means the Rules, Regulations and Official Policies and processes in effect on the Effective Date, including without limitation, the requirements in the San Benito County Code for approval of development agreements by the PLANNING COMMISSION and BOARD.

(g) **"Gross Receipts"** means total revenue received or receivable by the DEVELOPER from any Hemp Activity on the Site or from operation of the Project on the Site, including: all sales; the total amount of compensation received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit whether or not such act or service is done as part of or in connection with the sale of materials, goods, wares, or merchandise; and gains realized from trading in stocks or bonds, interest discounts, rents, royalties, fees, commissions, dividends, or other remunerations, however designated. Included in "gross receipts" shall be all receipts, cash, credits, and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

1. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;

2. Such part of the sale price of property returned by purchasers upon rescission of a contract of sale as is refunded either in cash or by credit;

3. Receipts of refundable deposits in any Hemp Activity, except that such deposits when forfeited and taken into income of the business shall not be excluded.

4. Revenue generated from professional consulting services providing the knowledge and experience of the Developer to other individuals. Examples of consulting services may include farming consulting, pest control advisory consulting and other services that are designed to enhance production of other hemp growers.

The intent of this definition is to ensure that in calculating the payments required under Article 4 of this Agreement, all sales and revenue generated from Project or through the Project are captured. This definition shall therefore be given the broadest possible interpretation consistent with this intent.

(h) “Hemp” means a crop that is limited to types of the plant *Cannabis sativa* L. having no more than three-tenths of 1 percent (0.3%) tetrahydrocannabinol (“THC”) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom.

(i) “Hemp Activities” shall mean all activities related to the hemp plant, including but not limited to possession, cultivation, nursery/starters/transplanting (in or out of greenhouses), manufacturing, compounding and formulating, laboratory testing, processing of hemp related food products and other hemp items, storing, packaging, labeling, transportation, delivery, dispensing, or sale of hemp or hemp related products, distribution and transportation activities within the Property and to other retailers off-site, and all other hemp related activities even not expressly identified above; however the recital herein shall not be construed to allow any activity not expressly permitted by the San Benito County Code.

(j) “Non-Payment Penalty” has the meaning set forth in Section 5.2 of this Agreement.

(k) “Manufacture” means to produce, prepare, propagate, or compound, or otherwise blend, extract, or infuse hemp and/or a hemp product either directly or indirectly, or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(l) “Notice of Non-Payment Penalty” has the meaning set forth in Section 5.2 of this Agreement.

(m) “Party” or “Parties” means and includes COUNTY and DEVELOPER.

(n) Permitted Uses

The subject property may be used for the Project and for any other use as authorized under Chapter 25.07 of the San Benito County, California Code of Ordinances (the “County Code”), subject to DEVELOPER obtaining the proper permits and approvals. Although currently, the County Code does not specifically identify industrial hemp facilities as allowed uses in any zoning district, such uses are similar to other listed uses, and therefore, industrial hemp facilities may be

allowed uses in the same zoning districts in which such similar uses are allowed under Chapter 25.07 of the County Code, subject to the PLANNING COMMISSION's determination as to similarity and approval of a conditional use permit. The sale or distribution of hemp and hemp products to the public (consumer end-user) from the Project Site is absolutely prohibited at this time.

(o) **"Processing"** shall mean all activities related to processing cultivated hemp, including but not limited to, drying, curing, grading, and trimming of hemp.

(p) **"Project Approvals"** means any and all land use, environmental and building approvals, permits and entitlements required for the development of the Project on the Project Site, and processed concurrently with this Agreement in accordance with the Existing Rules.

(q) **"Regulatory Fees"** mean charges owed by the DEVELOPER to the COUNTY for the COUNTY's costs incurred in processing applications related to the Project, administering its hemp-related ordinance with regard to the Project, and monitoring legal compliance of the PROJECT on the Site, including, but not limited to building and safety-related inspections by the COUNTY, consistent with fees that may be established uniformly throughout the County of San Benito.

(r) **"Rules, Regulations and Official Policies"** means the COUNTY rules, regulations, ordinances, resolutions, laws, general plan, zoning, and official policies governing development, design, density and intensity of use, permitted uses, growth management, environmental review, construction and building standards, and design criteria.

(s) **"Site"** or **"Project Site"** has the meaning as set forth in the Recitals, above.

Section 1.2. Exhibits. The following "Exhibits" are attached to and incorporated into this Agreement:

Exhibit "A":	Legal Description and Map
Exhibit "B":	Ordinance
Exhibit "C":	Reserved
Exhibit "D"	Reserved
Exhibit "E"	Assignment and Assumption Agreement
Exhibit "F"	Conditions of Approval

ARTICLE 2

DEVELOPMENT OF THE PROPERTY

Section 2.1. Right to Develop.

During the Term, DEVELOPER shall have the right to develop the Project on the Site, consistent with California and Federal Law, this Agreement, the Use Permit, Additional County Approvals if any, the San Benito County Code, and other state licenses which may be issued for the site.

Section 2.2. Permitted Uses and Operational Requirements.

DEVELOPER shall be permitted to develop, construct, and use the Site to carry out the PROJECT, including Hemp Cultivation, Hemp Manufacturing, and Hemp Distribution business activities (except in-County end-user distribution), consistent with Local, State and Federal Laws, this Agreement, the Use Permit, Additional County Approvals, the San Benito County Code, and any additional permits/licenses which may be issued for the site. Any expansion of the site or use of the Site for any purpose other than set forth in the Conditional Use Permit (except for those uses which may lawfully be done without a conditional use permit), shall require modification/amendment of the Conditional Use Permit.

Section 2.3. Additional Entitlements, Approvals, and Permits.

Successful implementation of the PROJECT may require the DEVELOPER to obtain additional approvals and permits from the COUNTY and other local and state agencies. In connection with the consideration and issuance of any such Additional County Approval which is not ministerial in nature, the COUNTY reserves its discretion under the police power to approve, conditionally approve, or deny the issuance of each County Additional Approval. COUNTY shall comply with CEQA in the administration of all Additional County Approvals.

Section 2.4. Conditional Use Permit. Pursuant to San Benito County Code, DEVELOPER shall not engage in the permitted uses set forth above pertaining to the Project on the Site without first obtaining and maintain any applicable Conditional Use Permit (s) as may be required by the Code.

Section 2.5- Density or Intensity of Uses

The Property is currently zoned agriculture productive (“AP”) pursuant to Chapter 25.07 of the County Code. For property located in the AP zoning district, the minimum building site is 5 acres and the maximum building height is 35 feet. Minimum setbacks for front yard is 25 feet, for side yard, the set back is 20% of the lot width (minimum eight feet and maximum 32 feet) and for rear yards, the set back is 20% of lot (not less than 20 feet, maximum required, 35 feet). The Parties agree that the Property is currently developed with improvements that meet the AP zoning district requirements. No buildings except those currently in existence on the Property will be constructed, except through a modification of the CUP if required for such construction. The Parties acknowledge that Commercial Greenhouses require a conditional use permit. The construction of “Hoop Houses” will be regulated by any County Code and state law currently in effect when the hoop house is constructed. To the extent Hemp or Hemp Products are grown or produced on site are “hot” (exceed .3% THC), Developer shall be allowed to remediate, or deliver such product to a California State licensed cannabis facility, so long as allowed by California law and so long as it is derived from strains and farming methods consistent with growing Hemp. Cannabis, as defined by state law, shall not be allowed to be grown on-site without the prior approval of San Benito County and compliance with San Benito County Code.

ARTICLE 3

DEVELOPER'S VESTED RIGHTS AND MUTUAL OBLIGATIONS

Section 3.1 Vested Elements

DEVELOPER shall have the right to develop the Project Site for the PROJECT in accordance with the Project Approvals and the provisions of this Development Agreement pursuant to the Existing Rules (collectively "**Vested Rights**"), subject to Section above.

The permitted use(s) of the SUBJECT PROPERTY, the maximum height of the proposed buildings, and the other terms and conditions of development applicable to the SUBJECT PROPERTY are referred to as vested elements of this AGREEMENT ("VESTED ELEMENTS") and are set forth in the following documents and approvals:

- (1) The DEVELOPMENT APPROVALS (e.g. the Conditional Use Permit); and
- (2) This AGREEMENT.

For purposes of this AGREEMENT, VESTED ELEMENTS are vested in order to provide assurance to DEVELOPER that the PROJECT can be built on the SUBJECT PROPERTY in conformance with the DEVELOPMENT APPROVALS granted by the COUNTY as described in this AGREEMENT, subject to the limitations and provisions of this AGREEMENT.

Section 3.2 Application of New Rules

(1) Development of the PROPERTY shall be subject to all standards and requirements in the GENERAL PLAN, the San Benito County Code, including but not limited to the Zoning Code, and other rules, regulations, ordinances and official policies of COUNTY applicable to the ability to develop the PROJECT on the PROPERTY, and the payment of any fees including but not limited to impact fees, **in effect at the time at the time of development and reuse of the structures**, except as otherwise provided in the VESTED ELEMENTS described herein.

(2) This SECTION shall not preclude the application to development of the PROJECT or the PROPERTY of changes in COUNTY laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in State or Federal laws or regulations. In the event State or Federal laws or regulations enacted after the EFFECTIVE DATE of this AGREEMENT (or action by any governmental jurisdiction other than the COUNTY) prevent or preclude compliance with one or more provisions of this AGREEMENT or require changes in plans, maps or permits approved by the COUNTY, this AGREEMENT shall be modified, extended or suspended as may be necessary to comply with such State or Federal law or regulation or the regulation of such other governmental jurisdiction.

(3) This SECTION shall not be construed to limit the authority or obligation of COUNTY to hold necessary public hearings or to limit the discretion of COUNTY or any of its officers or officials with regard to rules, regulations, ordinances, laws and entitlements of use which require the exercise of discretion by COUNTY any of its officers or officials, provided that subsequent discretionary actions shall not be in conflict with the VESTED ELEMENTS.

(4) Notwithstanding anything herein to the contrary, all applications for approvals, permits and entitlements shall be subject to the development and processing fees, impact fees, taxes, and charges which are in force and effect at the time the application therefor is filed.

(5) Nothing herein shall be construed to limit the authority of COUNTY to adopt and apply codes, ordinances, regulations, and policies which have the legal effect of protecting persons or property from dangerous or hazardous conditions which create a substantial physical risk. This subsection to protect and recognize the authority of COUNTY to deal with endangerments not adequately addressed at the time of the adoption of this AGREEMENT.

(6) Codes, ordinances, and regulations relating to construction standards or permits (for example, building and fire codes) and design and construction standards for road and storm drainage facilities, shall apply as of the time of grant of each applicable construction permit.

Section 3.3 Standard Operating Procedures

During the term of this Agreement, DEVELOPER shall lawfully operate in accordance with all Federal, State and local laws. DEVELOPER will employ exemplary operating procedures to comply with such laws. DEVELOPER's facility will employ all industry "best practices" safety and security measures for the safety and security of its employees, as well as other individuals in its neighboring community.

Section 3.4 Nature of Vested Rights

DEVELOPER is being granted vested rights which are limited in the sense that: (i) in the event the permitted hemp activities allowed by this PROJECT is found to be illegal pursuant to Federal or California State law; or (2) if the Use Permit is revoked (both as discussed in further detail below), DEVELOPER shall have no further rights to operate such activities, and shall be required to cease all operations, provided DEVELOPER shall have thirty (30) days to wind down business operations if no health or safety risk is present, and if such wind down period is consistent with federal and state law.

ARTICLE 4

COMMUNITY BENEFITS

Section 4.1. Intent. The Parties acknowledge and agree that this Agreement confers substantial private benefits on the DEVELOPER that will place burdens on COUNTY infrastructure, services, and neighborhoods and that the private benefits provided to the developer should be balanced with commensurate public benefits for the community ("Community Benefits").

Section 4.2. Community Benefits Fees. In addition to DEVELOPER's obligation to compensate COUNTY through its Regulatory Fees (such as Application, Permit and Impact Fees), DEVELOPER shall be obligated to provide Community Benefits as follows, which shall collectively be referred to as "Community Benefit Fees":

A. Quarterly Gross Annual Receipts/Community Benefit Fees

1. In exchange for the COUNTY's approval of this Agreement, DEVELOPER has agreed to pay the COUNTY one percent (1%) of its "gross annual receipts" each year;

2. Payments shall be made on a quarterly basis, following the conclusion of each fiscal year quarter; Quarterly Payments shall be received by the COUNTY Treasurer Tax Collector by January 20th, April 20th, July 20th, and October 20th of each year.

3. The money shall to be used in the COUNTY's discretion to advance the general interests of the COUNTY.

4. Any alteration of the amount of the percentage of gross annual receipts shall be by mutual agreement only.

5. Amounts owed shall begin accruing immediately upon the effective date of this Development Agreement, and the first payment shall occur the quarter immediately following the effective date of this Development Agreement.

6. One Percent (1%) of Gross Annual Receipts shall be paid on all Project Activities, including but not limited to Cultivation, Manufacturing, Distribution, Laboratory testing, and any other Hemp Activities occurring on site.

B. Possible Future Tax.

Should a tax be enacted by the People of the San Benito County, DEVELOPER shall pay the greater amount between either (a) the amount of such tax, or (b) the 1% of gross annual receipts specified above, but DEVELOPER shall not be required to pay both the tax and the 1% gross annual receipts.

Section 4.3 Frazier Lake Road Improvements.

DEVELOPER agrees to keep and maintain Frazier Lake Road at the intersection of the Property driveway and Frazier Lake Road in good working order and repair, which shall include, at minimum the following maintenance and repairs:

1) The applicant/developer shall contribute towards maintenance of Frazier Lake Road by providing a minimum 2" AC overlay from the center point of the property driveway to one(1) mile in each direction on Frazier Lake Road, within one (1) year from the approval of the use permit; and,

2) Applicant shall be further required to maintain that portion of Frazier Lake Road at the same level of maintenance as will exist on the road after the 2" AC overlay;

3) Upon a determination, made in the reasonable discretion of the County, for the need for further maintenance of the Road, the County shall specify in writing the maintenance needed (pothole repairs, chip seal, slurry seal or further overlay work), the County shall specify the work needed, and Developer shall complete such work within 90 days of receipt of such written notice.

DEVELOPER's obligations under this Section shall be limited to that portion of Frazier Lake Road that is within one (1) mile in each direction on Frazier Lake Road from the center point of the Property driveway and Frazier Lake Road. DEVELOPER's works of maintenance and repair of Frazier Lake Road shall be approved by the COUNTY, and such approval shall not be unreasonably withheld or delayed of proposed works of repair and maintenance that are consistent with COUNTY specifications for Frazier Lake Road and state law. COUNTY may request DEVELOPER to follow procedures and policies established for other DEVELOPERS who are working on or within the COUNTY right of way.

Section 4.4 Bond.

Additionally, upon execution of this Development Agreement by County, DEVELOPER shall post a bond for maintenance and repair of Frazier Lake Road in the amount of Five Hundred Thousand Dollars (\$500,000.00) (the "Road Bond"). The COUNTY shall be the beneficiary of such Bond. The Bond shall only be accessible by the COUNTY in the event that the COUNTY provides written notice to DEVELOPER that Frazier Lake Road requires repair and DEVELOPER does not commence the repairs within one hundred eighty (180) days of the receipt of such written request from the COUNTY.

Section 4.5 Local Employment Opportunities.

DEVELOPER agrees that, no later than two years from the effective date of this agreement, the Project will provide 75-100 county work opportunities in compliance with Chapter 19.11.002 of the County Code. Total estimated payroll for the PROJECT is estimated to be three to four million dollars annually. DEVELOPER agrees that it will use its best efforts to offer job opportunities for the PROJECT first to qualified individuals with a primary place of residence in the County of San Benito. In the event that a qualified COUNTY resident cannot be located for a job opportunity for the Project for more than six (6) weeks, DEVELOPER may offer the job opportunity to an out of county resident. A report regarding verification of effort will be provided to the BOARD, or its designee, twice a year. This should include a review of the total number of applicants, number of in-county and total hires, efforts at outreach, and a summary of the required training for "qualified candidate(s)".

Section 4.6 Reimbursement of Legal and Staff Costs

In order to expedite consideration of the DEVELOPER's proposal, DEVELOPER has agreed to and shall pay for the staff's time spent preparing and processing documents including the Use Permit and Development Agreement; drafting notices, staff reports, resolutions and ordinances; and appearing at COUNTY meetings he/she would not ordinarily attend (e.g. special BOARD meetings, Planning Commission meetings, community meetings, etc.) at County's hourly

established rates. DEVELOPER understands that these amounts shall be due and owing regardless of whether the PROJECT is ultimately approved. DEVELOPER further understands that this obligation will be retroactive to the date of the filing of the conditional use permit application once this Development Agreement becomes effective.

Section 4.7 Sales and Use Tax

Developer shall exert in good faith its best efforts to have all sales and use tax related to its Hemp Activities occur in the County, and also use its best efforts to direct any of its contractors and subcontractors to have sales and use tax occur in the unincorporated area of the County. Developer and its contractors and subcontractors (collectively for purposes of this section, “Developer”), shall establish a business location or locations and sales tax permits, and take other reasonable steps, in an effort to maximize receipt of sales and use tax revenues for County. Developer shall include in any contract for construction language ensuring that County will receive the benefit of any sales or use tax generated by the Project to the fullest extent legally permitted. Jobsite shall be stated in any contracts and all subcontracts as San Benito County, California. Developer shall direct its contractors and subcontractors to establish a place of business within the unincorporated area of the County and to obtain a sales tax construction sub-permit for the project site. Developer, which may enter into joint venture, or other relationship with contractor, supplier, or designer, will establish a place of business and sales tax permit within the unincorporated area of San Benito County and shall take first possession there of any goods on which sales or use taxes are applicable. Developer shall self-assess use tax on all items purchased for the Project from out of state suppliers that are subject to use tax. All requests for bids, procurement contracts, bid documents, and any other agreement whereby California Sales or Use Tax may be incurred shall state that sales or resale occurs in San Benito County, California. The principal negotiations for sale/resales of such goods are to be carried on in San Benito County. Alternately, any entity which may sell goods on which sales taxes are applicable may establish its own place of business within unincorporated San Benito County where delivery is ultimately made to Developer. The principal negotiations for all such sales to Developer are to be carried on in San Benito County.

ARTICLE V

RECORDKEEPING, REPORTING, AND PROCESSING

Section 5.1 Record Keeping

DEVELOPER will maintain records for all hemp activities on site. DEVELOPER will comply with all records-keeping responsibilities that are set forth in the County Code, as may be amended, and such other records as may be specified by the COUNTY in writing, including complete and up-to-date records regarding all “hemp activities” on site, including but not limited to those records related to hemp cultivated, produced, manufactured, harvested, stored, or packaged at DEVELOPER’s facility. DEVELOPER shall also keep such records as may be reasonably requested by the COUNTY in order to verify DEVELOPER’s compliance with the terms of this Development Agreement. County may inspect and photocopy records upon 48 hours prior written notice as it deems necessary and prudent in its sole judgment, to determine compliance with local laws, the Conditional Use Permit, and this Agreement.

Section 5.2. Penalty.

If DEVELOPER fails to make a payment concerning Community Benefits Fees, as required by this Agreement, the COUNTY may impose a "Non-Payment Penalty." A Non- Payment Penalty of ten percent (10%) shall be applied to all past due Community Benefits Fees. The COUNTY shall deliver to DEVELOPER a "Notice of Non-Payment Penalty." Payment of the Non- Payment Penalty shall be in a single installment due on or before a date fifteen (15) days following delivery of the Non-Payment Penalty. The Non-Payment Penalty is due and shall be collected if the Community Benefit Fees are not received by the County Treasurer Tax Collector by 5:00 p.m. on the first business date following the dates set forth in paragraph 4.2A above,

Section 5.3. Interest on Unpaid Non-Performance Penalty.

If DEVELOPER fails to pay the Non-Performance Penalty after County has delivered the Notice of Non-Performance Penalty, then, in addition to the principal amount of the Non-performance Penalty, DEVELOPER shall pay COUNTY interest at the rate of eighteen percent (18%) per annum, computed on the principal amount of the Non-Performance Penalty and the amount of GROSS RECEIPTS not paid, from a date fifteen (15) days following delivery of the Notice of Non-performance Penalty until such amounts due are paid, or the interest rate allowed by law, whichever is less. This shall be in addition to the Penalty amount set forth in Section 5.2.

Section 5.4 Audits

Notwithstanding anything to the contrary herein, DEVELOPER agrees that COUNTY may audit, at County's sole expense, the DEVELOPER's finances up to four times per year, and take all other reasonable steps to insure the DEVELOPER is accurately reporting its gross revenue to the COUNTY including but not limited to reviewing DEVELOPER's revenue records and statements, electronic transfer records and returns, and the DEVELOPER's tax records, statements, filings and returns. In addition to the COUNTY's right to audit, the DEVELOPER shall provide to the County all gross receipts records on a quarterly basis, with the understanding that DEVELOPER's tax records shall be available for viewing and copying only on project premises or at another mutually agreeable location, and shall remain confidential and shall not be disclosed by the COUNTY to the greatest extent allowed by law, except as may be necessary to enforce this Agreement. DEVELOPER shall provide all information, data, and records as may reasonably be requested by COUNTY in its audit process.

In the event that any audit show underpayment to COUNTY of the 1% gross annual receipts by more than three percent (3%) of the amount owed, the costs of such audits and staff time shall be reimbursed by DEVELOPER within thirty days of County's invoice of those costs.

ARTICLE VI

OPERATING STANDARDS

Section 6.1 Legality of Use

In the event DEVELOPER 's land use in general or this Project in particular is found to be illegal pursuant to Federal and California State law, this Development Agreement shall be of no further force or effect and all illegal operations shall immediately cease. If DEVELOPER chooses to appeal that determination, it may continue to operate pending conclusion of the appeal unless, in the reasonable opinion of the CAO or his or her designee, there will be an unacceptable health or safety risk to the general public as a result.

Section 6.2 Quality Control and Testing

DEVELOPER will utilize quality control measures and testing to ensure only the highest quality of hemp and infused products will be produced and that the concentration of delta 9 tetrahydrocannabinol (THC) is no greater than .3%, or such other standard as may be developed by the State of California for hemp productions. DEVELOPER will inspect the product to insure its identity and quantity, and will have a third party testing lab approved by the COUNTY, perform testing of random samples prior to distribution. Inspection and testing will be conducted by the approved testing lab on-site or off-site. Testing standards and procedures shall be in accordance with applicable State law and regulations.

Section 6.3 Regulatory Permit and Conditional Use Permit Conditions of Approval

DEVELOPER shall comply with all conditions of approval of any Use or Regulatory Permit approved by the COUNTY for the Project, which are deemed by the Parties to be incorporated herein by reference.

Section 6.4 Conditions for Operation of Hemp Facility

Any party to this Agreement, or successor in interest thereto, shall not operate a hemp facility or conduct "hemp activities" unless:

- a) The Conditional Use Permit described in Recital B herein is in full force and effect, the conditions of approval of which are attached as Exhibit F and incorporated hereby by this reference;
- b) It is the holder of any and all valid regulatory permits issued by the County in accordance with the County Code ("Additional County Approvals"); and
- c) At such time as the State of California requires hemp facilities and businesses to hold a valid license or permit issued by the State of California, it also holds such license or permit, unless, however, such State issued permit or license is not required by the State of

California for the type of hemp facility or business operation that is the subject of this Agreement.

Section 6.5 Operations Effect on Adjoining Property Owners

DEVELOPER shall take every reasonable step to make the operation of its activities at the Project Site as "seamless" as possible to neighbors, adjoining property owners and the community, including taking the following steps: saving / conserving electrical energy; avoiding the emission of sound, odor, light, dust, fertilizer and other airborne particulates beyond the applicant's boundaries; implementing adequate fire prevention measures; installing and maintaining an adequate security system; developing a working relationship with the COUNTY Sheriff's department which will allow any criminal conduct involving the Project site to be immediately dealt with; and taking necessary steps to insure the general public is not allowed onsite access.

ARTICLE VII

APPLICATION

Section 7.1 Developer's Application for Project Approvals.

In connection with development of the Project on the Project site, DEVELOPER shall be obligated to obtain any and all Project Approvals required under the Existing Rules, as well as any approvals that may be required by other governmental or quasi-governmental agencies having jurisdiction over the implementation of any aspect of the Project, if any. DEVELOPER shall apply for all such approvals in a timely manner.

Section 7.2 Reserved

Section 7.3 Cooperation to Obtain Other Governmental or Quasi-Governmental Approvals.

COUNTY shall cooperate in good faith with DEVELOPER in DEVELOPER's efforts to obtain approvals required by other governmental and quasi-governmental agencies for the development of the Project, if any, in order to serve the purposes of this Development Agreement and to limit to the extent possible the imposition of additional fees, dedications or exactions by or through such agencies; provided, however, in no event shall the obligations herein require COUNTY to incur out of pocket costs or restrict the County's reasonable discretionary authority.

Section 7.4 Execution and Delivery of Other Documents.

Each party shall execute and deliver any and all additional documents and instruments, and perform such further acts, as may be reasonably necessary or proper to achieve the purposes of this Development Agreement.

ARTICLE VIII

TERM OF THIS DEVELOPMENT AGREEMENT AND EXTENSIONS

Section 8.1 Duration of Agreement.

After approval by the PLANNING COMMISSION and BOARD, the term of this Development Agreement shall commence on the Effective Date and shall continue for a period of fifteen (15) full calendar years, unless sooner terminated as provided in this Development Agreement ("**Term**"). Following the expiration of the term, this Development Agreement shall be deemed terminated and of no further force and effect unless extended by mutual agreement. The parties may extend this agreement by mutual agreement if allowed pursuant to County Code.

ARTICLE IX

PERIODIC REVIEW; DEFAULT

Section 9.1 Periodic Review Required by Development Agreement Statute.

A. Pursuant to Government Code Section 65865.1, the County Board of Supervisors, or its designee, will, at least every twelve (12) months during the term of this Development Agreement, review whether there has been good faith compliance with the terms of this Development Agreement by DEVELOPER ("Periodic Review"). The Periodic Review shall be limited in scope to an inquiry of whether the DEVELOPER or any successor in interest has complied in good faith with the terms of the Development Agreement. COUNTY's failure to timely initiate the Periodic Review is not deemed to be a waiver of the right to do so at a later date. Accordingly, DEVELOPER is not deemed to be in compliance with this Development Agreement by virtue of such failure to timely initiate review.

(B) Staff Reports.

COUNTY shall deposit in the mail to DEVELOPER a copy of all staff reports and, to the extent practical, related exhibits concerning contract performance at least ten (10) days prior to any Periodic Review.

(C) Determination of Compliance or Non-Compliance.

The BOARD, or its designee, shall make a reasonable determination of compliance or non-compliance with the terms of this Development Agreement by DEVELOPER.

ARTICLE X

TERMINATION

Section 10.1 Termination by Expiration.

This Development Agreement shall terminate upon the expiration of the term or as otherwise provided in this Development Agreement.

Section 10.2 Amendment or Cancellation because of Conflict with State or Federal Laws.

In the event that state or federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the COUNTY , the parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state law or regulation. Any such amendment or suspension of the Agreement shall be subject to approval by the BOARD in accordance with San Benito County Code. DEVELOPER shall comply with all federal, state and local laws related to hemp cultivation and hemp activities, as currently exist or at such time they are established and effective.

Section 10.3 Termination Due to Default.

If the defaulting party has not cured the default or is not diligently curing the default in a manner and time frame agreed upon by the parties, the complaining party may at its option, terminate this Development Agreement in accordance with applicable law. The complaining party shall give written notice of its intent to terminate this Development Agreement due to default by the defaulting party ("**Notice of Intent to Terminate**") pursuant to Government Code Section 65868. Within thirty (30) days of receipt of a Notice of Intent to Terminate, termination procedures shall be commenced. Notwithstanding the foregoing a termination of this Development Agreement pursuant to this section is effective to terminate the obligations of the complaining party only if a default has occurred and such default as determined by an arbitrator, authorizes the complaining party to terminate its obligations under this Development Agreement.

Section 10.4 Termination by Mutual Consent.

This Development Agreement may be terminated or modified by mutual consent of the parties in the manner provided in Government Code Section 65868.

Section 10.5 Revocation

If DEVELOPER's Use Permit is revoked, this Development Agreement shall be of no further force or effect and all operations shall immediately cease. The COUNTY appreciates that revocation of the Use Permit is a drastic measure which may put DEVELOPER out of business. On the other hand, DEVELOPER appreciates that the COUNTY is empowered to abate public nuisances for good reason, and that the COUNTY does not intend to forego its right to do so. Accordingly, the parties agree that the COUNTY may revoke DEVELOPER's Use Permit upon the breach of a condition to the permit or for other "good cause" as that term is defined in O'Hagan v.

Board of Zoning Adjustment (1971) 19 Cal.App.3d 151, 96 Cal.Rptr. 484, subject to the following: (a) before initiating revocation proceedings the COUNTY must provide written notice to DEVELOPER of its belief that one or more conditions have been breached or that a nuisance exists on the property, and invite DEVELOPER to meet with COUNTY staff to discuss in good faith whether there is a breach or nuisance and, if so, how to cure the breach or abate the nuisance; (b) assuming there is a breach or nuisance, the DEVELOPER and COUNTY shall agree upon a time and manner in which to cure the breach or abate the nuisance or, if they cannot come to agreement, the PLANNING COMMISSION shall determine whether there is a breach or nuisance, and if so, decide the time and manner in which to cure the breach or abate the nuisance, which decision shall be reasonable in scope and direction. During pendency of the process, the DEVELOPER shall be allowed to continue its operations unless the CAO or his or her designee reasonably determines that there will be an unacceptable health or safety risk to the general public as a result.

Section 10.6 Procedure

Upon termination of this Development Agreement, the DEVELOPER shall cause a notice of such termination to be duly recorded in the official records of COUNTY, after such notice has been approved as to form and content by COUNTY.

ARTICLE XI

LEGAL ACTION

Section 11.1 Dispute Resolution Process.

If a dispute arises related to the interpretation or enforcement of, or compliance with, the terms and provisions of this Development Agreement ("Dispute"), COUNTY and DEVELOPER shall first attempt to resolve it through informal discussions. In the event a dispute cannot be resolved in this manner within twenty-one (21) days, COUNTY and DEVELOPER shall endeavor to settle the dispute by mediation which, except as otherwise mutually agreed upon in writing by the parties, shall be conducted under the then current Center for Public Resources Model Procedures for Mediation of Business Disputes by a neutral third party selected from the Center for Public Resources Panels of Neutrals. In the event that an applicable statute of limitations would run during the dispute resolution process, COUNTY and DEVELOPER shall agree in writing to toll such statute of limitations for such periods as may reasonably be necessary to complete the dispute resolution process, but in no event shall such statute of limitations be tolled for more than ninety (90) days.

Section 11.2 Arbitration

(a) Either COUNTY or DEVELOPER may initiate arbitration with respect to a Dispute by filing a written demand for arbitration at any time following completion of the informal dispute resolution and mediation processes described above; provided however, that mediation may continue after the commencement of arbitration, if COUNTY and DEVELOPER so desire. Unless otherwise agreed to by COUNTY and OWNER, the mediator shall be disqualified from serving as the arbitrator in the case. The provisions of this Section may be enforced by any court of competent jurisdiction, and the prevailing party shall be entitled to an award of all costs, fees, and expenses,

including attorneys' fees, to be paid by the non-prevailing party. Any Dispute arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, not resolved by the mediation process set forth above, shall be determined by arbitration to be held in San Benito County before one arbitrator. Neither party may request an arbitration hearing in conformity with this Section until after the completion of informal dispute resolution and mediation processes are complete; provided, however, that mediation may continue after the commencement of arbitration if COUNTY and OWNER so mutually desire. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures, which rules shall govern the commencement of arbitration and the selection of the arbitrator among other things. Judgment on the arbitration award may be entered in the San Benito County Superior Court or any court having jurisdiction. This Section shall not preclude COUNTY or OWNER from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The costs and fees of arbitration (including those fees and expenses set forth in JAMS' fee schedule in effect at the time of commencement of the arbitration) shall be borne equally by COUNTY and OWNER, and each side shall be responsible for its own attorney(s) and expert(s) witness fees. However, the arbitrator may award attorney's fees to the prevailing party upon conclusion of the arbitration process.

(b) The dispute resolution process described under the Sections above shall be undertaken in good faith. A mediator or arbitrator other than JAMS may be mutually agreed upon by COUNTY and OWNER in writing. By agreeing to this dispute resolution process, neither COUNTY nor OWNER hereby loses or waives its right to assert the operation of any applicable statute of limitations as an affirmative defense. Any arbitration award shall be final and binding upon COUNTY and OWNER and each shall accept such decision and award as binding and conclusive and shall abide thereby and neither party may commence civil litigation as a means of resolving a Dispute except for an action to obtain equitable relief.

In Arbitration, the parties agree that remedies to enforce the terms of this Agreement shall be limited to actions for mandamus, specific performance, declaratory relief, injunctive relief or other equitable relief. In no event shall the COUNTY be liable for monetary damages or for payment of any restitution for any breach or violation of this Agreement.

Section 11.3 Venue of Legal Proceedings Between the Parties.

All legal or equitable actions or proceedings in which DEVELOPER and the COUNTY are adverse parties shall be filed and maintained in the Superior Court of San Benito County. No party to such action or proceeding may seek a change of venue to another superior court unless such a change in venue is required by law.

Article XII

IDEMNIFICATION

Section 12.1 Developer Indemnification Requirement

DEVELOPER hereby agrees to and shall indemnify, save, hold harmless, and, if requested by the COUNTY, defend the COUNTY from any claim, action, or proceeding brought by a third party (i)

to challenge, attack, set aside, void, or annul this Agreement or any Project Approvals issued by COUNTY, and (ii) for claims, costs, and liability for any damages, personal injury, or death, which may arise in connection with the Project or this Agreement, including but not limited to those arising directly or indirectly from the negotiation, formation, execution, enforcement, or termination of this Agreement.

Nothing in this Section shall be construed to mean that DEVELOPER shall hold the COUNTY harmless and/or defend it from any claims arising from, or alleged to arise from, the negligent acts, negligent failure to act, or intentional acts on the part of the COUNTY, except indemnification and defense arising directly or indirectly or resulting from the review, processing, consideration, or approval of DEVELOPER'S Project or action taken by COUNTY thereon, which shall **include** those based on the negligence of COUNTY.

COUNTY shall provide Developer with notice of the pendency of such action or proceeding and may, in its discretion, request that DEVELOPER defend such action or proceeding. It being understood that the Project is a private undertaking, the parties agree that it is DEVELOPER's primary responsibility to defend any Legal Challenge, as defined herein. In this event, Developers shall engage the services of competent counsel at their sole cost and expense ("**Defense Counsel**"), subject to COUNTY's reasonable approval, to defend the parties' interests in any Legal Challenge; provided, however, that nothing in this Section shall preclude County Counsel's involvement in the Legal Challenge to defend COUNTY's interest therein. Furthermore, in the event that COUNTY determines, in its sole and absolute discretion, that separate counsel is necessary to serve the interests of the COUNTY, COUNTY may retain special counsel, for which DEVELOPER shall pay all actual legal fees and costs related thereto. If COUNTY retains special counsel in accordance with this Section, County shall direct special counsel to cooperate with Defense Counsel to the extent feasible and to use diligent and good faith efforts to avoid duplication with the efforts of Defense Counsel; such efforts may include, for example, the filing of joint briefs and other papers. Defense Counsel, County Counsel, and COUNTY's special counsel, if any, shall consult with each other and act in good faith in considering any settlement or compromise of any Legal Challenge.

Nothing contained in this Agreement, however, shall be construed to limit the discretion of COUNTY, in the interest of the public welfare, to settle, defend, or appeal, or to decline settlement or to terminate or forego defense or appeal of a legal action. In no event shall COUNTY be required to continue with a legal challenge, although COUNTY shall have the right to do so, in the event DEVELOPER fails to pay any amounts owing to COUNTY pursuant to this Agreement or fails to undertake indemnification and defense in a legal action. In no event shall COUNTY have any obligation or liability to Developer in connection with COUNTY'S defense or prosecution of litigation related to the Project (including, but not limited to, the outcome thereof) or in the event COUNTY elects not to prosecute a case or defend litigation brought against it.

With the exception noted above regarding the County's discretion to settle litigation in which it is involved, the County agrees that it shall reasonably cooperate with DEVELOPER in the defense of any matter in which DEVELOPER is defending, indemnifying, and/or holding the County harmless..

Section 12.2. Deposit in the Event of Challenge

In the event any claim, action, or proceeding as described above is filed by a third party against the COUNTY, DEVELOPER shall, within 10 days of being notified of the filing, make an initial deposit with the COUNTY in the amount of \$5,000, from which actual costs and expenses shall be billed and deducted for purposes of defraying the costs and/or expenses involved in the COUNTY's cooperation in the defense, including, but not limited to, depositions, testimony, and other assistance provided to DEVELOPER or DEVELOPER's counsel. If during the litigation process actual costs or expenses incurred reach 80 percent of the amount on deposit, DEVELOPER shall deposit additional funds to bring the balance up to the amount of \$5,000, or up to \$20,000 if Conflict Counsel has been retained. There is no limit to the number of supplemental deposits that may be required during the course of litigation. At the sole discretion of DEVELOPER the amount of the initial or any supplemental deposit may exceed the minimum amounts specified herein. Additionally, the cost for collection and duplication of records, including the reasonable costs of staff time necessary to collect, review, and/or duplicate such records in connection with the preparation of any administrative record or otherwise in relation to litigation, shall be paid by DEVELOPER. Upon DEVELOPER's initial \$5,000.00 deposit to cover the COUNTY's costs and expenses pursuant to this section, DEVELOPER shall have the right to a monthly, itemized accounting of such expenses, which COUNTY shall provide upon DEVELOPER's request within 15 working days of such request, but no sooner than 30 days after DEVELOPER's initial deposit. It is understood that DEVELOPER's duty to indemnify and hold harmless includes the duty to defend as set forth in California Civil Code Section 2778. Further, in the event that any legal challenge is filed as a result of the PROJECT processed under this AGREEMENT, the total amount of the Deposit shall be increased to such sum then reasonably determined by COUNTY, within 30 days of the County's request for an increased Deposit.

SECTION 12.3 Failure to Indemnify.

The DEVELOPER's failure to indemnify the COUNTY, when required by this Agreement, shall constitute a material breach of this Agreement and of any applicable Conditional Use Permit, and Additional County Approvals, which shall entitle the COUNTY to all remedies available under law, including, but not limited to, specific performance and damages. Failure to indemnify shall constitute grounds upon which the COUNTY may rescind its approval of any entitlement, permit, or license related to the Project, or any portion thereof, and a waiver of DEVELOPER's right to file a claim, action, or proceeding against the COUNTY and COUNTY's elected and appointed boards, commissions, legislative bodies, officials, employees, and representatives based upon the COUNTY's rescission or revocation of any applicable Conditional Use Permit and Additional COUNTY Approvals, or County's failure to defend any claim, action, or proceeding based upon DEVELOPER's failure to indemnify the County or upon the exercise of the County's discretion as set forth herein.

Section 12.4 Survival of Indemnification.

The indemnification obligation set forth in this section shall survive the termination of this Development Agreement.

ARTICLE XIII

Assignment and Assumption

Section 13.1 Assignment and Assumption

A. Subject to compliance with this Article, an DEVELOPER may sell, assign or transfer (collectively, “**Assignment**”) in whole or in part the Property to any individual or entity at any time during the Term of this Agreement. Said DEVELOPER shall seek COUNTY’s prior written consent to any Assignment, which consent shall not be unreasonably withheld or delayed. Assignment shall be permitted only with respect to the entire agreement, (ii) subject to prior written disclosure to COUNTY of all parties, terms, and conditions related thereto, and (iii) evidenced by documentation reasonably acceptable to COUNTY (including without limitation, an assumption of all the obligations of DEVELOPER under this Agreement and an agreement to be subject to all conditions and restrictions the DEVELOPER is subject.)

B. COUNTY may refuse to give its consent to a requested Assignment only if, in light of the following factors: (a) financial strength and capability of the proposed Subsequent Owner to perform the obligations of this Agreement; and (b) the proposed Subsequent Owner’s experience and expertise in planning, financing, development, ownership, and operation of similar projects; such Subsequent Owner would not be able to perform the obligations hereunder proposed to be assumed by such Subsequent Owner. Such determination shall be made by the RMA Director, and the RMA Director’s decision is appealable by DEVELOPER to the Board, which shall also evaluate the decision based on the criteria specified above.

C. Prior to COUNTY’s consideration of any such proposed assignment, DEVELOPER and the proposed Assignee shall submit to COUNTY, for its review and approval: (i) reliable evidence of the proposed Assignee’s qualifications as COUNTY may reasonably request, including but not limited to documentation of the proposed Assignee’s professional knowledge, experience, and financial ability to develop projects that are of similar scope and nature to the Project and to satisfactorily complete the obligations of DEVELOPER under this AGREEMENT, and (ii) all other legal documents proposed to effect any such assignment and by which the proposed Assignee shall expressly assume all of the obligations of DEVELOPER under this Agreement and agree to be subject to all conditions and restrictions to which DEVELOPER is subject.

D. In the absence of specific written agreement by COUNTY, no such assignment to an Assignee shall be deemed to relieve DEVELOPER from any obligations under this Agreement.

E. The COUNTY ADMINISTRATIVE OFFICER, or his/her designee, and COUNTY COUNSEL, or his/her designee, shall be authorized to grant approval for such assignment.

F. Without limiting the generality of the foregoing, COUNTY’s consent to any such Assignee shall not be deemed to have been unreasonably withheld in the event that such Assignee does not provide reasonably satisfactory evidence of its professional knowledge, experience, and financial ability to develop projects that are of similar scope and nature the Project and to satisfactorily complete the obligations of DEVELOPER under this Agreement.

G. Express written assumption by a proposed individual or entity of the obligations and other terms and conditions of this Agreement with respect to that portion (or all) of the Property thereof Assigned, shall relieve the applicable Owner of such obligations so expressly assumed.

H. The Assignment and Assumption Agreement shall be substantially in the form attached as Exhibit E to this Agreement (“*Assignment and Assumption Agreement*”), shall be recordable and shall be approved as to form by County Counsel. Said agreement shall provide for the proposed Subsequent Owner to contractually assume and be bound by all of the applicable Owner’s obligations under this Agreement with respect to the Property which are Assigned to the proposed Subsequent Owner. The applicable Owner shall ensure that such Assignment and Assumption Agreement is recorded by the County Recorder in the official records of San Benito County within ten (10) days of receipt after COUNTY executes the required Consent to Assignment, or as promptly thereafter as feasible. Subject to COUNTY’s consent of such Assignment pursuant to this Article 13, upon recordation of said Assignment and Assumption Agreement, the applicable DEVELOPER shall automatically be released from those obligations expressly assumed by the Subsequent OWNER/DEVELOPER at issue.

13.2 Subcontracts, Subleases, Licenses or Other Use of the Property

DEVELOPER may enter leases, subleases, licenses, memorandum of understandings, joint ventures, joint corporate ownership, sale of its ownership interests, formation or reformation of corporate or governance structures, or other transfer of ownership and interest in the Property or in its corporate interests (“Future Operator”), without requesting formal assignment and assumption of the Development Agreement as specified above. However, any use of the Property, no matter under what ownership or by any Future Operator shall be subject to the terms of this Development Agreement, and such Future Operator shall be subject to the same terms and requirements as the “Developer” specified herein and under Developer’s Conditional Use Permit. Developer shall ensure that any contract or other transfer of the interests specified above incorporates in full the obligations to comply with this Development Agreement and the Conditions of Approval of the Use Permit, with such Future Operator assuming the on-going responsibilities of Developer, including the payment of Gross Receipts. Developer shall not enter into any such agreements without first notifying San Benito County, and providing the name and contact information of any such Operators. Developer shall also provide basic information regarding its relationship to Future Operator and provide sufficient information to enable the County to determine the Future Operator has been informed about and will comply with this Development Agreement and the Conditional Use Permit. DEVELOPER shall, at all times, be responsible for the negligent acts, omissions, and/or errors of such Future Operators for their failure to comply with the terms of this Development Agreement and all Conditions of Approval. COUNTY may require all such FUTURE OPERATORS to enter into an agreement with the County similar to this Development Agreement (but without recordation), including authorization of the County to audit records of the FUTURE OPERATOR.

Section 13.3 Foreclosure or Sale in Lieu of Foreclosure.

In accordance with the provisions of Government Code section 65868.5, this AGREEMENT shall inure to the benefit of and be binding upon those successors in interest of the DEVELOPER of the SUBJECT PROPERTY who are lenders or purchasers through foreclosure or sale in lieu of foreclosure who meet the County's approval process for a Subsequent Owner(s)/Assignee(s).

ARTICLE XIV

GENERAL PROVISIONS

Section 14.1 Incorporation of Recitals.

The Recitals above are incorporated herein, including all exhibits referred to in said Recitals.

Section 14.2 Independent Contractors.

Each party is an independent contractor and shall be solely responsible for the employment, acts, omissions, control and directing of its employees. Except as expressly set forth herein, nothing contained in this Development Agreement shall authorize or empower any party to assume or create any obligation whatsoever, express or implied, on behalf of any other party or to bind any other party or to make any representation warranty or commitment on behalf of any other party.

Section 14.3 Invalidity of Development Agreement and Severability of Provisions.

If this Development Agreement in its entirety is determined by a state court to be invalid or unenforceable, this Development Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Development Agreement shall be determined by a court to be invalid and unenforceable, it shall be replaced with the valid provision that most closely reflects the intent of the parties, the remaining provisions shall continue in full force and effect.

Section 14.4 Modifications.

This Development Agreement may be modified from time to time by mutual consent of the parties in writing, in accordance with the Development Agreement Statute. In the event the parties modify this Development Agreement, the County Clerk of the Board shall cause notice of such action to be duly recorded in the official records of COUNTY within forty-five (45) days of such action.

Section 14.5 Project is a Private Undertaking.

The Parties agree that the Project is a private development and that COUNTY has no interest therein, except as authorized in the exercise of its governmental functions. COUNTY shall not for any purpose be considered an agent of DEVELOPER or the Project. COUNTY has no interest in or responsibilities for or duty to third parties concerning any improvements constructed in connection with the Project site. DEVELOPER shall have full power over and exclusive control of the development of the Project Site subject only to the limitations and obligations of DEVELOPER under this Development Agreement and the Project Approvals. Nothing in this

Development Agreement is intended or shall be construed to create or reflect any form of partnership or joint venture between the parties.

Section 14.6 Covenants Running with the Land.

All of the terms and conditions contained in this Development Agreement are binding upon the parties and their respective heirs, successors and assigns, representatives, lessees and all other persons acquiring all or any portion of the Project site, whether by operation of law or in any manner whatsoever, during their ownership of the Project site, or any portion thereof. All of the terms and conditions of this Development Agreement constitute covenants running with the land, pursuant to California law (including Civil Code Section 1468). Nothing herein is intended to permit DEVELOPER to transfer the Project Site to another operator without the COUNTY 's prior written consent.

Section 14.7 Recordation of Development Agreement.

Within ten (10) days of the Effective Date, the Clerk of the Board shall cause this Development Agreement to be duly recorded in the official records of San Benito County.

Section 14.8 Notices

Any notice required under this Development Agreement shall be in writing and personally delivered, or sent by certified mail (return receipt requested and postage prepaid), overnight delivery, or facsimile (with a hard copy sent within one (1) business day) to the following:

To: COUNTY

County of San Benito
Attn: CAO
481 Fourth Street, 1st Floor
Hollister, CA 95023

With a copy to:

San Benito County:
Attn: County Counsel
481 Fourth St., 2nd Floor
Hollister, CA 95023
(831) 636-4044 (fax)
bthompson@cosb.us

To DEVELOPER :
DEVELOPER:
Pacific Bay Capital Group
8 N. San Pedro St. , Suite 200
San Jose, CA 95100

Any party may change its address for notice by giving the other party written notice of such change in the manner set forth above.

Notices to Subsequent Landowners shall be given by COUNTY as required above only for those Subsequent Landowners who have given County written notice of their addresses for the purpose of receiving such notices. Any party may change its mailing address/facsimile at any time by giving written notice of such change to the other party in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on the earlier of the date personal delivery is effected or on the delivery date or attempted delivery date shown on the return receipt, air bill or facsimile.

Section 14.9 Prevailing Wage.

DEVELOPER shall be solely responsible for determining whether construction of any or all of the improvements required in connection with the Project trigger the obligation to pay prevailing wages under California or federal law. In the event and to the extent that the payment of prevailing wages is required, DEVELOPER shall use diligent good faith efforts to ensure full compliance with those requirements. DEVELOPER shall defend, indemnify and hold harmless COUNTY, its agents, employees, officers and officials from any liability, loss, debts, costs or damages sought by a third party for a failure to pay prevailing wages in connection with the Project. The indemnification obligation set forth in this section shall survive the termination of this Development Agreement.

Section 14.10 Applicable Law.

This Development Agreement shall be construed and enforced in accordance with the laws of the State of California.

Section 14.11 Third Party Beneficiaries.

This Development Agreement is made and entered into for the sole protection and benefit of DEVELOPER and the COUNTY. No other person shall have any right of action based upon any provision in this Development Agreement.

Section 14.12 No Discrimination Permitted.

DEVELOPER shall not discriminate in any way against any person on the basis of race, color, national origin, sex, marital status, sexual orientation, age, creed, religion, or condition of physical disability, or on any other basis prohibited by state or federal law, in connection with or related to the performance of this Agreement.

Section 14.13 Effect of Waiver.

No waiver by a party of any provision of this Development Agreement shall be considered a waiver of any other provision or any subsequent breach of the same or other provision, including the time for performance of any such provision. The exercise by a party of any right or remedy

provided in this Development Agreement or provided by law shall not prevent the exercise by that party of any other remedy provided in this Development Agreement or under the law.

Section 14.14 Construction.

The provisions of this Development Agreement and the attached exhibits shall be construed as a whole according to their common meaning and not strictly for or against any party, and in a manner that shall achieve the purposes of this Development Agreement. Wherever required by the context, the masculine gender shall include the feminine or neuter genders, and vice versa.

Section 14.15 Entire Agreement

This Development Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements whether oral or written. Any oral representations or modifications concerning this Development Agreement shall be of no force or effect unless contained in a subsequent written modification signed by both parties.

Section 14.16 Counterparts.

This Development Agreement and any and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

Section 14.17 Captions.

The caption headings provided are for convenience only and shall not affect the construction of this Development Agreement.

Section 14.18 Authority to Execute.

Each party hereto expressly warrants and represents that it has the authority to execute this Agreement on behalf of its entity and warrants and represents that it has the authority to bind its entity to the performance of its obligations hereunder.

Section 14.19 Irrevocable Offer

The parties recognize that this agreement will be approved by the Board of Supervisors after the Planning Commission's approval of the Conditional Use Permit. Since this agreement will not be fully approved and executed by the COUNTY prior to approval or other action on DEVELOPER's project, DEVELOPER irrevocably agrees to hold DEVELOPER's offer to enter into this agreement until the agreement is approved and fully executed by COUNTY. This obligation shall expire December 1, 2019.

Section 14.20 Closing Date

As noted above, this Agreement does not become effective until DEVELOPER closes its purchase on the subject property and becomes owner of record, and provide notice of the same to County. The effective date shall be **five (5) days after notice to County**. Developer shall provide notice of this closing date, which shall not occur later than December 31, 2019.

IN WITNESS WHEREOF, the COUNTY and the DEVELOPER have executed this Development Agreement in San Benito County, California, on the date first written above.

COUNTY

By: _____

Mark Medina, Chair

DEVELOPER

Pacific Bay Capital Group, LLC, a California Limited Liability Company

By: _____

Its: President

EXHIBIT “A”

EXHIBIT “B”

EXHIBIT “C”

RESERVED

EXHIBIT “D”

RESERVED

EXHIBIT "E"

ASSIGNMENT AND ASSUMPTION AGREEMENT

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

San Benito County
Attn: San Benito County Clerk
440 Fifth St., Room 206
County Courthouse
Hollister, CA 95023

WITH A COPY TO:
County Counsel's Office
Attn: County Counsel
481 Fourth St., 2nd Floor
Hollister, CA 95023

WITH A COPY TO:
NAME
ADDRESS
ADDRESS

AND TO:
NAME
ADDRESS
ADDRESS

RECORDING FEE EXEMPT PURSUANT TO GOVERNMENT CODE SECTION 27383

**ASSIGNMENT AND ASSUMPTION AGREEMENT
(Development Agreement By and Among the County of San Benito
and Pacific Bay Capital Group)**

This Assignment and Assumption Agreement (Development Agreement By and Among the County of San Benito and Pacific Bay Capital Group) ("Assumption and Assumption Agreement") is made and entered into effective as of DATE, by and between NAME , a _____ limited liability company ("Assignor"), and NAME ("Assignee").

A. Pacific Bay Capital Group, LLC and the County of San Benito ("County") entered into that certain Development Agreement, dated as of _____ and recorded as Instrument No. _____ on DATE ("Development Agreement"), relating to certain real property in located in unincorporated San Benito County, State of California

(“Property”). The Property is more particularly described in the Development Agreement. All capitalized terms used herein shall have the definitions given to them in the Development Agreement unless otherwise expressly stated herein.

B. The Development Agreement provides for development of the Project (as that term is defined therein) on the Property, as more particularly described in the Development Agreement.

C. Assignor desires to assign to Assignee all of Assignor's rights and obligations as an “DEVELOPER” under the Development Agreement with respect to the Property in whole or in part (collectively, “Assigned Interests”) and Assignee desires to assume from Assignor the Assigned Interests.

NOW, THEREFORE, in consideration of the promises and the mutual agreements and covenants set forth herein and intending to be legally bound hereby, Assignor and Assignee do hereby agree as follows:

1. Assignment. Assignor hereby assigns to Assignee all of Assignor's right, title and interest in and to the Assigned Interests.

2. Assumption. Assignee hereby assumes from Assignor all of Assignor's right, title and interest in and to the Assigned Interests relating to the period from and after the effective date of this Assignment and Assumption Agreement, and agrees to perform all of Assignor's obligations as “DEVELOPER” under the Development Agreement with respect to the Assigned Interests relating to the period from and after the effective date of this Assignment and Assumption Agreement.

3. Consent; Release. The County has consented to such assignment and assumption pursuant to the Consent set forth in attached Exhibit A.

4. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation shall not affect the validity or enforceability of the offending term or provision in any other situation.

5. Successors and Assigns. This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their permitted successors and assigns.

6. Applicable Law. This Agreement shall be governed by, and constructed in accordance with, the laws of the State of California, applicable to contracts executed in and to be performed entirely within that state, and without regard to the conflict of laws provisions thereof.

7. Counterparts. This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

ASSIGNOR:
NAME

By: _____
Name:
Title:

ASSIGNEE:
NAME
a California limited liability company

By: _____
Name:
Title

*** SIGNATURES MUST BE NOTARIZED

EXHIBIT A

**CONSENT TO ASSIGNMENT AND
ASSUMPTION**

The COUNTY OF SAN BENITO, a political subdivision of the State of California (the "County"), hereby consents to the Assignment and Assumption Agreement by and between NAME , as Assignor, and NAME , a _____ limited liability company , as Assignee (the "Assignment"), to which this Consent to Assignment and Assumption is attached as Exhibit A, and releases Assignor from its obligations under the Development Agreement that are expressly assumed by Assignee as set forth in said Assignment and Assumption Agreement relating to the period from and after the effective date of the Assignment, so long as the parties to said Assignment and Assumption Agreement have expressly and with specificity set forth therein assumed each and every right and obligation that comprise the Assigned Interests.

COUNTY OF SAN BENITO, a political subdivision of the State of California

Director, San Benito County Resource Management Agency

Date: _____

APPROVED AS TO FORM:

San Benito County Counsel's Office

Name County Counsel

Date: _____

EXHIBIT “F”
CONDITIONS OF APPROVAL