

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

City of Fontana  
8353 Sierra Ave.  
Fontana, CA 92335

Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Recording Fee Exempt per Government Code § 6103

**DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** (this "Agreement") is made and entered into this [REDACTED] ([REDACTED]<sup>th</sup>) day of [REDACTED], 2023 (the "Execution Date"), by and between the **CITY OF FONTANA, a California municipal corporation** ("City") and \_\_\_\_\_, \_\_\_\_\_ ("Permittee"). City and Permittee are sometimes referenced together herein as the "Parties." In instances when a provision hereof applies to each of the Parties individually, either may be referenced as a "Party." The Parties hereby jointly render the following statement as to the background facts and circumstances underlying this Agreement.

**RECITALS**

- A. The State of California enacted California Government Code sections 65864 et seq. ("Development Agreement Statutes") to authorize municipalities to enter into development agreements with those having a legal or equitable interest in real property to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development in connection with the development of real property within their jurisdiction.
- B. The purpose of the Development Agreement Statutes is to authorize municipalities, in their discretion, to establish certain development rights in real property for a period of years regardless of intervening changes in land use regulations, to vest certain rights, and to meet certain public purposes of the local government.
- C. As authorized by the Development Agreement Statutes, the City has adopted Municipal Code Section 30-322 establishing the procedures and requirements for the consideration of development agreements with the City.
- D. Permittee currently owns legal or equitable interest in real property considered in this Agreement, located at \_\_\_\_\_, City of Fontana, County of San Bernardino, State of California (the "Site"). The Site includes Assessor's Parcel

[REDACTED]/FONTANA DEVELOPMENT AGREEMENT

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Numbers: \_\_\_\_\_ as is more fully described in **Exhibit A** and shown on the map in **Exhibit B**, both exhibits being attached hereto and incorporated herein by this reference.

- E. On September 13, 2016, the City Council adopted Ordinance No. 1747 prohibiting all marijuana uses in the City to the extent allowed under California, and included a provision requiring a Residential Indoor Marijuana Cultivation (“RIMC”) permit for any individual who desires to grow up to six (6) marijuana plants in their private residence.
- F. On November 8, 2016, California voters approved Proposition 64, titled the “Adult Use of Marijuana Act” (the “AUMA”) and enacted a state statutory scheme legalizing, controlling, and regulating the cultivation, processing, manufacturing, distribution, testing, and sale of nonmedical (“adult-use” or “recreational”) cannabis, including cannabis products, for use by adults twenty-one (21) years of age and older.
- G. On June 27, 2017, Governor Brown signed Senate Bill 94, the “Medicinal and Adult-Use Cannabis Regulation and Safety Act” (“SB 94” or the “MAUCRSA”). SB 94 creates one state regulatory structure for medical and adult-use cannabis use and commercial cannabis activities, reconciling AUMA, with Proposition 215 and MAUCRSA. SB 94 continues to provide that a state license will not be approved for a business to engage in Commercial Cannabis Activity if the business activity violates any local ordinance or regulation.
- H. The City Council adopted Ordinance No. 1899, on July 12, 2022, as amended on \_\_\_\_\_ and \_\_\_\_\_, establishing a regulatory permit scheme for commercial cannabis activities, such that each proposed commercial activity must have an Agreement and a regulatory permit prior to operation.
- I. Presently, Permittee intends to utilize the Site for the sale of cannabis. Permittee is an authorized corporation as allowed by law duly formed under California law for the purpose of commercial cannabis sales (“Commercial Cannabis Activity”). Such Commercial Cannabis Activity facilities shall operate in accordance with the California State Compassionate Use Act (Health & Saf. Code, § 11362.5) (“CUA”), the Medical Marijuana Program Act (Health & Saf. Code, §§ 11362.7 et seq.) (“MMP”), the Control, Regulate and Tax Adult Use of Marijuana Act of 2016 (“AUMA”), and the Medicinal and Adult Use Regulation and Safety Act (“MAUCRSA”), Fontana Municipal Code Ordinance Chapter 33 and regulations promulgated thereunder, and any additional California state law related to Commercial Cannabis Activity (collectively “State Cannabis Law”). Prior to operating a Commercial Cannabis Activity facility, Permittee shall be required to obtain a Commercial Cannabis Activity regulatory permit from City pursuant to City ordinance.

- J. Permittee shall obtain all required state licenses issued under State Cannabis Law.
- K. On \_\_\_\_\_, 2023, Permittee applied to City for this Agreement, Architectural Review (AR #\_\_\_\_\_) (“AR”) and [if applicable] a Change of Zone (CZ #\_\_\_\_\_) (“CZ”). An Environmental Initial Study recommending the adoption of a Mitigated Negative Declaration (EA #\_\_\_\_\_) (“EA”) was prepared and distributed to responsible agencies for review and comment pursuant to the guidelines of the California Environmental Quality Act (“CEQA”). This Agreement, AR, EA and CZ shall collectively be referred to as “Project Approvals”.
- L. Permittee presently intends to develop and open Commercial Cannabis Activity facilities (“Commercial Cannabis Activity Facility”) on the Site consistent with State Cannabis Law, all other applicable California law, and Project Approvals (known as the “Project”).
- M. The Project will include commercial retail cannabis sales to individuals under State Cannabis Law at the Project Site (“Commercial Cannabis Activity Facility”).
- N. [Project Description] The Project will consist of a total planning area of approximately \_\_\_\_\_ (\_\_\_\_\_) square feet. [Project Name] is designed to integrate seamlessly into the City of Fontana’s General Plan Goals and Policies for Commercial Districts, including the latest provisions for Commercial Cannabis Activity. [Include additional information regarding the Project Description.]
- O. City and Permittee have agreed that, as a condition of allowing the Project, as defined herein, and due to the unique circumstances of the proposed Project, shall pay to the City a retail fee based on the gross receipts of Developer’s commercial cannabis retail sales, as hereinafter defined.
- P. City has given public notice of its intention to adopt this Agreement and has conducted public hearings thereon pursuant to California Government Code section 65867 and Municipal Code Section 30-322. City has found that the provisions of this Agreement and its purposes are consistent with the objectives, policies, general land uses and programs specified in City’s General Plan, zoning code and municipal ordinances.
- Q. City, in entering into this Agreement, acknowledges that certain City obligations hereby assumed shall survive beyond the terms of the present City Council members, that this Agreement will serve to bind City and future City Councils to the obligations hereby undertaken, and that this Agreement shall limit the future exercise of certain governmental and proprietary powers of City. By approving this Agreement, the City

Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than defer its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by City staff, the Planning Commission, and the City Council and have been found to be fair, just and reasonable. City has concluded that the pursuit of the Project will serve the best interests of its citizens and that the public health, safety, and welfare are best served by entering into this Agreement. Permittee has represented to City that it would not consider or engage in the Project absent City approving this Agreement; *i.e.*, assuring Permittee that it will enjoy the development rights given in this Agreement. The City Council specifically finds that this Agreement satisfies each and every one of the required findings in Municipal Code Section [REDACTED].

- R. The City agrees that Permittee's land use entitlements for the Project shall vest for the term of this Agreement as described below, including, but not limited to, the right to commercial cannabis retail sales and related development in compliance with State Cannabis Law and local ordinances.
- S. After conducting a duly noticed hearing on \_\_\_\_\_, 2023, in conjunction with Section 30-322 of the City's Municipal Code, the Planning Commission of the City reviewed, considered and approved AR # \_\_\_\_\_. The Planning Commission found the Project consistent with the objectives, policies, general land uses and programs specified in the general plan; compatible with the uses authorized in the [REDACTED] zone; is in conformity with the public necessity, public convenience, general welfare and good land use practices; will not be detrimental to the health, safety and general welfare of the city; will not adversely affect the orderly development of property or the preservation of property values; and will have a positive fiscal impact on the City.
- T. After conducting a duly noticed hearing on \_\_\_\_\_, 2023, the Planning Commission adopted Resolution No. \_\_\_\_\_ recommending approval of the execution of this Agreement to City Council.
- U. After conducting a duly noticed hearing on \_\_\_\_\_, 2023, in conjunction with Section \_\_\_\_\_ of the City's Municipal Code, and after independent review and consideration, the City Council approved the execution of this Agreement. The City Council found the Project consistent with the objectives, policies, general land uses and programs specified in the general plan; compatible with the uses authorized in the Commercial zone; is in conformity with good land use practices; will not be detrimental to the health, safety and general welfare of the City; and is in the best interest of the City of Fontana and its residents.

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

1. Binding Effect of Agreement. The Parties agree that the Recitals above are true and correct and intend to be bound by same; the Parties further agree to the incorporation by reference herein of said Recitals, together with all definitions provided and exhibits referenced therein. This Agreement pertains to the Site as described in **Exhibit A** and shown in **Exhibit B**. Except as otherwise provided in Section 15 of this Agreement, the burdens of this Agreement are binding upon the Permittee. In order to provide continued notice thereof, the Parties will record this Agreement with the San Bernardino County Recorder. Should the size or orientation of any Site component specified above be changed in minor respects, e.g., changed by a lot line adjustment, this Agreement shall not thereby be deemed to have been affected or invalidated, but the rights and obligations of the Parties shall remain as provided herein.

2. Relationship of the Parties. It is hereby specifically understood and acknowledged that the Project is a private project and that neither City nor Permittee will be deemed to be the agent of the other for any purpose whatsoever. City and Permittee hereby renounce the existence of any form of joint venture or partnership between or among them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Permittee joint venturers or partners.

3. Term. Except as otherwise specified herein, the term of this Agreement (the "Term") shall be for three (3) years from the Execution Date. The Term shall generally be subject to earlier termination or extension as hereinafter provided.

3.1 Term Extension. This Agreement shall be subject to two (2) year extensions at the sole discretion of the City. The City Manager is authorized to enter into the term extensions after conducting a periodic review in accordance with Government Code section 65865.1. If, on the basis of substantial evidence, the Permittee demonstrates to have complied in good faith with the terms and conditions of this Agreement, the Parties shall enter into a written extension signed by both Parties.

3.1.1 Litigation. Any third party-initiated litigation that arises from or is related to any City action or omission with respect to this Agreement or any subsequent City approval required in connection with the Project's development, or third party initiated litigation having the actual effect of delaying the Project's development. This extension

period related hereto shall include any time during which appeals may be filed or are pending.

3.1.2 Government Agencies. Any delay arising from or related to the act(s) or omission(s) any third party governmental agency, quasi-public entity or public utility, and beyond the reasonable control of Permittee.

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

3.2 Term Extensions. The Term of this Agreement may be extended in either of the following ways:

3.2.1 Request of Permittee. This Agreement's Term may be extended for additional two (2) year periods following the expiration of the initial Term upon the occurrence of all of the following:

3.2.1.1 Written Notice. Permittee shall give written notice to City of a request for the Term Extension no later than one hundred twenty (120) calendar days before the expiration of the Term; and

3.2.1.2 No Default by Permittee. Permittee shall not be in default with respect to any provision of this Agreement or any subsequent agreement or understanding between the Parties arising from or related to this Agreement, having received notice from City of said default per this Agreement, or if Permittee did in fact default as to this Agreement, upon notice from City, that Permittee did cure said default during the period to cure provided herein to City's satisfaction.

3.3 Termination of Agreement. Upon the termination of this Agreement, either by expiration or otherwise, Permittee shall have no right to engage in Commercial Cannabis Activity at the Project Site, except as may otherwise be allowed by City ordinance or law.

4. Defined Terms. As used in this Agreement, the following terms shall have the meanings hereinafter set forth:

4.1 Certified Report. "Certified Report" shall mean a detailed document prepared by Permittee on a form acceptable to the City's Director of Finance to report to City of the sales by Permittee, as defined herein, in the Project during each Operational Quarter, as defined herein. Each Certified Report shall be certified as true and correct by a duly-authorized officer of Permittee. City may also require certification by Permittee.

4.2 Certification of Non-Income Tax Exemption. Permittee certifies that Permittee is not income tax exempt under State or Federal Law and that Permittee will not file for such an exemption from the Internal Revenue Service or the Franchise Tax Board. Permittee will also require all Tenant(s) to certify that Tenant(s) are not income tax exempt under State or Federal Law and will not file for such an exemption.

4.3 Gross Receipts. Shall mean the total amount actually received or receivable in the course of business in a calendar year or calendar month from sales or the performance of acts or services for which charge is made or credit allowed. "Gross receipts" include, without limitation, all receipts, cash, credit, property received in lieu of cash, and any other valuable consideration taken in exchange for goods, services, or other valuable consideration.

4.4 Operational Quarter. "Operational Quarter" shall mean any calendar quarter, or portion of a calendar quarter, during which any Gross Receipts of the Project is produced, as defined herein. The calendar quarters shall begin and end as follows: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

4.5 Land Use Regulations. "Land Use Regulations" shall mean all ordinances, resolutions, codes, rules, regulations and official policies of the City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction and initial occupancy standards and specifications applicable to the Project. "Land Use Regulations" do not include any City ordinance, resolution, code, rule, regulation or official policy governing:



4.5.1 The conduct or taxation of businesses, professions, and occupations applicable to all businesses, professions, and occupations in the City;

4.5.2 Other than as provided in this Agreement, taxes and assessments of general application upon all residents of the City, provided that the taxes and assessments are not imposed for the purpose of taxing the right, power or privilege of developing or improving land (e.g., excise tax) or to directly finance the acquisition or dedication of open space or any other public improvement in respect of which the Developer is paying any fee or providing any improvement pursuant to this Agreement;

4.5.3 The control and abatement of nuisances;

4.5.4 The granting of encroachment permits and the conveyance of rights and interests which provides for the use of, access to or the entry upon public property, as may be approved by mutual agreement between Developer and City; and

4.5.5 The exercise of the power of eminent domain.

4.6 Existing Land Use Regulations. “Existing Land Use Regulations” means all Land Use Regulations in effect as of the approval date of this Agreement, including the Project Approvals.

4.7 Retail Fee. Shall mean five percent (5%) of Gross Receipts due to the City at the end of each Operational Quarter

## 5. Fee Payments.

5.1 Fee Payments. In consideration of City’s entering into this Agreement and authorizing the development and operation of the Project, the requirements for City services created by the Project, the City ensuring compliance with this Agreement, State Cannabis Laws, and the City’s municipal ordinances, throughout the Term of this Agreement, the following payments shall be made to City:

5.1.1 Five percent (5%) of Gross Receipts for operations from the Commercial Cannabis storefront retail operations to be paid quarterly. Retail Fees shall be due to the City by the 15<sup>th</sup> of each month succeeding Operational Quarter. Failure to



pay the Retail Fee within thirty 30 days after the due date shall result in an additional penalty for nonpayment in a sum equal to twenty-five (25%) of the total amount due.

6. Payment Procedures. The following procedures shall apply during the operation of the Project:

6.1 Remittance of Retail Fees/Certified Reports. Within thirty (30) calendar days following the end of each Operational Quarter during the Term of this Agreement commencing with the first Operational Quarter in which the Project has commenced, Permittee shall submit the Certified Report to the City's Finance Director and a payment for the Retail Fees for that Operational Quarter as identified in the Certified Report. Permittee shall pay Retail Fees to City on a quarterly basis without exception. Any material misstatement or misrepresentation in the Certified Report and any failure to pay Retail Fees when due shall constitute events of default by Permittee subject to the default provisions of this Agreement.

6.2 Maintenance of Records. Permittee shall maintain complete records of its operations to substantiate and document the content of each Certified Report. Such records shall include, without limitation, invoices and payments taken by Permittee and/or any operator of the Commercial Cannabis Facility. Permittee shall maintain such records in a form and location reasonably accessible to City, following reasonable notice to Permittee, for a period of at least five (5) calendar years following Permittee's submission of the Certified Report to which the records apply.

6.3 Audit. The City may conduct an audit or arrange for a third-party independent audit, at Permittee's expense, of Permittee records regarding Certified Reports and the Gross Receipts, at the sole discretion of the City. Such audit would not occur more than twice in one calendar year. The City's Finance Director shall provide at least seven (7) business days written notice of the commencement of such audit to Permittee, and shall reasonably attempt to schedule the audit so as to reduce the impact on Permittee operations as much as is feasible. Permittee shall cooperate with the City in completing the audit. If the audit reveals that Permittee has underpaid the payment due at the end of any Operational Quarter, Permittee shall pay such underpaid amounts to the City within thirty (30) calendar days of receipt of written notice from the City's Director of Finance. If the underpaid amount is more than five percent (5%) of the amount due, Permittee shall pay a penalty of an additional ten percent (10%) of Gross Receipts for first time underpayment and an additional twenty-five percent (25%) of Gross Receipts for any subsequent violations of the payment due at the end of the Operational Quarter.

If the audit reveals that the Permittee has overpaid any amount of the Gross Receipts, City shall provide written notification to Permittee and shall credit such amount against Permittee's subsequent quarterly payments of Gross Receipts until the overpaid amount has been resolved.

6.4 Site Inspection. From time to time, the City has the right to inspect the Facility for the purpose of monitoring operations, checking quantities and verifying volumes of product during operating hours or any time deemed appropriate to insure accurate reporting. The City must give notice at least forty-eight (48) hours in advance of any inspection.

7. Covenants of Permittee. During the Term of this Agreement, Permittee hereby covenants and agrees with the City as follows:

7.1 Implementation. Permittee shall use commercial reasonable efforts to pursue the implementation of the Project as expeditiously as feasible, in the form approved by the City, subject to all applicable laws, this Agreement, the Operating Agreement, the Commercial Cannabis Permit and the Municipal Code.

7.2 Maintain & Operate Project. Permittee shall maintain and operate the Project on the Site, throughout the Term of this Agreement, in accordance with the Project Approvals and all City, State and Federal laws.

7.3 Indemnification.

7.3.1 Permittee shall defend (with Counsel reasonably approved by the City), indemnify, and hold harmless the City and its Council, boards and commissions, officers, officials, employees, and agents from and against any and all actual and alleged liabilities, demands, claims, losses, damages, injuries, actions or proceedings and costs and expenses incidental thereto (including costs of defense, settlement and attorney's fees), which arise out of, or which are in any way related to i) the cannabis business permit and any land use entitlement related thereto, ii) the proceedings undertaken in connection with the approval, denial, or appeal of the cannabis business permit and any land use entitlement related thereto, iii) any subsequent approvals or licensing/permits relating to the cannabis business permit and any land use entitlement related thereto, iv) the processing of the cannabis business permit and any land use entitlement related thereto, v) any amendments to the approvals for the cannabis business permit and any land use entitlement related thereto, vi) the City's approval, consideration, analysis, review,

issuance, denial or appeal of the cannabis business permit; vii) the City's approval, consideration, analysis, review, issuance, denial or appeal of any land use entitlement related thereto, viii) the City's drafting, adoption and passage of an ordinance, and related resolutions, policies, rules and regulations, allowing for cannabis businesses, ix) the City's drafting, adoption and passage of an ordinance, and related resolutions if necessary in the future regarding any zoning law amendment(s) related to Permittee, x) the operation of Project or activity, xi) the process used by the City in making its decision to approve, consider, analyze, review, issue, or deny, my cannabis business permit or any related land use entitlement, or the appeal of either, xii) City's compliance or failure to comply with applicable laws and regulations or xiii) the alleged violation of any federal, state or local laws by Permittee or any of its officers, employees or agents, except where such liability is caused by the sole negligence or willful misconduct of the City.

7.3.2 City may (but is not obligated to) defend such challenge as City, in its sole discretion, determines appropriate, all at applicant's sole cost and expense. Permittee shall bear any and all losses, damages, injuries, liabilities, costs, and expenses (including, without limitation, staff time and in-house attorney's fees on a fully-loaded basis, attorney's fees for outside legal counsel, expert witness fees, court costs, and other litigation expenses) arising out of or related to any challenge ("Costs"), whether incurred by Permittee, City, or awarded to any third party, and shall pay to the City upon demand any Costs incurred by the City.

7.3.3 Permittee shall fund a deposit account ("Fund") to reimburse the City's cost, including attorney's fees, to defend any claim, action, or proceeding that is or may be subject to the agreement on limitations of City's Liability, and Certifications, Assurances Warranties, and Indemnification to City. In the event that any such claim, action, or proceeding is filed against the City, Permittee shall within 30 days of the filing deposit an initial sum of \$25,000 to the Fund to reimburse my portion of the City defense costs, as determined by the City in its sole discretion. The Fund shall, once established, shall at all times contain an amount necessary to cover not less than three months' worth of budgeted expenditures by the City relating to the City's defense of the claim, action, or proceeding, including all time to appeal, or as long as expenditures made by the City relating to its defense remain unreimbursed, whichever is later. The City may, from time to time, in the City's sole and absolute discretion, request additional deposits from the Permittee to ensure the fund balance is adequate to defend any claim, action or proceeding, including appeals related thereto. Once all remaining and outstanding reimbursements have been paid to the City by Permittee, City shall return to me any remaining unused portion of my deposit.

#### 7.4 Hold Harmless.

7.4.1 Permittee hereby waives, releases, and holds harmless the City of Fontana ("City") and its Council, boards and commissions, officers, officials, employees, and agents from any and all actual and alleged claims, losses, damages, injuries, liabilities, costs (including attorney's fees), suits or other expenses which arise out of, or which are in any way relate to my application for a cannabis business permit, the issuance of the cannabis business permit, the process used by the City in making its decision, the enforcement of the conditions of the cannabis business permit, or the cannabis business' operations.

7.4.2 Permittee hereby waives, releases and holds harmless the City and its Council, boards and commissions, officers, officials, employees, and agents from any and all actual and alleged claims, losses, damages, injuries, liabilities, costs (including attorney's fees), suits or other expenses which arise out of, or which are in any way relate to: (1) any repeal or amendment of any provision of the Fontana Municipal Code or Zoning Ordinance relating to commercial cannabis activity; or (2) any investigation, arrest or prosecution of Permittee, operators, employees, clients or customers, for a violation of state or federal laws, rules or regulations relating to cannabis activities.

8. Covenants of City. During the Term of this Agreement, City hereby covenants and agrees with Permittee as follows:

8.1 Expeditious Services. City shall process applications and address questions and concerns raised by Permittee representatives at the "counter" at City Hall as expeditiously as reasonably possible. Upon Permittee's request, or if, in an exercise of City's own discretion, City staff determines that it cannot comply with this Section, City shall expeditiously engage the services of private contract planners, plan checkers or inspectors ("Private Contractors") to perform such services as may be necessary to assist in processing the project plans as described herein. Compensation of such Private Contractors shall be at Permittee's sole cost and expense, inclusive of any administrative cost to City of integrating services by Private Contractors into the project's development processing. Permittee shall pay such costs and expenses of Private Contractors via reimbursement to City, per City's applicable policies and procedures. City shall have absolute discretion in the selection of such Private Contractors.

8.2 Vested Rights. During the term of this Agreement, Permittee shall have the vested right and entitlement to develop and operate the Project in accordance with the Existing Land Use Ordinances, in addition to any Commercial Cannabis Activity operating standards found in the Municipal Code, which may be amended at the City's discretion to minimize or eliminate safety hazards.

8.3 Building Permits and Other Approvals and Permits. Subject to (a) Permittee's compliance with this Agreement, the Project Approvals the Existing Land Use Ordinances, the Building Ordinances, and Operating Standards; and (b) payment of the usual and customary fees and charges of general application charged for the processing of such applications, permits and certificates and for any utility connection, or similar fees and charges of general application, the City shall process and issue to Permittee promptly upon application therefore all necessary use permits, building permits, occupancy certificates, permits, licenses and other required permits for the construction, use and occupancy of the Project, or any portion thereof, as applied for, including connection to all utility systems under the City's jurisdiction and control (to the extent that such connections are physically feasible and that such utility systems are capable of adequately servicing the Project).

8.4 Procedures and Standards. The standards for granting or withholding permits or approvals required hereunder in connection with the development of the Project shall be governed as provided herein by the standards, terms and conditions of this Agreement and the Project Approvals, and to the extent not inconsistent therewith, the Existing Land Use Ordinances, but the procedures for processing applications for such permits or approvals (including the usual and customary fees of general application charged for such processing) shall be governed by such ordinances and regulations as may then be applicable.

## 9. Effect of Agreement.

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

9.2 Binding on City. This Agreement shall be binding upon the City and its successors in accordance with and subject to its terms and conditions, unless subsequent action is taken by the City, whether by ordinance or resolution of the City Council, by referendum, initiative, or otherwise. As long as the City permits the retail cannabis in the City, and the Operating Agreement and Development Agreement are in good standing, the Permittee shall have a right to a Commercial Cannabis Permit.

9.3 Future Conflicting Local Laws. If any City law, including ordinances, resolutions, rules, regulations, standards, policies, conditions and specifications (collectively "City Laws") are enacted or imposed by a citizen-sponsored initiative or referendum, or by the City Council directly or indirectly in connection with any proposed initiative or referendum, which City Law would conflict with this Agreement, such City Law shall apply to the Project. The Parties, acknowledge that the City's approval of this Agreement and the City Approvals are legislative actions subject to referendum.

10. Specific Criteria Applicable to Development of the Project.

10.1 Applicable Ordinances. Except as set forth in the Project Approvals and subject to the provisions of Section 10.2 below, the Existing Land Use Ordinances shall govern the development of the Site hereunder and the granting or withholding of all permits or approvals required to develop the Site; provided, however, that (a) Permittee shall be subject to all changes in processing, inspection and plan-check fees and charges imposed by City in connection with the processing of applications for development and construction upon the Site so long as such fees and charges are of general application and are not imposed solely with respect to the Project Site, (b) Permittee shall abide by the Building Ordinances in effect at the time of such applications, (c) Development Impact Fees to be paid by Permittee shall be those in effect at the time permits are issued subject to those fees, and (d) development shall be consistent with current Operating Standards.

10.2 Amendment to Applicable Ordinances. Any change to the Existing Land Use Ordinances that conflicts with the Project Approvals shall nonetheless apply to the Project if, (i) it is determined by City and evidenced through findings adopted by the City Council that the change or provision is reasonably required in order to prevent a condition dangerous to the public health or safety; (ii) it is required by changes in State or Federal law; or (iii) it is otherwise expressly permitted by this Agreement. The City has adopted Operating Standards that govern this type of use, which Regulations, and any amendments thereto, shall apply to the Project.

11. Supersedure of Subsequent Laws or Judicial Action.

11.1 The provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with any new Law or decision issued by a court of competent jurisdiction (a "Decision"), enacted or made after the Execution Date which prevents or precludes compliance with one or more provisions of



this Agreement. Promptly after enactment of any such new Law, or issuance of such Decision, the Parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. In addition, Permittee and City shall have the right to challenge the new Law or the Decision preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect, except that the Term shall be extended, in accordance with Section 3.1 above, for a period of time equal to the length of time the challenge was pursued, to extent such challenge delayed the implementation of the project.

11.2 The Parties recognize that California adopted, through ballot initiative, the AUMA and may adopt through initiative or legislative action other laws and regulations pertaining to either medical or adult use of cannabis. The Parties intend through this Agreement that Permittee shall have the right for retail sales of cannabis as allowed by current State Cannabis Law, pertaining to Commercial Cannabis Activity. To the extent the changes in California law change the legal process or structure by which cannabis retailers can or may operate (i.e. for-profit vs. non-profit entities, size of licensees, etc.), the Parties intend this Agreement to be flexible to allow such changes and may alter the procedures specified herein, by Operating Agreement as defined below, or otherwise, as may be necessary.

12. Operating Agreement. The Parties have entered into an Operating Agreement, incorporated as Exhibit [REDACTED]. The Operating Agreement and this Agreement are not independent of each other but are dependent on each other. Any breach of any terms of one Agreement shall constitute a breach of the other Agreement.

13. CEQA. All procedures of CEQA, California Public Resources Code § 21000 et seq., and the CEQA guidelines, title 14 of the California Code of Regulations, chapter 3, § 15000 et seq. have been satisfied based on an initial study as a result of which certain additional focused studies evaluating the environmental impacts of the Project have been completed and the City has made certain findings and determinations that this Agreement and the Project can be supported by a Mitigated Negative Declaration in compliance with the requirements of CEQA.

14. Building Permits. Nothing set forth herein shall impair or interfere with the right of City to require the processing of building permits as required by law relating to any specific improvements proposed for the Project pursuant to the applicable provisions of the City's municipal code, inclusive of such California and International Codes as have



been adopted in accord therewith, that are in effect at the time such permits are applied for; provided, however, no such permit processing shall authorize or permit City to impose any condition on and/or withhold approval of any proposed improvement the result of which would be inconsistent with this Agreement.

15. Review for Compliance.

15.1 Periodic Review. Pursuant to California Government Code section 65865.1, City shall engage in an annual review of this Agreement, on or before the anniversary of the Execution Date, in order to ascertain Permittee's good faith compliance with its terms (the "Periodic Review"). In the event City fails to formally conduct such annual review, Permittee shall be deemed to be in full compliance with the Agreement.

16. Amendment or Cancellation. This Agreement may be amended or canceled in whole or in part only by mutual consent of the Parties or in the manner provided in California Government Code section 65865.1 or California Government Code section 65868.

17. Provide Notice. Provide the other Party with written notice of such State or Federal law or regulation, a copy of such law or regulation and a statement identifying how such law regulation conflicts with the provisions of this Agreement.

18. Meet and Confer. Upon notice by one Party to another as to preemption or frustration of this Agreement by law or regulation, the Parties shall promptly meet and confer in good faith and make a reasonable attempt to modify or suspend this Agreement to comply with such applicable Federal or State law or regulation. If the Parties cannot agree on a manner or method to comply with such Federal or State law or regulation, the Parties may, but shall not be required to, engage in alternative dispute resolution.

19. Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be either personally delivered (which shall include delivery by means of professional overnight courier service which confirms receipt in writing [such as Federal Express or UPS] ), sent by telecopier or facsimile ("Fax") machine capable of confirming transmission and receipt, or sent by certified or registered mail, return receipt requested, postage prepaid to the following parties at the following addresses or numbers:

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**If to City:**

City of Fontana  
8353 Sierra Ave.  
Fontana, CA 92335  
Attention: City Manager

With copy to: Best, Best & Krieger, LLP, City Attorney

2855 E. Guasti Rd.  
Suite 400  
Ontario, CA 91761  
Attention: Ruben Duran, Esq.

**If to Permittee:**

Company  
Address  
Attention: Managing Member

With copy to: \_\_\_\_\_  
Company  
Address  
Attention : \_\_\_\_\_

With copy to: \_\_\_\_\_

Address  
Attention : \_\_\_\_\_

Notices sent in accordance with this Section shall be deemed delivered upon the: **(a)** date of delivery as indicated on the written confirmation of delivery (if sent by overnight courier service); **(b)** date of actual receipt (if personally delivered by other means); **(c)** date of transmission (if sent by email or telecopier, so long as sender receives actual confirmation that the transmission was received); or **(d)** date of delivery as indicated on the return receipt (if sent by certified or registered mail, return receipt requested). Notice of change of address shall be given by written notice in the manner detailed in this Section.

20. Breach and Remedies. Notwithstanding any provision of this Agreement to the contrary, Permittee shall not be deemed to be in default under this Agreement with

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respect to any obligation owed solely to City, and City may not terminate or modify Permittee's rights under this Agreement, unless City shall have first delivered a written notice of any alleged default to Permittee that specifies the nature of such default. If such default is not cured by Permittee within fourteen (14) calendar days after receipt of such notice of default, City may terminate Permittee's rights under this Agreement. In the event that a breach of this Agreement occurs, irreparable harm is likely to occur to the non-breaching Party and damages will be an inadequate remedy. To the extent permitted by law, therefore, it is expressly recognized that injunctive relief and specific enforcement of this Agreement are proper and desirable remedies, and it is agreed that any claim by Permittee against City for an alleged breach of this Agreement shall be remedied by injunctive relief or an appropriate action for specific enforcement of this Agreement and not by a claim or action for monetary damages.

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

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

23. Attorneys' Fees. In the event any Party hereto brings an action or proceeding for a declaration of the rights of the Parties, for injunctive relief, for an alleged breach or default, or any other action arising out of this Agreement, or the transactions contemplated hereby or institutes a reference or arbitration proceeding as may expressly be permitted by the terms of this Agreement, the prevailing Party in any such action shall be entitled to an award of actual attorneys' fees and costs incurred in such action or proceeding, without regard to any rule of court or schedule of such fees maintained by the court, in addition to any other damages or relief awarded, regardless of whether such action proceeds to final judgment.

24. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which constitute one and the same instrument.

25. Execution of Agreement. The Parties shall sign this Agreement on or within five (5) business days of approval.

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

27. Discretion to Encumber. The Parties hereto agree that this Agreement shall not prevent or limit Permittee, in any manner, at Permittee's sole discretion, from encumbering the Site or any portion thereof or any improvements thereon then owned by such person with any mortgage, deed of trust or other security device ("Mortgage") securing financing with respect to the Site or such portion. City acknowledges that the lenders providing such financing may require certain modifications, and City agrees, upon request, from time to time, to meet with Permittee and/or representatives of such lenders to negotiate in good faith any such request for modification. City further agrees that it will not unreasonably withhold its consent to any such requested modification. Any mortgagee or trust deed beneficiary of the Site or any portion thereof or any improvements thereon and its successors and assigns ("Mortgagee") shall be entitled to the following rights and privileges.

28. Lender Requested Modification/Interpretation. City acknowledges that the lenders providing financing to Permittee may request certain interpretations and modifications of this Agreement. City therefore agrees upon request, from time to time, to meet with the Permittee and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. The City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement, provided, further, that any modifications of this Agreement are subject to the provisions of this Agreement relative to modifications or amendments.

29. Governing Law and Venue. This Agreement and the legal relations between the Parties shall be governed by and construed in accordance with the laws of the State of California. Furthermore, the Parties agree to venue in San Bernardino County, California.

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

31. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties . No other person or entity shall have any right of action based upon any provision of this Agreement.

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

33. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

34. Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the County Recorder by the City Clerk within the period required by Government Code Section 65868.5.

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

36. Waiver. The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

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37. Jointly Drafted. It is agreed among the Parties that this Agreement was jointly negotiated and jointly drafted by the Parties and their respective counsel, and that it shall not be interpreted or construed in favor of or against any party solely on the ground that it drafted the Agreement. It is also agreed and represented by all Parties that said Parties were of equal or relatively equal bargaining power and that in no way whatsoever shall this Agreement be deemed to be a contract of adhesion, or unreasonable or unconscionable.

38. Independent Legal Counsel. Each Party acknowledges that it has been represented by independent legal counsel of its own choice throughout all of the negotiations that preceded the execution of this Agreement or has knowingly and voluntarily declined to consult legal counsel, and that each Party has executed this Agreement with the consent and on the advice of such independent legal counsel.

39. Further Cooperation. The Parties herein agree to execute any and all agreements, documents or instruments as may be reasonably necessary in order to fully effectuate the agreements and covenants of the Parties contained in this Agreement, or to evidence this Agreement as a matter of public record, if required to fulfill the purposes of this Agreement. The Parties further agree to mutually cooperate with one another in carrying out the purposes of this Agreement.

40. Enforceability. This Agreement shall not become binding and shall have no force and effect whatsoever until such time as it has been fully executed by and delivered to all of the parties hereto.

[Signatures on following pages]

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

**“CITY”**

CITY OF FONTANA, CA  
a California Municipal Corporation

Date: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
Acquanetta Warren  
Mayor

Attest:

By: \_\_\_\_\_  
Germaine McClellan Key  
City Clerk

*Approved as to form:*

Best, Best & Krieger, LLP

By: \_\_\_\_\_  
Ruben Duran, Esq.  
City Attorney



**ACKNOWLEDGEMENT**

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

STATE OF CALIFORNIA            }  
COUNTY OF \_\_\_\_\_ }

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary

**“PERMITTEE”**

Company,  
a [entity type]

Date: \_\_\_\_\_, 2023

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

\_\_\_\_\_  
Its: Managing Member

*Approved as to form:*

\_\_\_\_\_

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

\_\_\_\_\_, Esq.  
Attorney for Permittee

**ACKNOWLEDGEMENT**

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

STATE OF CALIFORNIA            }  
COUNTY OF \_\_\_\_\_ }

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary