

# City of Isleton

## Planning Commission Staff Report

DATE: December 6, 2022

ITEM#: 6.A

CATEGORY: Public Hearing

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### **CANNABIS CONDITIONAL USE PERMIT APPLICATION CUP 02-22 AND DEVELOPMENT AGREEMENT DA 2022-01, 51 MAIN STREET, TPCC INCORPORATED formerly known as TIMELESS PALLIATIVE CARE COLLECTIVE and conducting business as the ISLETON CANNABIS COMPANY**

#### **SUMMARY**

TPCC Incorporated, formerly known as Timeless Palliative Care Collective and now conducting business as the Isleton Cannabis Company (“Applicant”) was previously owned by Cynthia Burnett and received approval from the City for Conditional Use Permit CUP 2018-08 and Development Agreement DA 2018-01 for cannabis manufacturing (cannabis oils and cannabis infused items), delivery (cannabis products to consumers) and distribution (cannabis products to wholesalers, testing facilities and retail dispensaries) in 2019. Located at 51 Main Street, these activities became operational after obtaining licensing from the State. Recently, Applicant changed ownership composition by replacing Cynthia Burnett with the new primary owner, Mark Mickelson. Mr. Mickelson is applying for a new conditional use permit and development agreement. This new application would replace the previous entitlements and clarify that Applicant is a licensed micro-business. The micro-business license simplifies the State’s licensing process and allows multiple cannabis operations to be hosted under a single State license, but essentially will not change the characteristics of the current operation on the site and within the building.

Both the use permit and development agreement are subject to review by the Planning Commission for recommendation to the City Council for final adoption to permit the proposed commercial cannabis operations.

The property is located in the C-Commercial Zoning District, within the downtown Historical District. The lot size is 3,523 square feet in size and contains an existing commercial building of 2,088 square feet, being about 15 feet in height. No onsite parking exists and the public utilizes existing street parking for access. The rear portion of the building is fenced.

#### **DISCUSSION**

##### **I. Application/Project Description**

Applicant proposes continuing operations to (i) extract, produce and package cannabis products, (ii) deliver cannabis products to retail customers (no direct sales on premises) and (iii) distribute cannabis products to wholesalers, testing facilities and retail dispensaries (refer to Exhibit A, Project Business Plan/Description for a more complete project description).

The building was renovated to comply with local and State regulations. The building has been be divided into four sections being:

1. Separately Housed Extraction Unit – This area contains all equipment for plant extraction. This is a restricted and secured area with a commercial grade door lock.
2. Production Lab – This area provides contact surface for mixing, measuring, preparing and holding components and ingredients. This is also a restricted area.
3. Packaging and Finishing Room – This area is for labeling, assembly, packaging, cold and dry inventory and storage. This is a limited access area.
4. Product Showroom – This area displays product and provides sampling and customer consultation.

Employees only are able to access any of the area beyond the product showroom.

## **II. Review of City Ordinances**

The City of Isleton Ordinance 2018-08 (and others) was adopted on June 26, 2018, to provide standards in regulating cannabis activities. Section 2307-C states a conditional use permit shall be issued by the City for commercial cannabis uses. Section 2307 lists the information to be provided by the applicant and states special findings the Planning Commission must make in order to approve a use permit for such an operation. The application has the required information for review and the discussion of findings is further below in this staff report.

Ordinance 2018-02, Section 2306 states cannabis operations can be established within the C-Commercial and PDI-Planned Industrial Districts in the City, and provides several conditions to which cannabis operations must comply, including:

1. A public safety and security plan shall be approved (refer to Exhibit A, Project Business Plan/Description).
2. No signage is permitted. No signage is being proposed.
3. A ventilation and odor control program has been implemented (refer to Exhibit A, Project Business Plan/Description).
4. The operation cannot be accessed to anyone under 21 years of age (18 years in certain cases).
5. A Development Agreement shall be required and approved by the Council (refer to Exhibit F, Attachment 1).

Section 2305 of this ordinance requires all cannabis operations to be at least 600 feet from any school, child care center, or youth center. The project is located over 600 feet from these activities (refer to Exhibit D, Youth Facilities Map).

## **III. Land Use Compatibility**

In accordance with Section 1407 of the Zoning Code, the Planning Commission must make the following findings to approve this conditional use permit:

- A. That there are circumstances or conditions applicable to the land, structure or use which makes the granting of a use permit necessary for the preservation and enjoyment of a substantial property right.
- B. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purposes of the district in which the site is located.
- C. That the proposed use will comply with each of the applicable provisions of this ordinance.

The Commission previously approved the operations, except for the addition of the micro-business licensing. The business has been operating in compliance with all zoning and building code requirements. Creating a micro-business allows for the three commercial cannabis operations to be allowed under one state license, so this will not change the operations or physical characteristics of the property.

#### **IV. Design Review**

This application does not propose any exterior changes to the building's exterior, so no design review is required.

#### **V. Development Agreement Considerations**

Development agreements are contracts negotiated between project proponents and public agencies that govern the land uses that may be allowed in a particular project. In accordance with City Ordinance 2018-02, Section 2306-A, a Development Agreement has been submitted for the proposed commercial cannabis operations (refer to Exhibit F, Attachment 1).

#### **VI. Environmental Considerations**

The California Environmental Quality Act ("CEQA") requires analysis of discretionary projects. Under CEQA Guidelines § 15378, a project is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." Conditional Use Permits and Development Agreements are typically considered projects under CEQA.

Staff has reviewed this project and determined that because there is no possibility that the project may have a significant effect on the environment, this project is exempt from CEQA under CEQA Guidelines § 15378, the "common sense" exemption. Staff made the determination that the common sense exemption applies based on the fact that, as described above, the Applicant is not modifying the operations at the site through this CUP and Development and will therefore not be making any changes to the conditions at the site over the existing baseline conditions.

In the alternative, if this project were exempt from CEQA under CEQA Guidelines § 15378, the project would nevertheless be exempt from CEQA under CEQA Guidelines § 15301, the Class 1 Existing Facilities exemption. Staff made the determination that the Class 1 exemption applies based on the fact that the project consists of the same physical operations existing on the site, involves no, expansion of this existing use, and therefore is not expected to result in any significant adverse environmental impacts.

For the foregoing reasons, Staff respectfully recommends the Planning Commission recommend the City Council direct Staff to file a Notice of Exemption for this project.

#### **FISCAL IMPACT**

There is no fiscal impact with the Commission's recommendation on this matter to the City Council depending on the projected gross receipts of the Applicant.

#### **RECOMMENDATION**

The Planning Commission should open and close the public hearing, consider the applicant's, staff's and public comments and then either approve (based on findings and subject to conditions)

or continue with direction for more information that might be needed to help in the decision making process. Staff recommends that the Planning Commission adopt Resolution PC 04-22 for Conditional Use Permit CUP 02-22) and Development Agreement DA 2022-01.

Prepared by: Charles Bergson, City Manager

**EXHIBITS:**

- A. Project Business Plan/Description
- B. Aerial Photo of Site
- C. Photos of building
- D. Youth Facilities Map
- E. General Plan Consistency Review
- F. Resolution PC 04-22 for Conditional Use Permit CUP 02-22 and Development Agreement DA 2022-01

## Exhibit A

### Project Business Plan/Description

#### Business Operations Description at 51 Main Street, Isleton, CA

*Delivery Service Hours.* The Applicant's delivery hours are scheduled on an as-needed basis.

*On-Site Machinery.* The Applicant's on-site machinery includes the following:

- **Crude Oil Extraction Systems** - These systems extract resin oil from cannabis plant matter such as buds, leaves, stems and seeds. The resin oil extracted by these system require further processing before cannabis-related consumer products can be created.
- **Distillation Systems** - These systems further refine the resin oil mentioned above by distilling out undesirable chlorophyll, fat and waxes. This refined oil is called distillate and can be used to create various cannabis-related consumer products.
- **Vape Cartridge Filling Machines** - These machines fills vape cartridges with distillate. Once filled, these vape cartridges can be sold to wholesalers, retailers and consumers. The distillate in the vape cartridges is vaporized by heat elements power by batteries and the vaporized distillate is inhaled by the end-user.
- **Edible Manufacturing Equipment.** This equipment manufactures cannabis products that are eaten. These types of cannabis products are sold to wholesalers, retailers and consumers.
- **Other Manufacturing Equipment.** This equipment manufactures other cannabis products that are consumed by various methods. These types of cannabis products are sold to wholesalers, retailers and consumers.
- **Joint Rolling Equipment.** This equipment measures and shakes down cannabis plant matter that has been ground up to put in pre-rolled joints that are sold to wholesalers, retailers and consumers.
- **Packaging Equipment.** This equipment prints labels and seals packaging that contain cannabis plant matter and cannabis products.
- **Other Miscellaneous Equipment.** The Applicant has other on-site equipment and machinery including scales, refrigerators and grinders.

*Stored Chemicals.* The Applicant stores ethanol that is used in the crude oil extraction system. The Applicant uses ethanol because it is less volatile and safer than other chemical alternatives including CO<sub>2</sub> and butane. Usually, the ethanol stored in the Applicant's premises is two or three 55-gallon drums.

#### *Public Safety and Security Program*

- Automated Security System with interior and exterior cameras
- Lock Inventory System with security cage
- Monitored front door entrance with security camera
- Emergency Exit Plans (posted for Fire, Flood, Burglary)

*Security Plan Details.* To minimize the potential for criminal activity, the Applicant installed a surveillance system with a security alarm system installed which is maintained by ADT. The overall surveillance system includes additional interior and exterior cameras and remote access in accordance with code requirements of Title 17 §40200 and §40205. The Applicant maintains a Locked Inventory System in which all products kept onsite are in either in a locked safe, locked cage, or locked storage closet. Emergency Exit Plans are posted in public view inside the facility. Emergency response instructions are posted inside staff areas and each staff member is provided a copy; these instructions provide contact and response information in case of burglary or nuisance.

*Ventilation and Odor Control Program.* In accordance with Section 2306 D of the City's Cannabis Regulations, a mechanical ventilation and odor control filtration system has been installed and is working well to prevent cannabis plant odors from exiting the interior of the building.

*Solid Waste/Recycling Plan.* Plant material used for extraction is stored in sealed airtight plastic bags that are stored in a locked storage unit and handled in accordance with Title 17 §40240 (f) of the California Code of Regulations. The process of storing plant material in sealed bags is conducted in a ventilated room; the slight odor that escapes during the packaging process dissipates once the storage bags are sealed. Cannabis waste material will be self-hauled to a solid waste facility. All cannabis self-haul waste transports are conducted only by the Applicant's employees. Routine non-cannabis garbage is discarded daily, and garbage removal service is provided weekly by Cal Waste 209.369.6887. For temporary dumpster services the Company will use Waste Management Services WM.com

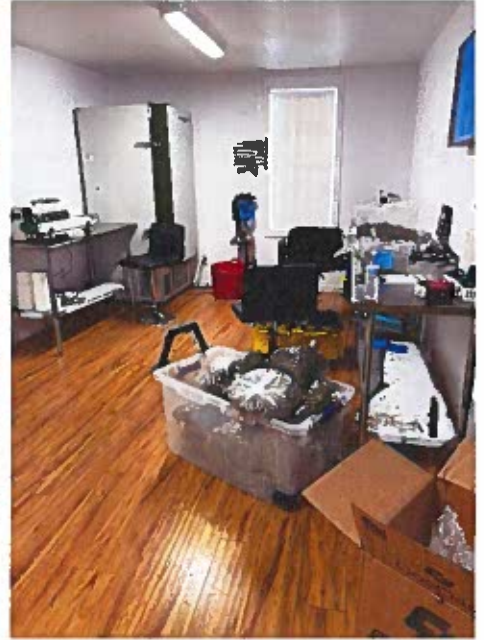
**Exhibit B**  
**Aerial Photo of Site**

**Location Map**  
**51 Main Street**





**Exhibit C**  
**Photos of the Building**





# Exhibit D Youth Facilities Map

## CITY OF ISLETON COMMERCIAL CANNABIS OPERATIONS PROGRAM YOUTH FACILITY BUFFER AREA



## **Exhibit E**

### **General Plan Consistency Review**

The following are excerpts from the General Plan to evaluate project consistency:

The Main Street center is the area which first encouraged the use of a redevelopment program in Isleton. A study financed by the property owners in 1982 illustrated the potential for rehabilitation of this seriously deteriorated 2-block area which lays immediately south of the State Highway, west of H Street. Most buildings of this center were rebuilt in the 1920's after a fire burned out the entire area. Today, the Main Street center occupies both sides of the street between D and H Streets. While most of the buildings suffer from long-deferred maintenance, most are also capable of rehabilitation. At an elevation of about 5 feet above sea level, Main Street was not flooded in 1972.

As the Chinn study of 1982 indicated, new facades and utilities can be installed at relatively modest cost. If the entire Main Street center were to be improved as a unit, values would increase markedly and private investment would be attracted. However, the extent of new investment attracted would depend in large part on Isleton. Improvement of the waterfront as a park and landscape open space corridor, with fishing access, boat docks and other water-oriented recreation is envisioned as a catalyst to eventually achieve Main Street and Second Street renewal.

Major features proposed for the CCD include the following:

1. Application of an architectural theme for all new buildings and remodeling. While the CCD, and especially the Main Street center, has had a long history of ethnic development, existing facades do not suggest a particular unified standard of architectural design. As proposed by the Chinn study, individual buildings would be aesthetically renovated, embellished and preserved to reflect their original character as part of an early 20<sup>th</sup> Century small town in the Delta.
2. Development of Second Street and Main Street as a central landscaped corridor with 45 degree angle parking, mid-block crosswalks, pedestrian connections to the waterfront, street furniture and modern street lighting on historically designed standards.
3. A strong visual commercial, street and landscaped linkage with development of the redevelopment project area east of H Street.
4. Complementary angled parking and landscaping for other streets within the CCD which are either perpendicular or parallel to the Second/Main Street corridor.

### **Development Standards for Commercial Areas**

The following development standards shall apply within commercial area:

1. All lands within the Redevelopment Project Area shall be subject to such additional standards for Site Plan and Architectural Review as may be imposed by the City. Proposed projects shall first be approved conceptually by the Redevelopment Agency as to use prior to Site Plan Review by the City Planning Commission. The role of the Agency is to determine whether a proposal is consistent with the purposes of the Redevelopment Plan. The Planning Commission and City Council determine land use policy as contained in the General Plan and through zoning consistent with the General Plan. Temporary uses, including light industrial, may be approved under agreement between the City and applicant on the condition that the applicant will remove all temporary uses at his expense at such time as the City determines that the property is needed for permanent use under the General Plan and Redevelopment Plan.
2. Commercial site boundaries adjacent to residential areas shall be visually screened with ornamental masonry walls and landscaping.

3. All outdoor storage areas shall be visually screened with ornamental fencing or walls, and landscaping.
4. Shade trees shall be provided within off-street parking areas as determined by the Planning Commission under Site Plan Review. Generally, the standard shall be a ratio of one tree per five spaces, placed along the line between parking bays, with trees at both ends of a line of parking spaces, served by automatic irrigation.
5. Street trees and frontage landscaping, with automatic irrigation, shall be provided for all commercial sites in accordance with a list of street trees approved by the City.

**Exhibit F**  
**Planning Commission Resolution for CUP 02-22 and DA 2022-01**

**RESOLUTION PC04-22**

**A RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF ISLETON RECOMMENDING APPROVAL TO THE CITY COUNCIL OF  
CONDITIONAL USE PERMIT CUP 02-22**

The Planning Commission of the City of Isleton hereby finds as follows:

**WHEREAS**, on [October 10, 2022], Mark Mickelson, the majority owner of TPCC Incorporated doing business as the Isleton Cannabis Company (“Applicant”), submitted a planning application to the City of Isleton for Conditional Use Permit CUP 02-22 and Development Agreement DA 2022-01, for continued operation of a commercial cannabis operation including cannabis manufacturing (cannabis oils and cannabis infused items), delivery (cannabis products to consumers), distribution (cannabis products to wholesalers, testing facilities and retail dispensaries), and new micro-business operation at 51 Main Street, Isleton, CA, APN# 157-0032-024-0000 (“Project”); and

**WHEREAS**, the Project application was submitted in accordance with the City of Isleton Municipal Code; and

**WHEREAS**, A duly noticed public hearing to consider the project was advertised for December 2, 2022; and

**WHEREAS**, the projects is exempt from environmental review in accordance with Section 153301 of the California Environmental Quality Act (CEQA) Guidelines as an existing facility; and

**WHEREAS**, at said hearing, the Planning Commission considered the staff report dated December 1, 2022; and

**WHEREAS**, on December 6, 2022, the Planning Commission conducted a public hearing on this Conditional Use Permit CUP 02-22 and Development Agreement DA 2022-01; and

**WHEREAS**, in Accordance with Section 2307 of Ordinance 2018-08 the project is consistent with special findings as follows:

- a. The proposed location, size, and other development standards of the premises are consistent with state law and this chapter.
- b. A development agreement between the applicant and the City has been fully executed.
- c. That the conditions set forth in Section 2306(B)-(D) has been satisfied.

**WHEREAS**, this application has submitted the required information to find the operation is consistent with State law and City ordinances; and

**WHEREAS**, the General Plan designates the project site as commercial. As conditioned, the proposed use would be consistent with the General Plan; and

**WHEREAS**, the project complies with the Zoning Code as conditioned by this Conditional Use Permit; and

**WHEREAS**, in accordance with Section 1407 of the Zoning Code, the Planning Commission/City Council finds that the proposed project, under this conditional use permit, is consistent with the following:

a. That there are circumstances or conditions applicable to the land, structure or use which makes the granting of a use permit necessary for the preservation and enjoyment of a substantial property right.

b. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purposes of the district in which the site is located.

b. That the proposed use will comply with each of the applicable provisions of this ordinance; and

**WHEREAS**, this application satisfies all public safety information requirements in accordance with Ordinances 2306 and 2307, subject to specific conditions of approval; and

**WHEREAS**, the Project is exempt from California Environmental Quality Act (CEQA) review pursuant to §15301 and §15378 of the CEQA Guidelines, as the project would be located on an existing developed property with the same operations as occurring on the site that will not result in any significant impacts; and

**WHEREAS**, a development agreement has been prepared for this project. and will be executed upon final approval by the City Council.

**NOW, THEREFORE, BE IT RESOLVED** that the City of Isleton Planning Commission that:

**Section 1.** The Planning Commission adopts the above Recitals as its findings with respect to the Project; and

**Section 2.** The Planning Commission recommends the City Council approve the Conditional Use Permit CUP 02-22 and Development Agreement DA 2022-01, herein attached as Attachment 1 and made a part thereof for the project based on the findings made below and subject to the Conditions of approval:

**Planning Commission Recommended Conditions of Approval**  
**for Conditional Use Permit CUP 02-22**

1. The applicant/developer/operator shall agree to indemnify, defend, and hold harmless the City or its agents, officers, and employees from and against any and all claims, actions, demands or proceeding (including damage, attorneys' fees, and court cost awards) against the City or its agents, officers, or employees to attach, set aside, void, or annul an approval of the City, advisory agency, appeal board, or legislative body concerning the permit or entitlement when such action is brought within the applicable statute of limitations. In providing any defense under this paragraph, the applicant, business operator, property owner, and developer shall use counsel reasonably acceptable to the City. The City shall promptly notify the applicant, business operator, property owner, and developer of any claim, action, demand or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the developer/operator of any claim, action, demand or proceeding, or if the City fails to cooperate fully

in the defense, the developer/operator shall not thereafter be responsible to defend, indemnify, or hold harmless the City as to that action. The City may require that the developer/operator to post a bond, in an amount determined to be sufficient, to satisfy the above indemnification and defense obligation. Developer/operator understands and acknowledges that City is under no obligation to defend any claim, action, demand or proceeding challenging the City's actions with respect to the permit or entitlement.

2. The applicant/developer/operator shall be responsible to pay all sales, use, business, and other applicable taxes, and all license, registration, and other fees and permits required under federal, state, and local laws and pursuant to the Development Agreement for the project.
3. The applicant/developer/operator shall cooperate with the City with respect to any reasonable request to audit the business's books and records for the purpose of verifying compliance with the Municipal Code and this Conditional Use Permit and related Development Agreement, including, but not limited to, a verification of the amount of taxes required to be paid during any period.
4. Conditional Use Permit CUP 02-22 shall not be operational unless or until a Development Agreement is fully executed by the City and the Development Agreement remains valid.
5. Cannabis Conditional Use Permit CUP 02-22 shall be reviewed by the City after five (5) years at which point a determination of extension will be given (refer to City Ordinance 2018-08, Section 2307).
6. Cannabis Conditional Use Permit 02-22 shall be subjected to an annual planning review to ensure that the business practices have stayed within the bounds of the Conditional Use Permit or other permitted uses (refer to City Ordinance 2018-08, Section 2307).
7. No signage is permitted for the cannabis operations use (refer to City Ordinance 2018-04, Section 2307).
8. No cultivation of cannabis or marijuana may occur on the premises.
9. No consumption or use of cannabis or marijuana, beyond manufacturing, processing, delivery, or distribution, as allowed by this Conditional Use Permit may occur on the premises use (refer to City Ordinance 2018-08, Section 2307).
10. No retail sales or display may occur on the premises.
11. Any exterior alterations to the building, including paint colors, new or altered doors or windows, shall be subject to prior approval by the City Planning Department, and may be subject to further review by the Isleton Historic Preservation Board.
12. Cannabis Conditional Use Permit CUP 02-22 shall be subject to termination, notwithstanding any other provision in the City's Municipal Code, if (refer to City Ordinance 2018-08, Section 2307):
  - a. The owner of the commercial cannabis facility attempts to transfer the commercial cannabis facility to another individual not named in the conditional use permit application as an owner or person in charge;
  - b. The commercial cannabis facility ceases to operate at the premises described in the conditional use permit application; or
  - c. The commercial cannabis facility ceases to operate for sixty (60) consecutive calendar days.
13. All conditions of Conditional Use Permit CUP 02-22 are necessary to protect the general health, safety, and welfare of the public. If any condition of this entitlement is held to be invalid by a court, then



the whole entitlement shall be invalid. The City Council specifically declares that it would not have approved this entitlement unless all of the conditions herein are held as valid.

Attachment 1

OFFICIAL BUSINESS

Document entitled to free recording  
Government Code Section 6103

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Isleton  
101 2<sup>nd</sup> St.  
Isleton, CA 95641  
Attn: City Clerk

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(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY OF ISLETON  
AND TPCC INCORPORATED DBA THE ISLETON CANNABIS COMPANY  
51 MAIN STREET, ISLETON, CA 95641

## DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is made and entered into between the CITY OF ISLETON, a municipal corporation ("City"), and TPCC Incorporated DBA the Isleton Cannabis Company ("Developer"). City and Developer are hereinafter collectively referred to as the "Parties" and singularly as "Party."

### RECITALS

- A. **Authorization.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code section 65864 et seq. (the "Development Agreement Law"), which authorizes the City and any person having a legal or equitable interest in the real property to enter into a development agreement, establishing certain development rights in the Property, which is the subject of the development project application.
- B. **Public Hearing.** On December [\_\_], 2022, the City's Planning Commission, serving as the City's planning agency for purposes of development agreement review pursuant to Government Code section 65867, considered this Agreement and recommended approval of this Agreement to the City Council.
- C. **Environmental Review.** On December [\_\_], 2022, the City Council determined that the Project (as defined herein) is exempt from environmental review in accordance with Section 15301 for Existing Facilities of the California Environmental Quality Act, Guidelines.
- D. **Need for Services and Facilities.** Development and operation of the Project will result in a need for municipal services and facilities, including police and fire protection services.
- E. **Contribution to Costs of Facilities and Services.** Developer agrees to make the quarterly payments set forth herein, which payment may be used by the City for any legal purpose. City and Developer recognize and agree that but for Developer's quarterly payments City would not and could not approve use of the Property for the Project as provided by this Agreement. City's approval of this Agreement is in reliance upon and in consideration of Developer's agreement to make the payments required hereunder.
- F. **Public Benefits.** Development of the Project will result in significant public benefits, as more fully described hereinafter, including, without limitation:
  - 1. The provision of opportunities for employment;
  - 2. Implementation of Crime Prevention Through Environmental Design ("CPTED") development principles during the operation and maintenance of the Property; and
  - 3. The furtherance of the economic development goals and objectives of the City.
- G. **Developer Assurances.** In exchange for the benefits to the City in the preceding Recitals, together with the other public benefits that will result from the development of the Property, Developer will receive by this Agreement assurance that it may proceed with the Project in accordance with the items set forth herein.

H. **Consistency with General Plan.** Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, in City Ordinance No. 2018-02, the City found that this Agreement satisfies the Government Code Section 65867.5 requirement of general plan consistency.

NOW, THEREFORE, in consideration of the above Recitals and mutual promises, conditions and covenants of the Parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **AGREEMENT**

1. **Definitions.** In this Agreement, unless the context otherwise requires, terms have the following meaning. Capitalized terms within the Exhibits not defined below have the meaning set out in the Exhibits.
  - 1.1. "Adopting Ordinance" means Ordinance No. 19-05, adopted by the City Council March 12, 2019, which approves this Development Agreement as required by the Development Agreement Law.
  - 1.2. "Agreement" means this Development Agreement, inclusive of all Exhibits attached hereto.
  - 1.3. "Authorized Operator" means a fully-licensed operator engaged by the Developer and approved by the City to operate portions of the Project on behalf of the Developer.
  - 1.4. "CEQA" means the California Environmental Quality Act, as set forth at California Public Resources Code, Division 13, commencing at Section 21000 and the CEQA Guidelines as set forth in Title 14 of the California Code of Regulations commencing at Section 15000.
  - 1.5. "City" means the City of Isleton, including its agents, officers, employees, representatives and elected and appointed officials.
  - 1.6. "City Manager" means the City Manager of the City of Isleton, or his or her designee.
  - 1.7. "Conditional Use Permit" means the Conditional Use Permit for the Project approved by the Planning Commission on December [\_\_\_], 2022, as that Conditional Use Permit may be modified or amended from time-to-time.
  - 1.8. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of an entity's management or policies, whether through the ownership of voting securities, by contract, or otherwise.
  - 1.9. "Development Agreement Law" means Government Code section 65864 et seq. and the procedures and requirements for the consideration of development agreements contained in Ordinance No. 2018-02. In the event of a conflict, the requirements of Government Code Section 65864 et seq. shall control.
  - 1.10. "Developer" means TPCC Incorporated DBA the Isleton Cannabis Company , together with any Successor duly approved by the City in accordance with the terms of this Agreement.

- 1.11.** "Effective Date" means that day on which the Adopting Ordinance shall be effective. The Adopting Ordinance shall be effective thirty (30) days after its adoption by the City Council, unless the Adopting Ordinance becomes subject to a qualified referendum, in which case, the Effective Date shall be the day after the referendum election, if the Adopting Ordinance is approved by a majority of the voters. Litigation filed to challenge the Adopting Ordinance or this Agreement shall not affect the Effective Date, absent a court order or judgment overturning or setting aside the Adopting Ordinance, or staying the Effective Date, or remanding the Adopting Ordinance to the City. Notwithstanding the foregoing, this Agreement shall not become effective until fully executed.
- 1.12.** "Facility" has the meaning of the term "commercial cannabis facility" set forth in Section 2301, Subsection G of the Municipal Code and includes the physical improvements to the Property used by Developer to conduct its operations.
- 1.13.** "Fees" means all charges, expenses, costs, monetary exactions and any other monetary obligations imposed on Developer by the City, other than assessments or regular or special taxes and shall not be limited to fees paid pursuant to this Agreement.
- 1.14.** "General Plan" means the General Plan of the City including the text and maps, as approved and updated by the City in 2014, plus any other General Plan amendments approved by the City on or before the Effective Date.
- 1.15.** "Gross Receipts from Operations" means total revenue derived, directly or indirectly, or actually received or receivable from operation of the Facility, including: all sales; the total amount of compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, or the fair market value thereof, for which a charge is made or credit allowed, whether or not such act or service is done as part of or in connection with the sale of materials, goods, wares or merchandise; and gains realized from trading in stocks or bonds, interest discounts, rents, royalties, fees, commissions, dividends, or other remunerations, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:
- 1.15.1.** Cash discounts allowed and taken on sales;
  - 1.15.2.** Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as "gross receipts";
  - 1.15.3.** Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
  - 1.15.4.** Such part of the sale price of property returned by purchasers upon rescission of a contract of sale as is refunded either in cash or by credit; and
  - 1.15.5.** Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded. Interorganizational sales

or transfers between or among the units of a parent-subsidary controlled group of corporations or other related legal entities as defined by 26 U.S.C. 1563(a)(1) or otherwise, or between or among the units of a brother-sister controlled group of corporations or other related legal entities as defined by 26 U.S.C. 1563(a)(2) or otherwise, whereby no Gross Receipts are generated or exchanged, directly or indirectly, pursuant to the interorganizational sales or transfers, discounted or otherwise.

The intent of this definition is to ensure that in calculating the payment required under Section 10.1, all sales of cannabis products shipped through or from the Facility are captured, regardless of whether the product is sold and/or shipped directly from the Facility to a consumer, retailer, or wholesaler within or outside the City limits of Isleton, or to another cannabis facility that then distributes the product to the consumer, retailer, or wholesaler within or outside the City of Isleton. This definition shall therefore be given the broadest possible interpretation consistent with this intent, as it does not pertain to a definition of "gross receipts" for purposes of a tax, subject to rules of apportionment under the Constitution of United States, Art. I, § 8, cl. 3, or the California Constitution. It is hereby recognized that the fee herein required to be paid by the Developer to the City of Isleton is in exchange for and pursuant to this Development Agreement, and not for the privilege of doing business within the City of Isleton or legally incident on those engaged in such business within the City of Isleton.

- 1.16. "Commercial Property" means that certain real property located at 51 Main Street, in the City of Isleton, County of Sacramento. A legal description of the Commercial Property is contained in **Exhibit B**.
- 1.17. "Law" means the case law, ordinances, statutes, rules, regulations, or any order, decree or directive of any court or any local, regional, state or federal government agency, unless the context suggests a different meaning.
- 1.18. "Municipal Code" means the Municipal Code of the City of Isleton. As of May 1, 2018, the Isleton Municipal Code is in the process of being codified. Until such time as the City Council adopts the codified version of the Municipal Code, the draft Municipal Code, which is a compilation of the City's adopted ordinances shall be used as reference to the City's laws.
- 1.19. "Planning Commission" means the City of Isleton Planning Commission.
- 1.20. "Project" means the physical improvement and use of the Property as a cannabis manufacturing, delivery and distribution facility. The "Project" is further defined in **Exhibit A** to this Agreement, and supplemented by the provisions of this Agreement.
- 1.21. "Project Approvals" means the entitlements that are the subject of this Agreement, consisting of the following land use approvals:
  - 1.21.1. A Conditional Use Permit; and
  - 1.21.2. This Development Agreement, as adopted on December [ ], 2022, by City Ordinance No. 2022-004 (the "Adopting Ordinance").



- 1.22. "Property" means 51 Main Street of the Commercial Property consisting of [\_\_\_\_] square feet. A site plan showing the Property occupied by the Facility is contained in **Exhibit C**.
  - 1.23. "Property Lease" means that certain Commercial Real Property Lease dated July 1, 2022 between Viking Enterprises, LLC as owner and TPCC Incorporated as Developer and as lessee of the Property.
  - 1.24. "Public Safety and Security Plan" has the meaning set forth in Section 10.2.1.
  - 1.25. "Successor" or "Successor in Interest" means any subsequent entity or individual that acquires all or any portion of Developer's interest in the Property; provided, however, that no Successor shall acquire any rights pursuant to this Agreement unless and until that Successor is approved by the City and complies with all applicable requirements of Section 15 of this Agreement.
2. **Incorporation of Recitals.** The Recitals and all defined terms set forth above are hereby incorporated into this Agreement as if set forth herein in full.
3. **Description of the Project.** The Project consists of occupying an existing industrial building to operate a cannabis manufacturing, delivery and distribution business. Developer's operations are more fully described in **Exhibit A**. Developer shall ensure that the Project is operated in accordance with Exhibit A at all times. In the course of operating the Project, Developer may enter into an agreement with an Authorized Operator to operate the Project. The engagement of any Authorized Operator shall be reviewed by the City and require the prior written consent of the City. Any such agreement between the Developer and any Authorized Operator shall provide that:
  - 3.1. The Authorized Operator shall make payments in accordance with Section 10.1.1 of this Agreement; and
  - 3.2. The Authorized Operator shall be subject to the record keeping, reporting, and audit requirements described in Section 10.1.2 of this Agreement; and
  - 3.3. The Authorized Operator shall maintain all licensing necessary to operate those portions of the Project that the Authorized Operator has been engaged to operate.
4. **Description of Property.** The Property, which is the subject of this Agreement, is defined in Section 1.21.
5. **Relationship of City and Developer.** This Agreement is a contract that has been negotiated and voluntarily entered into by City and Developer. It is agreed among the parties that the Project is a private development and that the relationship of the Developer and City is and at all times shall remain solely that of the City as a regulatory body and the Developer as the property owner. The City and Developer hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Developer undertaking a joint venture or partnership.
6. **Representations, Warranties and Acknowledgments.**

- 6.1. **Interest in Property.** Developer represents and warrants that as of the Effective Date, Developer is the lessee of the Property under the Property Lease, and as such holds a leasehold interest in and to the Property. Developer further represents that all persons holding legal or equitable interest in the Property have consented to the Agreement.
  - 6.2. **Authority.** The Parties represent and warrant that the persons signing this Agreement are duly authorized to enter into and execute this Agreement on behalf of their respective principals.
  - 6.3. **Brokers.** The Parties agree that the City has had no dealings with any real estate broker or agent in connection with the negotiation of this Agreement, and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Agreement. In the event any real estate broker or agent shall come forward and claim the right to a commission or other form of compensation in connection with this Agreement, Developer shall indemnify, defend and hold harmless the City in accordance with Section 14.1.
  - 6.4. **Procedures and Requirements.** The Parties acknowledge that this Agreement is subject to the procedures for approval, amendment and administration set forth in the Development Agreement Law.
7. **Effective Date and Term.**
- 7.1. **Effective Date.** The Effective Date of this Agreement means the date defined at Section 1.10 of this Agreement.
  - 7.2. **Term.** The term of this Agreement shall commence on the Effective Date and shall continue in force until the first to occur of the following events: 1) this Agreement is terminated in accordance with terms set forth herein; or 2) Developer no longer has a legal interest in the Property or has ceased all operations on the Property.
  - 7.3. **Termination by Mutual Consent.** This Agreement may be terminated in whole or in part by the mutual written consent of all the Parties.
  - 7.4. **Termination for Failure to Obtain or Maintain Required State or Local Licenses.** If Developer fails to obtain or maintain in effect all state and local licenses required for the Project in accordance with Section 9.3.1, City may terminate this Agreement.
  - 7.5. **Termination Resulting from Governmental Action.** In the event legal action is initiated or threatened by any governmental jurisdiction other than the City on the grounds that approval or implementation of this Agreement (or any part) constitutes a violation of state or federal law, and the parties are unable to reach agreement between themselves and the governmental jurisdiction on amendments to this Agreement that will resolve the dispute and still preserve the material terms of this Agreement, then either party may terminate this Agreement without compliance with the Default Procedures set forth in Section 13. If this Agreement is terminated pursuant to this section, Developer shall immediately cease operations at the Facility, the Conditional Use Permit shall be automatically terminated, and the Parties shall have no further rights or obligations under this Agreement (other than the rights under Section 14, which survive termination).

**7.6. Termination Upon Surrender or Revocation of Conditional Use Permit.** If the Developer voluntarily surrenders the Conditional Use Permit, or if the Conditional Use Permit is revoked by the City, then Developer shall immediately cease operations at the Property and this Development Agreement shall terminate automatically, without further action required by either party. In such an event, Developer waives the default procedures set forth in Section 13 of this Agreement, including the notice and cure rights contained therein, and the Parties shall have no further rights or obligations under this Agreement (other than the rights under Section 14, which survive termination).

**7.7. Effect of Termination.** This Agreement was entered into by the Parties for the limited purpose of setting forth certain terms and conditions concerning the proposed development and operation of the Project in a manner that is consistent with the Project Approvals. Accordingly, nothing contained herein is intended or shall be construed to grant to Developer any rights in connection with the future development or operations of the Property, except for those rights set forth in this Agreement.

**8. Development of the Project.**

**8.1. Development Rights.** This Agreement was entered into by the Parties for the limited purpose of setting forth certain terms concerning the development and use of the Property by Developer. Accordingly:

**8.1.1.** Developer acknowledges that it has no existing "vested rights" (as that term is used in California land use law) concerning the Property or the Project.

**8.1.2.** Nothing contained herein is intended or shall be construed to grant to Developer any rights in connection with the future development or use of the Property, and the Parties agree that development and use of the Property shall be governed by the land use and other regulations in effect at the time of development and operation.

**8.1.3.** Except as expressly provided herein, nothing contained in this Agreement is intended or shall be construed to affect in any way the permitted uses of the Property, the density and intensity of use, the maximum height and size of buildings, or the reservation or dedication of land for public purposes which shall continue to be governed by the City's General Plan, the City's zoning code, and all other entitlements and ordinances now existing or which may be amended or enacted in the future.

**8.1.4.** The City expressly reserves the right to adopt and apply regulations to protect the City and its citizens from immediate risks to health and safety. The Developer hereby agrees that any regulation imposed by the City with respect to flood protection adopted in response to federal, state, or local guidelines, regulations, or directives, including without limitation the implementation of a moratorium on development activities, shall be deemed necessary to protect the public health and safety.

**8.2. Referendum.** Developer acknowledges that the Adopting Ordinance, which is a legislative land use approval, is potentially subject to referendum. Notwithstanding anything in this

Agreement to the contrary, Developer shall not acquire a vested right to any legislative land use approval (or to any amendment thereto): (1) while such approval or amendment is still potentially subject to referendum or (2) in the event that such approval or amendment is reversed by referendum.

**9. Applicable Rules, Regulations, Fees and Official Policies.**

**9.1. Rules Regarding Design and Construction.** Unless otherwise expressly provided in this Agreement, all other ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications, applicable to the Project and to public improvements to be constructed by the Developer shall be those in force and effect at the time the applicable permit approval is granted.

**9.2. Uniform Codes Applicable.** Unless otherwise expressly provided in this Agreement, any improvements to the Property undertaken by Developer shall comply with the California Building Standards Codes, Title 24 of the California Code of Regulations, as adopted and amended by the City, as the same shall be in effect as of the time of approval of the permit in question. Such improvements shall also comply with the provisions of the California Mechanical, Plumbing, Electrical and Fire Codes, and City construction specifications, in effect at the time of approval of the appropriate permits for the improvements. If no permit is required for a given improvement, such improvement will be constructed in accordance with said Codes in effect in the City as of the commencement of construction of such improvement.

**9.3. Laws and Regulations Applicable to Cannabis Activities; Obtaining and Maintaining Required Licenses.**

**9.3.1. General.** Developer shall at all times comply fully with all existing and future state and local rules applicable to Developer's activities on the Property and shall ensure such compliance by all of Developer's employees, contractors, vendors, customers, and members of the public invited or allowed access to the Property.

**9.3.2. Licensure of Operations.** Developer shall promptly apply for and obtain all State licenses required for the operations described in **Exhibit A**, as well as any local licenses required in the future by the City. Failure to obtain required state licenses within twelve (12) months following the date when the relevant state agencies begin accepting applications for such licenses, and failure to maintain required state or city licenses during the term of this Agreement, shall constitute a default under this Agreement and shall be grounds for termination.

**9.4. Fees, Dedications, Assessments and Taxes.**

**9.4.1. Payment of Development Impact and Other City Fees, Taxes, and Assessments.** Developer shall pay all impact and other City fees, taxes and assessments when due.

**9.4.2. Other Public Agencies.** Nothing in this Agreement is intended to govern the authority of other public agencies to impose fees.

9.4.3. **Public Works and Community Development.** Any public improvements and work performed by Developer in connection with the Project shall be to the satisfaction of the City Engineer and acceptance by the City Council (or by the City Engineer, if the City Council delegates authority to accept public improvements to the City Engineer).

**10. Additional Developer Obligations.**

**10.1. Payments to City.**

**10.1.1. Required Payment.** Developer and any Authorized Operator shall make quarterly payments to the City equal to one percent (1%) of Developer's and any Authorized Operator's Gross Receipts from Operations. Payments shall be made by the last day of the month following the end of each quarter (i.e., April 30<sup>th</sup> for the quarter running from January 1 through March 31). Payments shall be accompanied by such documentation as may be reasonably required by the City. The 1% fee on Developer's and any Authorized Operator's Gross Receipts is not a tax and is particularly not an indirect tax on any consumer such as a sales and use tax, but is rather a direct fee levied on the Gross Receipts of the Developer and any Authorized Operator as a condition of this Development Agreement that is not to be passed along to the ultimate consumer. If the Developer or any Authorized Operator chooses to pass the 1% fee along to any consumer, it shall be required to include such amounts collected from any consumer as Gross Receipts. This documentation will include (but may not be limited to) the transportation manifests for cannabis products received at or transported from the Facility, and an accounting of Gross Receipts from Operations during the previous quarter. Late payments shall include interest at a rate of ten percent (10%) per annum. Failure to make any payment required by this Agreement when due shall be a material breach of the Agreement subject to Cure under the provisions of Section 13.3. Payments to the City shall be made by check, direct deposit, wire transfer or other electronic form of payment that originates from a legal financial channel that has been agreed to in advance by both parties. Upon request and with a minimum of ten (10) business days' notice prior to payment due date, alternative forms of payment, including cash, may be authorized at the City's discretion.

**10.1.2. Reporting of Gross Receipts from Operations.**

(a) **Quarterly Receipts.** No later than the last day of the month following the end of each quarter, Developer shall deliver to City a report (the "Quarterly Report") showing (i) Gross Receipts from Operations for the immediate prior quarter received by Developer, and a cumulative total of all amounts of Gross Receipts from Operations received by Developer for the calendar year, (ii) a calculation of the quarterly payment due to City for the prior quarter, and (iii) a calculation of the cumulative total of all quarterly payments for the calendar year.

- (b) Statements of Receipts. Developer shall keep complete, accurate and appropriate books and records of all receipts from operations in accordance with generally accepted accounting principles. For purposes herein "books and records" shall mean all bookkeeping or accounting documents Developer utilizes in managing its business operations relating to the Project. Such books and records, as well as all other relevant documents as City shall reasonably require, shall, upon reasonable written notice, be open for inspection by City, its auditors or other authorized representatives. If, at any time during the Term, such books and records prove inadequate in the reasonable judgment of City to record the Gross Receipts from Operations as herein required, Developer shall, upon the written request of City, procure and maintain such books and records as shall be of a character and form adequate for such purpose. City shall have the right to audit and examine such books, records and documents and other relevant items in the possession of Developer, but only to the extent necessary for a proper determination of Gross Receipts from Operations, and all such books, records, documents and other items shall be held available for such audit and examination. Upon request by the City, Developer shall make all such books, records and documents available to the City, and provide removable copies thereof, within thirty (30) of the date of the City's request. The cost for any audit shall be shared equally by the Parties. Developer shall preserve such books, records, documents, and other items in Isleton for a period of not less than seven (7) years for the purpose of auditing or re-auditing these accounts upon reasonable notice; except that, if an audit is made within the seven-year period and Developer claims that errors or omissions have occurred, the books and records shall be retained and made available until those matters are resolved. City shall keep strictly confidential all statements of revenue furnished by Developer and all other information concerning Developer's operation of the Premises obtained by City as a result of the inspection, audit and examination privileges of City hereunder, except as otherwise required by law. If City receives a request for such information pursuant to the Public Records Act (California Government Code Section 6250 et seq.), City shall provide Developer notice of any such request prior to disclosing any such information. Within seven (7) years after the receipt of any statement of receipts under this Agreement, City at any time shall be entitled to carry out an audit of such revenue either by City or agent to be designated by City. If it shall be determined as a result of such audit that there has been a deficiency in any payment due under this Agreement made on the basis of such statement, then such deficiency shall become immediately due and payable. If such statement of revenue for the relevant year shall be found to have understated receipts by more than two percent and City is entitled to any additional payment as a result of said understatement, then Developer shall, in addition, pay all of City's reasonable costs and expenses connected with such audit, including the expense incurred in retaining such agent; otherwise City shall bear the cost and expense of such audit.



- (c) Copies of Tax Filings. Developer shall provide City with copies of any reports Developer is required to provide to the County of Sacramento or the State of California for sales, use or other tax purposes.

**10.1.3. Applicability of Future Revenue Mechanisms.** During the term of this Agreement, if the City imposes an alternative revenue mechanism specifically related to cannabis operations (e.g. a cannabis tax), developer agrees to pay to City the greater of the payment required under such alternative revenue mechanism or the payment required by this Section. As used in this Section, "alternative revenue mechanisms" do not include taxes, fees, or assessments levied on or collected from both cannabis and non-cannabis operations. Payments required by revenue mechanisms that are not limited to cannabis operations shall be in addition to, and not in lieu of, payments under this Section.

**10.2. Public Safety and Security.**

**10.2.1. Public Safety and Security Plan.** Prior to acceptance of any cannabis product at the Facility, and prior to any manufacturing activities at the Facility, Developer shall have prepared and submitted to City a Public Safety and Security Plan ("Plan") acceptable to the City in the reasonable exercise of City's discretion. The Plan shall include and address all aspects of public safety and security, including but not limited to the following interior and exterior security and fire/life safety issues:

- (a) Physical security measures, including perimeter fencing, security cameras and other monitoring equipment, and internal security controls.
- (b) Implementation of CPTED (Crime Prevention Through Environmental Design) measures.
- (c) Protocols for loading and unloading, storage, and transportation of cannabis products.

At least annually, and at other times upon request by either party, Developer and City staff shall meet to review the Plan and operations of the Facility. Developer shall promptly revise the Plan to address deficiencies identified by Developer or the City (e.g. major incidents, high volume of calls for service, etc.) so that the Facility is operated at all times in a manner that ensures the safety and security of the public and Developer's employees, and the physical security of the Facility and products stored therein.

**10.2.2. Signage.** Signage for the Project and Facility shall conform to the requirements of the City's Sign Ordinance (Article 12, Section 1204 of the Municipal Code).

**10.2.3. Reporting of Incidents.** Developer shall promptly report to the police department breaches of security and criminal activities occurring at the Facility.

**10.3. Notification to City of Intent to Relocate.** Developer shall provide City with ninety (90) days written notice prior to relocating operations within or outside of the City. For

relocations within the City, delays in notice may result in delays in issuing a new conditional use permit for the proposed new location.

11. **Amendment.** This Agreement may be amended in writing from time to time by mutual consent of the Parties hereto and in accordance with the procedures required by the Development Agreement Law.
12. **Annual Review of Agreement.**
  - 12.1. **Review Date.** The annual review date of this Agreement (the "Review Date") as required by Development Agreement Law shall be approximately twelve (12) months from the Effective Date and every twelve (12) months thereafter.
  - 12.2. **Procedures.** The procedures for annual review shall be as set forth in the Development Agreement Law.
  - 12.3. **Fee for Annual Review.** The reasonable cost for the City's annual review of this Agreement shall be paid by Developer, not to exceed the actual costs incurred by the City in connection with the review.
13. **Default.**
  - 13.1. **Default.** The failure of either party to perform any obligation or duty under this Agreement within the time required by this Agreement shall constitute an event of default. For purposes of this Agreement, a Party asserting that the other Party is in default shall be referred to as the "Complaining Party" and the other Party shall be referred to as the "Defaulting Party."
  - 13.2. **Notice.** The Complaining Party may not place the Defaulting Party in default unless it has first given written notice to the Defaulting Party, specifying the nature of the default and the manner in which the default may be cured, if known to the Complaining Party. Any failure or delay by the Complaining Party in giving such notice shall not waive such default or waive any of the Complaining Party's remedies.
  - 13.3. **Cure.** The Defaulting Party shall have thirty (30) days from the receipt of notice to cure the default. In the case of monetary defaults (e.g. failure to make the payments required by Section 9.1.1), any default must be cured completely within this thirty (30) day period. In the case of non-monetary defaults, if the default cannot be reasonably cured within such time, the default shall be deemed cured if: (1) the cure is commenced at the earliest practicable date following receipt of notice; (2) the cure is diligently prosecuted to completion at all times thereafter; (3) at the earliest practicable date (but in no event later than thirty (30) days after receiving the notice of default), the Defaulting Party provides written notice to the Complaining Party that the cure cannot be reasonably completed within such thirty (30) day period; and (4) the default is cured at the earliest practicable date, but in no event later than one hundred twenty (120) days after receipt of the first notice of default.
  - 13.4. **Remedies.** If the Defaulting Party fails to cure a default in accordance with the foregoing, the Complaining Party shall have the right to terminate this Agreement upon notice to

the Defaulting Party and the Complaining Party may pursue all remedies available by law or in equity, including specific performance and injunctive relief.

- 13.5. **Additional Procedures and Remedies.** The Parties acknowledge that the foregoing default procedures and remedies are in addition to, and not in lieu of, the procedures and remedies set forth in Article 14, Section 1414 of the Municipal Code, and Developer waives the argument that any default taken against Developer is not valid for failing to comply with the procedures and remedies set forth in Article 14, Section 1414.
- 13.6. **Waiver of Damages.** Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge that the City would not have entered into this Agreement had it been exposed to liability for damages from Developer, and that therefore, Developer hereby waives all claims for damages against the City for breach of this Agreement. Developer further acknowledges that under the Development Agreement Law, land use approvals (including development agreements) must be approved by the City Council and that under law, the City Council's discretion to vote in any particular way may not be constrained by contract. Developer therefore waives all claims for damages against the City in the event that this Agreement or any Project Approval is: (1) not approved by the City Council or (2) is approved by the City Council, but with new changes, amendments, conditions or deletions to which Developer is opposed. Developer further acknowledges that as an instrument which must be approved by ordinance, a development agreement is subject to referendum; and that under law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and Developer waives all claims for damages against the City in this regard.
- 13.7. **Effect of Termination of Agreement on Conditional Use Permit.** Developer agrees that termination of this Agreement in accordance with this Section 12 shall also result in the automatic termination of the Conditional Use Permit.

14. **Insurance and Indemnity.**

- 14.1. **Indemnification, Defense and Hold Harmless.** Developer shall indemnify, defend, and hold harmless to the fullest extent permitted by law, the City and its officer, officials, consultants and employees ("Indemnitees") from and against any and all claims, liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with the Project, the Project Approvals or the Property (including any challenge to the validity of any provision of this Agreement or the Project Approvals, or Developer's failure to comply with any of its obligations in this Agreement, or Developer's failure to comply with any current or prospective Law); provided, however, that Developer shall have no obligations under this section for such loss or damage which was caused by the sole negligence or willful misconduct of the City. This indemnification obligation shall survive this Agreement and shall not be limited by any insurance policy, whether required by this Agreement or otherwise.
- 14.2. **Insurance.**
- 14.2.1. **Public Liability and Property Damage Insurance.** At all times that Developer is constructing any improvements to the Property, Developer shall maintain in

effect a policy of comprehensive general liability insurance with a per-occurrence combined single limit of one million dollars (\$1,000,000) and a deductible of not more than fifty thousand dollars (\$50,000) per claim. The policy so maintained by Developer shall name the City as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

14.2.2. **Workers' Compensation Insurance.** At all times that Developer is constructing any improvements, Developer shall maintain workers' compensation insurance for all persons employed by Developer for work at the Project site. Developer shall require each contractor and subcontractor similarly to provide workers' compensation insurance for its respective employees. Developer agrees to indemnify the City for any damage resulting from Developer's failure to maintain any such insurance.

14.2.3. **Evidence of Insurance.** Prior to commencement of construction of any improvements, Developer shall furnish City satisfactory evidence of the insurance required by this Sections 14 and evidence that the carrier is required to give the City at least fifteen (15) days prior written notice of the cancellation or reduction in coverage of a policy. The insurance shall extend to the City, its elective and appointive boards, commissions, officers, agents, employees and representatives and to Developer performing work on the Project. Developer shall additionally furnish City satisfactory evidence of the insurance coverage required under this Section whenever a policy is renewed, changed without impact to coverage, or at City's request.

15. **Assignment and Transfers of Rights and Interest; Binding Effect on Successors.**

15.1. **Assignment.**

15.1.1. **Assignment of Rights Under Agreement.** Developer may not transfer or assign its interests under this Agreement, in whole or in part, without the prior written consent of the City, which may not be reasonably withheld.

15.1.2. **Subsequent Assignments.** Any Successor may assign its rights under this Agreement by complying with the procedures set forth in this Agreement.

15.2. **Transfer of Control.** No change in Developer's leasehold interest or in the composition of Developer's leasehold interest shall be made, and no transfer of the Property Lease or any sublease of the Property shall be made, without providing the City with prior written notice. If the change, transfer or sublease changes Control over the use of the Property, the operations of Developer, or the actions or activities of Developer, then the prior written consent of the City must be obtained before the change, transfer or sublease, which consent may be withheld for any reason.

15.3. **Transferability to New Location.** In the event Developer moves operations from the Property to another location within the City, Developer agrees that the City may require that the rights and obligations set forth in this Agreement transfer to the new location. Developer and City agree to work cooperatively and collaboratively on any amendments

to this Agreement that may be necessary in view of the transfer of Developer's operations to the new location.

- 15.4. **Runs with the Land.** Except as otherwise provided in this Agreement, and for so long as this Agreement remains in effect, all of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assignees, representatives, sub-lessees, and all other persons acquiring the Developer's interest in the Property, whether by operation of law or in any manner whatsoever; provided that no successor or assignee of Developer may obtain the benefits hereunder unless the City has consented to assignment of those rights as set forth in Section 14.1. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1466 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, or with respect to any leasehold interest in the Property: (a) is for the benefit of such properties and is a burden upon such properties; (b) runs with such properties; and (c) is binding upon each Party and each successive owner during its ownership of such leasehold interest in the Property or any portion thereof, and shall be a benefit to and a burden upon each Party and its property hereunder and each other person succeeding to an interest in such properties.

16. **Miscellaneous.**

- 16.1. **Estoppel Certificate.** Either Party may at any time request the other Party to certify in writing that: (1) this Agreement is in full force and effect; (2) this Agreement has not been amended except as identified by the other Party; and (3) to the best knowledge of the other Party, the requesting Party is not in default, or if in default, the other Party shall describe the nature and any amount of any such default. The other Party shall use its best efforts to execute and return the estoppel certificate to the requesting Party within thirty (30) days of the request. The City Manager shall have authority to execute such certificates on behalf of the City.
- 16.2. **Recordation.** This Agreement shall not be operative until recorded with the Sacramento County Recorder's office. Developer shall record this Agreement against the Property at its expense with the County Recorder's office within ten (10) days of the Effective Date and shall cause any amendment to this Agreement or any instrument affecting the term of this Agreement to be recorded within ten (10) days from date on which the same become effective. Any amendment to this Agreement or any instrument affecting the term of this Agreement which affect less than all of the Property shall contain a legal description of the portion thereof that is the subject of such amendment or instrument. Alternatively, Developer and City may execute the instrument entitled "Memorandum of Development Agreement" attached hereto as **Exhibit D**, which shall be recorded against the Property, in lieu of recording the entire Agreement.
- 16.3. **Notices.** All notices required by this Agreement or the Development Agreement Law shall be in writing and personally delivered or sent by certified mail, postage prepaid, return receipt requested.

Notice required to be given to the City shall be addressed as follows:

CITY OF ISLETON  
101 2<sup>nd</sup> St.  
Isleton, CA 95641  
Attn: Charles Bergson, City Manager  
(916) 777-7770

with copies to:

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
400 Capitol Mall, 27th Floor  
Sacramento, CA 95814  
Attn: Andreas Booher, City Attorney  
(916) 321-4500

Notice required to be given to the Developer shall be addressed as follows:

TPCC Incorporated dba the Isleton Cannabis Company  
Attn: Mark Mickelson  
2850 W. Horizon Ridge Parkway, Suite 200  
Henderson, NV 89052  
(310) 295-2221

Either Party may change the address stated herein by giving notice in writing to the other Party, and thereafter notices shall be addressed and transmitted to the new address. All notices shall be deemed received on the earlier of the date of personal delivery or the date shown on the return receipt.

- 16.4. **References to Municipal Code.** This Agreement contains references to articles and sections of the City's Municipal Code. If, after the Effective Date, the City amends or renumbers its Municipal Code, then the references in this Agreement shall be understood to apply to the amended or renumbered Municipal Code.
- 16.5. **Construction of Agreement.** The provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions hereof, in order to achieve the objectives and purpose of the parties hereunder. The captions preceding the text of each Article, Section, and subsection hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders and vice versa.
- 16.6. **Third Party Beneficiaries.** This Agreement is entered into for the sole benefit of the Parties and any Successors. No other party shall have any cause of action or the standing to assert any rights under this Agreement.
- 16.7. **Attorneys' Fees and Costs in Legal Actions by Parties to the Agreement.** Should any legal action be brought by either Party for breach of this Agreement or to enforce any



provisions herein, each Party shall bear its own costs (including attorneys' fees) and neither Party shall be entitled to recover such costs from the other Party.

- 16.8. **Liability of City Officials.** No City official or employee shall be personally liable under this Agreement.
- 16.9. **Delegation.** Any reference to any City body, official or employee in this Agreement shall include the designee of that body, official or employee, except where delegation is prohibited by law.
- 16.10. **Severability.** Should any provision of this Agreement be found invalid or unenforceable by a court of law, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.
- 16.11. **Integration.** This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersedes any previous oral or written agreement. This Agreement may be modified or amended only by a subsequent written instrument executed by all of the Parties.
- 16.12. **Counterparts.** This Agreement may be signed in one (1) or more counterparts, and will be effective when the Parties have affixed their signatures to counterparts, at which time the counterparts together shall be deemed one (1) original document; provided, however, that all executed counterparts are provided to the City Clerk.
- 16.13. **Interpretation.** The Parties acknowledge that this Agreement has been negotiated by both Parties and their legal counsel and agree that this Agreement shall be interpreted as if drafted by both Parties.
- 16.14. **Inconsistency.** In the event of any conflict or inconsistency between the provisions of this Agreement and the Project Approvals or Exhibits, this Agreement shall prevail.
- 16.15. **Incorporation.** The Recitals, Exhibits, and all defined terms in this Agreement are part of this Agreement.
- 16.16. **Applicable Law and Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of California without regard to principles of conflicts of law. In the event of litigation arising under this Agreement, venue shall reside exclusively in the Superior Court of the County of Sacramento or, in the event of federal litigation, the Eastern District of California.
- 16.17. **Time of the Essence.** Time is of the essence of this Agreement.

*(Signatures on Next Page)*

IN WITNESS WHEREOF, the Parties hereto are executing this Agreement on the dates set forth below, to be effective as of the Effective Date.

“CITY”

CITY OF ISLETON,  
Municipal corporation

By: \_\_\_\_\_

Name: [ \_\_\_\_\_ ]

Its: Mayor

Dated: December [\_\_], 2022

“DEVELOPER”

TPCC Incorporated

By: \_\_\_\_\_

Name: Mark Mickelson

Its: Chairman

Dated: December [\_\_], 2022

ATTEST:

\_\_\_\_\_  
Yvonne Zepeda, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Andreas Booher, City Attorney

List of Exhibits:

Exhibit A: Project Description

Exhibit B: Legal Description of the Property

Exhibit C: Site Plan Showing Location of the Facility on the Property

Exhibit D: Memorandum of Development Agreement

**Exhibit A**

**Project Description**

TPCC Incorporated DBA the Isleton Cannabis Company ("Developer") proposes to develop and operate a legal cannabis manufacturing, delivery and distribution facility at 51 Main Street in Isleton, California (APN 157-0032-024-0000) pursuant to a City-issued Conditional Use Permit

**Exhibit B**

**Legal Description of the Property**

Real property in the City of Isleton, County of Sacramento, State of California, described as follows:

Lot 10, Block 49, occupying 3523 sq. ft. / 0.08 acres, recorded by S048017 - Final Map Book 48, Page 17 in the City of Isleton, CA. One building, built in 1925, occupying 2088 sq. ft. sits on the property.

APN: 157-0032-024-0000

Exhibit C

Site Plan Showing Location of the Facility and the Property

Location Map  
51 Main Street



**Exhibit D**

**Memorandum of Development Agreement**

Recording Requested by and

When Recorded Return to:

City of Isleton  
101 2<sup>nd</sup> St.  
Isleton, CA 95641

No recording fee required pursuant to  
Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**MEMORANDUM OF DEVELOPMENT AGREEMENT  
TPCC Incorporated DBA the Isleton Cannabis Company**

THIS MEMORANDUM OF DEVELOPMENT AGREEMENT ("Memorandum") is made this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the CITY OF ISLETON, a municipal corporation ("City"), TPCC Incorporated DBA the Isleton Cannabis Company ("Developer") and Viking Enterprises, LLC ("Owner") collectively referred to as the "Parties." Developer is the lessee under the terms of that certain unrecorded lease dated July 1, 2022, by and between Developer and Owner.

City and Developer are Parties to that certain "Development Agreement" approved by Ordinance 2022-004 (the "Development Agreement"), the terms and conditions of which are hereby incorporated by this reference as if set forth in full herein. The Development Agreement applies to the development and operation of a "Facility" (as defined in the Development Agreement) that is located on certain real property situated in the County of Sacramento, State of California, and legally described as follows (the "Property"):

"CITY"

CITY OF ISLETON,  
a municipal corporation

By: \_\_\_\_\_  
Name: [\_\_\_\_\_] ]  
Its: Mayor  
Dated: December [\_\_], 2022

"DEVELOPER"

TPCC Incorporated

By: \_\_\_\_\_  
Name: Mark Mickelson  
Its: Chairman  
Dated: December [\_\_], 2022

"OWNER"

By: \_\_\_\_\_  
Name: Mark Mickelson on behalf of Viking Enterprises, LLC  
Its: President  
Dated: December [\_\_], 2022

**RECORDATION OF THIS CERTIFICATE IS THE RESPONSIBILITY OF THE REQUESTING PARTY.**

*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.*

Acknowledgment

State of California        }  
County of Sacramento    }

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

\_\_\_\_\_  
\_\_\_\_\_, Notary Public

*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.*

Acknowledgment

State of California        }  
County of Sacramento    }

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

\_\_\_\_\_  
\_\_\_\_\_, Notary Public



## **Exhibit A to Memorandum of Agreement**

### **Legal Description**

Real property in the City of Isleton, County of Sacramento, State of California, described as follows:

Lot 10, Block 49, occupying 3523 sq. ft. / 0.08 acres, recorded by S048017 - Final Map Book 48, Page 17 in the City of Isleton, CA. One building, built in 1925, occupying 2088 sq. ft. sits on the property.

APN: 157-0032-024-0000

**Exhibit A to Memorandum of Agreement (continued)**

**Location Map  
51 Main Street**



# City of Isleton

## Planning Commission Staff Report

DATE: December 6, 2022

ITEM#: 7.A

CATEGORY: New Business

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### **The Meadows RV Park Project located at 301, 401, 501 Jackson Slough Rd Status Report**

#### **SUMMARY**

This project application was received on October 21, 2022. In accordance with the California Environmental Quality Act (CEQA) staff has prepared an environmental initial study for the project and is in the process of circulating this document for agency and public comment for the mandated 30 day review. Commissioners are welcome to obtain a copy of the initial study document from staff when it is circulated later this week upon request. Once staff received public/agency comments on the initial study, responses to comments will be assembled and a final initial study will be prepared. Once staff has prepared the final document the project will be ready to notice this item for public hearing with the Planning Commission (sometime in January or possibly February, 2023), depending on the extent of comments received and what information may be needed to respond.

#### **RECOMMENDATION**

No action required

