

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “**Development Agreement**”) is made and entered into this 5th of October, 2020, (the “**Record Date**”), by and among the **City of Coalinga**, a municipal corporation organized and existing under the laws of the State of California (the “**City**”), and Estate of Mine, LLC, a California limited liability company (“**Owner**”), and Coalinga Retail Partners, LLC, a California limited liability company (“**Developer**”). The Parties to this Development Agreement may be referred to hereinafter individually as a “**Party**” or jointly as the “**Parties.**”

RECITALS

A. Gov. Code, §§ 65864 et seq., provides that the legislative body of a city may enter into a development agreement for the development of real property in order to vest certain rights in the developer and to meet certain public purposes of the local government. Developer has applied to the City pursuant to Gov. Code, §§ 65864 to 65869.5 for approval of this Development Agreement.

B. As of the date of this Development Agreement, Owner is the owner of certain property (the “**Property**”) located at 150 E. Durian Ave., Coalinga, California 93210, more fully described in **Exhibit “A”** attached hereto. Concurrent with the effectiveness of this Agreement, Owner will lease the Property to Developer for the uses contemplated herein.

C. Developer and the City desire to enter into this Development Agreement in order to facilitate the development and/or use of the Property as a medical and/or recreational cannabis dispensary and on-site consumption lounge (the “**Project**”). The entirety of the process of physically changing the Property and/or any existing improvements on the Property, or otherwise changing the Property in order to facilitate the Project, including, without limitation, predevelopment activities, entitlements, permits, licensing, environmental review, obtaining a Certificate of Occupancy, negotiating this Development Agreement, site clearance, remediation, construction, alterations, and similar legal or practical requirements shall be referred to herein as the “**Development.**”

D. The City has conducted one or more duly noticed public hearings on this proposed Development Agreement pursuant to Gov. Code, § 65867 and has found that the provisions of this Development Agreement and its purposes are consistent with the objectives, policies, general land uses and programs specified in the City’s General Plan as amended. Prior to or concurrently with its approval of this Development Agreement, the City Council of the City (the “**City Council**”) has also approved the environmental review undertaken by the City in accordance with the California Environmental Quality Act.

E. The Development of the Project has been found by the City to provide substantial public benefits and to help attain certain public objectives. The public benefit

objectives furthered by the development of the Project include, without limitation: (i) providing a long-term source of employment opportunities; (ii) revitalization of the economic base of the community; (iii) providing funds for the City's general fund through payment of Additional Revenues, as defined hereinafter; (collectively, the "**City's Goals**").

F. Certain development risks and uncertainties associated with the long-term nature of the Development could discourage and deter Developer from making the long-term commitments necessary to fully develop the Property. Therefore, the Parties desire to enter into this Development Agreement in order to reduce or eliminate uncertainties to such development over which the City has control.

G. The Project and the use that Developer proposes in connection with the Property have been reviewed and considered by the City and its officers, agencies and departments, and such proposed Project and use have been found to accommodate the City's recommendations and suggestions in order to protect the public's interest and to enhance the desirability, from the public's perspective, of such proposed Development and use.

H. As permitted by law, the City and Developer desire to establish development standards for the entire build-out period of the Development.

I. The City recognizes that Developer and Owner may sustain substantial losses if the City were to default in its obligations or commitments herein undertaken, including without limitation the substantial investment made by Developer to plan and obtain entitlements for the Development.

J. The City, by electing to enter into contractual agreements such as this one, acknowledges that the obligations of the City shall survive beyond the term or terms of the present City Council members, that such action will serve to bind the City and future City Councils to the obligations thereby undertaken, and this Development Agreement shall limit the future exercise of certain governmental and proprietary powers of the City. By approving this Development Agreement, the City Council has elected to exercise certain governmental powers at the time of entering into this Development Agreement, rather than deferring its actions to some undetermined future date. The terms and conditions of this Development Agreement have been found to be fair, just and reasonable, and the City has concluded that the pursuit of this Development will serve the best interests of its citizens and the public health, safety and welfare will be best served by entering into this obligation. The City acknowledges that Developer would not consider or engage in the Development without the assurances of development entitlements that this Development Agreement is designed to provide.

K. This Development Agreement will promote and encourage the development of the Property by providing Developer with a greater degree of certainty of the Developer's ability to expeditiously and economically complete the development effort, and the Parties agree that the consideration to be received by the City pursuant to this

Development Agreement and the rights secured to the Developer hereunder constitute sufficient consideration to support the covenants and agreements of the City and Developer. By entering into this Development Agreement, the City desires to allow the Development pursuant to the Development Agreement utilizing the land-use ordinances, rules, regulations and policies applicable on the Effective Date, as defined in Section 4 of this Development Agreement and, pursuant to this Development Agreement, to vest in Developer and Owner, to the fullest extent possible under the law, all development entitlements required as of the Effective Date by the City in order to complete the Development.

TERMS AND CONDITIONS

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

1. ***Binding Effect of Development Agreement.*** This Development Agreement pertains to the Property. The burdens of the Development Agreement are binding upon, and the benefits of the Development Agreement inure to, all authorized successors-in-interest of the parties to the Development Agreement, and constitute covenants that run with the Property, and in order to provide continued notice thereof, a memorandum evidencing this Development Agreement will be recorded by the parties at such time as it becomes effective.

2. ***Benefits to the City.*** As and for the primary consideration to the City for entering into this Development Agreement and any and all other agreements which the Parties conclude with respect to this transaction (the “**Related Agreements**”), it is agreed by the Parties that the benefits to the City may include the Additional Revenues (as defined below).

3. ***Exclusivity.*** The City covenants and agrees that, during the Term of this Development Agreement, other than the existing cannabis retail facility located at 286 Coalinga Plaza (the “**Existing Dispensary**”), it will not grant any conditional use permits or commercial cannabis regulatory permits (as provided in Sections 9-5.128(e) and 9-5.128(f), et seq. of the Coalinga Municipal Code) permitting (i) any other “cannabis retail facility” (as defined in Section 9-5-129(a) of the Coalinga Municipal Code) to operate within the City Limits, or (ii) any other “Cannabis Consumption Lounge” (as defined in Section 9-5.129(a) of the Coalinga Municipal Code) to operate within the City limits. It is the intention of this Section 3 that, during the Term of this Development Agreement, the Project and the Existing Dispensary will be the only permitted cannabis retail facilities permitted to operate within the City limits, and that the Project will be the only permitted Cannabis Consumption Lounge permitted to operate within the City limits. The City acknowledges and agrees that this Section 3 is a material inducement to

Developer and Owner entering into this Development Agreement, and that Developer and Owner may suffer substantial damages if the City violates this Section 3.

4. ***Term.***

(a) The “**Effective Date**” of this Development Agreement shall be the date on which this agreement is approved by the City Council.

Regardless of other conditions, this Development Agreement shall cease to be effective if the Property fails to open to the public within one (1) year of the effective date.

(b) Subject to earlier termination as hereinafter provided, the term (“**Term**”) of this Development Agreement is for the earlier period of any of the following:

- i. ten (10) years calculated from the Effective Date;
- ii. City’s population exceeding 24,000 (minus group quarters);
- iii. Any three (3) month period where the Property is not open seventy-five percent (75%) of established normal operating hours except for closures due to casualty, condemnation, or force majeure causes.

Unless otherwise specified, the obligations herein and the rights herein shall remain in full force and effect throughout the Term.

5. ***Development Approval.*** The following elements of the Development are hereby approved:

(a) *Permitted Uses of the Property.* The Parties agree that the Project and intended use of the Property are permitted upon Developer’s receipt of the CUP, subject to the right of the City to: (i) take appropriate action to abate any public nuisance; (ii) to enforce all laws that do not conflict with Existing Development Regulations, as defined hereinafter; (iii) to enforce compliance with the conditions of approval expressed in the Conditional Use Permit (“**CUP**”) issued by the City with respect to the Project (and notwithstanding anything to the contrary contained herein or in the Coalinga Municipal Code); (iv) to enforce the obligations and requirements of this Development Agreement; and (v) to exercise the police powers of the City in order to safeguard the health, safety and wellbeing of the public. Nothing in this Development Agreement shall be construed to prohibit uses other than the Project on the Property, provided such other uses are in conformity with: (i) the provisions of this Development Agreement; and (ii) the ordinances, regulations and standards of the City as they may from time to time be amended. The vested rights granted to Developer under this Development Agreement apply only to the Project and the use of the Project approved herein.

(b) *Development Standards.* The City agrees to allow Development of the Project in accordance with the Existing Development Regulations as defined in Section 9 of this Development Agreement and the CUP. The purpose of this provision is to limit changes to the City’s development standards as of the Effective Date.

6. **Processing of Application and Permits.** The City and its officers, agencies and departments shall not unreasonably delay the processing of any application for any permit or approval necessary to commence or complete the Development.

7. **Building Permits.** It is understood by the Parties to this Development Agreement that pursuant to the City's Building Code building permit applications and issued building permits do not remain valid for the term of this Development Agreement, but only for the term set by the Building Code. Accordingly, the Developer shall have the right to file new building permit applications for the Development or any portion thereof where such previously approved building permit applications or issued building permits have expired, provided no Certificate of Occupancy has been issued with respect to the relevant portion of the Project. Any such new building permit applications filed for the Development shall be reviewed in accordance with this Development Agreement. However, any alternations or modifications to the Project or any separate portion thereof, which occur during the Term, but after the Project is completed and issued its initial Certificate of Occupancy, will be subject to whatever building codes and standards as are in effect at the time of application for building permits, as well as the fees then in effect.

8. **Development Review.** Nothing set forth herein shall impair or interfere with the right of the City to require the processing of building permits as required by law and to conduct its development review of any specific improvements proposed for the Development pursuant to the applicable provisions of state law; provided, however, no such review shall authorize or permit the City to impose any condition and/or withhold approval of any proposed building the result of which would be inconsistent with any term or provision of this Development Agreement.

9. **Vesting of Development Rights.**

(a) **General Statement.** As a material inducement to Developer to continue with diligent efforts to promote the Development of the Property, the City agrees that all development rights and the permitted uses identified herein which may be required to develop to completion the Project consistent with this Development Agreement, are deemed vested in Developer for the benefit of the Property, as of the Effective Date of this Development Agreement, to the greatest extent permitted by law, and are free of all discretionary rights of the City or any body or subsequent building moratorium, ordinances, rules, regulations, policies or restrictions on development that are inconsistent with this Development Agreement.

(b) **Existing Rules to Govern.** In accordance with the terms of Gov. Code, § 65866, and except as specified herein, the City and Developer agree that the Coalinga General Plan provisions, ordinances, rules, regulations and official policies of the City in effect as of the date of this Development Agreement governing the design, density and permitted land uses applicable to the Development (collectively, the "**Existing Development Regulations**") shall govern during the Term of this Development

Agreement. The City shall not, in subsequent actions applicable to the Property or the Development, apply general plan provisions, ordinances, rules, regulations and policies that conflict with the Existing Development Regulations, except with the mutual consent in writing of the City's Manager and the Developer. Except as otherwise provided in this Development Agreement, no amendment to or revision of, or addition to any of the Existing Development Regulations without the mutual consent in writing of the City Manager and the Developer, whether adopted or approved by the City Council or any office, board, commission or other agency of the City, or by the people of the City through charter amendment, referendum or initiative measure or other vote, shall be effective or enforceable by the City with respect to the Development, its design, grading, construction, remodeling, use or occupancy, schedule or development.

(c) *Exclusions from "Existing Development Regulations."* As used in this Development Agreement, "Existing Development Regulations" shall not include municipal laws and regulations that do not conflict with Developer's vested rights to develop and use the Property in accordance with this Development Agreement. Developer and its successors and assigns and all persons and entities in occupation of any portion of the Property shall comply with such non-conflicting laws and regulations as may from time to time be enacted or amended hereafter. Specifically, but without limitation on the foregoing, such non-conflicting laws and regulations include the following:

(i) Taxes, assessments, fees and charges;

(ii) Building, electrical, mechanical, fire and similar codes based upon uniform codes incorporated by reference into the Coalinga Municipal Code and the fees applicable to them from time to time;

(iii) Laws, including zoning code provisions, which regulate the manner in which business activities may be conducted or that prohibit any particular type of business activity on a city-wide basis;

(iv) Procedural rules of general city-wide application;

(v) Fees or exactions adopted by the City after the Project receives its initial Certificate of Occupancy, which apply generally and are not imposed with specific reference to the Project; and

(d) *Subsequent Measures.* Consistent with (a) and (b), above, the City, Owner and Developer specifically agree that any subsequently enacted initiatives, referendums, or amendments to the Coalinga General Plan and/or Zoning Ordinance that by their terms are intended to, or by operation having such effect or that otherwise conflict with the terms of this Development Agreement, or limit the timing or phasing of the Development or the use of the Property as provided in this Development Agreement shall have no application to the Development. Notwithstanding any such measures, the

mitigation measures required for the Development are limited to those established by this Development Agreement.

10. ***Developer's Obligations Regarding Property.***

(a) *Transfer.* Developer and Owner may transfer any interest or right under the terms of this Development Agreement, and any interest of any kind in the Property or the Project, or any of the cannabis businesses contemplated by the Parties (the "**Businesses**"), at any time without the requirement to obtain consent of the City, provided that the proposed transferee and the transfer meet the requirements of state law and the City's ordinances as they pertain to cannabis businesses and activities as applicable to the transfer of the Businesses. The City consents to any transfer of Developer's Licenses so long as such transfer is permitted by state law, and nothing herein is meant to restrain the owner from leasing, transferring, hypothecating, mortgaging, assigning or otherwise using the real estate as collateral for Owner's use and benefit.

(b) *Construct and Operate Project.* Developer is obligated, after the Effective Date, to construct and then operate the Project as provided herein and in the CUP, and a failure to do so is inconsistent with the City's Goals and shall be a breach of this Development Agreement.

(c) *Components of Project.* Developer is to be the owner of the Property and will develop and operate the Project. However, the various component businesses of the Project may be owned by other entities to operate the various components of the Project (the "**Tenants**"). The following will apply with respect to the Tenants and their relationship to Developer. Tenants may or may not be operating cannabis related businesses.

(i) Any Tenant, as well as Developer, must be licensed with respect to the nature of its business as required by state law and the ordinances of the City ("**Licensing**" or "**Licenses**"). Notwithstanding the prior sentence, the use of the Project for a consumption lounge shall be permitted provided that one or more Licenses for commercial cannabis retail dispensary is issued to a Tenant or Developer for the Project.

(ii) Developer may lease portions of the Project to Tenants, which may operate one or more Businesses on the Property. All of the provisions of this Development Agreement pertain to Developer as an operator of a Business, and apply equally to the Tenants, even if Developer is ultimately not an operator, and to Developer in its business role as the owner/lessor of the Property and/or the Project. Developer covenants that all Tenants conducting Businesses in the Project will be businesses subject to Licensing directly with the City in order to come under the purview of this Development Agreement and must comply with all City zoning and permit requirements. Developer covenants and agrees to include an express acknowledgement and assumption of each Tenant's respective obligations under this Development Agreement

in a lease of any portion of the Project or Property to any Tenant conducting a Business. Notwithstanding the foregoing, it is understood and agreed that portions of the Project may be leased to non-cannabis businesses as the leasing market may require, and that such businesses are not subject to this Development Agreement or the payment of Additional Revenues. Nothing in this paragraph is meant to modify the City's authority to regulate land use, enforce regulations, or otherwise regulate or provide any land use entitlement.

(d) Additional Revenue. Developer or Tenant(s) as applicable shall pay all applicable City taxes, including those assessed against retail dispensaries under Coalinga Municipal Code Section 3-9.02 (as the same may be amended from time to time)(the "**Additional Revenues**").

(e) Lawfulness of Activities. In entering into this Agreement and processing the Regulatory Permit, City makes no guarantees or promises as to the lawfulness of the proposed commercial cannabis operations under State or federal law. Developer is obligated to comply with all applicable State and City laws. To the fullest extent permitted by law, City shall not assume any liability whatsoever with respect to approving the Ordinance, a Regulatory Permit for Developer, or any other commercial cannabis operation approved by City

(f) Compliance with Laws. Developer shall operate the Project in conformity with the California Medicinal and Adult-Use Cannabis Regulation and Safety Act and any implementing regulations, as they may be amended from time to time. Developer shall comply with all other applicable State and local laws, State labor standards, City zoning and development standards, conditions of approval, building, plumbing, mechanical and electrical codes, all other provisions of the Coalinga Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., California Government Code Section 4450, et seq., California Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq., with respect to the Project.

11. **Assignment/Release**. This Development Agreement shall not be severable from Developer's interest in the Property and the Development. Any transfer of a portion of the Property, including the improvements thereon, shall automatically operate to transfer the benefits and burdens of this Development Agreement in respect of such portion.

(a) Termination by Developer and Release of Developer. Developer may terminate this agreement at any time for any reason whatsoever, provided that Developer provides prior written notice to the City specifying the date such termination shall take effect. Upon such termination, Developer and City shall be released from their respective obligations under this Development Agreement, except to the extent any such obligations expressly survive the termination of this Agreement. In connection with a termination

pursuant to this Section 12, City agrees to execute any such documents reasonably requested by Developer evidencing such termination and release.

12. **Other Documents.** Each of the Parties, the City, Developer and the new Developer, agrees to execute any documents reasonably required in order to effectuate the intent and requirement of this Development Agreement and/or any other contract, document, deed or condition which is applicable.

13. **Periodic Review of Compliance.** In accordance with Gov. Code, § 65865.1, the City Council shall review this Development Agreement at least once each year, Developer must demonstrate its good-faith compliance with all of the terms of this Development Agreement. Developer agrees to furnish such evidence of good-faith compliance as the City, in the reasonable exercise of its discretion and after reasonable notice to Developer, may require.

(a) Developer Compliance. Developer shall be deemed in compliance with this Development Agreement if the City is not entitled by the terms and provisions of this Development Agreement to terminate this Development Agreement, but shall be subject to the imposition of additional conditions on Developer's performance as is reasonably deemed deficient but does not rise to the level of requiring termination.

(b) Compliance Factors. In addition to compliance with this Development Agreement, the following may, either alone or in coordination with one or more other factors, constitute factors which shall, at the City's sole option, permit the City to unilaterally terminate or modify this Development Agreement:

- (i) Breach of any provision or requirement set forth in the CUP; and
- (ii) Breach of any federal or state law, or City ordinance;

Any default in the terms of this Development Agreement, or any of the Related Agreements, which continues after written notice of breach and the lapse of sixty (60) days from the date of that notice, unless cure reasonably requires more than sixty (60) days, in which case if cure is not commenced with said sixty (60) day period and diligently pursued to completion without unnecessary delay, is a breach of the relevant agreement. The Parties acknowledge that the use of the Property is to include businesses engaged in one or more aspects of the cannabis industry, which is illegal under federal law but legal under state law and the City's ordinances. This existing federal illegality shall not constitute the basis for a Breach under this section.

If a Breach is determined by the City to have occurred and is continuing beyond any applicable cure period, the City may, but is not required to, unilaterally terminate the Development Agreement or unilaterally modify any term or condition of the Development Agreement, including the amount of revenues flowing to the City, or exercise any and all remedies available to it.

14. ***Amendment or Cancellation.*** Except as otherwise provided for herein, including but not limited to a breach of the terms of this Agreement, this Development Agreement may be amended or canceled in whole or in part only by mutual consent of the parties, or their successors in interest, and in the manner provided in Gov. Code, §§ 65865.1, 65867, 65867.5.

15. ***Enforcement.*** Unless amended or canceled as provided in Section 15, this Development Agreement shall continue to be enforceable by any Party.

16. ***Indemnity.*** Developer shall defend, indemnify, assume all responsibility for, and hold City and its officers, agents, employees, and volunteers, harmless from all actual out-of-pocket claims, demands, damages, defense costs or liability arising from or related to any State or federal law enforcement action against Developer, Developer's tenants, subtenants, licensees, contractors and employees in connection with the Project, conditional use permit, CEA compliance and regulatory permit issuance. Developer's indemnity shall not extend to any loss of revenue suffered or incurred by City in connection with any termination, cessation, restriction, seizure, or other limitation of the Project.

17. ***Reimbursement of Legal Fees.*** Developer shall reimburse City for the staff time and reasonable legal fees and costs paid by City, at the customary rate charged by the City's contract City Attorney, for legal services for negotiating, finalizing, and implementing this Agreement.

18. ***Superseding of Agreement by Changes in Law.*** In the event that state laws, City ordinances, rules, policies or regulations or the laws, ordinances, rules, policies, or regulations of any other governmental or quasi-governmental entity are enacted after the Effective Date of this Development Agreement, or the action or inaction of any other affected governmental jurisdiction, prevents or precludes compliance with one or more provisions of this Development Agreement, or imposes a requirement on the Development materially different than contemplated by this Development Agreement, or requires changes in plans, maps or permits approved by the City or the development standards set forth in the Development Agreement, the parties shall:

(a) ***Notice of Change.*** Provide the other Party with written notice of such restriction, together with a copy of the applicable law, rule, regulation or policy and a statement in reasonable detail setting forth the conflict of same with the provisions of this Development Agreement; and

(b) ***Meet and Confer.*** Promptly meet and confer with the other Party in good faith and make a reasonable attempt to modify or suspend this Development Agreement to comply with such law, ordinance, rule, policy or regulation. Thereafter, regardless of whether the Parties reach agreement on the effect of such law, ordinance, rule, policy or regulation upon this Development Agreement, the matter shall be scheduled for a hearing before the City Council upon 30 days' notice, for the purposes of determining the exact modification or suspension that is required by such law, ordinance, rule, policy or

regulation. It is the express intent of the Parties to modify the Development Agreement to allow for the development of the Development in as close conformity to the terms and conditions of this Development Agreement as reasonably possible. Nothing herein shall preclude Developer from challenging the conflicting law, rule, regulation or policy.

19. ***Enforced Delay and Extension of Times of Performance.*** Except as otherwise provided by specific provisions of this Development Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to:

(a) ***Outside Factors.*** War, insurrection, civil commotion, riot, flood, severe weather, earthquake, fire, casualty, acts of public enemy, acts of God, governmental restriction, litigation (including, without limitation, litigation contesting the validity, or seeking the enforcement or clarification of, this Development Agreement whether instituted by Developer, the City or any other person or entity), acts or failures to act of any governmental agency or entity; or

(b) ***Development Factors.*** Inability to secure necessary labor, materials or tools, strikes, lockouts, other labor disputes, or delays of any contractor, subcontractor or supplier.

(c) ***Extensions.*** An extension of time in writing for any such cause shall be granted for the period of the enforced delay if of a known duration, or longer as mutually agreed upon, or for a reasonable time as determined by the City if the parties cannot agree, which period shall commence to run from the time of commencement of cause.

20. ***Notices.***

(a) ***Procedure.*** Any and all notices, demands or communications submitted by either Party to the other Party pursuant to or as required by this Development Agreement shall be proper if in writing and dispatched by messenger for immediate personal delivery, or by a nationally known overnight service (e.g. Federal Express) or by registered or certified United States mail, postage prepaid, return receipt requested, to the location designated below. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate as provided in this Section. Any such notice, demand or communication shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is dispatched by messenger for immediate personal delivery, on the day following dispatch by overnight service or two (2) calendar days after it is placed in the United States mail as heretofore provided.

(b) ***Location.*** All notices, demands or communications to a Party shall be sent to:

To Owner: Estate of Mine, LLC
c/o Ocean Grown Extracts
15230 Burbank Blvd., Suite 103
Sherman Oaks, CA 91411

With a copy to: Buchalter, PC
1000 Wilshire Blvd., Suite 1500
Los Angeles, CA 90017
Attn: J. David Hitchcock, Esq.

To Owner: Coalinga Retail Partners, LLC
c/o Ocean Grown Extracts
15230 Burbank Blvd., Suite 103
Sherman Oaks, CA 91411

With a copy to: Buchalter, PC
1000 Wilshire Blvd., Suite 1500
Los Angeles, CA 90017
Attn: J. David Hitchcock, Esq.

To City:

With a copy to:

(c) Address Changes. Notice of a change of address shall be delivered in the same manner as any other notice provided herein, and shall be effective three days after mailing by the above-described procedure.

21. **Default.**

(a) Developer's Default. Developer shall be in default under this Development Agreement upon the happening of one or more of the following events or conditions:

(i) If a material warranty, representation or statement made or furnished by Developer to the City is false or proves to have been false in any material respect when it was made;

(ii) An express repudiation, refusal or renunciation of this Development Agreement, if the same is in writing and signed by the Developer or is made verbally during an open session of a City Council meeting;

(iii) Any uncured breach of the CUP or this Development Agreement; or

(iv) Any uncured violation of any ordinance or regulation of the City.

(b) *City's Default.* The City shall be in default under this Development Agreement if it shall:

(i) Fail to comply in good faith with the requirements hereof regarding the permitted development standards and uses specified herein, or any other express obligation of the City under this Development Agreement; or

(ii) Expressly repudiate, refuse or renounce this Development Agreement in writing after a majority vote of the City Council so deciding; or

(iii) Breach the exclusivity provision contained in Section 3.

(c) Any of the foregoing breaches, after notice and a failure to cure within the prescribed time, shall be a material breach of the Development Agreement (a "**Breach**").

22. ***Procedure Upon Default.***

(a) *Establishing Breach.* Notwithstanding any provision of this Development Agreement to the contrary, except for a Party's express repudiation of this Development Agreement for which no notice is required, a Party shall not be deemed to be in breach under this Development Agreement, and the non-defaulting Party may not exercise its remedies under this Development Agreement unless it first delivers (in accordance with the Notice provisions in Section 19 above) a written notice of each default claimed to the defaulting Party, which shall specify the nature of each such default. If each such default is not cured by the defaulting Party within ten (10) days of service of such notice of default, or with respect to defaults that cannot be cured within such period, if the defaulting Party fails to commence to cure the default the ten (10) notice period, or thereafter fails to diligently pursue the cure of each default until completion, then a Breach exists.

(b) *Irreparable Harm.* In the event a Breach occurs, irreparable harm is likely to occur to the non-breaching Party and damages may be an inadequate remedy. To the extent permitted by law, therefore, it is expressly recognized that specific enforcement of this Development Agreement is a proper and desirable remedy.

(c) No Damages. In no event shall either Party be entitled to damages against the other Party based on the other Party's Breach, except for recovery by the City of accrued but unpaid Additional Revenues.

23. **Entire Agreement**. This Development Agreement and the Exhibits therein contain the entire agreement between the Parties, and is intended by the Parties to completely state the Development Agreement in full. Any agreement or representation respecting the matters dealt with herein or the duties of any Party in relation thereto, not expressly set forth in this Development Agreement, is null and void.

24. **Related Documents**. The Parties hereto acknowledge that they have or will be entering into the Related Agreements. In order to provide for an orderly and comprehensive resolution of breaches, the Parties hereto agree that a breach of any one of the Related Agreements, at the sole option of the non-defaulting Party, is a breach of all of the Related Agreements and of this Agreement, and a Breach of this Agreement is a breach of each and every one of the Related Agreements.

25. **Remedies**.

(a) Developer's Remedies. In the event of a Breach by the City, Developer shall have: (i) with respect to the Related Agreements, such remedies as specifically provided therein; and (ii) with respect to this Development Agreement, the right to seek a writ of mandate or order of specific performance against the City compelling it to comply with its obligations under the Development Agreement or available in law or equity. Notwithstanding anything to the contrary contained herein, in connection with a breach of Section 3 by the City, Developer shall expressly be entitled to recover special, incidental, and consequential damages.

(b) City's Remedies. In the event of a Breach by Developer: (i) with respect to the Related Agreements, such remedies as specifically provided therein; (ii) with respect to this Development Agreement, the City shall have the same remedies as afforded to Developer in the foregoing subsection, together with such other rights and remedies as specifically provided in this Development Agreement or available in law or equity.

(c) Force Majeure. Notwithstanding the foregoing, all Events shall be subject to force majeure as set forth in this Development Agreement.

26. **Severability**. If any term, provision, condition, or covenant of this Development Agreement, or the application thereof to any Party or circumstances, shall to any extent be held invalid or unenforceable, the remainder of the instrument, or the application of such term, provision, condition or covenants 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 Development Agreement shall be valid and enforceable to the fullest extent permitted by law.

27. **Attachments.** Exhibits “A” attached to this Development Agreement is incorporated by reference and made a part hereof.

28. **Recitals.** Recitals A through K, inclusive, are made a part of this Development Agreement.

29. **Relationship of the Parties.** It is hereby specifically understood and acknowledged that the Project is a private project and that neither the City nor Developer will be deemed to be the agent, partner or co-venturer of the other for any purposes whatsoever.

30. **Standard for Exercise of Discretion.** Any action taken by a Party, including, but not limited to, the termination of this Development Agreement under the provisions hereof, shall be made in a reasonable manner, unless a different standard is otherwise specifically indicated.

31. **Additional Documents.** The Parties each agree to execute any additional forms, notices, applications or other documents which are reasonably necessary to carry out the intent of this Development Agreement or which become necessary by changes in circumstances and/or the passage of time, and/or errors in form or content.

32. **Venue.** Any legal action must be instituted in the Superior Court of the County of Fresno, State of California. In no event shall either Party be permitted to pursue any legal action in any federal court.

33. **Governing Law.** The laws of the State of California shall govern the interpretation and enforcement of this Development Agreement.

34. **Cumulative Remedies.** Except with respect to any rights and remedies expressly declared to be exclusive in this Development Agreement, the rights and remedies of the Parties are cumulative and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by any non-defaulting Party.

35. **No Consideration to any Third Party.** Each of the Parties warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial or other consultants, accountants, engineers, architects and the like when such fees are considered necessary by the Party. For the purposes of this paragraph, third parties shall include any elected official, officer, employee or agent of the City. This warranty includes each Party’s assurance that it has not employed any licensed real estate broker or salesperson, or other person, licensed or unlicensed, to whom a commission or other form of compensation is due.

36. **No Personal Liability.** No member, officer, employee, agent or attorney of Developer and/or City shall be personally liable to the any other Party, its members or principals, or any successor in interest, or any other party or person whatsoever, in the event of any default or breach by said it for any amount which may become due to another Party or to its successors, or on any obligations under the terms of this Development Agreement, except for gross negligence or willful acts of such member, officer or employee, unless said person has entered into an express written agreement to be liable.

37. **Independent Legal Advice/Interpretation of Agreement.** Each Party represents and warrants the following; it has carefully read this Development Agreement, and in signing this Development Agreement, and agreeing to be bound by the same, it has received independent legal advice from legal counsel as to the matters set forth in this Development Agreement, or has knowingly chosen not to consult legal counsel as to the matters set forth in this Development Agreement, and it has freely signed this Development Agreement and agreed to be bound by it without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or its officers, agents, employees, or attorneys, except as specifically set forth in this Development Agreement, and without duress or coercion, whether economic or otherwise. This Development Agreement shall be interpreted as though prepared jointly and severally by both of the Parties.

38. **Costs and Attorneys' Fees.** In the event that any Party hereto institutes an action or proceeding for a writ of mandate or declaration of the rights of the Parties under this Development Agreement, for injunctive relief, for an alleged breach or default of, or any other action arising out of this Development Agreement or the transactions contemplated hereby, or in the event any Party is in Breach of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, the non-defaulting party or prevailing Party shall be entitled to its actual attorneys' fees and to any court costs incurred, in addition to any other damages or relief awarded, including those incurred in connection with (a) an assertion of any affirmative defense in connection with such action, (b) any appellate review of the judgment rendered in such action or of any other ruling in such action, or (c) any proceeding to enforce a judgment in such action.

39. **Successors.** This Development Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted heirs, executors, administrators, legal representatives, successors and assigns.

40. **Time Frames.** Unless otherwise indicated with respect to a requirement, all time frames for performance of an act required or permitted by this Development Agreement shall be calendar days. Time frames measured in months shall be calculated with reference to the actual number of days in the relevant months. Annual time frames shall mean a period of 365 days.

41. **Counterparts.** This Development Agreement shall be executed in four (4) duplicate originals each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the Parties. Faxed or electronically submitted signature pages shall bind a Party as if the other Party had received original signatures.

42. **Integration.** This Development Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

43. **Waivers; Amendments.** All waivers of the provisions of this Development Agreement and all amendments hereto must be in writing and signed by the appropriate representatives of the Party making the waiver. All approvals, waivers or amendments by the City shall require the advance approval of the City Council of the City.

44. **Headings.** Titles or headings of sections, paragraphs or provisions of this Development Agreement are provided as an aid and are to be considered part of the Agreement itself.

SIGNATURES APPEAR ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the undersigned have executed this Development Agreement as of the day and year first above-written.

CITY:

CITY OF COALINGA

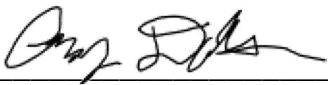
By: _____

NAME

Mayor

OWNER:

ESTATE OF MINE, LLC

By:  _____

NAME: CASEY DALTON SCHUTT

TITLE: Managing Member

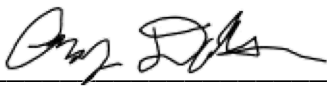
By: _____

City Clerk

:

DEVELOPER:

Coalinga Retail Partners, LLC, a California limited liability company

By:  _____

NAME: CASEY DALTON SCHUTT

TITLE: Manager

APPROVED AS TO FORM:

NAME

By: _____

City Attorney

By: _____

Developer's Counsel

NOTARY ACKNOWLEDGEMENT

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

State of California)
) ss
County of _____)

On _____, 20__ before me,
_____, a Notary Public, 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_____

(SEAL)

NOTARY ACKNOWLEDGEMENT

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

State of California)
) ss
County of _____)

On _____, 20__ before me,
_____, a Notary Public, 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_____

(SEAL)

NOTARY ACKNOWLEDGEMENT

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

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County of _____)

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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_____

(SEAL)

EXHIBIT "A"
To
Development Agreement

PROPERTY DESCRIPTION

Lots 8, 9 and 10 in Block 21, according to the corrected map of the Town of Coalinga, in the City of Coalinga, County of Fresno, State of California, according to the map thereof recorded February 14, 1905, in Book 3, Page 14 of Record of Surveys, and as per Official Map of the city of Coalinga Recorded February 20, 1918, in Book 10, Pages 3 to 8 inclusive, of Record of Surveys, Fresno County Records.

APN: 072-131-03