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TCEQ Registration Form

October 24, 2023

Leprino Foods Company Proposed TPDES Permit No. WQ0005417000

PLEASE PRINT

Name: DORA T Cortez

Mailing Address: P.O. Box 5153

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City/State: Lubbock, TX Zip: 79408

****This information is subject to public disclosure under the Texas Public Information Act****

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• Are you here today representing a municipality, legislator, agency, or group? Yes No

If yes, which one? North & East Lubbock Coalition

Please add me to the mailing list.

I wish to provide formal *ORAL COMMENTS* at tonight's public meeting.

I wish to provide formal *WRITTEN COMMENTS* at tonight's public meeting.

(Written comments may be submitted at any time during the meeting)

Please give this form to the person at the information table. Thank you.

RECEIVED

OCT 24 2023

AT PUBLIC MEETING

STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

PERFORMANCE AGREEMENT

This Performance Agreement (the "Agreement") is made effective on March 1, 2022 (the "Start Date") by and between LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC., a Texas nonprofit corporation (hereinafter referred to as "LEDA") and Leprino Foods Company, a Colorado corporation, (hereinafter referred to as "Recipient" or "Leprino"), by and through their duly authorized officers and affiliate organizations under the terms and conditions that follow. LEDA and Recipient may collectively be referred to as the "Parties."

RECITALS

WHEREAS, LEDA and Leprino have been engaged in discussions since August 2019 regarding Leprino's potential development of a new dairy-products manufacturing facility (the "Project" – also further defined below) in or near Lubbock, Texas.

WHEREAS, the Project, upon completion of construction, is expected to generate approximately 674 new Primary Jobs (as defined below) and result in approximately \$870,000,000 in new capital investment in Lubbock.

WHEREAS, as a direct result of the expected economic impacts associated with the Primary Jobs, capital investment, and other ancillary effects of the Project, LEDA has offered Leprino several incentives as consideration for Leprino to develop the Project in Lubbock (the "Incentives" – also further defined below).

WHEREAS, Leprino has conceptually and initially decided to pursue the development of the Project in Lubbock, Texas, on an approximately 258-acre site located east of the Lubbock Loop on East 19th Street.

WHEREAS, LEDA and Leprino mutually agree that the Incentives are a material element in Leprino's ultimate decision to develop the Project in Lubbock, Texas, and Leprino would not give further consideration to development of the Project in Lubbock without the Incentives.

WHEREAS, the Incentives, which are described more particularly below, include: (1) the real property required for the Project; (2) multiple infrastructure improvements necessary for Leprino's development of the Project; and (3) a cash incentive for payment to Leprino of Project Costs (as defined below) to be paid as (a) a cash incentive directly associated with Leprino's creation of jobs at the Project, and (b) a cash incentive directly associated with Leprino's capital investment in the Project.

WHEREAS, on October 1, 2021, Leprino announced that it had selected Lubbock as the location for its Project. For the avoidance of doubt, Leprino's ultimate development of the Project

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in Lubbock is subject to Leprino's execution of the "Contingent Agreements," which are defined below. LEDA expressly acknowledges that the Leprino's performance under this Agreement is excused in the event the Contingent Agreements are not timely executed.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, including the promises and agreements contained herein, the adequacy, sufficiency, and receipt of which are hereby acknowledged by the Parties, LEDA and Leprino agree as follows:

1. **Performance Agreement:** The parties acknowledge that this agreement is a performance agreement as that term is used in Section 501.158 of the Act (as defined below), and that the provisions of this agreement meet the requirements of that Section. The Parties hereto covenant and agree to comply with the terms of the Act.

2. **Parties:**
 - A. LEDA, a Texas non-profit corporation as well as a tax exempt 501(c)(4) entity, was created by the City of Lubbock, Texas, as an Industrial Development Corporation under the Act (as defined below) and under Chapter 504 of the Texas Local Government Code 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. Subject to execution of the Contingent Agreements, Leprino is preparing a new "Project" which shall include the construction of a new dairy products manufacturing facility (NAICS 311513). With respect to site selection in Lubbock, Leprino will develop the Project at a location on *East 19th Street*, Lubbock, Texas, with projected employment of at least 674 new employees. The products manufactured at the Project will primarily be sold to customers outside of Lubbock, Texas. The Project is expected to generate the following target compensation or jobs figures according to the following schedule.

- | | |
|-----------------|--|
| (1) Year Three: | Either \$15,750,000, or 300 Primary Jobs |
| (2) Year Four: | Either \$28,875,000, or 550 Primary Jobs |
| (3) Year Five: | Either \$35,385,000 or 674 Primary Jobs |

The Project's total capital investment is estimated to be \$870,000,000 with \$850,000,000 anticipated to occur within five years of Year One.

3. **Purpose:** The purpose for this Agreement is to formalize the agreement between LEDA and Recipient for the payment to Recipient of certain Project Costs (as defined below), 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; although, incentive payments thereunder will be divided into multiple installments as annually earned.

4. **Definitions:**

The following terms used herein are defined as set out in this Section 4. Additional terms set out herein may be defined in other Sections of this Agreement.

- 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. "Target Annual Compensation" shall mean the higher of actual compensation or annualized base pay cumulatively paid to employees holding Primary Jobs created by Recipient at the Project, as reasonably determined by LEDA's accountants/representatives in consultation with Recipient, with \$15,750,000 in total annualized compensation by Year Three, \$28,875,000 in total annualized compensation by Year Four, and \$35,385,000 in total annualized compensation by Year Five, all as determined on the Measurement Date, as that term is defined below.
- C. "Baseline Employment Level" is defined to mean the employee census on the day preceding the Term of this Agreement; the parties agree that because the Project is the construction of a new facility, the Baseline Employment Level shall be zero.
- D. "Baseline Measurement Date" shall mean the day preceding the Start Date of this contract.
- E. "Census" is defined as a compilation listing of the employee's name, address, date of hire, date of termination, position, base pay, and indication of full-time or part-time status. Such information is preferred to be presented in Excel format which shall be made available to the accountant in performing the review.
- F. "Full-Time Jobs" shall mean an employee employed on average at least 30 hours of service per week, or 130 hours of service per month and includes individuals employed in "Primary Jobs" as defined by the Act, as well as contract or leased employees performing "Primary Jobs" at the Project in the City of Lubbock (or individuals who are directed or managed by management at the Project) on behalf of Recipient. Employees must be employed on the Measurement Date. If an employee has been laid off but paid through the Measurement Date, his or her employment will not be counted towards incentives.
- G. "Incentives" shall mean, collectively, the Real Property Incentive, Infrastructure Improvements, Job Creation Incentive, and Capital Investment Incentive, as those terms are defined below.

- H. "Layoff" is defined as an event, due to adverse or changing business conditions, and not due to the fault of the employees themselves, that results in the loss of employment. Layoff shall specifically exclude loss of employment due to a casualty or event of Force Majeure at the Project or temporary reduction in number of employees, provided that such temporary reduction of employees is less than six (6) months in duration.
- I. "Measurement Date" shall mean the date upon which the determination is made as to whether Recipient is in compliance with this agreement. Measurement Dates shall be:
- (1) Year One: December 31 of the calendar year of the commencement of physical construction of the manufacturing facility at the Project.
 - (2) Year Two: December 31 of the calendar year following Year One
 - (3) Year Three: December 31 of the calendar year following Year Two
 - (4) Year Four: December 31 of the calendar year following Year Three
 - (5) Year Five: December 31 of the calendar year following Year Four
 - (6) Year Six: December 31 of the calendar year following Year Five
 - (7) Year Seven: December 31 of the calendar year following Year Six
 - (8) Year Eight: December 31 of the calendar year following Year Seven
 - (9) Year Nine: December 31 of the calendar year following Year Eight
 - (10) Year Ten: December 31 of the calendar year following Year Nine
- J. "Payback Provisions" shall mean the provisions set forth in Section 10 hereof relating to forfeiture of all unpaid incentives in accordance with the terms of this Agreement.
- K. "Primary Job" shall have the meaning ascribed to it in Tex. Loc. Gov't Code § 501.002.
- L. "Project" shall mean the project identified in Paragraph 2B, above.
- M. "Project Costs" shall mean costs for land, buildings, equipment, facilities, targeted infrastructure, improvements or other expenditures associated with the Project.
- N. "Target Job Positions" shall refer to a cumulative increase of 674 Primary Jobs in excess of the Baseline Employment Level.
- O. "Term" as used herein, shall begin with the Start Date of the date of this Agreement, and end on December 31 in the fifteenth year following completion of construction of the Project (the "Termination Date") unless earlier terminated by Recipient as set out below, or unless earlier breached by Recipient's or LEDA's failure to perform after notice and a reasonable opportunity to cure such breach.
- P. "Contingent Agreements" shall mean all agreements that were material to

Leprino's decision to construct the Project in Lubbock, including an agreement for a 100% property tax abatement with both the City of Lubbock and the County of Lubbock, as well as a water conveyance agreement with the City of Lubbock, whereby the City of Lubbock will pay a set rate to Leprino for effluent discharged by Leprino into Lubbock's Canyon Lake System.

5. **Representations of Recipient:**

- A. Recipient represents that it will utilize the Incentives for reimbursement of Project Costs.
- B. Recipient represents that it is authorized to do business in Texas and is authorized to enter into this Agreement.
- 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, 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 represents that it acknowledges that its failure to perform any reporting requirements within a reasonable period after the request is made could result in payment adjustments.
- F. 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.
- G. Recipient certifies that all jobs for which incentives are being requested are new Primary Jobs at the Project and that none of the jobs are to fill positions that resulted from layoffs in Lubbock by Recipient during the 12-month period prior to the date of this Agreement.
- H. Recipient agrees to consider participating in any LEDA sponsored confidential wage and benefit surveys, and with Recipient's prior written approval after reviewing marketing materials, Recipient agrees that it will reasonably participate in marketing materials that focus on economic development for the City of Lubbock.
- I. Recipient agrees to make a good-faith effort to hire low income/socio-economically disadvantaged job applicants. The parties agree that Recipient's activities under Paragraph 5J shall satisfy the requirements of this paragraph.



- J. Until the end of two years after the completion of the construction of the Project, Recipient agrees to work with LEDA's Director of Workforce Development or Workforce Solutions of the South Plains to facilitate the posting and advertisement of new jobs with those organizations, as well as for the recruitment of potential qualified applicants from the City of Lubbock and Lubbock County for such positions. Workforce Solutions of the South Plains offers other employer services, such as assessment of basic skills and work aptitudes of potential employees, job matching services, labor market information, assistance in arranging workforce training and outplacement services which the recipient may access. Notwithstanding the foregoing, Recipient retains the ultimate right to select or reject any applicant for any position of employment at the Project.
- K. Recipient agrees to begin construction at the new location within 18 months of the date it receives title to the property from LEDA, as verified by providing documentation of proof of construction on the Project or a copy of its Notice to Proceed to LEDA, subject to extension for reasonably unanticipated events 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-platting necessary for the construction of the Project, (iv) LEDA's commencement of construction of the Infrastructure Incentives (as defined below) necessary to achieve completion by milestone deadlines, and (v) any delays associated with conditions of the Property that are either known or unknown at the time of execution of this Agreement.
- L. Recipient agrees to make a total capital investment in the Project of \$870,000,000, with \$850,000,000 anticipated to occur within five years of Year One.

6. **Representations by LEDA:**

- A. LEDA represents that it is established as an Industrial Development Corporation as formed under the Act and under Chapter 504 of the Texas Local Government Code, and further represents that the Project and the costs applied toward Recipient's Project as stated in this Agreement have been found and determined by the Board of Directors of LEDA sitting as fact finders 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. 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.
- C. LEDA represents that the Property (defined below) described in Section 7 will have within reasonable proximity access to gas, electric, communication, and other utility services available for use at the Property by the Project and will be accessible and appropriate for use by Recipient for the Project and all ancillary purposes of

the Project. LEDA acknowledges that, prior to accepting conveyance of the Property, Recipient will have had the opportunity to object to any encumbrances or conditions affecting the Property that will interfere with Recipient's ability to fully utilize the property for development of the Project and LEDA agrees to reasonably support Recipient's activities associated with the Project.

- D. LEDA shall advocate and provide assistance for Recipient's pursuit of a 100% tax abatement for ten years on all real and personal property at the Project from the City of Lubbock and Lubbock County.
- E. LEDA shall advocate and provide assistance for Recipient's pursuit of a water line capable of delivering municipal water and fire water from the City of Lubbock municipal water supply to the Project.
- F. LEDA shall advocate and provide assistance for Recipient's pursuit of a sewer line capable of conveying both domestic and industrial wastewater from the Property to the City of Lubbock's municipal wastewater treatment system.
- G. LEDA shall advocate and provide assistance for Recipient's pursuit of an electric supply system that would be capable of providing 115KV electricity from dual feeds and independent sources up to a capacity of 20 MVA.
- H. LEDA will engage contractors directly and pay up to \$100,000 for the following surveys for the Project, which will all promptly be provided to Recipient for Recipient's review; boundary, topographic, Geotech, and Phase 1 Environmental. LEDA will ensure that Leprino is specifically named as a third-party beneficiary of all contracts LEDA enters into pursuant to this representation or, as alternative, provide at least equivalent protection to Leprino's interests in such agreements. Leprino will reimburse in a timely manner for any survey work completed by LEDA in excess of \$100,000 not including any additional studies and/or clean up required as a result of the Phase 1 Environmental.
- I. The site is eligible for Foreign Trade Zone designation. If Recipient would like to apply for Foreign Trade Zone designation, LEDA would facilitate the application and activation process on behalf of Recipient.
- J. Along with its partners, LEDA will provide assistance with workforce attraction, screening, and interviewing assistance to help Recipient in the initial hiring process.
- K. LEDA will assist with the application for training assistance through a Skills Development Fund Program to help offset training costs.
- L. LEDA will bring together a Site Development Briefing Team that will include the City of Lubbock and the various public service utility companies. This team will help facilitate the process by serving as the direct, immediate line to key decision-makers that can troubleshoot and resolve problems encountered in the

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
development and permitting process, such as issues related to local subdivision, uniform building, and uniform fire codes. This courtesy briefing and conceptual plan review does not replace any regular development processes.

- M. LEDA will advocate directly with the City and/or County of Lubbock, as appropriate, to ensure all governmental approvals necessary for completion of the Project are timely initiated and completed.
- N. LEDA and Leprino have conceptually discussed the development of a potential project intended to foster the sustainability of the Project in the context the Project itself, and in the broader context of Leprino's company-wide sustainability initiatives. LEDA will coordinate with local, regional, and state-level stakeholders, as is reasonably necessary, to assist Leprino in identifying a potential sustainability project associated with the development of the Project.
- O. In consideration of LEDA's limitation of liability (addressed in Section 7(A)(b), below) for environmental conditions discovered on the Property after conveyance thereof to Leprino, LEDA agrees to reimburse Leprino up to \$12,500 for Leprino's procurement of pollution insurance coverage following conveyance of the Property ("Pollution Insurance"), prior to conveyance of the Property.

7. **Real Property and Infrastructure Incentives:**

A. Real Property Incentive.

- a. As consideration for Leprino's development of the Project, LEDA shall convey approximately 258 acres of land located in Lubbock, Texas (the "Property") by Special Warranty Deed and pursuant to the terms and conditions as set forth in the "Purchase and Sale Agreement" to be executed by LEDA and Leprino in substantially the form attached as Exhibit A hereto (the "Purchase and Sale Agreement") (collectively, the "Real Property Incentive"). The legal description of the Property shall be as set forth on Exhibit A to the Purchase and Sale Agreement. LEDA shall convey the Property to Leprino at a closing as set out in the Purchase and Sale Agreement. The obligations and rights of Recipient under this Agreement shall be conditioned upon the Parties closing on the above-described transaction in full compliance with the Purchase and Sale Agreement.
- b. While Exhibit A sets out the Parties' obligations and rights with respect to the conveyance of the Property, LEDA expressly acknowledges and agrees that Leprino's ability to utilize the Property for development of the Project is material to Leprino's decision to develop the Project in Lubbock. LEDA agrees to use every effort to remove any encumbrance and/or abate any environmental conditions that may impact the development of the Project on the Property that are either known or unknown to LEDA or Leprino. With respect to environmental conditions discovered after conveyance of the Property (and not previously known to LEDA) to Leprino, Leprino agrees that its recovery of costs to abate such environmental

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conditions is limited to the Pollution Insurance.

- c. Should LEDA ultimately be unable to resolve any issue(s) relating to the Property that ultimately constrains Leprino's ability to develop the Project thereon and obtain the full benefits of use of the Property for the purposes described in the Agreement, even after such Property has been conveyed to Leprino, Leprino will have the option to terminate this agreement.
 - d. LEDA acknowledges that the Phase 1 environmental report for the "Carlton Parcel" (as defined in the Purchase and Sale Agreement) identified a landfill (as described in the Phase 1 environmental report) that was discovered on that parcel. LEDA agrees to take all actions necessary to remediate the landfill, including, but not limited to (all in consultation with Leprino), removing all refuse found on the Property (wherever located), sampling and identifying the constituents of the refuse to assess the potential for contamination posed by the refuse, and taking soil and groundwater samples to assess whether the illicit landfill caused soil and/or water contamination on or around the Property. LEDA will completely remediate any contamination identified and deliver the Property to Leprino without any environmental contamination or recognized environmental conditions in the Phase 1 Environmental Report conducted for LEDA.
 - e. LEDA also specifically agrees that Recipient shall have the right prior to acceptance of the Property to object to any easements that could adversely impact the development of the Project. LEDA agrees to use commercially reasonable efforts to coordinate with all such easement and blanket easement holders whose interest(s) encumber the Property to remove or amend such easement(s), which amendments may require addition of crossing rights, allow for certain improvements within the easement area, or identification of a narrower easement area in place of the blanket easement, all in a manner that will not conflict with Leprino's development of the Project on the Property. LEDA will consult with Leprino as it negotiates with such easement holders to amend or remove the easements as set forth above. The parties acknowledge that Recipient has the right to decline to accept the Property and Leprino may terminate this agreement if any such easements are not amended or removed to its satisfaction
- B. Infrastructure Incentives. As consideration for Leprino's development of the Project, LEDA shall, at its expense, make or cause to be made the following infrastructure improvements for the benefit of the Property and the Project (collectively, the "Infrastructure Improvements"). LEDA expressly acknowledges and agrees that each of the Infrastructure Improvements described below are critical path items necessary for Leprino's development of the Project, and LEDA acknowledges that Leprino may suffer irreparable harm to its business and incur substantial liability to third parties, including but not limited to, milk and other raw material suppliers, contractors, customers and others in the event that LEDA fails to timely complete construction of the Infrastructure Improvements consistent with the specifications set out below. LEDA acknowledges and represents that the costs associated with these Infrastructure Improvements are found by

the LEDA Board of Directors to be required or suitable under Section 501.103 of the Act and are allowed under 504.103(b) of the Act to the extent that provision is applicable. Should it become apparent to Leprino, in Leprino's reasonable discretion, that LEDA is unlikely to be able to timely complete the Infrastructure Improvements according to the milestone dates set out below, Leprino may take over management of the Infrastructure Improvements and LEDA agrees to reimburse Leprino for all of the costs Leprino incurs to complete the Infrastructure Improvements. LEDA shall consult and coordinate with Leprino closely during the design and construction of the Infrastructure Improvements. Moreover, at Leprino's request, LEDA agrees that it will share with Leprino all contracts that it enters into for the design and/or construction of the Infrastructure Improvements. And further agrees that, to the extent possible, Leprino is a third-party beneficiary of any such contracts.

a. Treated Effluent Pipeline.

- i. LEDA has agreed to engage a contractor and incur all costs associated with the development and construction of a pipeline (including all legal rights, titles, and interests in and to any permanent rights of way and/or easements) capable of conveying up to 3.5 million gallons per day ("MGD") at a flow rate of 3500 gallons per minute (peak demand) ("GPM") of treated effluent from the Property to a discharge point in Lubbock's Lake 6 (the "Pipeline"). Exhibit B includes detailed specifications for the construction of the Pipeline as well as all milestone dates necessary for completion of the Pipeline.
- ii. In addition to construction costs, LEDA has agreed to obtain, at its expense, all legal rights, titles, and interests in and to any temporary or permanent rights of way or easements necessary for construction and maintenance of the Pipeline. Upon completion of the Pipeline, LEDA agrees to convey, at no cost to Leprino: (1) the Pipeline itself (including any pumps or other equipment necessary for operation of the Pipeline that are necessary for operation of the Pipeline along the Pipeline right of way (but not pumps required to be located at Leprino's wastewater treatment facility)); and (2) all rights, titles, and interests in and to any rights of way or easements LEDA procured for construction and maintenance of the Pipeline. LEDA represents and warrants that its interest in any real property necessary for construction and maintenance of the Pipeline will be fully transferable and/or assignable to Leprino, upon completion of Pipeline construction.

b. Gas Supply.

LEDA will reimburse to Leprino or the natural gas company supplying Leprino up to \$150,000 towards the cost of building improvements necessary to access and draw gas from the high-pressure gas line located adjacent to the Property upon proof of expenses incurred.

c. Road Improvements to 19th Street.

LEDA, at its cost and expense, has agreed to construct road improvements deemed necessary by any governmental agency and/or Leprino to handle increased truck and passenger vehicle traffic that is directly or indirectly related to the development and operation of the Project as specified on Exhibit B (the "Road Improvements"). In addition, should any additional temporary or permanent rights of way and/or easements be required for the construction of the Road Improvements, LEDA will incur all costs associated with such additional rights of way, whether directly or as reimbursement to the City of Lubbock, Lubbock County, the State of Texas, or otherwise. Exhibit B also includes milestone dates necessary for completion of the Road Improvements. For the avoidance of doubt, LEDA agrees that it will cover the cost and expense of any road improvements as specifically outlined in Exhibit B necessary for construction and operation of the Project, whether contemplated and known now or discovered after execution of the Agreement.

8. Capital Investment and Job Creation Incentives to be Awarded and Terms of Award:

Subject to Recipient's performance as set forth below, LEDA hereby grants to Recipient an incentive for reimbursement of Project Costs of \$25,300,000 (through job creation and capital investment) with payments to be expressly made under the following terms and conditions:

A. Job Creation Incentive

LEDA agrees to pay Recipient up to a maximum of \$6,740,000 for Job Creation Incentives at the rate of \$10,000 for each Full-Time Job created and maintained, to be paid out over a five-year period, consistent with the schedule set out below. The payments are conditioned upon the creation of Full-Time Jobs (as verified by Recipient in writing) under the following terms and conditions: (the "Job Creation Incentive").

1. Recipient understands and agrees that in the event, other than as a result of Force Majeure (as defined in Section 15.F below), there is a failure to meet its Total Annual Compensation in the aggregate or attain its Target Job Positions, then LEDA shall have the right to make all necessary adjustments, not to exceed the sums as approved by LEDA's Board of Directors.
2. In evaluating Recipient's Request and pursuant to Section 40(b) of the Act, it is the intention of the Parties that, assuming Recipient is successful in total completion of Recipient's Project, its total Target Job Positions of 674 in number would ultimately result in 674 new Primary Jobs for the City of Lubbock, with a target Annual Compensation as follows:

Year Three: \$15,750,000 in the aggregate or 300 Primary Jobs
Year Four: \$28,875,000 in the aggregate or 550 Primary Jobs
Year Five: \$35,385,000 in the aggregate or 674 Primary Jobs

3. Each annual incentive installment shall be considered to be earned as of each Measurement Date during the Agreement when, by review, it is confirmed that Recipient has attained either the Target Job Positions or the Target Annual Compensation.
4. The incentive earned (\$10,000 for each full-time job created and maintained) will be based on the greater of (1) the total number of full-time jobs created at the Project, or (2) total annual compensation for all jobs created at the Project, divided by \$52,500. For example, if Leprino creates 100 full-time jobs at the Project, but total annual compensation for all jobs at the Project is \$7,000,000, the amount of incentive earned would be based on 133 jobs (\$7,000,000 / \$52,500), not 100.
5. Should Recipient fail to meet either its Target Job Positions or its Target Annual Compensation at any Measurement Date, but ultimately meet either its overall Target Job Positions or Target Annual Compensation, LEDA, shall, at its discretion have the right to allow Recipient to recapture any forfeited incentives not to exceed the maximum amount approved by the Board.
6. While this Agreement contemplates that the job creation incentive will total \$6,740,000, should Recipient exceed its Target Job Positions or Target Annual Compensation during any year or years, LEDA, shall, at its discretion have the right to allow accelerated or—as appropriate—increased job creation incentive payments (\$10,000 per Primary Job), not to exceed any Board approved amount.

B. Capital Investment by Recipient

1. In addition to the payments under Paragraph 8(A), LEDA agrees to pay, as set forth herein, up to \$19,300,000 of Project costs, beginning at the end of Year Two, and payable over nine (9) years (the “Capital Investment Incentive”). Subsequent annual payments made on or around the annual anniversary date of the first payment, in amounts equal to the following:

Year Two -	\$3,000,000
Year Three -	\$2,300,000
Year Four -	\$2,000,000
Year Five -	\$2,000,000
Year Six -	\$2,000,000
Year Seven-	\$2,000,000
Year Eight -	\$2,000,000
Year Nine -	\$2,000,000
Year Ten -	\$2,000,000

2. Recipient agrees to timely provide information to LEDA’s designated accounting representative when requested regarding the final investment in the

Project. LEDA and its representative agree to maintain confidentiality of all of Recipient's records and to return all such records unless other mutually agreeable arrangements are made regarding record retention by Recipient or inspection access to LEDA.

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

- A. Any use of LEDA or Recipient's name for publicity in connection with Recipient's business or activities must be approved in advance by Leprino and LEDA and it is understood that, pursuant to lawful Texas Public Information Act requests, LEDA may make known its written contributions to Recipient. In addition, LEDA may—in its reasonable discretion—orally disclose LEDA's contributions to third parties who request such information in good faith.
- B. For the duration of this Agreement and for an additional five years beyond the Agreement, in order to receive benefits hereunder, Recipient must maintain a business location in the City of Lubbock or Lubbock County and its legal status under federal and state law duly and 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 of Lubbock and/or governmental entities which may have jurisdiction over operations and activities of the Project and the Recipient.
- D. Recipient agrees to, in good faith, engage in a confidential review and examination of all material records with LEDA's accountants, and the Parties mutually agree that such review is necessary to ensure compliance with the conditions of the incentive payments (including base salary, overtime, and fringe benefits). Recipient agrees to timely provide to LEDA's accountants all information reasonably requested by the accountants. Should Recipient fail to provide to the accountants the information reasonably necessary to complete the review within six months from the Measurement Date, the job creation incentives for the year being reviewed may be suspended until such time as Recipient provides such information and may be forfeited in the event that recipient does not provide such information within six months of the information coming due. All such reviews and examinations shall be subject to the Recipient's confidentiality and security policies.
- E. Recipient certifies that the Recipient does not and will not knowingly employ an undocumented worker 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), Recipient shall repay the amount of the

public subsidy provided under this Agreement in an amount equal to the amount of such public subsidy that Recipient received for the benefit of such undocumented worker, 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 of the violation.

- F. 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, have or will be returned upon the execution of this Agreement, subject to a right to a continuing examination by LEDA in order 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.
- G. Recipient will notify LEDA in writing within three (3) business days of any lay-off or reduction in force greater than 20% of the existing workforce, related to the Project. The notification must include the number of employees being laid off, their job titles, the reasoning for the lay-off, and what the company is doing to assist the laid off employees. Likewise, if an announcement is made that the Recipient is closing its doors and ceasing business operations at the Project during the review of job creation incentives, LEDA, in its sole discretion, may elect to suspend payment to Recipient.

10. Payback Provisions and Events of Default:

- A. Recipient acknowledges that LEDA and Recipient are required to remain in conformance with the statutory provisions of the Act. The Parties agree that in the event Recipient fails to comply with the provisions of this Agreement, including, but not limited to, Paragraphs 5E, 5K, 5L, 9C, 9D, 9E or 11, and after written notice and failure to cure the violation within a reasonable period of time after such notice, then LEDA, in its sole discretion, may terminate this Agreement and permanently suspend all future payments to Recipient.
- B. If within 15 years from the date hereof, and except for an event of Force Majeure, Recipient of this Agreement abandons or vacates the Property, Recipient shall reimburse LEDA 1) for payments under Section 8.B. herein and 2) for LEDA's out-of-pocket costs under Section 6 of the design and installation of the Industrial Effluent Pipeline, gas line reimbursement, and of improvements to 19th Street, which amounts may be verified by Recipient or its third-party accounting representative. The amount of any reimbursement required by this paragraph shall be reduced by 6.7% for each full year of operation of the Project in accordance with this Agreement.
- C. The Recipient has provided to LEDA an estimated capital investment cost of \$870,000,000 with 850,000,000 anticipated to be expended by the end of Year Five in the form of new construction of a building (or buildings) and personal property. LEDA based its decision to grant the Capital Investment Incentive to Recipient partly upon such capital investment. If the actual capital investment amounts are significantly lower (20% or greater) than the estimated capital investment, LEDA may reduce the Capital Investment Incentive by \$280,000 for every \$10,000,000 of capital investment below \$680,000,000. In

consultation with Leprino, Capital investment will be measured either by documentation of construction or personal property purchased invoices or by the increased valuation of the Lubbock Central Appraisal District historic information reports.

- D. If Recipient fails to begin construction of the Project on or before the Commencement Deadline, Recipient shall reconvey title to the Property to LEDA, at no cost to LEDA, (the "**First Conveyance Right**"). Further, Recipient agrees to promptly and diligently pursue the completion of the construction of the Project and receive a Certificate of Occupancy from the City of Lubbock, Texas, subject to reasonably unanticipated events, events of force majeure and delays caused by LEDA, within sixty months following the Commencement Date (the "**Completion Date**"). If Recipient fails to complete construction of the Project and receive a Certificate of Occupancy from the City of Lubbock, Texas, on or before the Completion Date, Recipient shall, at Leprino's option in its sole and absolute discretion, either (i) reconvey title to the Property, together with all improvements situated thereon, to LEDA, at no cost to LEDA (the "**Second Reconveyance Right**" and together with the First Reconveyance Right, the "**Reconveyance Rights**"), or (ii) pay to LEDA the Stipulated Value in cash within thirty days following Leprino's notification of such choice to Recipient (the "**Purchase Price**").

11. **Assignment:** This Agreement shall not be assignable, either in whole or in part, except this Agreement may be assigned to any successor or assign of Recipient by merger, consolidation, or transfer of all or substantially all of the assets of the Project. Any assignment not authorized by this Agreement shall not disqualify the remaining or new entity from applying to LEDA for new incentive consideration.

12. **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 and the sole connection between the Parties is the contribution of the economic assistance by LEDA under the restricted conditions as set forth herein and that such 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.

13. **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.

14. **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:

(1) LEDA

John Osborne
CEO and President
LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC.
1500 Broadway, 6th Floor
Lubbock, TX 79401

With a copy to:

Ann Manning
Attorney at Law
Underwood Law Firm, PC
P.O. Box 16197
Lubbock, Texas 79490

(2) Recipient

Erik Nielsen
Associate General Counsel
Leprino Foods Company
1830 W. 38th Ave.
Denver, CO 80211

With a copy to:

legal@leprinofoods.com

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 as may be changed, pursuant to the terms and conditions hereof.

- B. Entire Agreement: This instrument constitutes the entire agreement between the parties hereto and neither this Agreement nor any of the Exhibits attached hereto, if any, can be altered, changed, or amended in any respect except by an instrument in writing duly executed by both parties.
- C. Governing Law, Jurisdiction, and Performance: This Agreement shall be governed by the laws of the State of Texas and shall be deemed to be executed in and performance called for in Lubbock, Lubbock County, Texas. The Parties agree that any disputes arising out of this Agreement that cannot be resolved through good-faith negotiation will be resolved in the United States District Court for the Northern District of Texas. In the event of any litigation between the Parties, the prevailing Party shall be entitled to its reasonable attorneys' fees, plus court costs,

expert fees and costs, and other expenses of litigation in proportion to the degree of success of that Party

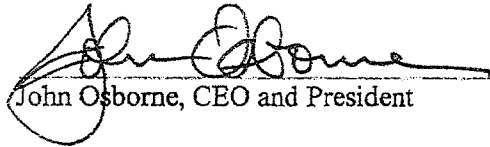
- D. Partial Invalidity: In the event that any portion of this Agreement should be found or declared to be invalid for any reason, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties. Notwithstanding anything contained herein to the contrary, should it be determined that LEDA cannot legally provide the benefit described in this Agreement and/or should funding for any of such benefits be terminated, then all future obligations of the Recipient shall be terminated.
- E. Binding Effect: This Agreement shall be binding upon the undersigned, their successors and assigns by merger, subject to the express terms of this Agreement concerning assignment.
- F. Force Majeure: If any performance of any covenant or term of this Agreement is delayed or prevented by reason of strike, riots, shortages of labor, materials, supplies, or transportation, war, civil commotion, act of God, governmental restrictions, regulations, or interference, fire, pandemic – including, but not limited to – the COVID-19 pandemic, or other casualty, or any other circumstances beyond a signatory party's control (“Force Majeure”), 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 and all timeframes for performance under this Agreement shall be extended accordingly. Notwithstanding the foregoing, the Parties each have an affirmative obligation to take all reasonable actions to overcome an event of Force Majeure before any performance under this Agreement will be excused.
- G. Time is of the Essence: The parties agree that time is of the essence in the execution of this Agreement.
- H. Limitation of Leprino's Liability and Leprino's Termination for Convenience. LEDA understands and agrees that, despite the execution of this Agreement, Leprino retains sole and absolute discretion to (1) develop the Project in Lubbock; (2) develop the Project outside of Lubbock (in another city, state, and/or country); or (3) develop the Project at all. LEDA agrees that, should Leprino not develop the Project in Lubbock, Leprino may terminate this Agreement for convenience on 30 days' notice to LEDA and Leprino's sole liability to LEDA for such termination for convenience will be to reimburse LEDA for the actual costs that it incurs pursuant to Section 6(H) and Section 7(B). With respect to Section 7(A), should Leprino ultimately not develop the Project in Lubbock pursuant to this Section 14(H), Leprino has the option to either reconvey the Property to LEDA or to reimburse LEDA for the actual costs that it incurred to procure the Property. ASIDE FROM THE REMEDIES SET OUT IN THIS SECTION 14(H) LEDA EXPRESSLY DISCLAIMS ANY RIGHT TO PURSUE ANY DAMAGES FROM LEPRINO THAT RESULT FROM LEPRINO'S DECISION TO TERMINATE

THIS AGREEMENT FOR CONVENIENCE AND NOT DEVELOP THE PROJECT IN LUBBOCK (WHETHER LEPRINO DEVELOPS THE PROJECT ELSEWHERE OR NOT AT ALL).

[signature page follows]

EXECUTED in multiple counterparts, each of which is an original, on this 23rd day of February, 2022.

LUBBOCK ECONOMIC DEVELOPMENT
ALLIANCE, INC.


John Osborne, CEO and President

ATTEST:



RECIPIENT:

Leprino Foods Company

By: Mike Dentin

Its: President + CEO

ATTEST:

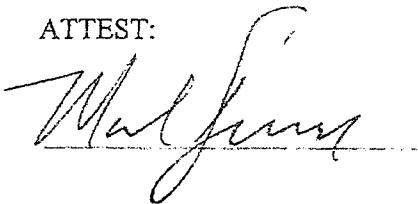


EXHIBIT A TO PERFORMANCE AGREEMENT

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is made and entered into effective as of March 1, 2022 (the “**Effective Date**”) by and between LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC., a Texas non-profit corporation, 1500 Broadway, Suite 600, Lubbock, Lubbock County, Texas 79401 (“**Seller**”), and LEPRINO FOODS COMPANY, a Colorado corporation, whose mailing address is 1830 West 38th Avenue, Denver, Colorado, 80211-2225 (“**Purchaser**”). Except as otherwise expressly defined herein, capitalized terms will have the meanings set forth in Article I below.

WITNESSETH

For and in consideration of the mutual covenants and promises hereinafter set forth, the parties hereby mutually covenant and agree as follows:

ARTICLE I

DEFINED TERMS

The following terms shall have the following meanings for all purposes of this Agreement:

“**Additional Title Objection**” has the meaning set forth in Section 3.01(d)(ii).

“**Affiliate**” or any derivation thereof, means any Person which directly or indirectly controls, is under common control with, or is controlled by any other Person. For purposes of this definition, “controls”, “under common control with” and “controlled by” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities or otherwise.

“**Appraisal**” means an MAI appraisal of the Real Property which may be obtained by Purchaser.

“**Assignment of Warranties**” has the meaning set forth in Section 6.01(a)(ii)(A).

“**Business Day**” means a day on which banks located in Texas are not required or authorized to remain closed.

“**Carlton Parcel**” means that certain real property located in the City of Lubbock, Texas, which, together with the Eppes Parcel, comprises the Larger Parcel.

“**City**” means the City of Lubbock, Texas.

“**Closing**” has the meaning set forth in Section 4.01.

“**Closing Date**” means the date specified as the closing date in Section 4.01.

"County" means Lubbock County, Texas.

"Deed" means a deed in substantially the form attached hereto as **Exhibit C**, pursuant to which Seller will convey to Purchaser the two parcels comprising the Real Property at Closing.

"Eppes Parcel" means that certain real property located in the City of Lubbock, Texas, which, together with the Carlton Parcel, comprises the Larger Parcel.

"Effective Date" has the meaning set forth in the preamble of this Agreement.

"Environmental Inspections and Reports" has the meaning set forth in Section 3.05.

"Excluded Parcels" has the meaning set forth in Section 3.06.

"Governmental Authority" means the United States of America, any state or other political subdivision thereof, any other entity exercising executive, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

"Hazardous Materials" includes: (a) oil, petroleum products (including any and all constituents and additives), flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other materials, contaminants or pollutants which pose a hazard to the Property or to Persons on or about the Property, cause the Property to be in violation of any local, state or federal law or regulation, (including without limitation, any Hazardous Materials Law), or are defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "toxic substances", "contaminants", "pollutants", "regulated substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted, orders issued, or publications promulgated pursuant thereto, including, but not limited to: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, et seq.; (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, et seq.; (iv) the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, et seq.; and (v) regulations adopted and publications promulgated pursuant to the aforesaid laws; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million contained in transformers or other equipment; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or which may or could pose a hazard to the health and safety of the occupants of the Property or the owners and/or occupants of any property adjoining the Property.

"Hazardous Materials Laws" includes any and all federal, state and local laws, rules, regulations, statutes, and requirements pertaining or relating to the environmental condition of the Property or to Hazardous Materials.

"Independent Consideration" has the meaning set forth in Section 2.02(a).

“Insolvency Event” means (a) a Person’s (i) failure to generally pay its debts as such debts become due; (ii) admitting in writing its inability to pay its debts generally; or (iii) making a general assignment for the benefit of creditors; (b) any proceeding being instituted by or against any Person (i) seeking to adjudicate it as bankrupt or insolvent; (ii) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency, or reorganization or relief of debtors; or (iii) seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property, and in the case of any such proceeding instituted against any such Person, either such proceeding shall remain undismissed for a period of 120 days or any of the actions sought in such proceeding shall occur; or (c) any Person taking any corporate or other formal action to authorize any of the actions set forth above in this definition.

“Inspection Period” means the period commencing on the Effective Date and ending, unless waived earlier by Purchaser, on the date which is one hundred eighty (180) days following the Effective Date or, if such 180th day is not a Business Day, then the first Business Day following such 180th day.

“Inspections” has the meaning set forth in Section 3.03(a).

“Larger Parcel” means the approximately 407 acres of land located in the City and the County, all of which was previously owned by Seller, comprised of the Carlton Parcel and the Eppes Parcel, and more particularly described on the attached **Exhibit B**.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

“Losses” means any and all claims, lawsuits, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, interest, charges, fees, expenses, judgments, decrees, awards, amounts paid in settlement and damages of whatever kind or nature (including, without limitation, reasonable attorneys’ fees, court costs and costs incurred in the investigation, defense and settlement of claims).

“Material Encumbrance” means any encumbrance or condition affecting the Property that is likely to interfere with Purchaser’s ability to fully utilize the Property for development of the Project and timely objected to by Purchaser in accordance with Section 3.01(d) hereof.

“Monetary Encumbrance” means any deeds of trust, mortgages, attachments, judgments, liens for delinquent real property taxes and assessments, mechanics’ and materialmen’s liens, abatement liens, civil administrative penalties, and all other liens or encumbrances of a definite or ascertainable amount that secure the payment of money.

"Non-Foreign Seller Certificate" has the meaning set forth in Section 6.01(a)(iii).

"Notices" has the meaning set forth in Section 8.03.

"OFAC List" means the list of specially designated nationals and blocked Persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and any other similar list maintained by the U.S. Treasury Department, Office of Foreign Assets Control pursuant to any Legal Requirements, including, without limitation, trade embargo, economic sanctions, or other prohibitions imposed by Executive Order of the President of the United States. The OFAC List currently is accessible through the internet website <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>.

"Performance Agreement" has the meaning set forth in Section 2.02(b).

"Permitted Encumbrances" means (a) the lien of any real estate taxes, water and sewer charges, not yet due and payable; (b) the Standard Exceptions; and (c) those recorded easements, restrictions, liens and encumbrances set forth as exceptions in the Title Commitment and in the Title Policy to be issued by Title Company to Purchaser and approved by Purchaser in its sole discretion in connection with this Agreement. Permitted Encumbrances expressly excludes any Material Encumbrances agreed to be cured by Seller or Monetary Encumbrances.

"Person" means any natural person, firm, corporation, partnership, limited liability company, other entity, state, political subdivision of any state, the United States of America, any agency or instrumentality of the United States of America, any other public body or other organization or association.

"Phase I" means the Phase I Environmental Site Assessment performed ~~on the Real Property~~ on the Real Property.

"Phase II" means the Phase II Environmental Site Assessment to be conducted by Purchaser prior to the end of the Inspection Period.

"Pollution Insurance" means an insurance policy procured by Purchaser to cover any costs and/or damages that Purchaser incurs to remediate any environmental conditions and/or Hazardous Materials discovered on the Property after the Closing Date.

"Property" has the meaning set forth in Section 2.01.

"Project" means Purchaser's proposed development of a new dairy-products manufacturing facility and related improvements to be located in or near the City.

"PCA" means a property condition assessment or report which may be obtained by Purchaser in its sole discretion and at its sole cost and expense with respect to the Property.

"Purchaser Event of Default" has the meaning set forth in Section 7.03.

"Real Property" has the meaning set forth in Section 2.01.

“**Standard Exceptions**” means those standard printed title exceptions with language promulgated from the Texas Department of Insurance, which the Title Company has not agreed to delete.

“**Seller Documents**” has the meaning set forth in Section 3.02.

“**Seller Event of Default**” has the meaning set forth in Section 7.01.

“**Stipulated Value**” means a total amount equal to Two Million Six Hundred Twenty Thousand Dollars (\$2,620,000).

“**Survey**” means the survey dated May 14, 2021, prepared by Brent Carroll of Hugo Reed and Associates, Inc.

“**Surveys**” shall have the meaning set forth in paragraph 2.04.

“**Title Commitment**” means the Commitment for Title Insurance issued by Chicago Title Insurance Co., GF No. 50123, effective August 20, 2021, covering the Real Property.

“**Title Company**” means Service Title Co., 1408 Buddy Holly Ave., Suite B, Lubbock, Texas 79401 (Attention: Tex Timberlake).

“**Title Objection**” has the meaning set forth in Section 3.01(d)(i)

“**Title Policy**” or “**Title Policies**” have the meaning set forth in Section 3.01(a).

“**Transaction**” has the meaning set forth in Section 2.01.

“**Transaction Costs**” has the meaning set forth in Section 2.04.

“**Transaction Documents**” means this Agreement, the Deed, the Non-Foreign Seller Certificate, the Assignments of Warranties, the Performance Agreement, any and all documents referenced herein and therein, and such other documents, payments, instruments and certificates as are reasonably required by Seller, Purchaser and/or the Title Company.

“**Zoning Report**” means a zoning report, zoning letter or other evidence regarding compliance by the Real Property with applicable local zonings laws.

ARTICLE II

PURCHASE OF PROPERTY

Section 2.01 Agreement to Purchase. Purchaser agrees to purchase, and Seller agrees to sell, in accordance with the terms, conditions and stipulations set forth in this Agreement (the “**Transaction**”), all of the right, title and interest of Seller, respectively, in and to:

(a) the two parcels of real property located in the City of Lubbock, County of Lubbock, State of Texas, as more particularly described on Exhibit A attached hereto, and

any and all improvements thereon and appurtenances thereto (collectively, the "Real Property"), it being understood that Seller represents to Purchaser that Seller owns the Larger Parcel and the Real Property and Exhibit A sets forth the portion of the Larger Parcel to be acquired by Purchaser at Closing;

(b) all fixtures affixed thereto;

(c) all plans, specifications and studies pertaining to the Real Property in Seller's possession or under its control;

(d) all mineral, oil and gas rights, water rights, sewer rights and other utility rights appurtenant to or allocated to the Real Property and owned by Seller;

(e) all appurtenances, easements, licenses, privileges and other property interests belonging or appurtenant to the Real Property (all of the foregoing items in clauses (a) through (d) above, now or hereafter existing, the "Property"). Purchaser acknowledges that Seller's insurance policies will not be transferred to Purchaser and that such insurance policies shall in no way inure to the benefit of Purchaser or constitute part of the Property.

Section 2.02 Consideration.

(a) Upon execution of this Agreement, Purchaser shall pay to Seller the amount of One Hundred Dollars (\$100.00) as independent consideration for Seller's performance under this Agreement (the "Independent Consideration").

(b) The parties will cooperate and work in good faith to mutually execute an agreement on or before the expiration of the Inspection Period setting forth the parties' respective obligations relating to incentives offered by Seller to Purchaser in connection with Purchaser's development of the Project (the "Performance Agreement"). In further consideration for the conveyance of the Property by Seller, Purchaser agrees to abide by the terms and conditions of the Performance Agreement upon mutual execution of the same.

Section 2.03 Prorations. Taxes for the year of Closing shall be prorated between Seller and Purchaser as of the Closing Date (with any such expense as of the Closing Date to be for the account of the Purchaser). Notwithstanding the foregoing, Seller as a non-profit corporation may be exempted from payment of ad valorem taxes. Nothing herein shall be construed to waive such exemption.

Section 2.04 Transaction Costs. Seller and Purchaser shall be responsible for the payment of the following transaction costs incurred by Seller and Purchaser in connection with the Transaction (collectively, the "Transaction Costs") as follows:

(a) Seller and Purchaser shall each be responsible for the payment of the fees and expenses of their respective legal counsel, accountants and other professional advisers.

(b) Seller shall pay for the cost of obtaining the Survey, the Phase I, a topographic survey, and a Geotech survey (the "Surveys"), up to a total of \$100,000.00.

Purchaser shall reimburse Seller within five Business Days following demand by Seller, accompanied by reasonable evidence of such cost, for any cost for such Surveys over and above \$100,000.00.

- (c) Purchaser shall pay for any endorsements to the Title Policy.
- (d) Seller shall pay the premium cost for any Pollution Insurance that Purchaser procures, up to \$12,500, and Purchaser shall pay any premium costs in excess of \$12,500.
- (e) Seller and Purchaser shall equally split the title escrow fee.
- (f) Seller shall pay the cost of the basic premium for the owner's Title Policy or Title Policies to be obtained by Purchaser for coverage in the amount of the Stipulated Value. Purchaser shall pay title insurance premium costs for coverage in excess of the Stipulated Value.
- (g) Seller shall pay for the cost of any broker engaged by Seller.
- (h) Purchaser shall pay for the cost of the Appraisal, if any.
- (i) Seller shall pay all recording fees for any releases of liens or Monetary Encumbrances, or relating to any Material Encumbrances which Seller has agreed to cure, and Purchaser shall pay for the cost of recording the Deed.

The provisions of this Section 2.04 shall survive Closing or termination or expiration of this Agreement for any reason; provided, however, notwithstanding anything contained in this Agreement to the contrary, in the event this Agreement is terminated due to a default by Seller relating to Seller's refusal to convey title to the Property when Purchaser is ready, willing, and able to take title to the Property and perform its obligations hereunder and under the Performance Agreement, Purchaser shall not have any obligation to pay for all or any portion of the items listed in this Section 2.04.

ARTICLE III

DUE DILIGENCE

Section 3.01 Title Insurance.

(a) *Title Commitment and Title Policy.* Prior to the Effective Date, Seller has obtained the Title Commitment committing to issue an Owner's Policy of Title Insurance on the form approved by the Texas Department of Insurance at the date of issuance to Purchaser, which policy shall be in at least the amount of the Stipulated Value, subject only to the Permitted Encumbrances, together with any endorsements which the Title Company agrees to issue and for which Purchaser has agreed to pay (the "Title Policy"). Seller has caused a copy of the Title Commitment to be delivered to Purchaser.

(b) **Title Company.** The Title Company is hereby employed by the parties to act as escrow closing agent in connection with this Transaction. This Agreement shall be used as instructions to the Title Company, as escrow agent, which may provide its standard conditions of acceptance of escrow; *provided, however*, that in the event of any inconsistency between such standard conditions of acceptance and the terms of this Agreement, the terms of this Agreement shall prevail.

(c) **Title Company Actions.** The Title Company is authorized to pay, at Closing, from any funds held by it for each party's respective credit, all amounts necessary to procure the delivery of any documents and to pay, on behalf of Purchaser and Seller, all charges and obligations payable by them as expressly authorized hereunder, respectively. Except as otherwise set forth herein, Seller and Purchaser will pay all charges payable by them, respectively, as expressly set forth under this Agreement, to the Title Company. The Title Company shall not cause the Transaction to close unless and until it has received written instructions from Purchaser and Seller to do so (which written instructions may be by e-mail) and Title Company shall cause such closing to occur strictly in accordance with such written instructions. The Title Company is authorized, in the event any conflicting demand is made upon it concerning these instructions or the escrow, at its election, to hold any documents and/or funds deposited hereunder until an action shall be brought in a court of competent jurisdiction to determine the rights of Seller and Purchaser or to interplead such documents and/or funds in an action brought in any such court.

(d) **Title Objections.**

(i) Prior to the expiration of the Inspection Period, Purchaser shall notify Seller (or Seller's counsel) in writing (email is acceptable) of Purchaser's objection to any exceptions or other title matters shown on the Zoning Report, the Title Commitment or the Survey (each, a "**Title Objection**"). If any Title Objection with respect to the Property is not removed or resolved (pending the actual Closing) by Seller or Title Company to Purchaser's satisfaction at least five (5) days prior to the Closing Date, then Purchaser shall have the option, as its sole remedy, upon written notice to Seller or to Seller's counsel (notice by email is acceptable) on or before the Closing Date, to terminate this Agreement, in which event neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein, including without limitation payment or reimbursement of costs as set forth in Section 2.04;

(ii) If, after the Inspection Period, any supplement to a Title Commitment or the Survey discloses any additional title defects which were not created by or with the consent of Purchaser, and which are not acceptable to Purchaser, Purchaser shall notify Seller (or Seller's counsel) in writing (email is acceptable) of Purchaser's objection thereto (each, an "**Additional Title Objection**") within ten (10) days following receipt of such supplement or revision. If any Additional Title Objection is not removed or resolved (pending the actual Closing) by Seller to Purchaser's satisfaction at least three (3) days

prior to the Closing Date, then Purchaser shall have the option, as its sole remedy, to terminate this Agreement upon written notice to Seller or to Seller's counsel (notice by email is acceptable) on or before the Closing Date, in which event neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein, including, but not limited to, Section 2.04;

(iii) Purchaser's failure to timely deliver a Title Objection or an Additional Title Objection shall be deemed Purchaser's acceptance of the matters disclosed by the Title Commitment, the Zoning Report and Survey. If Purchaser does not terminate this Agreement by reason of any Title Objection or Additional Title Objection, as provided in this Section 3.01, then such Title Objection or Additional Title Objection shall be deemed waived and approved by Purchaser and shall thereafter be deemed a Permitted Encumbrance.

(iv) Notwithstanding anything set forth in this Agreement to the contrary, on or before Closing, Seller shall cause any Monetary Encumbrances affecting any part or all of the Property to be paid and satisfied; and (ii) any Material Encumbrances which Seller has agreed to cure to be removed, terminated, and/or modified as agreed in writing between Seller and Purchaser, and all such Monetary Encumbrances shall be deemed to be included in all Title Objections and Additional Title Objections even if not specifically so included by Purchaser.

(v) If Seller is unable to convey title to the Real Property free and clear of the lien of any state or local tax (except those which are not yet due and payable), Seller shall be responsible for either paying such tax or providing to the Title Company security (such as a cash deposit) so that the Title Company can issue a Title Policy with respect to the Property to Purchaser free and clear of such liens, whether or not Purchaser includes such liens as a Title Objection or Additional Title Objection.

(v) Notwithstanding anything set forth in this Agreement to the contrary, Purchaser's obligation to close the Transaction contemplated under this Agreement is expressly conditioned upon the Title Company's irrevocable commitment to issue to Purchaser (with an effective date not earlier than the Closing Date) the Title Policy, subject only to the Permitted Encumbrances and with all endorsements requested by Purchaser.

Section 3.02 Seller Documents. On or before ten (10) days after the Effective Date, Seller will deliver to Purchaser those of the items listed on Schedule 1 attached hereto and made a part hereof which are in Seller's possession or control (collectively, the "Seller Documents"). Seller represents and warrants that the Seller Documents constitute true, correct and complete copies of all of the documents relating to the Property that Seller has in its possession and/or control. To the extent that Purchaser requests additional, reasonable information or documents from Seller after the initial delivery of the Seller Documents, which are in Seller's possession or control, Seller shall

cooperate to provide the same to Purchaser for review, and the same shall become a part of the Seller Documents.

Section 3.03 Inspections.

(a) During the Inspection Period, Purchaser and its representatives, at their sole cost and expense except as specifically set forth herein, and at their sole risk, may perform investigations, tests and inspections (collectively, the "Inspections") with respect to the Property that Purchaser deems reasonably appropriate (such Inspections shall include but not be limited to the right to obtain a survey, environmental inspections, a Zoning Report, a PCA and an Appraisal).

(b) During the Inspection Period, Seller shall, at all reasonable times and during customary business hours and after 24 hours' prior notice to Seller, by e-mail:

(i) to the extent within the actual possession or under the control of Seller, provide Purchaser and Purchaser's officers, employees, agents, advisors, attorneys, accountants, architects, and engineers with access to the Property, all drawings, plans, specifications and all engineering reports for and relating to the Property, the files and material correspondence relating to the Property, and the financial books and records relating to the ownership, lease (if applicable), operation, and maintenance of the Property; and

(ii) allow such Persons to make such inspections, tests, copies, and verifications which are commercially reasonable at such Person's sole cost and expense.

Purchaser shall perform, and shall cause its agents, employees, contractors, and other representatives to perform, all Inspections of the Property in compliance with all applicable laws and regulations and so as to not cause any damage, loss, cost, or expense to, or claims against Seller or the Property. Notwithstanding any of the foregoing, following the completion of any due diligence, Purchaser and/or Purchaser's representatives shall, at Purchaser's sole cost and expense, return the Property to substantially the same condition it was in prior to such due diligence. Damage to property or person resulting from access to the Property by Purchaser and/or Purchaser's representatives or from due diligence performed by Purchaser and/or Purchaser's representatives shall be at Purchaser's sole risk, cost, and expense and Purchaser and/or Purchaser's representatives shall provide Seller with evidence satisfactory to Seller of general liability insurance prior to entering the Property. Purchaser shall not permit the attachment of any mechanic's lien, materialman's lien or any other lien, claim or encumbrance against the Property and, in the event of any such encumbrance, Purchaser shall bear all costs and expenses related to the defense or removal of same and shall indemnify and hold Seller harmless from any such costs or expenses that Seller may incur in connection with such defense or removal of any such encumbrance. These provisions shall survive the expiration or earlier termination of this Agreement.

Section 3.04 Inspection Reports. Immediately upon receipt thereof, Purchaser shall deliver to Seller true, correct and complete copies of any and all title commitments, surveys, PCAs,

written environmental inspections and reports, Zoning Report or other inspection results which may be obtained by Purchaser.

Section 3.05 Environmental.

(a) Seller hereby represents and warrants to Purchaser that: (i) Seller is in full compliance with all Hazardous Material Laws, including, without limitation, that Seller has all permits required by Hazardous Material Laws, (ii) except as disclosed to Purchaser in the Phase I, neither Seller, nor to the best of Seller's knowledge, any previous owner of the Property or any other person or entity, has ever used, generated, processed, stored, disposed of, released or discharged any Hazardous Materials on, under, or about the Property or transported it to or from the Property, nor, to the best of Seller's knowledge, has any party ever alleged that any such activities have occurred, (iii) except as disclosed to Purchaser in the Phase I, no use by Seller, or, to the best of Seller's knowledge, any prior owner of the Property or any other person, has occurred which violates or violated, any applicable Hazardous Material Law, nor to the best of Seller's knowledge has any party ever alleged that such violations have occurred, and (iv) to the best of Seller's knowledge, the Property is not on any "Superfund" list under any applicable Hazardous Material Law, nor is it subject to any lien related to any environmental matter.

(b) During the Inspection Period, Purchaser and its agents, employees, consultants, engineers, inspectors and contractor's (collectively, the "**Purchaser Representatives**") may enter the Property to complete any tests, studies or environmental inspections of the condition of the Property that Purchaser deems appropriate, including without limitation, Phase II investigations of any kind and geotechnical assessments (collectively, "**Inspections**"). In the event the Inspections reveal environmental conditions on the Property to which Purchaser reasonably objects, Purchaser may provide notice of such reasonable objections, and upon receipt of such notice, Seller, at Seller's cost, shall immediately proceed with any reasonable remediation, removal, response, abatement, and clean-up efforts necessary to resolve such environmental conditions to in order for Purchaser to be considered a "bona-fide purchaser" under applicable environmental laws. In addition, in the event that Purchaser is not satisfied with the condition of the Property or in the event that Seller is unwilling or unable to resolve any environmental conditions to Purchaser's satisfaction, in its sole discretion, then Purchaser may terminate this Agreement in which event neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein including, without limitation, payment or reimbursement of costs as set forth in Section 2.04.

(c) Notwithstanding anything herein to the contrary, Purchaser's obligation to close on the purchase of the Property hereunder is expressly conditioned upon Purchaser's satisfaction with the results of the environmental condition of the Property in its sole and absolute discretion.

(d) In consideration of Seller's payment of a portion of Pollution Insurance as set out in Section 2.04(d), Purchaser hereby releases Seller from liability for any environmental conditions and/or Hazardous Materials discovered on the Property after the

Closing Date, provided that such environmental conditions are unknown to Seller as of Closing Date. Purchaser agrees to look solely to the Pollution Insurance for recovery of any costs it incurs associated with the discovery of any such environmental conditions after the Closing Date, provided that such environmental conditions are unknown to Seller as of the Closing Date.

Notwithstanding anything to the contrary contained herein, and subject to the limitation set out in Section 3.05(d), the representations and warranties in this paragraph shall be deemed remade as of Closing, and Seller's obligations under this Section 3.05 shall survive Closing or any other termination of this Agreement and shall not be merged therein.

Section 3.06 Subdivision Approval. Purchaser and Seller acknowledge Seller has conveyed certain portions of the Larger Parcel prior to the Effective Date, including (i) a portion of the Carlton Parcel located along the western boundary, and (ii) a portion of the Eppes Parcel located along the western boundary (collectively, the "Excluded Parcels"), and that as of the Effective Date, the Real Property has been legally separated from the Excluded Parcels.

Section 3.07 Purchaser's Right to Terminate. Notwithstanding any provision contained herein, in addition to its right to terminate this Agreement as set forth elsewhere in this Agreement, Purchaser may elect, for any reason or for no reason, so long as Purchaser provides written notice thereof to Seller (or to Seller's counsel) on or before expiration of the Inspection Period (notice by email is acceptable), to terminate this Agreement, in which event neither Seller nor Purchaser shall have any further duties or obligations under this Agreement except as otherwise provided herein, provided that each party shall be responsible for its obligations stated in Section 2.04.

ARTICLE IV

CLOSING

Section 4.01 Closing Date. Subject to the provisions of Article V of this Agreement, the closing date of the Transaction contemplated by this Agreement (the "Closing") shall occur on the date that is thirty (30) days following the expiration of the Inspection Period, or as otherwise set by mutual agreement of Seller and Purchaser (the "Closing Date"), **WHICH TIME IS OF THE ESSENCE OF THIS AGREEMENT.** The parties shall deposit with the Title Company all documents (including without limitation, the executed Transaction Documents) as necessary to comply with the parties' respective obligations hereunder on or before the Closing Date or as otherwise mutually agreed upon by the parties. The parties shall deposit all funds and documents required hereunder with the Title Company prior to 2:00 p.m. Lubbock, Texas, prevailing time on the Closing Date or before the Closing Date.

Section 4.02 Possession. Seller shall deliver possession of the Real Property to Purchaser on the Closing Date, free and clear of all tenants or other parties in possession, except for Permitted Encumbrances. To the extent there are any existing surface leases or subleases affecting the Property to which Buyer objects during the Inspection Period, Seller shall (at its sole

cost and expense) cause such leases and subleases to be terminated prior to Closing, and shall provide evidence of such termination to Purchaser, prior to Closing.

ARTICLE V

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 5.01 Seller's Representations and Warranties. Seller represents and warrants to, and covenants with, Purchaser as follows:

(a) **Organization and Authority.** Seller is duly organized or formed, validly existing and in good standing under the laws of the state of Texas, and is qualified to do business in any jurisdiction where such qualification is required. Seller has all requisite power and authority to own the Property purportedly owned by it, to execute, deliver and perform its obligations under this Agreement and all of the other Transaction Documents to which it is to be a party, and to carry out the Transaction. The Person who has executed this Agreement on behalf of Seller has been duly authorized to do so:

(b) **Enforceability of Documents.** Upon execution by Seller of this Agreement and the other Transaction Documents to which each is a party, this Agreement and the other Transaction Documents shall constitute the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles.

(c) **No Other Agreements and Options.** Neither Seller nor the Property is subject to any commitment, obligation, or agreement, including, without limitation, any lease; right of first refusal or offer or similar right to purchase; or option to purchase or lease; franchise agreement, which will:

(i) prevent Seller from completing, or impair Seller's ability to complete, the sale of the Property under this Agreement; or

(ii) except for the Permitted Encumbrances and the Performance Agreement, bind Purchaser subsequent to consummation of the Transaction.

(d) **No Violations.** To Seller's Knowledge, the authorization, execution, delivery and performance of this Agreement and the other Transaction Documents will not:

(i) violate any provisions of the charter documents of Seller;

(ii) result in a violation of or a conflict with, or constitute a default (or an event which, with or without due notice or lapse of time, or both, would constitute a default) under any other document, instrument or agreement to which Seller is a party or by which Seller or the Property are subject or bound;

(iii) result in the creation or imposition of any Lien, restriction, charge or limitation of any kind, upon Seller or the Property except for the provisions set forth in the Deed and the Performance Agreement; or

(iv) violate any law, statute, regulation, rule, ordinance, code, rule or order of any court or Governmental Authority applicable to Seller or the Property.

(e) **Compliance with Anti-Terrorism, Embargo, Sanctions and Anti-Money Laundering Laws.** To the best of Seller's Knowledge, Seller is not currently identified on the OFAC List or is a Person with whom a citizen of the United States of America is prohibited from engaging in transactions by any trade embargo, economic sanction, or other prohibition of United States of America law, regulation, or executive order of the President of the United States of America.

(f) **Litigation.** There is no legal, administrative, arbitration or other proceeding, claim or action of any nature or investigation pending, or, to the Seller's Knowledge, threatened, against Seller or the Property, which would cause a Material Adverse Effect. "**Material Adverse Effect**" shall mean: (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), or condition (financial or otherwise) of the Seller taken as a whole; or (b) a material impairment of the ability of the Seller to perform their respective obligations under any Transaction Document to which it is a party.

All representations and warranties of Seller made in this Agreement shall be true as of the date of this Agreement, shall be deemed to have been made again at and as of the Closing Date, AND shall be true at and as of the Closing Date.

"**Knowledge**" with respect to Seller, shall mean the actual knowledge, without investigation or inquiry, on the Effective Date, of the Designated Persons (as hereinafter defined) of Seller, and (unless such person is named as a Designated Person) shall not be construed, by imputation or otherwise, to refer to the knowledge of any property manager or broker, or to any other officer, agent, manager, representative or employee of Seller, or any Affiliate of Seller, or to impose upon such Designated Persons any duty to investigate the matter to which such actual knowledge, or the absence thereof, pertains. As used herein, the term "**Designated Persons**" shall refer to the following person: John Osborne.

Section 5.02 Purchaser's Representations and Warranties. Purchaser represents and warrants to, and covenants with, Seller as follows:

(a) **Organization and Authority.** Purchaser is duly organized, validly existing and in good standing under the laws of the State of Colorado. Purchaser has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and all of the other Transaction Documents to which it is a party and to carry out the Transaction. The Person who has executed this Agreement on behalf of Purchaser has been duly authorized to do so.

(b) **Enforceability of Documents.** Upon execution by Purchaser, this Agreement and the other Transaction Documents to which it is a party, shall constitute the legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles.

(c) **Litigation.** To the best of Purchaser's actual knowledge, there are no actions or proceedings pending against or involving Purchaser before any Governmental Authority which in any way adversely affect or may adversely affect Purchaser or Purchaser's ability to perform under this Agreement and the other Transaction Documents to which it is a party.

(d) **No Violations.** The authorization, execution, delivery and performance of this Agreement and the other Transaction Documents will not:

(i) violate any provisions of the charter documents of Purchaser;

(ii) result in a violation of or a conflict with, or constitute a default (or an event which, with or without due notice or lapse of time, or both, would constitute a default) under any other document, instrument or agreement to which Purchaser is a party or by which Purchaser is subject or bound; or

(iii) violate any law, statute, regulation, rule, ordinance, code, rule or order of any court or Governmental Authority applicable to Purchaser.

(e) **Compliance with Anti-Terrorism, Embargo, Sanctions and Anti-Money Laundering Laws.** Purchaser is not, and to the best of Purchaser's Knowledge, Purchaser is not currently identified on the OFAC List, or is a Person with whom a citizen of the United States of America is prohibited from engaging in transactions by any trade embargo, economic sanction, or other prohibition of United States of America law, regulation, or executive order of the President of the United States of America.

(f) **No Financing Contingency.** The purchase of the Property by Purchaser and the consummation by Purchaser of the transactions contemplated by this Agreement are not contingent on any financing.

(g) **Net Worth.** Purchaser has adequate funds to consummate the transactions contemplated by this Agreement and perform its obligations under this Agreement.

All representations and warranties of Purchaser made in this Agreement shall be true as of the date of this Agreement, shall be deemed to have been made again at and as of the Closing Date, AND shall be true at and as of the Closing Date, and together with the covenants made by Purchaser herein, shall survive Closing for twelve (12) months following the Closing Date.

Section 5.03 Post-Closing Development Covenant. Purchaser agrees to begin construction of the Project on the Property within eighteen months of Closing (the

"Commencement Deadline"), and in connection therewith, will provide documentation of proof of commencement of construction of the Project, such Commencement Deadline being subject to extension by Purchaser for reasonably unanticipated events, and provided Purchaser has made timely application for permits, subject to extension for the following delays: (i) in the issuance of governmental approvals required for construction of the Project, (ii) in subdivision and/or replatting necessary for the construction of the Project, and (iii) associated with conditions of the Property that are either known or unknown at the time of execution of this Agreement. Subject to the provisions of this Section 5.03, if Purchaser fails to begin construction of the Project on or before the Commencement Deadline, Purchaser shall reconvey title to the Property to Seller, at no cost to Seller (the "First Reconveyance Right"). Further, Purchaser agrees to promptly and diligently pursue the completion of the construction of the Project and receive a Certificate of Occupancy from the City of Lubbock, Texas, subject to reasonably unanticipated events, events of force majeure and delays caused by Seller, within sixty months following the Commencement Deadline (the "Completion Date"). If Purchaser fails to complete construction of the Project and receive a Certificate of Occupancy from the City of Lubbock, Texas, on or before the Completion Date, Purchaser shall, at Purchaser's option in its sole and absolute discretion, either (i) reconvey title to the Property, together with all improvements situated thereon, to Seller, at no cost to Seller (the "Second Reconveyance Right" and together with the First Reconveyance Right, the "Reconveyance Rights"), or (ii) pay to Seller the Stipulated Value in cash within thirty days following Purchaser's notification of such choice to Seller (the "Purchase Price"). Simultaneously with the execution of this Agreement, the parties will execute and record, in the real property records of Lubbock County, Texas, a memorandum of the Reconveyance Rights and Purchase Price in substantially the form attached hereto as Exhibit E (the "Memorandum"), which Memorandum shall serve as notice to and shall be binding upon and inure to the benefit of the Purchaser and Seller and upon the successive owners of the Property, until termination of the same. If requested by Purchaser, the parties shall execute and record a termination of the Reconveyance Rights and Purchase Price and the Memorandum in the real property records of Lubbock, Texas upon issuance of a Certificate of Occupancy for the Project. The covenants contained in this Section 5.03 shall survive Closing.

ARTICLE VI

CONDITIONS PRECEDENT TO CLOSING

Section 6.01 Purchaser's Conditions to Closing. Purchaser shall not be obligated to close the Transaction until the fulfillment (or written waiver by Purchaser) of all of the following conditions:

(a) Seller shall have delivered to Purchaser or the Title Company, as applicable, the following items at least one (1) Business Day prior to the Closing Date (unless an earlier delivery is required as set forth below):

(i) to the Title Company, such documents evidencing the legal status and good standing of the Seller that may be required by the Title Company for issuance of the Title Policy;

(ii) fully executed originals of the following documents, which shall be prepared and delivered:

(A) the Deed in substantially the form attached hereto as Exhibit C;

(B) to the extent any such warranties are assignable, an Assignment of Warranties executed by Seller in substantially the form of Exhibit D attached hereto, (the "Assignment of Warranties");

(C) the Memorandum, executed and acknowledged by Seller, in substantially the form attached hereto as Exhibit E;

(D) all of the other Transaction Documents required to be delivered by Seller.

(iii) a duly executed "non-foreign" tax affidavit from Seller, in form reasonably acceptable to Purchaser (collectively, the "Non-Foreign Seller Certificate");

(iv) a closing settlement statement prepared by Title Company and approved by Seller to reflect the credits, prorations, and adjustments contemplated by or specifically provided for in this Agreement;

(v) such further documents as reasonably may be required in order to fully and legally close this Transaction;

(b) Intentionally omitted;

(c) The Performance Agreement has been mutually executed and is in full force and effect;

(d) All (i) representations and warranties of Seller set forth herein shall have been true and correct in all material respects when made, and (ii) all covenants, agreements and conditions required to be performed or complied with by Seller prior to or at the time of Closing in connection with the Transaction shall have been duly performed or complied with by Seller prior to or at such time or waived in writing by Purchaser;

(e) No event shall have occurred or condition shall exist which would, upon the Closing Date, or, upon the giving of notice and/or passage of time, constitute a breach or default by Seller hereunder or under any other Transaction Document;

(g) All real estate taxes then due and payable with respect to the Real Property shall be paid in full;

(h) Seller has caused satisfaction or removal of all Monetary Encumbrances affecting the Property; and

(i) The Title Company has irrevocably committed to issue the Title Policy, including all endorsements requested by Purchaser, subject only to the Permitted Encumbrances.

All of the documents to be delivered at Closing shall be dated as of the Closing Date.

Section 6.02 Seller's Conditions Precedent to Closing. Seller shall not be obligated to close the Transaction until the fulfillment (or written waiver by Seller) of all of the following conditions:

(a) Purchaser shall have delivered to the Title Company such documents evidencing the legal status and good standing of the Purchaser that may be required by the Title Company for issuance of the Title Policy;

(b) Purchaser shall have delivered to the Seller the Independent Consideration;

(c) Purchaser shall have caused to be executed and delivered to the Seller and other appropriate Persons fully executed originals of the following documents:

(A) all of the Transaction Documents required to be delivered by Purchaser;

(B) the Performance Agreement; and

(C) the Memorandum, executed and acknowledged by Purchaser, in the form attached hereto as Exhibit E;

(d) Purchaser shall have executed and delivered to the Title Company and Seller a closing settlement statement approved by Purchaser to reflect the credits, prorations, and adjustments contemplated by or specifically provided for in this Agreement;

(e) Purchaser shall have delivered to the Seller and/or the Title Company such further documents as may reasonably be required in order to fully and legally close this Transaction;

(f) All (i) representations and warranties of Purchaser in this Agreement shall have been true and correct in all material respects when made, and (ii) all covenants, agreements and conditions required to be performed or complied with by Purchaser prior to or at the time of Closing in connection with the Transaction shall have been duly performed or complied with by Purchaser prior to or at such time or waived in writing by Seller; and

(g) No event shall have occurred or condition shall exist which would, upon the Closing Date, or, upon the giving of notice and/or passage of time, constitute a breach or default by Purchaser hereunder or under any other Transaction Document.

ARTICLE VII

DEFAULTS; REMEDIES

Section 7.01 Seller Default. Each of the following shall be deemed an event of default by Seller (each, a "Seller Event of Default"):

- (a) if any representation or warranty of Seller set forth in this Agreement or any other Transaction Document is false in any material respect;
- (b) if Seller fails to perform any of its obligations under this Agreement and fails to cure such failure within five (5) Business Days after receipt of Purchaser's written notice of such failure; or
- (c) if any Insolvency Event shall occur with respect to Seller.

Section 7.02 Purchaser's Remedies. In the event of a Seller Event of Default, Purchaser shall be entitled to exercise either one of the following remedies which shall be Purchaser's sole and exclusive remedies prior to Closing:

(a) Purchaser may terminate this Agreement by giving written notice to Seller, in which case neither party shall have any further obligation or liability, except for the obligations set forth herein (including without limitation, those set forth in Section 8.05), the provisions which are expressly stated to survive termination of this Agreement. Notwithstanding the foregoing, in the event Purchaser is ready, willing, and able to take title to the Property and perform its obligations hereunder and under the Performance Agreement but Seller refuses to convey title to the Property, Purchaser shall not have any obligation to pay for all or any portion of the items listed in Section 2.04 and Purchaser shall also recover from Seller, and Seller shall immediately reimburse Purchaser for, all of Purchaser's out of pocket Transaction Costs incurred pursuant to this Agreement, including, without limitation, due diligence expenses and attorney's fees (including without limitation, reasonable attorney's fees and costs incurred solely in collecting such amounts); or

(b) Purchaser may bring an action to require Seller to specifically perform its obligations hereunder. Notwithstanding anything contained in this Agreement to the contrary, as a condition precedent to Purchaser exercising any right it may have to bring an action for specific performance, Purchaser must file an action to enforce specific performance against Seller in an appropriate State court having jurisdiction over the Property within ninety (90) days after the Closing Date. Purchaser agrees that its failure to timely commence such an action for specific performance within such periods shall be deemed a waiver by it of its right to commence an action for specific performance as well as a waiver by it of any right it may have to file or record a notice of *lis pendens* or notice of pendency of action or similar notice against any portion of the Property.

Section 7.03 Each of the following shall be deemed an event of default by Purchaser (each, a "Purchaser Event of Default"):

- (a) If any representation or warranty of Purchaser set forth in this Agreement or any other Transaction Document is false in any material respect;
- (b) If Purchaser fails to perform any of its obligations under this Agreement and fails to cure such failure within five (5) Business Days from receipt of Seller's written notice of such failure; or
- (c) if any Insolvency Event shall occur with respect to Purchaser.

Section 7.04 Seller's Sole Remedy. In the event of any Purchaser Event of Default, Seller's sole and exclusive remedy shall be to terminate this Agreement by giving written notice to Purchaser, in which event neither party shall have any further obligation or liability, except for the provisions which are expressly stated to survive termination of this Agreement including, without limitation, those set forth in Section 8.05. Notwithstanding the foregoing, if Seller is ready, willing, and able to convey title to the Property, and Seller is not in default under this Agreement, but Purchaser refuses to take title to the Property in breach of this Agreement and the Performance Agreement, Seller shall not have any obligation to pay for all or any portion of the items listed in Section 2.04, and Seller shall also recover from Purchaser, and Purchaser shall immediately reimburse Seller for, all of Seller's out of pocket Transaction Costs incurred pursuant to this Agreement, including without limitation due diligence expenses and attorney's fees (including without limitation, reasonable attorney's fees and costs incurred solely in collecting such amounts).

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Intentionally omitted.

Section 8.02 Risk of Loss.

(a) **Condemnation.** If, prior to Closing, action is initiated to take any of the Property, or any portion thereof, by eminent domain proceedings or by deed in lieu thereof, Seller shall give Purchaser prompt written notice of the commencement of such action and Purchaser may elect at or prior to Closing, to:

- (i) terminate this Agreement, in which event Seller and Purchaser shall be relieved and discharged of any further liability or obligation under this Agreement, except as otherwise expressly set forth herein (including without limitation, the payment of costs and the other expenses as set forth in Section 2.04); or
- (ii) proceed to close, in which event all of Seller's assignable right, title and interest in and to the award of the condemning authority with respect to

the Property subject to such condemnation or deed-in-lieu thereof shall be assigned to Purchaser at the Closing.

(b) **Casualty.** Seller shall give Purchaser prompt written notice of any Casualty. Subject to Section 3.03, Seller assumes all risks and liability for damage to or injury occurring to the Property by fire, storm, accident, or any other casualty or cause until the Closing has been consummated. Except if caused by Purchaser or its representatives, if the Property, or any part thereof, suffers any damage prior to the Closing from fire or other casualty, which Seller, at its sole option, does not elect to fully repair, Purchaser may elect at or prior to Closing, to:

(i) terminate this Agreement, in which event Seller and Purchaser shall be relieved and discharged of any further liability or obligation under this Agreement, except as otherwise expressly set forth herein (including without limitation, the payment of costs and the other expenses as set forth in Section 2.04); or

(ii) consummate the Closing, in which event all of the Seller's right, title and interest in and to the proceeds of any insurance covering such damage (less an amount equal to any expense and costs reasonably incurred by such Seller to repair or restore the Property, which shall be payable to such Seller upon such Seller's delivery to Purchaser of satisfactory evidence thereof) shall be assigned to Purchaser at Closing, and Purchaser shall be entitled to a credit in the amount of Seller's deductible at Closing.

(c) **Maintenance of Property and Insurance.** From the Effective Date until Closing, Seller shall continue to (A) maintain the Property or cause the Property to be maintained in good condition and repair, and (B) maintain insurance for the Property.

Section 8.03 Notices. All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Agreement (collectively called "Notices") may be given by the parties respective law firms, listed below, shall be in writing and given by email, and shall be deemed to have been delivered upon email delivery. Notices shall be provided to the parties and addresses specified below:

If to Seller:

LEDA
1500 Broadway, 6th Floor
Lubbock, TX 79401
Attn: John Osborne
Telephone: (806) 749-4500
Email: john@marketlubbock.org

With a copy to: Ann Manning
Underwood Law Firm, P.C.
P.O. Box 16197
Lubbock, Texas 79416
Telephone: (806) 793-1711
Email: Ann.Manning@uwlaw.com

If to Purchaser: Leprino Foods Company
Attn: Erik Nielsen, Associate General Counsel
1830 W. 38th Ave.
Denver, Colorado 80211
Telephone: (303) 264-5391
Email: enielsen@leprinofoods.com

With a copy to: Polsinelli PC
Attn: Andrea Horvath Esq.
1401 Lawrence Street, Suite 2300
Denver, Colorado 80401
Telephone: (303) 256-2705
email: ahorvath@polsinelli.com

or to such other e-mail address or such other Person as either party may from time to time hereafter specify to the other party in a written notice delivered in the manner provided above. Whenever in this Agreement the giving of Notice is required, the giving thereof may be waived in writing at any time by the Person or Persons entitled to receive such Notice.

Section 8.04 Assignment. Purchaser, at its sole cost and expense, without profit, shall be entitled to assign its rights under this Agreement to any party Controlled by Purchaser by providing three (3) Business Days prior written notice to Seller. Notwithstanding such assignment, Purchaser shall remain obligated under this Agreement. "Controlled" or any variation thereof of any entity means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ability to exercise voting power, by contract or otherwise. Seller shall not, without the prior written consent of Purchaser, which consent may be withheld in Purchaser's sole discretion, sell, assign, transfer, mortgage, convey, encumber or grant any easements or other rights or interests of any kind in the Property, any of Seller's rights under this Agreement or any interest in Seller, whether voluntarily, involuntarily or by operation of law or otherwise, including, without limitation, by merger, consolidation, dissolution or otherwise.

Section 8.05 Brokerage Commission. Each of the parties represents and warrants to the other that neither party has dealt with, negotiated through or communicated with any broker, finder or agent in connection with this Transaction. So far as the laws of Texas allow, each party shall indemnify, defend and hold harmless the other party from and against any and all claims, loss, costs and expenses, including reasonable attorneys' fees, resulting from any claims that may be made

against the indemnified party by any broker claiming a commission or fee by, through or under such indemnifying party. The parties' respective obligations under this Section 8.05 shall survive Closing or termination of this Agreement.

Section 8.06 Reporting Requirements. The parties agree to comply with any and all reporting requirements applicable to the Transaction which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority, and further agree upon request, to furnish the other party with evidence of such compliance.

Section 8.07 Intentionally omitted.

Section 8.08 Time is of the Essence. The parties hereto expressly agree that time is of the essence with respect to this Agreement.

Section 8.09 Non-Business Days. If the Closing Date or the date for delivery of a notice or performance of some other obligation of a party falls on a Saturday, Sunday or legal holiday in the state in which the Property is located, then the Closing Date or such notice or performance shall be postponed until the next Business Day.

Section 8.10 Waiver and Amendment. No provision of this Agreement shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any prior or future occasion.

Section 8.11 Purchaser's and Seller's Liability.

(a) Notwithstanding anything to the contrary provided in this Agreement, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Agreement by Purchaser, that:

(i) there shall be absolutely no personal liability on the part of any director, officer, manager, partner, member, employee or agent of Purchaser with respect to any of the terms, covenants and conditions of this Agreement; and

(ii) Seller waives all claims, demands and causes of action against Purchaser's directors, officers, managers, members, partners, employees and agents in the event of any breach by Purchaser of any of the terms, covenants and conditions of this Agreement to be performed by Purchaser.

(b) Notwithstanding anything to the contrary provided in this Agreement, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Agreement, that:

(i) there shall be absolutely no personal liability on the part of any director, officer, manager, partner, member, employee or agent of Seller with respect to any of the terms, covenants and conditions of this Agreement; and

(ii) Purchaser waives all claims, demands and causes of action against Seller's directors, officers, managers, members, partners, employees and agents in the event of any breach by Seller of any of the terms, covenants and conditions of this Agreement to be performed by Seller.

Section 8.12 Headings; Internal References. The headings of the various sections and exhibits of this Agreement have been inserted for reference only and shall not to any extent have the effect of modifying the express terms and provisions of this Agreement. Unless stated to the contrary, any references to any section, subsection, exhibit and the like contained herein are to the respective section, subsection, exhibit and the like of this Agreement.

Section 8.13 Construction Generally. This is an agreement between parties who are experienced in sophisticated and complex matters similar to the Transaction, and this Agreement and the other Transaction Documents are entered into by both parties in reliance upon the economic and legal bargains contained herein and therein, and shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party. Seller and Purchaser were each represented by legal counsel competent in advising them of their obligations and liabilities hereunder.

Section 8.14 Further Assurances. Each of the parties agrees, whenever and as often as reasonably requested so to do by the other party or the Title Company, to execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, assignments, confirmations, satisfactions, releases, instruments, or other documents as may be necessary, expedient or proper, in order to complete any and all conveyances, transfers, sales and assignments herein provided and to do any and all other acts and to execute, acknowledge and deliver any and all documents as so requested in order to carry out the intent and purpose of this Agreement.

Section 8.15 Attorneys' Fees. In the event of any controversy, claim, dispute or proceeding between the parties concerning this Agreement, the prevailing party shall be entitled to recover all of its reasonable attorneys' fees and other costs in addition to any other relief to which it may be entitled. The provisions of this Section 8.15 shall survive Closing.

Section 8.16 Entire Agreement; Amendments. Except for the Performance Agreement, this Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and there are no other representations, warranties or agreements, written or oral, between Seller and Purchaser with respect to the subject matter of this Agreement. Notwithstanding anything in this Agreement to the contrary, upon the execution and delivery of this Agreement by Seller and Purchaser, this Agreement and the Performance Agreement shall supersede any previous discussions, letters of intent, cost letters, agreements and/or term or

commitment letters relating to the Transaction. This Agreement may only be amended by a written agreement executed by Purchaser and Seller.

Section 8.17 Confidentiality. Seller (including its Affiliates) shall not issue any press release or other public disclosure using the name, logo or otherwise referring to Purchaser any of its Affiliates or the Transaction without the prior written consent of Purchaser, in Purchaser's sole and absolute discretion. During the term of this Agreement, Seller and Seller's agents and representatives shall not show, offer, market or negotiate to sell the Property or any portion thereof or any interest therein to any party other than Purchaser, nor will Seller conduct discussion with any other party with respect to same. Seller and Seller's agents and representatives shall keep this Agreement and the Transaction confidential, and shall not, without the prior written consent of Purchaser, which consent may be withheld in Purchaser's sole and absolute discretion, disclose the existence or terms of this Agreement and the Transaction to any other Person (other than to Seller's accountants, attorneys, or agents who need to know and whom Seller has directed to treat such information as confidential). The terms of this Section 8.17 shall survive Closing and any termination of this Agreement indefinitely.

Section 8.18 Forum Selection. AS PART OF THE CONSIDERATION OF THIS AGREEMENT, PURCHASER AND SELLER HEREBY CONSENT TO AND AGREE TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE STATE OF TEXAS OVER ANY CLAIMS OR DISPUTES AS TO MATTERS PERTAINING TO THIS AGREEMENT OR ARISING THEREFROM.

Section 8.19 Severability; Binding Effect; Governing law. Each provision hereof shall be separate and independent. Each provision hereof shall be valid and shall be enforceable to the extent not prohibited by law. If any provision hereof or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable, the remaining provisions hereof, or the application of such provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. Subject to the provisions of Section 8.04, all provisions contained in this Agreement shall be binding upon, inure to the benefit of and be enforceable by the successors and assigns of each party hereto, including, without limitation, any United States trustee, any debtor-in-possession or any trustee appointed from a private panel, in each case to the same extent as if each successor and assign were named as a party hereto. This Agreement shall be governed by, and construed with, the laws of the applicable state in which the Real Property is located, without giving effect to any state's conflict of laws principles.

Section 8.20 EACH PARTY WAIVES THE RIGHT IT MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM THE OTHER PARTY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO.

Section 8.21 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all such counterparts shall be deemed to constitute one and the same instrument.

Section 8.22 Intentionally omitted.

Section 8.23 Tender. The formal tender of an executed deed is hereby waived, but nothing herein contained shall be construed as a waiver of Seller's obligation to deliver the Deed at Closing.

Section 8.24 Submission of Drafts. The submission of this Agreement or any draft hereof by any party to the other or its representatives shall not constitute an offer capable of acceptance. The terms and conditions of this Agreement shall not be binding on the parties unless and until this Agreement is completely executed by both Seller and Purchaser.

Section 8.25 No Recording. Neither this Agreement nor a memorandum hereof may be recorded in the office for the Recording of Deeds of any county in Texas, or in any other office or place of public records.

Section 8.26 Delay. Either party to this Agreement shall be excused for the period of any delay in the performance of any obligations hereunder when such delay is occasioned by cause or causes beyond the control of and not caused by the party whose performance is so delayed and the time for performance shall be automatically extended for a like period not to exceed ten (10) Business Days in the aggregate for all such delays of such party. Such causes shall include, without limitation, all labor disputes, power outages, acts of terrorism, civil commotion, war, warlike operations, invasion, pandemic, military or usurped power, sabotage, government regulations or controls, or acts of God.

[Remainder of page intentionally left blank; signature page(s) to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above.

PURCHASER:

LEPRINO FOODS COMPANY,
a Colorado corporation

By: _____
Name: _____
Title: _____

SELLER:

**LUBBOCK ECONOMIC DEVELOPMENT
ALLIANCE, INC.**
a Texas non-profit corporation

By: _____
Name: _____
Title: _____

Exhibits:

- A: Legal Description of Real Property
- B: Legal Description of Larger Parcel
- C: Form of Deed
- D: Form of Assignment of Warranties
- E: Form of Memorandum of Reconveyance Right and Purchase Price

Schedules:

- 1: Seller Documents and Disclosures

EXHIBIT B TO PERFORMANCE AGREEMENT

INFRASTRUCTURE IMPROVEMENT SPECIFICATIONS AND MILESTONE DATES

The following specifications are intended to serve as a baseline list of preliminary and minimum specifications and milestone dates necessary for the construction of the Infrastructure Improvements which will be required for development and operation of the Project. As Project design, engineering, and construction commences, some or all of these baseline specifications may need to be revisited and altered to reflect circumstances that are outside of Leprino's control, such as site conditions, state and local laws and regulations, or similar. LEDA will coordinate closely with Leprino to ensure that LEDA is utilizing the latest and most relevant set of Infrastructure Improvement specifications.

(1) Road Improvements to 19th Street

- LEDA is responsible for any road improvement costs (either directly or indirectly as reimbursement to state/local entities) required (by state or local laws, regulations, planning/zoning requirements, or similar) to accommodate the Project when it is fully operational, including accommodating additional traffic to the Property associated with Leprino's employees, contractors, and visitors, as well as at least 175 tractor trailers entering/exiting the Property every day.
- Road Improvement considerations may include, but are not limited to:
 - o Turn pocket or center turn lane into both employee entrance and truck entrance
 - LEDA intends to rebuild 19th Street from Loop 289 to the east end of Leprino's property
 - 4 lanes: 2 west bound, 1 east bound, and 1 continuous left hand turn lane
 - One of the west bound lanes may be used as an acceleration lane but will not be striped as such.
 - o Truck entrance turn pocket or center turn lane must accommodate 2 trucks, including "supertankers" if they are allowed in future
 - o Improvements must be compliant with all state and local codes
 - o All manholes, drainage ways, etc., to be located out of wheel path
 - o Roads must be designed/built to accommodate milk trucks (weight) and survive turning forces, usually concrete
 - o Where required by transportation plan, Road Improvements must accommodate multiple modes of transportation, including cars, buses, electric vehicles, and motorcycles
 - o Lighting will be provided to the City of Lubbock's standards as required for an arterial roadway.
- Must be substantially complete by March 14, 2024.

(2) Industrial Effluent Pipeline

- Capable of conveying up to 3.5 MGD of treated effluent at a peak flow rate of 3500 GPM

- HDPE SDR11 – Butt fused
- Typical pipeline trenching spec defining bedding and backfill requirements. This includes locator tape and tracer wire.
- Cleanout distances every 1,000 ft. Consider camera access and fittings (i.e. 90s vs sweeps)
- Air relief valves/access points/structures sufficient for proper operation and maintenance
- Due to various factors the pipeline will be a force main.
- Must have an interconnection from pipeline to the City of Lubbock's wastewater treatment system to utilize industrial effluent discharge as a backup if we have a major process upset during operation for raw wastewater or non-compliant effluent water, and/or during startup and commissioning.
- Leprino must be part of the design process for the effluent outfall structure at Lake 6, considering:
 - o Compliance sampling point at LFC factory prior to discharging into effluent line
 - o Aesthetics
 - o Oxygenation
 - o Foam control
 - o Public access
 - o Effluent structure/diffuser
- Must be substantially complete by April 10, 2023.

THIS DOCUMENT IS RELEASED ON 02/23/2022 FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF BRIAN M. STEPHENS, P.E. TEXAS LICENSE #92815. IT IS NOT TO BE USED FOR REGULATORY APPROVAL, CONSTRUCTION, BIDDING OR PERMIT PURPOSES. PARKHILL, SMITH & COOPER, INC. F-560

BEGIN 14" HDPE FORCE MAIN
N = 7274963.08
E = 971249.33
NAD83 TX STATE PLANE
NORTH CENTRAL ZONE 4202

NEW 14" HDPE DR-11 FORCE MAIN

2300 LF ± FROM ROW LINE

BORE UNDER CR 6700

CR 6700 ROW

NEW 14" HDPE DR-11 FORCE MAIN



Leprino New Effluent Outfall Line

Lubbock Economic Development Alliance
1500 Broadway, Suite 600
Lubbock, Texas 79401



Parkhill.com

Proposed Force Main Alignment

Issue: Agreement
Date: Feb 2022
Project No: 01.5609.21
Sheet: 1 of 1

①

TCEQ Registration Form

October 24, 2023

Leprino Foods Company
Proposed TPDES Permit No. WQ0005417000

PLEASE PRINT

Name: Sonyia Fair

Mailing Address: 1821 Manhattan Dr.

Physical Address (if different): _____

City/State: Hubbuck, TX Zip: 79404

This information is subject to public disclosure under the Texas Public Information Act

Email: _____

Phone Number: (806) 765-7533

• Are you here today representing a municipality, legislator, agency, or group? Yes No

If yes, which one? Stop

Please add me to the mailing list.

I wish to provide formal *ORAL COMMENTS* at tonight's public meeting.

I wish to provide formal *WRITTEN COMMENTS* at tonight's public meeting.
(Written comments may be submitted at any time during the meeting)

Please give this form to the person at the information table. Thank you.

TCEQ Registration Form

October 24, 2023

Leprino Foods Company
Proposed TPDES Permit No. WQ0005417000

PLEASE PRINT

Name: ANGELINA V. GIBBS

Mailing Address: 2307 99th Street

Physical Address (if different): _____

City/State: LUBBOCK, TEXAS Zip: 79423

****This information is subject to public disclosure under the Texas Public Information Act****

Email: angelinagibbs@gmail.com

Phone Number: (707) 373-5880

• Are you here today representing a municipality, legislator, agency, or group? Yes No

If yes, which one? _____

Please add me to the mailing list.

I wish to provide formal *ORAL COMMENTS* at tonight's public meeting.

I wish to provide formal *WRITTEN COMMENTS* at tonight's public meeting.

(Written comments may be submitted at any time during the meeting)

When the plant is in operation, please have periodic public tours for schools and local families.

Please give this form to the person at the information table. Thank you.

RECEIVED
OCT 24 2023
AT PUBLIC MEETING

3 Davis

TCEQ Registration Form

October 24, 2023

Leprino Foods Company Proposed TPDES Permit No. WQ0005417000

PLEASE PRINT

Name: Janet L. Price, Davis B. Price

Mailing Address: 3523 92nd St.

Physical Address (if different): _____

City/State: Lubbock TX Zip: 79423

****This information is subject to public disclosure under the Texas Public Information Act****

Email: davisbprice45@~~stc~~gmail.com

Phone Number: (806) 797-6320

• Are you here today representing a municipality, legislator, agency, or group? Yes No
If yes, which one? West Texas Organizing Strategy

Please add me to the mailing list.

I wish to provide formal *ORAL COMMENTS* at tonight's public meeting.

I wish to provide formal *WRITTEN COMMENTS* at tonight's public meeting.
(Written comments may be submitted at any time during the meeting)

Please give this form to the person at the information table. Thank you.

~~Did not speak~~
7

TCEQ Registration Form

October 24, 2023

Leprino Foods Company Proposed TPDES Permit No. WQ0005417000

PLEASE PRINT

Name: Paul Raygoza

Mailing Address: 19401 CR 2165 Lubbock TX 79423

Physical Address (if different): _____

City/State: _____ Zip: _____

This information is subject to public disclosure under the Texas Public Information Act

Email: _____

Phone Number: (559) 495 8420

- Are you here today representing a municipality, legislator, agency, or group? Yes No

If yes, which one? _____

Please add me to the mailing list.

I wish to provide formal *ORAL COMMENTS* at tonight's public meeting.

I wish to provide formal *WRITTEN COMMENTS* at tonight's public meeting.

(Written comments may be submitted at any time during the meeting)

Please give this form to the person at the information table. Thank you.

TCEQ Registration Form

October 24, 2023

Leprino Foods Company

Proposed TPDES Permit No. WQ0005417000

PLEASE PRINT

Name: MAFIZ HOSSAIN SHAH

Mailing Address: 1212 N QUAKER AV.

Physical Address (if different): _____

City/State: LUBBOCK / STATE Zip: 79415

This information is subject to public disclosure under the Texas Public Information Act

Email: bmc78999@gmail.com

Phone Number: (806)

- Are you here today representing a municipality, legislator, agency, or group? Yes No

If yes, which one? CITIZEN CLIMATE LOBBY

Please add me to the mailing list.

I wish to provide formal *ORAL COMMENTS* at tonight's public meeting.

I wish to provide formal *WRITTEN COMMENTS* at tonight's public meeting.

(Written comments may be submitted at any time during the meeting)

- 1 TCEQ to consider Quality of water before and after discharge.
- 1 Lake water Quality Test every 6 month.
- 1 The quantity of water discharged to Lake and its Threshold

Please give this form to the person at the information table. Thank you.

to avoid flood.

RECEIVED
OCT 24 2023
AT PUBLIC MEETING

④

TCEQ Registration Form

October 24, 2023

Leprino Foods Company

Proposed TPDES Permit No. WQ0005417000

PLEASE PRINT

Name: Joshua Shankles

Mailing Address: 2604 47th

Physical Address (if different): same

City/State: Lubbock, TX Zip: 79413

This information is subject to public disclosure under the Texas Public Information Act

Email: joshua@lubbockcompact.com

Phone Number: (575) 441-3740

• Are you here today representing a municipality, legislator, agency, or group? Yes No

If yes, which one? _____

Please add me to the mailing list.

I wish to provide formal *ORAL COMMENTS* at tonight's public meeting.

I wish to provide formal *WRITTEN COMMENTS* at tonight's public meeting.

(Written comments may be submitted at any time during the meeting)

Please give this form to the person at the information table. Thank you.