

STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

PERFORMANCE AGREEMENT

This Performance Agreement (the "Agreement") is made effective on June 28, 2023 (the "Effective Date") by and among LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC., a Texas nonprofit corporation (hereinafter referred to as "LEDA"), the CITY OF LUBBOCK, TEXAS, a Texas home rule municipality (hereinafter referred as "City"), and PLANT-AS-DNPS-003-1 LLC, a Delaware limited liability company (along with its affiliates, subsidiaries, and designees, collectively hereinafter referred to as "Recipient"), by and through their duly authorized officers and affiliate organizations under the terms and conditions that follow.

WHEREAS, LEDA is an Industrial Development Corporation created by the City under the Act (as defined herein) for all purposes set forth therein;

WHEREAS, Recipient is an infrastructure service provider delivering both the physical and digital infrastructure necessary to support localized fresh produce demand in all regions of the world;

WHEREAS, LEDA desires for the Company to build and operate a Controlled Environment Agriculture Distributed Network Production Site on the property known as Roberts Family Trust Property (as defined in Section 4.1.) and on the Carlton North Property (as defined in Section 4.J., and, together with the Roberts Family Trust Property, the "Property") located in Lubbock, Texas;

WHEREAS, it is of vital importance to Recipient and the successful operation of the Controlled Environment Agriculture Distributed Network Production Site for Recipient to have and enjoy the rights in and to free, continuous, and unencumbered access to and use of sufficient groundwater and other water sources that Recipient desires for its purposes, in the form, quality, and amounts that it determines in cooperation with LEDA and the City, for Recipient's use of the Property as contemplated herein and/or by the parties hereto;

WHEREAS, Recipient would not have entered into this Agreement or the Purchase and Sale Agreement (as defined herein) but for the contributions to be made by LEDA, including, without limitation, the conveyance of the Property and the provision of the other benefits and incentives to be provided hereunder, and such contributions have induced Recipient to enter into this Agreement;

WHEREAS, the Recipient will require a certain amount of water in order to perform the Project;

WHEREAS, the Recipient understands and acknowledges that City is only able to provide the quantity of water as set forth in the Agreement for the Project in order to ensure that the City's

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water supply remains adequate to provide water to all citizens of the City of Lubbock; and

WHEREAS, Recipient and the City may negotiate and enter into an additional agreement or agreements for the City to provide Recipient additional amounts of water a sufficient amount of time in advance of Recipient commencing additional phases of the Project where such additional phases are anticipated to cause Recipient's water requirements to exceed the amount of water agreed upon and committed to be provided herein;

WHEREAS, LEDA is authorized to enter into and perform its obligations arising under this Agreement with Recipient in accordance with the laws of the State of Texas;

NOW THEREFORE, in consideration of the mutual covenants and premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Applicable Law:** It is understood by and between the parties that the term "Act," as used herein, is intended to mean the Development Corporation Act of 1979, as amended. (Sec 501.001 *et seq.*, Local Government Code, formerly Sec 5190.6, VACS.) The parties hereto covenant and agree to comply with the terms of the Act applicable to this Agreement.

2. **Parties:**

- A. LEDA, a Texas non-profit corporation as well as a tax exempt 501(c)4 entity, was created by the City as an Industrial Development Corporation under the Act for the purpose of creating and retaining positions and encouraging new businesses to be established in Lubbock, Texas, to stimulate business and commercial activities, as well as all other purposes allowed by the Act.
- B. City, a Texas home rule municipality created and authorized to operate a water utility pursuant to Art. XI, Section 5 of the Texas Constitution, the laws of the State of Texas, the City's Charter and the City's Code of Ordinances.
- C. Recipient is preparing a new project which shall include new construction in multiple phases on the Roberts Family Trust Property in Lubbock, Texas, (NAICS111419) and on the Carlton North Property. Its business project is anticipated to result in 936 new Primary Jobs for the City of Lubbock with a Target Annual Compensation of \$45,096,216.00, in the aggregate, or a total of \$225,481,080.00 over five years. It is anticipated that the full anticipated employment will not be reached until year eleven. As used in this Agreement, the term "Project" shall mean the construction and operation in multiple phases of facilities on the Property. Total capital investment with respect to the Project is estimated to be \$674,303,318.00.
- D. Recipient is a foreign (Delaware) limited liability company authorized to do business in Texas.

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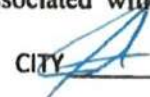
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3. **Purpose:** The purpose for this Agreement is to formalize the agreements between LEDA, the City, and Recipient for the payment of certain costs associated with Recipient's Project and specifically state the covenants, representations of the parties, and the incentives associated with Recipient's commitment to abide by the provisions of the Act and to abide by the terms of this Agreement which has been approved by the Board of Directors of LEDA as complying with the specific requirements of the Act. It is expressly agreed that this Agreement constitutes a single transaction. A failure to perform any obligation by Recipient, if remaining uncured after written notice thereof, may constitute a breach of the entire Agreement and terminate any further commitments by LEDA and/or the City.

4. **Definitions:**

- A. The "Act" shall refer to the Development Corporation Act of 1979, as amended, as Sec 501.001 *et seq*, Local Government Code, formerly Sec 5190.6, VACS.
- B. "LEDA" shall refer to Lubbock Economic Development Alliance, Inc., a Texas non-profit corporation, created by the City as an "Industrial Development Corporation," pursuant to the Act.
- C. "Recipient" shall refer to PLANT-AS-DNPS-003-1 LLC, a Delaware limited liability company authorized to do business in Texas, along with its affiliates, subsidiaries, and designees, and the Recipient party to this Agreement.
- D. "City" shall refer to the City of Lubbock, Texas, a Texas home rule municipality.
- E. "Project" shall mean the project on the Property identified in Paragraph 2C, above.
- F. "Recipient Request" may include the identification of the cost of the project by Recipient to the facility or other purpose within Section 2(4) of the Act.
- G. "Measurement Date" shall mean sixty (60) months following the Closing Date.
- H. "Term", as used herein, shall begin on the Effective Date of this Agreement, and terminate sixty (60) months following the Closing Date, unless earlier breached by Recipient's failure to perform. For the purpose of clarity, this defined term, as used in this Agreement, shall not, in any way, be deemed to include, be related to, affect, or apply to the duration during which the City's agreement with Recipient shall remain active with respect to the provision of water as set forth in this Agreement.
- I. "Roberts Family Trust Property" is defined as approximately 299 acres of land as identified in Exhibit A to the Purchase and Sale Agreement, along with all of LEDA's right, title, and interest in groundwater and groundwater rights associated with and relating to such land.
- J. "Carlton North Property" is defined as approximately 397 acres of land as identified in Exhibit B to the Purchase and Sale Agreement, along with all of LEDA's right, title, and interest in groundwater and groundwater rights associated with and



relating to such land.

- K. "Closing Date" is defined as the date upon which the conveyance of the Roberts Family Trust Property and Carlton North Property, from LEDA to the Recipient, occurs.
- L. "Payback Provisions" shall mean the payments set forth in Paragraph 11 of this Agreement and reversion of the Roberts Family Trust Property and/or the Carlton North Property as set forth in Paragraph 11 of this Agreement.
- M. "Layoff" is defined as an event, due to adverse or changing business conditions, that results in the loss of employment and shall exclude loss of employment due to casualty at the Project if Recipient chooses to rebuild the Project. Employees meeting this definition shall have lost their jobs through no fault of their own.
- N. "Purchase and Sale Agreement" is defined as the Purchase and Sale Agreement entered into by the parties hereto with respect to conveyance of the Roberts Family Trust Property and the Carlton North Property in connection with the parties entering into this Agreement, which Purchase and Sale Agreement shall be in the form attached hereto as Exhibit A.

5. **Representations of Recipient:**

- A. Recipient represents that it will utilize the incentive provided towards costs involved and associated with the Project.
- B. Recipient represents that it is authorized to do business in Texas and has authorization to enter into this Agreement on its behalf.
- C. Recipient represents that it has sought from LEDA economic assistance pursuing Recipient's Project.
- D. Recipient represents that it has conferred with attorneys of its own choosing and is fully knowledgeable of the terms of the Act and understands the reporting requirements of the Act, as well as all conditions precedent and subsequent as required to be eligible for the incentives offered by LEDA, including the Payback Provisions.
- E. Recipient understands and agrees that any variations as to any term of this Agreement or any terms or conditions of the incentives as stated must be mutually agreed to in written supplements or addenda since no oral agreements, amendments, or representations will be binding on either party.
- F. Recipient agrees to reasonably participate in any LEDA sponsored wage and benefit surveys, as well as any marketing materials that focus on economic development for the City of Lubbock.

- G. Recipient agrees to either obtain financing with respect to or that is collateralized by the Property or any portion thereof or begin construction at the Roberts Family Trust Property within 12 months following the Closing Date, as such commencement of construction would be verified by providing documentation of proof of construction on the Project or a copy of their Notice to Proceed to LEDA, subject to extension for force majeure and, provided Recipient shall have made timely application for permits, subject to extension for delays in (i) issuance of governmental approvals required for construction of the Project, (ii) any subdivision and/or re-plating necessary for the construction of the Project.
- H. Recipient agrees to a capital investment in an amount estimated to be \$674,303,318 into the Project, as supported by information from Recipient which may be verified by LEDA's designated third party accounting representative.
- I. Recipient agrees to connect to the water line at the 4th street entrance of the Roberts Family Trust Property and to the water line at the NW corner of the Roberts Family Trust Property to create the looped system required by the City.
- J. Recipient agrees to connect to the sewer line at the 4th street entrance of the Roberts Family Trust Property.
- K. Recipient agrees to provide building plans, construction specs, and proof of construction contracts for the Project in connection with construction of the Project.
- L. Recipient agrees not to grow cannabis or any illegal substances on the Project.
- M. Recipient agrees to allow any agricultural crops to remain in place for the remainder of the 2023 crop year. Crop proceeds from the 2023 crop year will be paid per the lease terms between LEDA and the tenants on the Property.

6. **Representations by LEDA:**

- A. LEDA represents that it is established as an Industrial Development Corporation under the Act, validly existing under the laws of the State of Texas, and further represents that the costs applied toward Recipient's Project as stated in this Agreement have been found by the Board of Directors of LEDA, sitting as fact finders, and the Board of Directors of LEDA has determined the Project, to be in compliance with the requirements and purposes of the Act, the provisions of LEDA's charter, as well as for the benefit of the City of Lubbock, Lubbock County, Texas, and trade area.
- B. LEDA represents that it has authority to enter into this Agreement and the Purchase and Sale Agreement. LEDA understands and agrees that any variation in terms of this Agreement or the incentives offered to Recipient or commitment by Recipient will only be binding if mutually agreed to in writing.

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- C. LEDA represents, warrants, and covenants to Recipient that to its actual knowledge (1) there is no activity, condition, situation, or circumstance on, with respect to, or affecting LEDA or the Property that may prevent, restrict, impede, inhibit, impair, negatively affect, or delay in any way (i) the transactions contemplated herein or in the Purchase and Sale Agreement, or (ii) Recipient or any of its successors or assigns or use of the Property by Recipient or any of its successors or assigns for the development and operation of advanced greenhouse facilities or any other lawful use, including, without limitation, in either case, pending, threatened, potential, or actual legal proceedings, contractual rights, limitations, obligations (except the short-term lease relating to crops currently grown on the Property, for which LEDA has provided Recipient with all information and documents related thereto), special assessments, exploitation of mineral or other rights, violations of environmental or other laws, claims, liens, dangers, hazards, or encumbrances except those items reflected on the title policy to be provided pursuant to the terms of the Purchase and Sale Agreement, and (2) LEDA has and maintains fee simple title in and to the Property with such Property and title not encumbered by any lien or encumbrance except those items reflected on the title policy to be provided pursuant to the terms of the Purchase and Sale Agreement.

- D. LEDA represents, warrants, and covenants that it will, without cost or expense to Recipient, bring, or cause to be brought, water to the Roberts Family Trust Property entrance on 4th Street and to the NW corner of the Roberts Family Trust Property, which is adjacent to the Carlton North Property, each via permanently installed underground infrastructure and pipes in accordance with the plans reasonably approved by Recipient, which approval shall not be unreasonably withheld, conditioned, or delayed.

- E. LEDA represents, warrants, and covenants that it will bring, or cause to be brought, a force main sewer line to the Roberts Family Trust Property entrance on 4th Street. The sewer line profile and flow line elevation shall be constructed in accordance with plans reasonably approved by Recipient, which approval shall not be unreasonably withheld, conditioned, or delayed.

The representations and warranties contained herein and in the Purchase and Sale Agreement shall survive the consummation of the conveyance of the Property and shall not merge therein.

7. Conveyance of Real Property; Additional Contributions; Water Rights:

- A. LEDA shall convey to Recipient fee simple title in and to the Property, subject to those items reflected on the title policy to be provided pursuant to the terms of the Purchase and Sale Agreement, which conveyance includes, for the purpose of clarity, all of LEDA's right, title, and interest in all groundwater, groundwater rights, and other water rights associated with and relating to the Property and any mineral rights or other rights relating to the Property to the extent LEDA has any such rights, which Property is

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comprised of both the Roberts Family Trust Property and the Carlton North Property, subject to the following conditions:

(1) Roberts Family Trust Property

- (a) LEDA shall convey approximately 299 acres of land, also known as the Roberts Family Trust Property, as identified by Special Warranty Deed attached as Exhibit B and pursuant to the terms and conditions as set forth in the Purchase and Sale Agreement attached as Exhibit A. Such conveyance shall take place at closing on or before _____. The obligation and rights of Recipient under this Agreement shall be conditioned upon the parties closing on the transfer under the Purchase and Sale Agreement.
- (b) The value of the Roberts Family Trust Property at the time of conveyance from LEDA to Recipient is stipulated to be \$2,990,000 (\$10,000/per acre) of land. It is acknowledged and agreed that the fair market value of the land, \$2,990,000, shall not be required to be paid by Recipient except for the Payback Provisions set forth in Paragraph 11 of this Agreement.

(2) Carlton North Property

- (a) LEDA shall convey approximately 397 acres of land, also known as the Carlton North Property, as identified by Special Warranty Deed attached as Exhibit C and pursuant to the terms and conditions as set forth in the Purchase and Sale Agreement attached as Exhibit A, simultaneously upon the closing of the Roberts Family Trust Property. The obligation and rights of Recipient under this Agreement shall be conditioned upon the parties closing on the transfer under the Purchase and Sale Agreement.
- (b) The value of the Carlton North Property at the time of conveyance from LEDA to Recipient is stipulated to be \$3,970,000 (\$10,000/per acre) of land. It is acknowledged and agreed that the fair market value of the land, \$3,970,000, shall not be required to be paid by the Recipient except for the Payback Provisions set forth in Section 11 of this Agreement.

B. Additional Contributions.

- (1) LEDA will advocate for and use its best efforts to assist in the City's annexation of the Property and provision of easements for utilities required and/or desired by Recipient for and in connection with the Property and any and all uses of the Property desired by Recipient in connection therewith and will advocate for the City's assistance and cooperation with respect to

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clearing easements of record as well as those not of record in order to prevent any third party from making a claim (and/or if a claim has been made or is made, from maintaining or prevailing upon any such claim) with respect to any improvements made or to be made upon the Property encroaching upon any easements or other rights held or maintained, or claimed to be held or maintained, by any third party, including, without limitation, with respect to an active gas line easement that may be held by or otherwise connected with Oneok and/or BP, an inactive crude oil easement that may be held by or otherwise connected with Centurion, any other gas line, electric line, or otherwise. LEDA will advocate for the City's assistance and cooperation with Recipient in any efforts to obtain the benefit of, execute, and/or file any encroachment agreements or similar agreements, documents, or instruments, and/or resolve any title issues, exceptions, or claims, including, without limitation, with respect to active pipeline easements, power lines, and/or removal of power lines.

- (2) LEDA will advocate for and use its best efforts to assist in the City's approval of the Property for zoning for Recipient's uses including for commercial greenhouse and ancillary operations, including distribution, packing, and other related activities, via a commercial planned development, based on the site plans provided by or on behalf of Recipient, including those that provide additional detail and, specifically, any final site plans, and subject to planning and zoning commission requirements.
- (3) LEDA will advocate for and use its best efforts to assist in Recipient's efforts to expedite all permitting, application, incentive, and approval processes related to the Property.
- (4) LEDA will support and work with the Texas Workforce Commission with respect to workforce development with Recipient. LEDA will make commercially reasonable efforts to connect Recipient with other agencies and organizations that may support Recipient's workforce development.

C. Water Rights:

- (1) In connection with the conveyance of the Property, LEDA will convey to Recipient fee simple title in and to all of LEDA's right, title, and interest in groundwater, groundwater rights, and other water rights associated with and relating to the Property, subject to those items reflected on the title policy to be provided pursuant to the terms of the Purchase and Sale Agreement.
- (2) The parties agree and acknowledge that any water meter that supplies potable water from the City's water utility shall be located inside the City's jurisdictional limits and the use of any such potable water supplied by the

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City shall only be within the City's jurisdictional limits.

- (3) The City shall make available to Recipient up to 600,000 gallons of water per day at the point of delivery. The parties agree and acknowledge that any water meter that supplies potable water from the City's water utility shall be located inside the City's jurisdictional limits and the use of any such potable water supplied by the City shall only be within the City's jurisdictional limits. Recipient agrees and acknowledges that the City shall only be obligated to make available to Recipient, and Recipient shall only utilize, the amount of water stated herein; provided, however, (a) Recipient may request additional amounts of water in excess of 600,000 gallons per day, (b) the provision of any additional amounts of water in excess of 600,000 gallons per day shall be at the sole discretion of the City, and (c) the City may rescind any decision to provide such additional amounts of water in excess of 600,000 gallons per day at any time and at its sole discretion. The City shall only be obligated to provide up to 600,000 gallons of water per day in accordance with this Paragraph if Recipient commences construction on the Project. Notwithstanding any other terms contained in this Agreement with respect to duration of this Agreement generally or duration of any other terms contained herein, the City and Recipient agree that the terms of the City providing water to Recipient as set forth in this Agreement shall be effective as of the Effective Date and shall continue until the date that is twenty-five (25) years following the Closing Date.
- (4) The City shall approve, at its sole discretion, the size, placement, and total number of water meters utilized for the Project. Recipient may request additional water meters from the City, which the City may provide at its sole discretion. In addition, if the City provides any additional water meters, it may reclaim such additional water meters at any time at the City's sole discretion. Notwithstanding the foregoing, the City shall use its best efforts to avoid the reduction or limitation of the amount of water capacity or service to the Recipient which limits or reduces Recipient's capacity of production or operations when possible. However, the City may reduce said amount of water capacity or service in certain conditions, including, but not limited to the following: water line breaks, system-wide interruptions, the occurrence of triggering criteria specified in section 22.08.078 of the City's Code of Ordinances regarding the plan for stage 4 - emergency water shortage conditions, and other unforeseen events or acts of God that interrupt or otherwise reduce the production or capacity of the City's water supply. In such cases of water shortage conditions, the City may allocate its water supplies in a fair manner among all customers, in accordance with section 22.08.082 of the City's Code of Ordinances and state laws and regulations. The City will make reasonable efforts when possible to notify Recipient prior to the occurrence of such reduction of said amount of water capacity or service. In the event the City must implement its Water Conservation and/or Drought Contingency Plan, as adopted by the City Council, for its system, then the Recipient shall abide by the provisions of




section 22.08.079 of the City's Code of Ordinances.

- (5) The rates charged for water provided to Recipient, along with any other charges, shall be in accordance with the rates and charges established by the City Council of the City as set forth in Article 22.03, Division 2 of the Code of Ordinances of the City, as may be amended from time to time.
- (6) In addition to any other right Recipient may have in this Agreement, at any given time, to the extent the City fails to provide to Recipient an amount of water that is sufficient for Recipient to consistently maintain full operations of and production from the Project facilities or Recipient otherwise does not have or is not provided sufficient water with respect to the Project, including for any expansion therein or thereof, Recipient's obligations under this Agreement will be suspended and, without limitation, Recipient shall not be liable for failure to adhere to or comply with any obligations contained herein (and there shall be no penalties (including payments by Recipient related to or reversions of any portion of the Property) for delays therein or failure thereof), including, without limitation, that the running of any timelines and/or any deadlines for or related to expansion, development, construction, expenditure thresholds, financing, and operations shall be tolled, suspended, and postponed for the duration during which Recipient is not provided, on an ongoing basis, sufficient water to maintain full operations of and production from the Project facilities, including for any expansion therein or thereof, until such point in time as the City provides to Recipient on an ongoing basis sufficient water for such uses and expansions.

- 8. **AS IS PROVISION:** The deeds to the Property shall include the following "As-Is" provision:

THIS CONVEYANCE IS AN ARMS-LENGTH CONVEYANCE BETWEEN THE PARTIES. THE CONVEYANCE WAS BARGAINED ON THE BASIS OF AN AS IS, WHERE IS TRANSACTION AND REFLECTS THE AGREEMENT OF THE PARTIES THAT THERE ARE NO REPRESENTATIONS, DISCLOSURES, OR EXPRESS OR IMPLIED WARRANTIES, EXCEPT FOR THE SPECIAL WARRANTY OF TITLE TO THE REAL PROPERTY STATED IN THIS DEED AND LEDA'S REPRESENTATIONS AND WARRANTIES SET FORTH IN THE PERFORMANCE AGREEMENT BETWEEN THE PARTIES ("PERFORMANCE AGREEMENT") AND THE AGREEMENT OF PURCHASE AND SALE BETWEEN THE PARTIES ("PURCHASE AND SALE AGREEMENT").

EXCEPT FOR THE SPECIAL WARRANTY OF TITLE TO THE REAL PROPERTY STATED IN THIS DEED AND LEDA'S REPRESENTATIONS AND WARRANTIES SET FORTH IN THE PERFORMANCE AGREEMENT AND PURCHASE AND SALE AGREEMENT, THE PROPERTY IS CONVEYED TO GRANTEE IN AN AS IS, WHERE IS CONDITION, WITH ALL FAULTS. ALL WARRANTIES ARE DISCLAIMED, EXCEPT THE SPECIAL WARRANTY OF TITLE TO THE REAL PROPERTY IN THIS DEED AND LEDA'S REPRESENTATIONS AND





WARRANTIES SET FORTH IN THE PERFORMANCE AGREEMENT AND PURCHASE AND SALE AGREEMENT.

GRANTEE SPECIFICALLY ACKNOWLEDGES THAT BY ACQUIRING THE PROPERTY, GRANTEE IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM LEDA, ITS AGENTS, OR BROKERS AS TO ANY MATTERS CONCERNING THE PROPERTY, OTHER THAN THOSE SET FORTH IN THE PERFORMANCE AGREEMENT AND THE PURCHASE AND SALE AGREEMENT.

9. **Conditions for Payment of Incentives and Conveyance of Real Property:** It is specifically agreed and understood by and between the parties that LEDA has agreed to make the project payments and conveyance to Recipient strictly upon the following terms and conditions:

- A. Any use of LEDA's name for publicity in connection with Recipient's business or activities must be approved in advance by LEDA. It is understood that LEDA may make known its contributions to Recipient in whatever public manner LEDA and Recipient mutually agree in advance in writing is appropriate, including, without limitation, with respect to form, substance, and outlets and channels utilized, with respect to any such communication, and provided further that any use of Recipient's name, logos, trademarks, service marks, or any other intellectual property for or relating to publicity in connection with LEDA or otherwise in connection with Recipient's business or activities must be approved in advance in writing by Recipient. Notwithstanding anything to the contrary contained above, LEDA, without approval or consent from Recipient, will comply with all federal, state, and local laws and regulations.
- B. Recipient agrees to maintain a business location in the City of Lubbock or Lubbock County for ten (10) years following the execution of this Agreement and with respect to its legal status under federal and state law and to remain qualified to do business in the State of Texas.
- C. The operations or activities of Recipient and its employees shall be performed and conducted in a professional and businesslike manner and shall be in keeping with federal and state laws and regulations, and any ordinances of the City and/or governmental entities which may have jurisdiction over Recipient's operations and activities taking place on the Property.
- D. Recipient certifies that the Recipient does not and will not knowingly employ an undocumented worker at the Controlled Environment Agriculture Distributed Network Production Site located on the Property in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Recipient is convicted of a violation under 8 U.S.C. § 1324a(f) directly with respect to employment of such an undocumented worker at the Controlled Environment Agriculture Distributed Network Production Site located on the Property, Recipient

shall repay the amount of the public subsidy provided under this Agreement, with interest at the legal pre-judgment interest rate, with attorney's fees, not later than the 120th day after the date LEDA notifies Recipient in writing of the violation.

- E. Any information obtained by LEDA or its agents or assigns during negotiations leading up to the execution of the Agreement or otherwise about the business, has or will be returned upon the execution of this Agreement, subject to a right to a continuing examination by LEDA to comply with LEDA's reporting obligations, if any. Such information shall be considered confidential and beyond the scope of any Open Records request as proprietary information.
- F. Recipient will notify LEDA in writing within three (3) business days of any Layoff or reduction in force greater than 20% of the existing workforce. The notification must include the number of employees being laid off, their job titles, the reasoning for the Layoff, and what the company is doing to assist the laid-off employees.

10. **Development of Land:** LEDA and Recipient acknowledge and agree that Recipient intends to develop the Property.

A. **Construction:** Recipient intends to construct the Project on the Property in multiple phases. Recipient agrees to either obtain financing with respect to or that is collateralized by the Property or any portion thereof or commence construction of the Project on the Roberts Family Trust Property within twelve (12) months after the Closing Date. Furthermore, Recipient agrees to promptly and diligently pursue the completion of the construction of the first two greenhouse structures for commercial operation to be part of the Project within thirty-six (36) months following the Closing Date, subject to any delays caused by any force majeure event. As used herein, the term "complete the construction" shall mean that the facility shall have received a Certificate of Occupancy from the City.

11. **Payback Provisions and Events of Default:** Recipient acknowledges that LEDA and Recipient are required to remain in conformance with the statutory provisions of the Act. The parties hereto agree that in the event Recipient fails to comply with the provisions of this Agreement, including but not limited to Paragraph 10, and after written notice and failure to cure the violation, then LEDA, in its sole discretion, may seek the remedies set forth in this Section.

A. Following conveyance of real property referenced in Paragraph 7.A., the Recipient shall provide to LEDA an estimated capital investment cost of \$309,772,744 in the form of new construction and equipment at the Roberts Family Trust Property to be invested prior to the end of sixty (60) months from Closing. LEDA based its decision to grant incentives to Recipient partly upon such capital investment.

- (1) If Recipient's actual capital investment amounts are significantly lower (20% or greater) than the estimated capital investment at the end of thirty-six (36) months from Closing, LEDA may demand the sum of \$120,000 for every \$10,000,000 of capital investment below \$123,909,098. Capital

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investment will be measured and confirmed by documentation from Recipient on company letterhead indicating the amount of capital investment spent or purchased for the Project.

- (2) If Recipient's actual capital investment amounts are significantly lower (20% or greater) than the estimated capital investment at the end of sixty (60) months from the Closing Date, LEDA may demand the sum of \$120,000 for every \$10,000,000 of capital investment below \$247,818,195. Capital investment will be measured and confirmed by documentation from Recipient on company letterhead indicating the amount of capital investment spent or purchased for the Project.
- (3) If (a) Recipient has not obtained financing with respect to or that is collateralized by the Roberts Family Trust Property or any portion thereof within twelve (12) months following the Closing Date, and (b) Recipient has not commenced construction of the first greenhouse on or with respect to the Roberts Family Trust Property within twelve (12) months following the Closing Date, then the Property shall immediately revert to LEDA without the need for judicial or any other action and LEDA shall have the right to enter and take back possession of the Property. In the event LEDA exercises its right to enter and take back possession of the Property, then Recipient agrees to execute and deliver to LEDA a Special Warranty Deed conveying the Property to LEDA free and clear of all liens and encumbrances not present prior to the Closing Date. This covenant shall survive termination of this Agreement except as set forth herein. Other than with respect to the Carlton North Property, as such rights are set forth in Section 11.B below, LEDA's rights under this Section 11.A.(3), including to enter and take back possession of the Property and any rights relating to reversion of the Property and/or reconveyance of the Property to LEDA shall automatically terminate upon the business day immediately prior to the earlier of (x) the closing by Recipient of any financing described in this section or (y) the date of commencement of construction on or with respect to the Roberts Family Trust Property and/or any portion thereof.
- (4) If Recipient either (a) has not completed construction of the first two greenhouse structures for commercial operation to be part of the Project on the Roberts Family Trust Property within thirty-six (36) months following the Closing Date, or (b) has not completed all phases of construction on the Roberts Family Trust Property within sixty (60) months following the Closing Date, Recipient agrees to pay LEDA the value of the Roberts Family Trust Property as of the Closing Date, i.e., \$2,990,000, less any Payback Provisions previously paid to LEDA by Recipient.
- (5) Notwithstanding the foregoing, the Recipient's aggregate liability arising out of this Agreement shall not exceed the value of the Property, i.e., \$6,960,000, in potential payback to LEDA. For the sake of clarity any

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reversion of land to LEDA hereunder shall be deemed to be payback to LEDA (with respect to the Payback Provisions) in an amount equal to the value for such land as set forth in this Agreement.

B. Unless the Property has reverted to LEDA in accordance with the terms of this Agreement, with respect to the Carlton North Property:

- (1) If Recipient's actual capital investment amounts are significantly lower (20% or greater) than the estimated capital investment at the end of thirty-six (36) months from the Measurement Date, LEDA may demand the sum of \$160,000 for every \$10,000,000 of capital investment below \$123,909,098 of additional capital expenditure. Capital investment will be measured and confirmed by documentation from Recipient on company letterhead indicating the amount of capital investment spent or purchased for the Project.
- (2) If Recipient's actual capital investment amounts are significantly lower (20% or greater) than the estimated capital investment at the end of sixty (60) months from the Measurement Date, LEDA may demand the sum of \$120,000 for every \$10,000,000 of capital investment below \$167,715,361 of additional capital expenditure. Capital investment will be measured and confirmed by documentation from Recipient on company letterhead indicating the amount of capital investment spent or purchased for the Project.
- (3) If (a) Recipient has not obtained financing with respect to or that is collateralized by the Carlton North Property or any portion thereof within twelve (12) months following the Measurement Date, and (b) Recipient has not commenced construction of the first greenhouse on or with respect to the Carlton North Property within twelve (12) months following the Measurement Date, then the Carlton North Property shall immediately revert to LEDA without the need for judicial or any other action and LEDA shall have the right to enter and take back possession of the Carlton North Property. In the event LEDA exercises its right to enter and take back possession of the Carlton North Property, then Recipient agrees to execute and deliver to LEDA a Special Warranty Deed conveying the Carlton North Property to LEDA free and clear of all liens and encumbrances not present prior to the Closing Date. This covenant shall survive termination of this Agreement except as set forth herein. LEDA's rights under this Section 11.B.(3), including to enter and take back possession of the Carlton North Property and any rights relating to reversion of the Carlton North Property and/or reconveyance of the Carlton North Property to LEDA shall automatically terminate upon the business day immediately prior to the earlier of (x) the closing by Recipient of any financing described in this section or (y) the date of commencement of construction on or with respect to the Carlton North Property and/or any portion thereof.

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- (4) If Recipient either (a) has not completed construction of the first two greenhouse structures for commercial operation to be part of the Project on the Carlton North Property within thirty-six (36) months following the Measurement Date, or (b) has not completed all phases of construction on the Carlton North Property within sixty (60) months following the Measurement Date, Recipient agrees to pay LEDA the value of the Carlton North Property as of the Closing Date, i.e., \$3,970,000, less any Payback Provisions previously paid to LEDA by Recipient. It is the Recipient's intention to use commercially reasonable efforts to substantially build out the Roberts Family Trust Property prior to commencing construction on the Carlton North Property.

12. **Assignment:** This Agreement and the Purchase and Sale Agreement shall be binding upon and inure to the benefit of the heirs, successors, administrators, executors, affiliates, designees, and permitted assigns of the respective parties. For the sake of clarity, the obligations set forth for Recipient in this Agreement and in the Purchase and Sale Agreement may be satisfied via, and shall be deemed to be and considered, the aggregate actions and activities of Recipient's component entities, in Recipient's discretion, and therefore, the rights and benefits provided to Recipient pursuant to this Agreement and the Purchase and Sale Agreement shall inure to the benefit of and additionally be provided to, each of Recipient's component entities. All rights hereunder may be assigned by the parties in whole or in part, upon prior mutual consent of each party. Such approval shall not be unreasonably withheld.

13. **No Privity of Endeavor Nor Joint Venture:** It is specifically agreed that there shall be no privity of endeavor nor joint venture whatsoever between LEDA and Recipient or between the City and Recipient and the sole connection between such respective parties is the supply of water by the City to Recipient and the contribution of the economic assistance by LEDA under the restricted conditions as set forth herein and that such supplying of water and contributions as stated herein are for the sole purposes as set forth herein and it shall in no way be construed as a continuing basis of financial support by LEDA to Recipient. The parties hereto have entered into this Agreement in an arms-length transaction. No agency relationship or fiduciary relationship is intended to be created by this Agreement and no such relationship shall be determined to exist.

14. **Good Faith; Normal Business Operations:** The parties agree that this Agreement has been entered into in good faith and that each party shall act in good faith in complying with its provisions. The parties further agree to transact all their business under and that which relates to this Agreement in accordance with their normal business operations.

15. **Miscellaneous Provisions:**

- A. **Notices:** For the purposes of any notices to be given, pursuant to the terms of this Agreement, the parties shall use the following addresses, or any other address as may be changed by the parties, upon written notice to the other party, as follows:

LEDA:

John Osborne
CEO and President
LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC.
1500 Broadway, Suite 600
Lubbock, TX 79401
Email: john@marketlubbock.org

With a copy to:

Ann Manning
Attorney at Law
UNDERWOOD LAW FIRM
P.O. Box 16197
Lubbock, Texas 79490
Email: Ann.Manning@uwlaw.com

RECIPIENT:

Richard Dent III
Chief Operating Officer
PLANT-AS-DNPS-003-1 LLC
333 Las Olas Way CU1
Fort Lauderdale, FL 33301
Email: Richard.dent@plant-as.com

With a copy to:

Adam Litwin
Chief Legal Officer
PLANT-AS-DNPS-003-1 LLC
333 Las Olas Way CU1
Fort Lauderdale, FL 33301
Email: adam.litwin@plant-as.com

CITY:

W. Jarrett Atkinson
City Manager
P.O. Box 2000
Lubbock, Texas 79457
Email: jatkinson@mylubbock.us

Notices shall be deemed to be given upon the placing in the United States Mail, Certified Mail, Return Receipt Requested, to the above-described addresses or in case of electronic mail, upon affirmative confirmation of such receipt by reply email, or as such addresses may be changed, pursuant to the terms and conditions

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hereof.

B. Remedies:

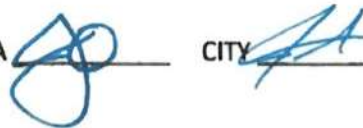
- (1) The sole remedies for LEDA under or pursuant to this Agreement shall be solely those which are set forth in Section 11 of this Agreement and Recipient's aggregate liability is as set forth therein. LEDA may not seek rescission of the conveyance of the Property or reversion or reconveyance of the Property to LEDA other than as and to the extent explicitly set forth in Section 11 of this Agreement. Notwithstanding anything set forth or deemed to the contrary in this Agreement or otherwise, LEDA acknowledges and agrees that any and all remedies and claims which it may pursue under this Agreement or otherwise pursuant to law, including, without limitation, any repayment of financial incentives and/or any monetary penalties payable by Recipient to LEDA, shall be and remain subject and subordinate to debt (and rights and claims of lenders and/or debt holders associated with any such debt) in connection with which Recipient is or will be obligated, including, without limitation, in connection with the Property and/or which otherwise attaches to the Property, including, without limitation, any secured bonds that utilize the Property or any portion thereof as collateral or which cause the Property or any portion thereof to be subject to a security interest, including any obligations that arise in connection therewith, and nothing may interfere with the rights and claims of such lenders or debt holders. Recipient may pursue all remedies available to it pursuant to law; provided, however, in no event shall LEDA be liable for special, consequential, or punitive damages arising from its breach or default of this Agreement.
- (2) If the Recipient materially breaches Paragraph 7.C.(2)-(4), the City may pursue any and all remedies provided by law, equity, contract or otherwise, including without limitation, termination of the delivery of any water service to the Project.

C. No Waiver of Immunity. Notwithstanding any other provision of this Agreement, including, without limitation, the provisions of Paragraph 8 (as is) of this Agreement, nothing in this Agreement shall or may be deemed to be or shall or may be construed to be, a waiver or relinquishment of any immunity, defense or tort limitation to which LEDA and the City, its elected officials, its officers, employees, representatives and agents are or may be entitled, including without limitation, any waiver of immunity suit.

D. Further Agreements: The parties agree to enter into, execute, file, and record any additional agreements, documents, assurances, estoppels, certifications, and instruments, and perform any additional actions, that may be reasonably required by any of the parties in order to effect any of the transactions or intentions

contemplated or contained herein including in support of Recipient's financing and as may be required by its lenders and/or financiers.

- E. Venue: Governing Law. All payments made pursuant to this Agreement and other obligations performed under this Agreement shall be made or performed in the City of Lubbock, Lubbock County, Texas. Exclusive venue for any action, cause of action, lawsuit, or other proceeding under or in connection with this Agreement shall be and lie in Lubbock County, Texas and the parties hereby submit themselves to the jurisdiction thereof; and this Agreement shall be governed by and construed in accordance with the laws of the State of Texas without respect to the conflict of laws rules thereof. Recipient hereby waives and agrees not to assert by way of motion, as a defense, or otherwise, in any suit, action, or proceeding, any claim that (1) it is not subject to such venue or the jurisdiction of the courts of Lubbock County, Texas, (2) the suit, action, or proceeding is brought in an inconvenient forum or (3) the venue of the suit, action or proceeding is improper.
- F. Entire Agreement; Headings: This instrument, including the preamble, recitals, and the Exhibits contained herein or attached hereto, each of which are, for the purpose of clarity, hereby incorporated into and made a part of this Agreement, along with the Purchase and Sale Agreement and any additional agreements, instruments, and documents referenced herein to be executed by the parties in connection with the transactions contemplated herein, constitutes the entire agreement between the parties hereto and neither this Agreement nor any of the Exhibits attached hereto, if any, nor any of such other agreements, instruments, and/or documents can be altered, changed, or amended in any respect except by an instrument in writing duly executed by both parties. The section, paragraph and exhibit headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- G. Partial Invalidity: In the event that any portion of this Agreement should be found or declared to be invalid for any reason, such portion shall be deemed to be reformed to the minimum extent required for it to be valid, and the remaining provisions of this Agreement shall not be affected thereby and shall remain in full force and effect and shall be binding upon the parties. The parties agree that it is their intent for this Agreement to be determined as being an indivisible obligation of the parties.
- H. Binding Effect: This Agreement shall be binding upon the undersigned, their successors, and assigns, subject to the express terms of this Agreement concerning assignment.
- I. Force Majeure: If any default or performance of any covenant or term of this Agreement is delayed by reason of any of the following, so long as such delay is not caused by the actions of Recipient: strike, riots, labor controversy, shortages of labor, materials, supplies, or transportation, failure or inability to obtain or secure materials, supplies, or labor through ordinary sources on commercially reasonable terms and by commercially reasonable means (whether by reason of shortages or



priority or otherwise), limitations relating to capacity, availability, and/or reasonable ability of any construction partners to diligently proceed with construction, delays of transportation and/or commercial carriers, embargos, war or armed conflict, act of public enemy, act or threat of terror or terrorism, civil commotion or disturbance, sabotage, act of God, weather-related events, windstorm, tornado, hurricane, earthquake, flood, fire, epidemic, pandemic, outbreak, accident, failure of technical facilities, governmental approvals, permits, certificates, and issuances thereof (or delay or failure thereof), including as required for construction and/or operation of the Project, annexing, subdivision, zoning, and/or platting or re-platting as necessary or desirable for the Project (including delay or failure thereof), delivery of plans or designs (or delay or failure thereof), including with respect to any water, sewer, electric, and/or utilities to be located on, serving, or affecting the Property and/or the Project, including from any governmental entity or agent, and the installation at the Property thereof (or delay or failure thereof), insufficient water, electricity, and/or utilities available and/or provided for the Project as of any given time and with respect to any planned or contemplated expansion (as determined by Recipient), government lockdown or quarantine, governmental restrictions, regulations, orders, or interference, power outage, or other casualty, or any other circumstances beyond a signatory party's reasonable control, then the duty to do or perform the term or covenant, regardless of whether the circumstance is similar to any of those enumerated above or not, is excused during the delay period.

- J. Time is of the Essence: The parties agree that time is of the essence in the execution of this Agreement.

- K. Counterparts: This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same instrument. Counterparts may be delivered digitally or via electronic mail (including PDF or any electronic signature complying with the U.S. federal E-SIGN Act of 2000) or other transmission method, and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

***Remainder of Page Intentionally Left Blank.
Signature Page Follows.***

PLANT _____ LEDA _____ CITY _____



IN WITNESS WHEREOF, and as duly respectively authorized by the parties hereto, the parties have executed this Agreement to be effective as of this 28th day of June, 2023.

LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC.



John Osborne, CEO and President

RECIPIENT:

PLANT-AS-DNPS-003-1 LLC



Richard Dent III, Chief Operating Officer

CITY OF LUBBOCK, TEXAS



W. Jarrett Atkinson, City Manager

PLANT  _____ LEDA  _____ CITY  _____

EXHIBIT A

Agreement of Sale and Purchase

[attached]

EXHIBIT B

Special Warranty Deed for the Roberts Family Trust Property

[attached]

EXHIBIT C

Special Warranty Deed for the Carlton North Property

[attached]