

UTILITY CONNECTION AGREEMENT

This Utility Connection Agreement (this "Agreement"), is effective as of August 13, 2020 (the "Effective Date"), by and between the City of South Bend, Indiana Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the "Commission"), the City of South Bend, Indiana (the "City"), acting by and through its Board of Public Works (the "Board"), and Greenleaf Holdco LLC, a Delaware limited liability company, with an address of 3820 W. Calvert Street, South Bend, Indiana 46613 (the "Developer") (each, a "Party," and collectively, the "Parties").

RECITALS

WHEREAS, the Commission exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953, as amended (I.C. 36-7-14 *et seq.*, the "Redevelopment Act"); and

WHEREAS, the Redevelopment Act provides that the clearance, replanning, and redevelopment of redevelopment areas are public uses and purposes for which public money may be spent; and

WHEREAS, the City's Department of Public Works (the "Department") oversees the provision of water and sewer utilities to the public, pursuant to I.C. 36-9-2-15, including the imposition of a System Development Charge ("SDC") pursuant to Chapter 10, Article 17, Sections 17-79 and 17-80 of the City's Municipal Code; and

WHEREAS, the Board is authorized to prepare a plan for and to design the all public drains and sewers for the City pursuant to I.C. 36-9-6-10 and to oversee all connections to the City's public sewer system pursuant to I.C. 36-9-22; and

WHEREAS, the Developer owns certain real property described in Exhibit A, together with all improvements thereon and all easements, rights, licenses, and other interests appurtenant thereto (collectively, the "Developer Property"), on which the Developer is developing a fully automated, large-scale, hydroponic greenhouse (the "Project") into which the Developer has or will invest approximately Fifteen Million Five Hundred Thousand Dollars (\$15,500,000); and

WHEREAS, the Developer desires to connect to the City's public water and sewer system and will also, in part, use private wells (the "Utility Connection"); and

WHEREAS, the Developer Property is located within the corporate boundaries of the City, within the River West Development Area (the "Area"); and

WHEREAS, the Commission has adopted (and subsequently amended, from time to time) a development plan, which contemplates development of the Area consistent with the Project; and

WHEREAS, the Commission believes that accomplishing the Project as described herein is in the best interests of the health, safety, and welfare of the City and its residents; and

WHEREAS, the Commission desires to facilitate and assist the Project by financing the Developer's SDC subject to the terms and conditions of this Agreement and in accordance with the Act; and

WHEREAS, the Board desires to facilitate the Utility Connection, upon the Developer's compliance with certain terms and conditions, as stated herein.

NOW, THEREFORE, in consideration of the mutual promises and obligations stated in this Agreement, the adequacy of which is hereby acknowledged, the Parties agree as follows:

SECTION 1. RECITALS.

1.1 Recitals. The Recitals set forth above are incorporated into and are a part of this Agreement for all purposes.

SECTION 2. DEVELOPER'S OBLIGATIONS.

2.1 Generally. The Parties acknowledge and agree that the Commission's agreements to perform and abide by the covenants and obligations set forth in this Agreement are material consideration for the Developer's commitment to perform and abide by the covenants and obligations of the Developer contained in this Agreement.

2.2 The Utility Connection.

(a) No portion of Developer's well water system shall be connected to any portion of the City's water or sewer systems.

(b) The Developer will install a backflow prevention mechanism on the City's lateral sewer line to prevent well water from entering the City's system in accordance with the relevant regulations of the State of Indiana, the American Water Works Association, the Environmental Protection Agency, and local codes.

(c) The wellhead and all points of use or piping that extend into Developer's building are required to be marked indicating the line as not suitable for human consumption.

(d) Prior to drilling any well, the Developer shall notify all property owners within a one-quarter (1/4) mile radius around the wellhead of Developer's intention to drill.

(e) A soils and water table review shall be required.

(f) Developer shall register as a significant withdrawal facility with the Indiana Department of Natural Resources within three (3) months of the facility's completion per the guidelines in effect as of the date of this Agreement.

2.3 Obtain Necessary Permits or Approvals. The Developer agrees to obtain any and all permits or approvals from any governmental entity and/or any other third parties that the Developer or Department deems necessary or advisable in order to complete the Utility Connection,

and the obtaining of such permits or approvals is a condition precedent to the Commission's obligations under this Agreement.

2.4 Submission of Plans and Specifications for Utility Connection; Inspection. Prior to connecting to the City's main utility lines, the Developer shall submit to the Department any plans or specifications evidencing the requirements set forth in Section 2.2 hereof for the Department's review and comment. The Developer shall work with the Department to address any reasonable concerns prior to connection. Additionally, the Department shall appoint a designee to inspect all installations and cross-connections to the City's utility lines in order to determine whether the terms of this Agreement have been met.

2.5 Costs and Expenses of Construction of Project. The Developer hereby agrees to pay, or cause to be paid, all costs and expenses connected with the Utility Connection, except for the payment of the SDC.

2.6 Non-Interference. Developer hereby agrees to use commercially reasonable efforts to minimize disruption for those living and working near the Developer Property during construction of the Utility Connection.

2.7 Indemnification. Developer shall indemnify, defend, and hold harmless the City, including its boards and commissions, employees and agents, with regard to any cause of action arising from the Utility Connection and/or Developer's use of wells in connection with the Project. This Section 2.7 shall survive the termination of this Agreement.

SECTION 3. COMMISSION'S OBLIGATIONS.

3.1 Generally. The Parties acknowledge and agree that the Developer's agreement to perform and abide by the covenants and obligations set forth in this Agreement is material consideration for the Commission's commitment to perform and abide by the covenants and obligations of the Commission contained in this Agreement.

3.2 Payment of SDC. The Commission hereby pledges and agrees to pay the SDC on behalf of the Developer in an amount not to exceed Eight Thousand Six Hundred Seventy-One and 50/100 Dollars (\$8,671.50) and approves the expenditure to reimburse the City for such SDC using the following procedure:

(a) Upon issuance of a utility verification form, or other invoice for the SDC, by the Department to the Developer in accordance with the provisions of the SDC Ordinance and the Department's internal operating procedures, the City's Department of Community Investment ("DCI"), acting on behalf of the Commission pursuant to this Agreement, will submit a copy of this Agreement to the City Engineer expressing the Commission's pledge as set forth herein.

(b) DCI, acting on behalf of the Commission pursuant to this Agreement, will coordinate with the Department and the City Engineer to identify the City's qualifying costs incurred for the SDC for reimbursement by the Commission.

(c) The Commission will approve a claim in an amount equal to the SDC as set forth above, at the Commission's next regular meeting and pay such sum to the City in the ordinary course of business thereafter.

SECTION 4. COOPERATION IN THE EVENT OF LEGAL CHALLENGE.

4.1 Cooperation. In the event of any administrative, legal, or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending such action or proceeding to settlement or final judgment including all appeals. Each Party shall select its own legal counsel and retain such counsel at its own expense, and in no event shall the City, Commission, Board, or Department be required to bear the fees and costs of the Developer's attorneys nor shall the Developer be required to bear the fees and costs of the City's, Commission's, Board's, or Department's attorneys. The Parties agree that if any other provision of this Agreement, or this Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the Parties agree to be bound by the terms of this Section 4.1, which shall survive such invalidation, nullification, or setting aside.

SECTION 5. DEFAULT.

5.1 Default. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. Upon the occurrence of a default under this Agreement, the non-defaulting Party may (a) terminate this Agreement, or (b) institute legal proceedings at law or in equity (including any action to compel specific performance) seeking remedies for such default. If the default is cured within thirty (30) days after the notice described in this Section 5.1, then no default shall exist and the noticing Party shall take no further action.

5.2 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, none of the Parties shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of acts of God or nature, acts of terrorism, restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, contract defaults by third parties, or similar basis for excused performance which is not within the reasonable control of the Party to be excused (each, an event of "Force Majeure"). Upon the request of any of the Parties, a reasonable extension of any date or deadline set forth in this Agreement due to such cause will be granted in writing for a period necessitated by the event of Force Majeure, or longer as may be mutually agreed upon by all the Parties.

SECTION 6. MISCELLANEOUS.

6.1 Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions

of this Agreement shall continue in full force and effect unless amended or modified by mutual consent of the parties.

6.2 Waiver. Neither the failure nor any delay on the part of a Party to exercise any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise of the same or of any right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of any such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

6.3 Other Necessary Acts. Each Party shall execute and deliver to the other Parties all such other further instruments and documents as may be reasonably necessary to accomplish the Project and the Local Public Improvements contemplated by this Agreement and to provide and secure to the other Parties the full and complete enjoyment of its rights and privileges hereunder. Notwithstanding the foregoing, the Parties understand and agree that certain actions contemplated by this Agreement may be required to be undertaken by persons, agencies, or entities that are not a party to this Agreement, including, but not limited to certain permits, consents, and/or approvals (to the extent they have not yet been obtained and completed), and that any action by such third parties shall require independent approval by the respective person, agency, entity, or governing body thereof.

6.4 Dispute Resolution; Waiver of Jury Trial. Any action to enforce the terms or conditions of this Agreement or otherwise concerning a dispute under this Agreement will be commenced in the courts of St. Joseph County, Indiana, unless the Parties mutually agree to an alternative method of dispute resolution. The Parties acknowledge that disputes arising under this Agreement are likely to be complex and they desire to streamline and minimize the cost of resolving such disputes. In any legal proceeding, each Party irrevocably waives the right to trial by jury in any action, counterclaim, dispute, or proceeding based upon, or related to, the subject matter of this Agreement. This waiver applies to all claims against all parties to such actions and proceedings. This waiver is knowingly, intentionally, and voluntarily made by both Parties.

6.5 Attorneys' Fees. In the event of any litigation, mediation, or arbitration between the Parties regarding an alleged breach of this Agreement, none of the Parties shall be entitled to any award of attorney's fees.

6.6 Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Project:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and

(b) The Developer will state, in all solicitations or advertisements for employees placed by or on behalf of the Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

6.7 Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute one and the same instrument. Any electronically transmitted version of a manually executed original shall be deemed a manually executed original.

6.8 Notices and Demands. Any notice, demand, or other communication required or permitted under the terms of this Agreement may be delivered (a) by hand-delivery (which will be deemed delivered at the time of receipt), (b) by registered or certified mail, return receipt requested (which will be deemed delivered three (3) days after mailing), or (c) by overnight courier service (which will be deemed delivered on the next business day) to each Party's respective addresses and representatives stated below.

Developer: Greenleaf Holdco LLC
806 Howard St.
South Bend, IN 46617
Attn: Joe McGuire, CEO

With a copy to: _____

Attn: _____

Commission: South Bend Redevelopment Commission
1400 S. County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Executive Director,
South Bend Department of Community Investment

With a copy to: South Bend Legal Department
1200 S. County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Corporation Counsel

6.9 Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of Indiana.

6.10 Authority. Each undersigned person executing and delivering this Agreement on behalf of a Party represents and certifies that he or she is the duly authorized officer or representative of such Party, that he or she has been fully empowered to execute and deliver this Agreement on behalf of such Party, and that all necessary action to execute and deliver this Agreement has been taken by such Party.

6.11 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm, or corporation other than the Parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as third-party beneficiaries or otherwise,

and all of the terms, covenants, and conditions hereof shall be for the sole and exclusive benefit of the Parties herein.

6.12 Assignment. The Developer's rights and obligations under this Agreement shall be personal to the Developer and shall not run with the land. The Developer may not assign its rights or obligations under this Agreement to any unrelated third party without obtaining the Commission's and/or the Board's prior written consent to such assignment, which the Commission and/or the Board may give or withhold in its sole discretion. In the event the Developer seeks the Commission's and/or the Board's consent to any such assignment, the Developer shall provide to the Commission and/or the Board all relevant information concerning the identities of the persons or entities proposed to be involved in and an explanation of the purposes for the proposed assignment(s). For clarity, and notwithstanding anything to the contrary set forth in the foregoing Agreement, the use of the wells on the Developer Property shall be limited to use for the benefit of the Project. In the event that the Developer Property is no longer used for the Project, the use of the wells shall be discontinued. This Section 6.12 shall survive the termination of this Agreement.

6.13 Further Assurances. The Parties agree that they will each undertake in good faith, as permitted by law, any action and execute and deliver any document reasonably required to carry out the intents and purposes of this Agreement.

6.14 Exhibits. All exhibits described herein and attached hereto are incorporated into this Agreement by reference.

6.15 Entire Agreement. No representation, promise, or inducement not included in this Agreement will be binding upon the Parties hereto. This Agreement cannot be modified except by mutual agreement of the Parties set forth in a written instrument signed by the Parties' authorized representatives.

6.16 Time. Time is of the essence of this Agreement.

Signature Page Follows

EXHIBIT A

Description of Developer Property

Part of the South Half of Section 16, Township 37 North, Range 2 East, Portage Township, St. Joseph County, Indiana (all monuments referenced herein are set or found on a Lang, Feeney & Associates, Inc. survey Job #137-64) being more particularly described as follows: Beginning at the South Quarter corner of said Section 16, said point being a stone found; thence North 89°19'06" West along the south line of said Section, a distance of 1128.38 feet to a point on the easterly right-of-way line of the New Jersey, Indiana & Illinois railroad; thence North 22°36'49" East along said right-of-way, a distance of 1402.66 feet to a 5/8" rebar iron found with Lang Feeney S0309 S0523 cap, flush with the surface, said point being on the south right-of-way line of Calvert Street; thence South 89°43'52" East along said south line, a distance of 579.47 feet to a 5/8" rebar iron found with Lang Feeney S0309 S0523 cap, flush with the surface, said point being on the North-South centerline of said Section 16; thence continuing South 89°43'52" East along said south right-of-way line, a distance of 1323.02 feet to a 5/8" rebar iron found with Lang Feeney S0309 S0523 cap, flush with the surface, said point being on the east line of the Southwest Quarter of the Southeast Quarter of said Section 16; thence South 00°11'35" East along said east line, a distance of 1297.61 feet to a 5/8" rebar iron found with Lang Feeney S0309 S0523 cap, flush with the surface, said point being on the south line of said Section 16; thence South 89°55'32" West along said south line, a distance of 1317.89 feet to the point of beginning.