

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

City of La Habra  
City Clerk  
110 East La Habra Blvd.  
La Habra, California 90631

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APN: 019-111-74  
SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Recording Fee Exempt per Government Code §6103

**DEVELOPMENT AGREEMENT**

This Development Agreement (“Agreement”) is made and entered into this **XX** day of **XX**, 2022 (“Execution Date”) by and between the City of La Habra, a California municipal corporation (“City”) and Essential Roots La Habra, LLC, a California limited liability company (“Developer”). City and Developer are sometimes referenced together herein as the “Parties.” In instances when a provision hereof applies to each of the Parties individually, either may be referenced as a “Party.” The Parties hereby jointly render the following statement as to the background facts and circumstances underlying this Agreement.

**RECITALS**

- A. The State of California enacted California Government Code sections 65864 *et seq.* (“Development Agreement Statutes”) to authorize municipalities to enter into development agreements with those having an interest in real property to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development in connection with the development of real property within their jurisdiction.
- B. The purpose of the Development Agreement Statutes is to authorize municipalities,

in their discretion, to establish certain development rights in real property for a period of years regardless of intervening changes in land use regulations, the members of the City Council or any department or agency of the City, changes in staff, including the City Manager or his or her designee, to vest certain rights in the developer, and to meet certain public purposes of the local government.

C. Developer currently holds a leasehold interest in a portion of that certain real property with the common address of 441 East Imperial Highway, Suite E, City of La Habra, County of Orange, State of California ("Property") which consists of approximately 2,988 square feet of real property, of the structure located thereupon and any entitlements and parking incident thereto ("Site"). The Assessor's Parcel Number for the Site is APN 019-111-74. The legal description of the Property is attached hereto as Exhibit "A" and is shown on the map in Exhibit "B," both exhibits being attached hereto and incorporated herein by this reference. The Developer will make extensive interior improvements to the building that modifies the entire configuration of the structure to create secured spaces for business operations and storing of business vehicles. The City will require the non-conforming features of the property to be upgraded to meet zoning development standards in effect at the time of the execution of this agreement, to the maximum extent feasible.

D. Developer seeks to use the Site for non-storefront retail (delivery only) of medicinal and adult use cannabis and cannabis products in accordance with California law as permitted by a Type 9 Non-Storefront Retailer (Delivery Only) License issued by the California Bureau of Cannabis Control and the ordinances and regulations of the City, so long as such use is consistent with the ordinances and regulations of the City and Conditional Use Permit No. 22-05 (the "Project" and/or the "Business"). The Parties acknowledge that the fee title to the Property is held by Essential Roots La Habra, LLC, a California limited liability company.

E. The non-storefront retail activities subject to this Agreement and authorized by the City shall be conducted in accordance with the California Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA") codified at California Business & Professions Code section 26000 *et seq.* together with the regulations promulgated thereunder and the 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued by the California Attorney General ("AG Guidelines") Ordinance No. 1791, adopted by the La Habra City Council on April 16, 2018 and all other ordinances enacted by the City of La Habra (collectively the "Cannabis Laws").

F. Prior to operating the commercial cannabis non-storefront retail business, Developer shall be required to obtain a California Commercial Cannabis Non-Storefront Retail License (Type 9) from the California Bureau of Cannabis Control.

G. On December 21, 2020, the City Council adopted Ordinance No. 1827 amending Chapter 18.22 of the La Habra Municipal Code allowing cannabis non-storefront retail facilities, to be operated in strict compliance with the Cannabis Laws allowed by the California Bureau of Cannabis Control per a Type 9 Non-Storefront Retailer (Delivery Only) License under certain conditions and provisions.

H. This project was reviewed pursuant to the guidelines of the California Environmental Quality Act (CEQA) and determined to be Categorically Exempt pursuant to 14 CCR 15060(c)(2) and 15061(b)(3) because it can be seen with certainty that there is no possibility that the project will have a significant impact on the environment.

I. The development of the Project and the Site has been found by the City to provide substantial and extraordinary public benefits and to help attain certain public objectives. The Developer will make extensive interior improvements to the building that modifies the entire configuration of the structure to create secured spaces for business operations and loading and unloading of business vehicles. The City will require the non-conforming features of the property to be upgraded to meet zoning development standards in effect at the time of the implementation of this agreement, to the maximum extent feasible. The public objectives furthered by the development of the Project include, without limitation: (a) providing a long-term source of employment opportunities and assisting in the revitalization of the economic base of the community; (b) providing additional monies for the City's general fund through quarterly payments to the City; and (c) providing certain community benefits as described in the Community Benefits portion of this Agreement.

J. City has given proper public notice of its intention to adopt this Agreement and has conducted public hearings thereon pursuant to California Government Code section 65867 (regarding public hearings and notice thereof). City has found that the provisions of this Agreement and its purposes are consistent with the objectives, policies, general land uses and programs specified in City's General Plan, City's municipal ordinances and La Habra Municipal Code.

K. City, in entering into this Agreement, acknowledges that certain City obligations arising hereunder shall survive beyond the terms of the present Council members, that this Agreement will serve to bind City and future Councils to the obligations hereby undertaken, and that this Agreement shall limit the future exercise of certain governmental and proprietary powers of City. By approving this Agreement, the Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than defer its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by City staff, the Planning Commission, and the City Council and have been found to be fair, just and reasonable. City has concluded that the pursuit of the Project will serve the best interests of its citizens and that the public health, safety and welfare are best served by entering into this Agreement. Developer has represented to City that it would not consider or engage in the Project absent City approving this Agreement; i.e., assuring Developer that it will enjoy the development rights granted in this Agreement.

L. The City has conducted noticed public hearings before the City of La Habra Planning Commission (the "Planning Commission") and La Habra City Council ("City Council") as required by Government Code section 65867 concerning the Project and this Agreement.

M. The Planning Commission and the City Council found and determined that the Project is in the best interest of its citizens and furthers the public health, safety, and

welfare of the community; is consistent with the objectives, policies, general land uses and programs specified in the General Plan and the Light Industrial General Plan land use designation; is compatible with the uses authorized in, and the regulations prescribed for the Light Manufacturing (M-1) Zone, is in conformity with the public convenience, general welfare and good land use practices; will not be detrimental to the health, safety and general welfare of the City; will not adversely affect the orderly development of property or the preservation of property values; and, will have a positive fiscal impact on the City subject to the findings and conditions contained within Conditional Use Permit 22-05.

N. After conducting a duly noticed hearing on **DATE**, 2022, and after review and consideration of the application, this Agreement and the written recommendations from the Planning Commission, the City Council approved the execution of this Agreement.

O. On **DATE**, 2022, the City Council approved this Development Agreement pursuant to Ordinance No. **XXXX** ("Enacting Ordinance").

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

1. Binding Effect of Agreement. The Parties agree that the Recitals above are true and correct and intend to be bound by same; the Parties further agree to the incorporation by reference herein of said Recitals, together with all definitions provided and exhibits referenced therein. This Agreement pertains to the Site as described in Exhibit "A" and shown in Exhibits "B" and "C." Except as otherwise provided this Agreement, the burdens of this Agreement are binding upon, and the benefits of this Agreement inure to, all successors-in-interest of the Parties and constitute covenants which run with the Site. Not later than ten (10) days after the City enters into this Agreement, the City Clerk shall record this Agreement with the Orange County Recorder and provide a recorded copy to Developer when such recorded copy is available. The word "Developer" as previously defined and used herein shall include Developer's successors-in-interest.
2. Relationship of the Parties. It is hereby specifically understood and acknowledged that the Project is a private project and that neither City nor Developer will be deemed to be the agent of the other for any purpose whatsoever. City and Developer hereby renounce the existence of any form of joint venture or partnership between or among them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developer joint ventures or partners.
3. Term and Effective Date of Agreement. Except as otherwise specified herein, the term of this Agreement ("Term") is five (5) years from the Effective Date of the adoption of the Enacting Ordinance approving this Agreement ("Effective Date"). The Term shall generally be subject to earlier termination or extension as hereinafter provided.
4. Term Extension – Third Party Issues. Notwithstanding the Parties expectation that there will be no limit or moratorium upon the Project's development or the issuance of

building or other development related permits (“Development Limitation”) during the Term, the Parties understand and agree that various third parties may take action causing a *de facto* Development Limitation. Consequently, the Term shall be extended for any delay arising from or related to any of the potential Development Limitations that follow in the subsections below for a time equal to the duration of that delay occurring during the Term. No Development Limitation may arise or result from an action or omission by Developers.

4.1. Litigation. Any third party-initiated litigation that arises from or is related to any City action or omission with respect to this Agreement or any subsequent City approval required in connection with the Project’s development, or third party initiated litigation having the actual effect of delaying the Project’s development, such as a legal challenge to any ordinance or ballot initiative or measure or referendum regarding cannabis activity in the City. This extension period related hereto shall include any time during which appeals may be filed or are pending.

4.2. Government Agencies. Any delay arising from or related to the act(s) or omission(s) of the City or any of its departments, councils, commissions or divisions or any third party governmental agency, quasi-public entity, or public utility, and beyond the reasonable control of Developers.

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

5. Term Extensions. The Term of this Agreement may be extended for up to an additional four (4) five-year terms by mutual agreement of parties not later than one hundred twenty (120) days before the expiration of the Terms or any extension. Developer may request a term extension by giving written notice to the City of the request. No extension of this Agreement shall be considered if the Developer is in material default with respect to any provision of this Agreement or any subsequent agreement or understanding between the Parties at the time of making this request. The Parties may consider and negotiate revisions to the terms of this Agreement prior to executing an extension with the understanding that changes to the terms of the Agreement require City Council approval through the adoption of an ordinance pursuant to Government Code section 65868 and 65867.5.

6. Termination of Agreement. No Grandfather Rights upon the termination of this Agreement either by expiration or otherwise. Developer shall not engage in cannabis non-storefront retail or any other activities at the Project Site unless Developer has applied for and obtained all permits and authorizations that would be required for a new business operating at this location. Upon termination or expiration of this Agreement, or the termination or revocation of the conditional use permit issued in connection with this project, Developer waives any and all Grandfathered Rights it may have relating to

operation of the facility.

7. Amendment and Cancellation of Agreement. This Agreement may be amended or canceled by mutual consent of the Parties. Pursuant to Government Code section 65868, the Parties hereby consent that approval authority for such amendments shall be as follows:

7.1. Minor changes, as determined by the Director of Community and Economic Development (the "Director"), shall require the Director to approve the amendment.

7.2. Large changes, as determined by the Director shall require the Planning Commission to approve the amendment.

7.3. Major amendments, as determined by the Director, shall require the approval of the City Council.

8. Permitted Use of Site. The Site shall only be used for the non-storefront retail of medicinal and adult use cannabis and cannabis products in accordance with California law as permitted by a Type 9 Non-Storefront Retailer (Delivery Only) License issued by the California Bureau of Cannabis Control and the ordinances and regulations of the City, and such other expanded sales of cannabis products or use on the Site as may become legal under the Type 9 Non-Storefront Retailer (Delivery Only) License or City law not yet in effect or presently unknown. Developer shall comply with any and all revisions to regulations affecting such businesses.

8.1. The General Plan Land Use designation for the Site is currently Commercial Industrial.

8.2. The Zoning designation for the Site is currently Planned Commercial Industrial (PC-I) with a Planned Unit Development (PUD) overlay.

8.3. If Developer changes the location of the non-storefront retail facility to a location other than the Site, this Agreement shall become null and void.

9. Recordation of Development Agreement, Amendment or Cancellation.

9.1. Pursuant to Government Code section 65868.5, no later than ten (10) calendar days after the City enters into a development agreement, the City Clerk shall record with the Orange County Recorder a copy of this Agreement, which shall impart notice of the terms herein to all persons as is afforded by the recording laws of this state. The burdens of the Agreement shall be binding upon, and the benefits of the Agreement shall inure to, all successors in interest to the parties to the Agreement.

9.2. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided in Government Code section 65868, or if the City terminates or modifies this Agreement as provided in Government Code section 65865.1 for failure of the Developer to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall cause notice of such action to be recorded with the Orange County Recorder.

10. Periodic Review of Development Agreement.

10.1. Pursuant to California Government Code section 65865.1, the Director or the Director's designee shall review this Development Agreement at least once every twelve (12) months after the Effective Date of this Agreement (hereinafter "Periodic Review"), at which time the Developer, or successor in interest thereto, shall be required to demonstrate good faith compliance with the terms of this Agreement. If, as a result of such Periodic Review, the City finds and determines, on the basis of substantial evidence, that Developer or successor in interest thereto has not complied in good faith with terms or conditions of the agreement, the City may terminate or modify the agreement.

11. Notice of Periodic Review. The Director or his/her designee shall give the Developer thirty (30) calendar days' advance notice of the Periodic Review pursuant to the Notice provision of this Agreement.

12. Periodic Review—Modification or Termination of Development Agreement.

12.1. If, upon a finding made pursuant to the Periodic Review process described in this Agreement, the City determines to proceed with modification or termination of this Agreement, the City may set a hearing date and give notice to the Developer and the public in accordance with Government Code 65868 and additionally as follows:

12.1.1. Notice to Developer. The City shall give the Developer thirty (30) calendar days' advance notice of the Periodic Review pursuant to the Notice provision of this Agreement as specified in Paragraph 13.

12.1.2. Notice to the Public. For a public hearing, the City shall set a date for the public hearing and shall ensure that the public is given proper notice of the public hearing in accordance with applicable laws.

12.2. The notice required by this section shall contain:

12.2.1. Any potential issues the City considers to exist with respect to the Project or operation thereof;

12.2.2. Other information which the City considers necessary to inform the Developer of the nature of the proceedings.

12.3. The Public Hearing held pursuant to this section shall be conducted as nearly as possible in accordance with the procedural standards adopted under Government Code section 65804 for the conduct of zoning hearings. Each Person interested in the matter shall be given an opportunity to be heard.

13. Notice. Any notice to be given in connection with this Agreement shall be delivered via first class mail and electronic mail as follows:

13.1. Notice to the City.

City Manager  
110 E. La Habra Blvd.  
La Habra, CA 90631

13.2. Notice to Developer:  
Essential Roots La Habra, LLC  
Attention: Aaron Herzberg  
575 Anton Boulevard, Suite 750  
Costa Mesa, CA 92626

14. Community Benefits. Developer will contribute financial support in the amount specified in below in section 14.1.

14.1. Payments. The Developer agrees that for the Term of this Agreement, Developer shall pay the City 0.5% on all gross receipts attributable to the Site from that quarter (the "Community Benefit Payment") for the term of the Agreement. Said Community Benefits Payment shall be placed within an account held by the City and distributed to the Community through a grant process as established and administered by the Director of Community Services. The Community Benefit Payments shall be paid to the City no later than within fifteen (15) days after the end of each quarter (March 31, June 30, September 30, and December 31) beginning on the date the facility begins operations (the first quarter payment will be made within 15 days after the end of the quarter following the date the facility begins operations and each quarter thereafter for the Term of this Agreement. If any payment is late, Developer shall pay City a processing fee of \$200 to compensate City for its administrative time relating to the late fee. In addition, interest on the unpaid amount shall accrue at the rate of 12 percent per year, compounded daily. If either (a) any payment is more than 45 days late and at least 15 days has passed since City has notified Developer of such late payment (notice may occur via email, telephone, or US mail), or (b) Developer is late on two out of the four consecutive Community Benefits Payments; this shall constitute a material breach of this Agreement, and the City may terminate this Agreement, notwithstanding any notice requirements set forth in subsection 27, "Breach and Remedies."

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

15.1. Implementation. Developer shall use commercially reasonable efforts to pursue the implementation of the Project as expeditiously as feasible, in the form approved by City, subject to all applicable laws, this Agreement, Conditional Use Permit 22-05 and the La Habra Municipal Code.

15.2. Maintain and Operate Project. Developer shall maintain and operate the Project on the Site, once constructed, throughout the Term of this Agreement, in accordance with the Project Approvals and all City and State laws.

15.3. Hold Harmless. Developer shall defend (with counsel reasonably acceptable to City), indemnify and hold City and its councilpersons, officers, attorneys, agents, contractors, and employees (collectively, the "Indemnified Parties") harmless from and against all losses, costs and expenses (including, without limitation, reasonable attorneys' fees and costs), damages (including, without limitation, consequential

damages), claims and liabilities arising from the Project, this Agreement, the approval of the Project and any conditions of approval in connection therewith (“Project Approvals”) including threats or claims asserted by any other jurisdiction in connection with Developer’s operation of the non-storefront retail facility in the City, and the activities of Developer, their members, officers, employees, agents, contractors, invitees and any third parties on the Site, from and against any challenges to the validity of this Agreement or other Project Approvals.

16. Vested Rights. During the Term of this Agreement, Developer shall have the vested right and entitlement to develop and operate the Project in accordance with the General Plan, Building Code, La Habra Municipal Ordinances, and La Habra Municipal Codes regarding land use, zoning and cannabis non-storefront retail facilities as of the Execution Date (“Existing Land Use Ordinances”). Parties acknowledge that neither the City nor the Developer can at this time predict when or the rate at which or the order in which parts of the Project will be developed. Developer shall have the vested right to develop the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its business judgment, provided that Developer is in compliance with the Project Approvals and timelines established in La Habra Municipal Code Chapter 18.22 “Commercial Cannabis Activity”.

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

18. Procedures and Standards. The standards for granting or withholding permits or approvals required hereunder in connection with the development of the Project shall be governed as provided herein by the standards, terms and conditions of this Agreement and the Project Approvals, and to the extent not consistent therewith, the Existing Land Use Ordinances, but the customary fees for processing applications for such permits or approvals shall be governed by such ordinances and regulations as may then be applicable. The Developer shall not be permitted to operate until it has obtained a Type 9 Non-Storefront Retailer (Delivery Only) License issued by the California Bureau of Cannabis Control.

19. Effect of this Agreement. Unless otherwise provided by this Agreement, the rules, regulations and official policies governing permitted uses of the land, governing density, and governing design, improvement and construction standards and specifications, applicable to development of the property subject to a development agreement, are the

rules, regulations, and official policies in force at the time of execution of the agreement. A development agreement does not prevent the City, in subsequent actions applicable to the property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the property under the development agreement, nor does a development agreement prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

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

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

20. Future Conflicting Local Laws. If any City law, including ordinances, resolutions, rules, regulations, standards, policies, conditions and specifications (collectively, "City Laws") are enacted or imposed by a citizen-sponsored initiative or referendum after the applicable statute of limitations has run, or by the City Council, directly or indirectly, in connection with any proposed initiative or referendum, which City Laws would conflict with this Agreement, such City Laws shall not apply to the Developer with respect to the Project Site and the provisions of this Agreement shall control and supersede any such inconsistent or conflicting City Laws.

21. Approval Subject to Referendum. The Parties, however, acknowledge that City's approval of this Agreement is a legislative action subject to referendum. Without limiting the generality of the foregoing, no moratorium or other limitation whether relating to the rate, timing, phasing or sequencing of development affecting subdivision maps, building permits, or other subsequent approvals, if any, shall apply to the Project. Developer agrees and understands that the City does not have authority or jurisdiction over another public agency's authority to grant a moratorium or to impose any other limitation that may affect the Project.

22. Specific Criteria Applicable to Project.

22.1. Applicable Ordinances. Except as set forth in this Agreement and the

Project Approvals, the Existing Land Use Ordinances shall govern the Site hereunder and the granting or withholding of all permits or approvals required for the Project; provided, however, that Developer shall be subject to all changes in processing, building and fire codes, inspection and plan-check fees and charges imposed by City in connection with the processing of applications for development and construction upon the Site so long as such fees and charges are of general application and are not imposed solely with respect to the Project Site or Developer.

22.2. Amendment to Applicable Ordinances. Any change to the Existing Land Use Ordinances that conflicts with the Project Approvals shall nonetheless apply to the Project if, and only if, (i) it is consented to in writing by Developer in Developer's sole and absolute discretion; (ii) it is determined by City supported by substantial evidence through findings adopted by the City Council that the change or provision is necessary to prevent a condition dangerous to the public health or safety so long as said change does not have the effect of prohibiting the cannabis non-storefront retail activity in the City; (iii) it is required by changes in State or Federal law (except that Federal law prohibiting or furthering prohibition of commercial cannabis activity shall not constitute satisfaction of this requirement); (iv) it consists of changes in, or new fees as provided in Paragraph 19 of this Agreement; and (v) it is otherwise expressly permitted by this Agreement.

22.3. Applicability of Zoning Amendments. In the event that a City zoning ordinance is amended by City in a manner which provides more favorable site development standards for the Project Site or any part thereof than those in effect as of the Effective Date, Developer shall have the right to notify City in writing of its desire to be subject to all development related laws applicable in the City for the remaining term of this Agreement. If City agrees, by resolution, vote or ordinance of the City Council, such new standards shall become applicable to the Project. Should City thereafter amend such new standards, upon the effective date of such amendment, the original new standards shall continue to apply to the Project as provided above, but Developer may notify City in writing of its desire to be subject to all or any such amended new standards and City shall agree in the manner above provided to apply such amended new standards to the Project.

23. Delays.

23.1. Permitted Delays. In addition to any other provisions of this Agreement with respect to delay, Developer and City shall be excused from performance of their obligations hereunder during any period of delay caused by acts of mother nature, civil commotion, riots, strikes, picketing, or other labor disputes, or damage to or prevention of work in process by reason of fire, floods, earthquake, or other casualties, litigation, acts or neglect of the other party, any referendum elections held on the Enacting Ordinance, or the Existing Land Use Ordinances, or any other ordinance affecting the Project or the approvals, permits or other entitlements related thereto, or restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting provisions of the Constitution or laws

of the State of California or any codes, statutes, regulations or executive mandates promulgated thereunder (collectively, "Laws"), orders of courts of competent jurisdiction, or any other cause similar to the foregoing beyond the reasonable control of City or Developer, as applicable. Each Party shall promptly notify the other Party of any delay hereunder as soon as possible after the same has been ascertained. The time of performance of such obligations shall be extended by the period of any delay hereunder.

23.2. Subsequent Laws or Judicial Action. The provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with any new Laws or decision issued by a court of competent jurisdiction (a "Decision"), enacted or made after the Effective Date which prevents or precludes compliance with one or more provisions of this Agreement. Promptly after enactment of any such new Law, or issuance of such Decision, the Parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. In addition, Developer and City shall have the right to challenge the new Law or the Decision preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect, except that the Term shall be extended, for a period of time equal to the length of time the challenge was pursued, to extent such challenge delayed the implementation of the Project.

23.3. Cannabis Non-storefront retail. The Parties recognize that California has adopted the Cannabis Laws. The Parties intend through this Agreement that Developer shall have the right to engage in cannabis non-storefront retail activities as allowed by the current Cannabis Laws (Type 9 Non-Storefront Retailer (Delivery Only) License issued by the California Bureau of Cannabis Control), or any other law or initiative adopted in California pertaining to the delivery of cannabis goods as that term is defined by MAUCRSA. To the extent the changes in California law change the legal process or structure by which cannabis retailers can or may operate (i.e., for-profit vs non-profit entities, delivery restrictions, etc.), the Parties intend this Agreement to be flexible to allow such changes and may alter the procedures specified herein, by Operating Memoranda as defined below, or otherwise, as may be necessary.

23.4. Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between City and Developer. It is anticipated due to the term of this Agreement that refinements to the Project Approvals may be appropriate with respect to the details of performance of City and Developer. When and if Developer finds it necessary or appropriate to make changes, adjustments or clarifications, the Parties shall enter into memoranda ("Operating Memoranda") approved by the Parties in writing, which reference this section of the Agreement. Operating Memoranda are not intended to constitute an amendment to this Agreement but mere ministerial clarifications; therefore, public notices and hearings shall not be required. The City Attorney shall be authorized upon consultation with

Developer, to determine whether a requested clarification may be effectuated pursuant to this section or whether the requested clarification is of such character to constitute an amendment to the Agreement which requires compliance with the provision of this Agreement pertaining to amendments and as may be required by La Habra Municipal Code Chapter 18.22 “Commercial Cannabis Activity” for review and approval by the Planning Commission and/or City Council. The authority to enter into such Operating Memoranda is hereby delegated to the City Manager, and the City Manager is hereby authorized to execute any Operating Memoranda hereunder without further City Council action.

24. CEQA. The project was reviewed pursuant to the guidelines of the California Environmental Quality Act (CEQA) and determined to be Categorically Exempt pursuant to 14 CCR 15060(c)(2) and 15061(b)(3) because it can be seen with certainty that there is no possibility that the project will have a significant impact on the environment.

25. Building Permits Required. Nothing set forth herein shall impair or interfere with the right of City to require the processing of building permits as required by law relating to any specific improvements proposed for the Project pursuant to the applicable provisions of the La Habra Municipal Code, inclusive of such California codes as have been adopted in accordance therewith, that are in effect at the time such permits are applied for; provided, however, no such permit processing shall authorize or permit City to impose any condition on and/or withhold approval of any proposed improvement, the result of which would be inconsistent with this Agreement unless the proposed improvements to the building itself are not in conformance with applicable provisions of the Building Standards Codes, as amended by the City. The City agrees to expedite processing, inspections and approvals in connection with Developer’s building permits to the extent practicable.

25.1. CUP Required. Prior to issuance of a building permit, Developer shall have secured a Conditional Use Permit from the City.

25.2. Non-storefront retail License Required. Prior to commencing business operations, Developer shall have secured a Type 9 Non-Storefront Retailer (Delivery Only) License issued by the California Bureau of Cannabis Control.

26. Assignment and Transfer of Rights. Except as otherwise provided in this section, the burdens of this Agreement are binding upon, and the benefits of this Agreement inure to, all successors-in-interest of the Parties and constitute covenants that run with the Site. No assignment or transfer of rights is permitted until full compliance for such action has been completed as required by La Habra Municipal Code Chapter 18.22 “Commercial Cannabis Activity”.

27. Breach and Remedies. Except as otherwise expressly provided in this Agreement in section 16, Developer shall not be deemed to be in default under this Agreement with respect to any obligation owed solely to City, and City may not terminate or modify Developer’s rights under this Agreement, unless City shall have first delivered a written notice of any alleged default to Developer that specifies the nature of such default and provides Developer with a meaningful and reasonable opportunity to cure.

27.1. If such default is not cured by Developer within fourteen (14) City work days after receipt of such notice of default, or with respect to defaults that cannot be cured within such period and Developer fails to commence efforts to cure the default within fourteen (14) City work days, after receipt of the notice of default, or thereafter fails to diligently pursue the cure of such default, City may terminate Developer's rights under this Agreement at a public hearing. Established timelines, penalties and compliance standards contained within La Habra Municipal Code Chapter 18.22 "Commercial Cannabis Activity" shall supersede this section. In the event that a breach of this Agreement occurs, irreparable harm is likely to occur to the non-breaching Party and damages will be an inadequate remedy. To the extent permitted by law, therefore, it is expressly recognized that injunctive relief and specific enforcement of this Agreement are proper and desirable remedies, which remedies shall be cumulative and in addition to any claims or actions for monetary damages.

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

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

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

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

32. Definitions. To the extent this Agreement defines terms used herein, the definitions in this Agreement shall control any interpretation of this Agreement. To the extent that any term is not defined in this Agreement, and such term is defined in the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), the definition under MAUCRSA shall control; and if not defined, clarified or explained under

MAUCRSA, then the remaining Cannabis Laws; and if not defined, clarified or explained under the Cannabis Laws, then the definition supplied in any state or City law relevant to the subject matter of this Agreement that does not conflict with the overall interpretation of this Agreement shall control.

33. Severability. If any term, provision, condition or covenant of this Agreement, or the application thereof to any Party or circumstance, shall to any extent be held invalid or unenforceable, the remainder of the instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

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

35. Interpretation of Agreement. This Agreement shall not be construed as if it had been prepared by either Party, but rather as if both Parties had prepared the Agreement, without regard to any statute which construes drafting errors or ambiguities against the Party proposing or drafting the contract, or similar statutes, because it has been reviewed by the Parties and found to be fair and in accordance with the intentions and agreements intended to be made by the Parties after consultation with each such Party's legal counsel or opportunity to do so. This Agreement is fair and in accordance with their intentions and, therefore, should interpretation hereof ever be necessary, this Agreement shall be interpreted simply and fairly, and neither for nor against any Party hereto.

36. Forum, Venue and Choice of Law. This Agreement shall be governed in all respects by the laws of the state of California, including but not limited to the California Code of Civil Procedure, the California Commercial Code and the California Evidence Code.

37. Jurisdiction. The Parties consent to the exclusive personal and subject matter jurisdiction and venue of the Superior Court of the State of California for the County of Orange located at 700 Civic Center Drive West, Santa Ana, CA, 92701, and no other court, in any action arising out of or relating to this Agreement. Parties waives any other venue to which Parties might be entitled by domicile or otherwise.

38. Counterparts. This Agreement may be executed in counter parts and may be transmitted electronically or via facsimile.

39. Representations. The Parties represent and warrant that no other person or entity has, or has had, any interest in the claims, liens, demands, obligations, or causes of action referred to in this Agreement, except as otherwise set forth herein; that the Parties have the sole rights and exclusive authority to execute this Agreement and receive the sums specified in it; and that the Parties have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action

referred to in this Agreement.

40. Authority to Execute and Bind. In addition to the above warranties, the Parties specifically warrant and represent that each such Party is authorized to enter into this Agreement on its behalf and that the person signing below is duly authorized to execute and bind the Party to this Agreement.

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

41.1. The ability of Developer to transfer the rights and benefits arising out of this Agreement shall be subject to City approval, a new approved Conditional Use Permit between the City and the prospective transferee and an approved development agreement between the City and the prospective transferee. No commercial cannabis activities may be conducted by any potential transferee prior to satisfaction of all City requirements as outlined herein. City shall not unreasonably deny Developer and a potential transferee's request to transfer the rights, duties, benefits and obligations arising hereunder.

41.2. The ability of Developer to transfer the rights and benefits of this agreement is subject to the successful completion of provisions contained within La Habra Municipal Code Chapter 18.22 "Commercial Cannabis Activity" as it relates to completing the application process, screening, development agreement and Conditional Use Permit process followed by obtaining the required Type 9 Non-Storefront Retailer (Delivery Only) License issued by the California Bureau of Cannabis Control.

42. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their Successors and Assignees. No other person or entity shall have any right of action based upon any provision of this Agreement and no other person shall be considered a third party beneficiary under this Agreement.

43. Dispute Resolution and Attorneys' Fees. Notwithstanding a Party's right to seek to injunctive or equitable relief as provided in this Agreement, in the event that a dispute between the Parties should arise out of or in connection with this Agreement, the Parties agree to submit to voluntary mediation upon written demand by either Party served on the other Party pursuant to the notice provisions set forth in this Agreement. The cost of the mediator shall be split equally between the Parties and shall be paid timely and in

accordance with the mediator's terms and conditions. Mediation shall be conducted at a reputable mediator's office (e.g., ADR Services, JAMS, Adjudicate West, etc. but shall not include IVAMS) within Orange County, California or such other county in Southern California as the Parties may mutually agree, and shall be selected by the Party demanding mediation submitting a list of three to five qualified mediators for the other Party to select from. Should either Party refuse to submit to mediation upon written demand by the other Party, that Party shall waive his, her or its right to recover his, her or its attorneys' fees in any resulting court action regardless of whether that Party would otherwise be entitled to recovery of attorneys' fees as the prevailing party or otherwise (including sanctions for a discovery abuse or violation, anti-SLAPP award or otherwise) without regard to any rule of court or schedule of such fees maintained by the court, in addition to any other damages or relief awarded, regardless of whether such action, proceeding or claim proceeds to final judgment. Provided that, if the Parties both elect to forego mediation, or after any unsuccessful good faith attempt(s) to mediate any dispute between the Parties, the prevailing party shall be entitled to recover reasonable and actual attorneys' fees (and in no event greater than \$500 per hour) plus expert fees, costs and the cost of mediation and attorneys' fees in connection therewith, regardless of whether the dispute is resolved by court or jury trial. The required fees shall be all fees and costs in connection with the dispute, both prior and subsequent to commencement of legal action in court.

44. Indemnification.

44.1. Construction. Developer agrees to indemnify, defend with counsel acceptable to City and hold harmless the City, and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs (including legal fees and costs) and liabilities of any kind for any personal injury or property damage which may arise directly or indirectly as a result of any actions or inactions by the Developer, or any actions or inactions of Developer's contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the Project, except to the extent such costs and liabilities are caused by the sole negligence or willful misconduct of the City.

44.2. Legal challenges. Developer agrees to indemnify, defend with counsel acceptable to City and hold harmless the City, and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs (including legal fees and costs) and liabilities of any kind for arising out of or connected to the approval or issuance of any permit, license or approval by the City for the Project, except to the extent such costs and liabilities are caused by the sole negligence or willful misconduct of the City. In particular, and without limiting the generality of the foregoing, Developer agrees it shall be responsible for all costs incurred by the City in the event of a third-party challenge to the validity of this Agreement, the

Project Approvals, CEQA Documents, and/or the associated regulatory permits for the Project.

45. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.
46. Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the County Recorder by the City Clerk within the period required by Government Code section 65868.5.
47. Construction. Each Party expressly waives the provisions of California Civil Code §1654 and hereby agrees that this Agreement was jointly negotiated and jointly drafted by the Parties and their respective counsel, and that it shall not be interpreted or construed in favor of or against any Party solely on the ground that it drafted the Agreement. It is also agreed and represented by all Parties that said Parties were of equal or relatively equal bargaining power and that in no way whatsoever shall this Agreement be deemed to be a contract of adhesion, or unreasonable or unconscionable.
48. Independent Legal Counsel. Each Party acknowledges that it has been represented by independent legal counsel of its own choice throughout all of the negotiations that preceded the execution of this Agreement or has knowingly and voluntarily declined to consult legal counsel, and that each Party has executed this Agreement with the consent and on the advice of such independent legal counsel.
49. Further Cooperation. The Parties herein agreed to execute any and all agreements, documents or instruments as may be reasonably necessary in order to fully effectuate the agreements and covenants of the Parties contained in this Agreement, or to evidence this Agreement as a matter of public record, if required to fulfill the purposes of this Agreement. The Parties further agree to mutually cooperate with one another in carrying out the purposes of this Agreement.
50. Enforceability. This Agreement shall not become binding and shall have no force and effect whatsoever until such time as it has been fully executed by and delivered to all of the Parties thereto.

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

CITY: City of La Habra

---

By: Jim Sadro  
Its: City Manager  
On:

DEVELOPER: Essential Roots La Habra, LLC

---

By: NAME  
Its: Manager  
On:

DEVELOPER: Essential Roots La Habra, LLC

---

By: NAME  
Its: Manager  
On:

*Approved by:*

---

Richard D. Jones, Esq.  
La Habra City Attorney

ACKNOWLEDGMENT

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

State of California )  
 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me,

\_\_\_\_\_  
(insert name and title of the officer) personally appeared

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

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

**WITNESS** my hand and official seal.

Signature \_\_\_\_\_

(Seal)

ACKNOWLEDGMENT

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

State of California )  
 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me,

\_\_\_\_\_  
(insert name and title of the officer) personally appeared

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

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

**WITNESS** my hand and official seal.

Signature \_\_\_\_\_

(Seal)

Exhibit A  
*Legal Description of Site:*

OR-2084295

TITLE OFFICER - DAVID M. NEAL

EXHIBIT "A"

ALL THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF LA HABRA, DESCRIBED AS FOLLOWS:

PARCEL A:

PARCELS 1 AND 2, AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT LL 89-02, RECORDED MARCH 21, 1990 AS INSTRUMENT NO. 90-147082 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPT ONE-HALF OF ALL OIL, MINERAL AND HYDROCARBON SUBSTANCES BUT WITHOUT THE RIGHT, HOWEVER, OF SURFACE ENTRY OF ANY KIND WHATSOEVER FOR THE PURPOSE OF EXPLORATION, REMOVAL, EXTRACTION OR DEVELOPMENT OF SAME AND UPON THE FURTHER EXPRESS CONDITIONS THAT ANY DRILLING OPERATIONS FOR THE EXTRACTION OR REMOVAL OF SUCH EXCEPTED SUBSTANCES WILL BE FROM DRILLING SITES LOCATED AND SITUATED OUTSIDE OF THE BOUNDARIES OF THE LAND HEREBY CONVEYED AND THAT IN THE DRILLING OR EXPLORING FOR SAID SUBSTANCES THERE WILL BE NO PENETRATION INTO SAID LANDS EXCEPT AT A DISTANCE OF MORE THAN 500 FEET BELOW THE SURFACE OF SAID LAND, AS RESERVED BY JOHN E. WILKS, A MARRIED MAN IN DEED RECORDED MARCH 13, 1953 IN BOOK 2469, PAGE 566 OF OFFICIAL RECORDS.

ALSO EXCEPT THEREFROM ONE-HALF OF ALL OIL, MINERAL AND HYDROCARBON SUBSTANCES, BUT WITHOUT THE RIGHT, HOWEVER, OF SURFACE ENTRY OF ANY KIND WHATSOEVER FOR THE PURPOSE OF EXPLORING, REMOVAL, EXTRACTING OR DEVELOPMENT OF SAME AND UPON THE FURTHER EXPRESS CONDITIONS THAT ANY DRILLING OPERATIONS FOR THE EXTRACTION OR REMOVAL OF SUCH EXCEPTED SUBSTANCES WILL BE FROM DRILLING SITES LOCATED AND SITUATED OUTSIDE OF THE BOUNDARIES OF THE LAND HEREBY CONVEYED AND THAT IN THE DRILLING OR EXPLORING FOR SAID SUBSTANCES THERE WILL BE NO PENETRATION INTO SAID LANDS EXCEPT AT A DISTANCE OF MORE THAN 500 FEET BELOW THE SURFACE OF SAID LAND, AS RESERVED IN DEED FROM FITZGERALD AND LITROV, A CORPORATION, RECORDED JANUARY 6, 1955 IN BOOK 2916, PAGE 73 OF OFFICIAL RECORDS.

PARCEL B:

APPURTENANT NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS, UTILITIES AND SURFACE WATER DRAINAGE AS SET FORTH IN THAT CERTAIN "EASEMENT AGREEMENT" RECORDED MAY 12, 1989 AS INSTRUMENT NO. 89-253097 AND AS AMENDED BY THAT CERTAIN "FIRST AMENDMENT TO EASEMENT AGREEMENT" RECORDED MAY 18, 1989 AS INSTRUMENT NO. 89-265551, BOTH OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

Exhibit B

Assessor's Parcel Map for 441 East Imperial Highway, La Habra, CA 90631

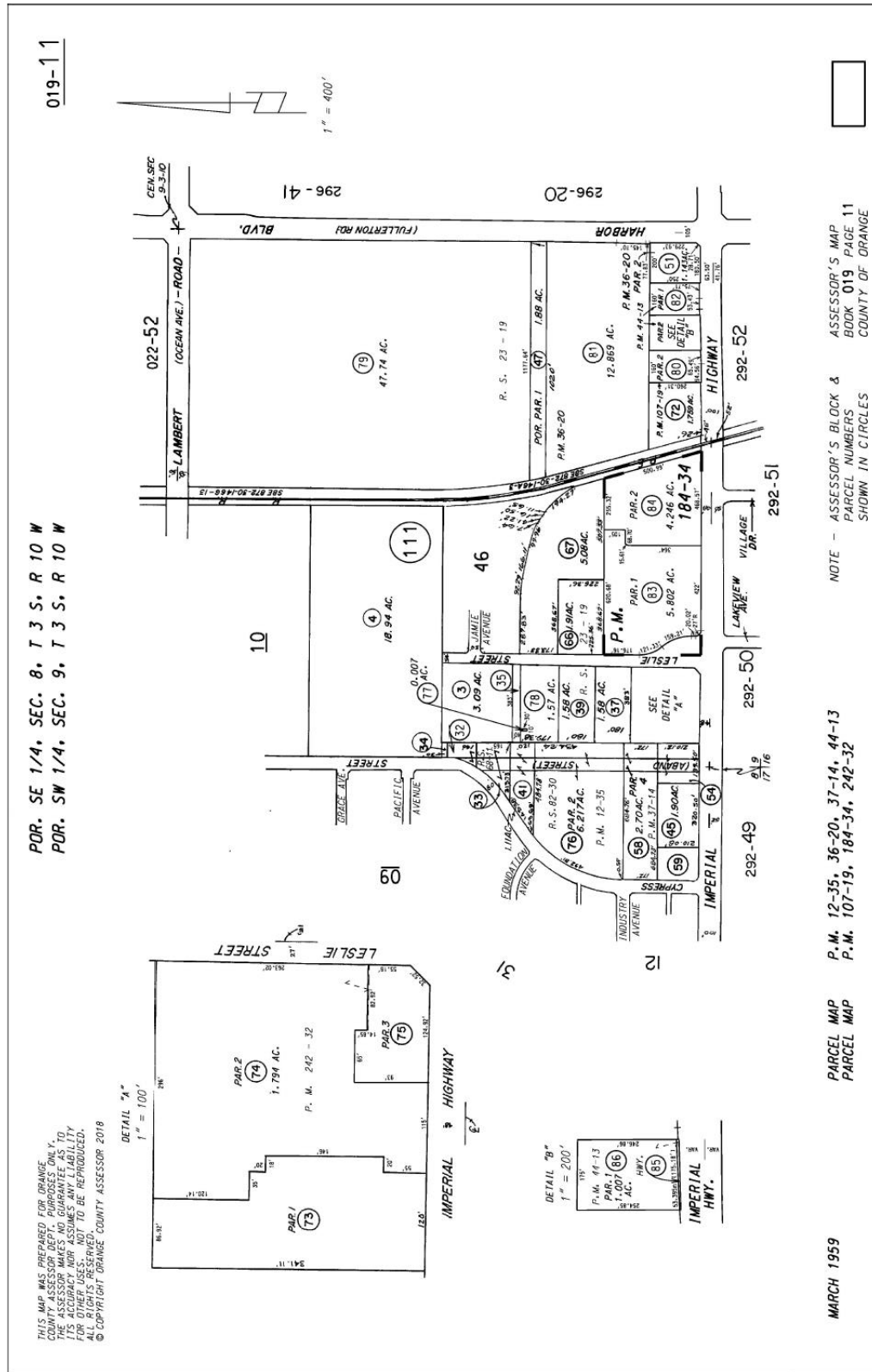






Exhibit D  
*Conditional Use Permit 22-05 Resolution*