

UNCODIFIED ORDINANCE NO. _____

AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE APPROVING AND ADOPTING DEVELOPMENT AGREEMENT NO. _____ [ALSO IDENTIFIED AS COMMERCIAL CANNABIS PERMIT I.D. NO. 18-094] BETWEEN THE CITY OF COMMERCE AND 6436 CORVETTE, LLC [A CALIFORNIA LIMITED LIABILITY COMPANY] FOR A COMMERCIAL CANNABIS BUSINESS; MAKING FINDINGS CONSISTENT WITH AND PURSUANT TO GOVERNMENT CODE SECTION 65867.5; AND MAKING FINDINGS OF A CEQA CATEGORICAL EXEMPTION

WHEREAS, 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 an 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;

WHEREAS, 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 in the Applicant, and to meet certain public purposes of the local government;

WHEREAS, as authorized by the Development Agreement Statutes, the City has adopted Resolution No. 18-50 ("A Resolution of the City Council of the City of Commerce Approving Procedures and Requirements for the Processing of Development Agreements") establishing the procedures and requirements for the consideration of development agreements with the City;

WHEREAS, on September 4, 2018, City Council adopted Ordinance No. 700, concerning commercial cannabis regulations, which added new Chapter 5.61 "Commercial Cannabis Activities", of Title 5, "Business Regulations and Licensing", of the Commerce Municipal Code, and became effective October 4, 2018;

WHEREAS, the purpose and intent of Ordinance No. 700 is to regulate the cultivation, manufacturing, testing, distribution, non-storefront retailer-delivery only, and microbusinesses, of medicinal and adult-use cannabis and cannabis products, and the ancillary transportation and delivery of same, in a responsible manner to protect the health, safety, and welfare of the residents of the City of Commerce and to enforce rules and regulations consistent with the California Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), and related laws, regulations, and policies issued by the State of California;

WHEREAS, in October 2018, Owner 6436 Corvette, LLC, (a California limited liability company) applied to this City for a Commercial Cannabis Permit (hereinafter "CCP") to conduct Commercial Cannabis Activities. No such activities are allowed or authorized without a Development Agreement, a Commercial Cannabis Permit, and all requirements pursuant to City Ordinance No. 700, including all requirements pursuant to Commerce Municipal Code Section 5.61.060, which includes all applicable local and State of California laws, regulations and policies;

WHEREAS, the definition of "Owner" hereunder shall mean and refer to the Development Agreement applicant, to the extent such person is a party to the Development Agreement, and will hold or be covered by a City of Commerce Commercial Cannabis Permit to operate a commercial cannabis business in the City of Commerce;

WHEREAS, Owner currently holds a legal or equitable interest in real property considered

in the Development Agreement, located at 6436 Corvette Street, City of Commerce, State of California (the "Site");

WHEREAS, Owner presently intends to develop and open a commercial cannabis business on the Site consistent with all applicable local and State of California laws, regulations and policies, (known as the "Project");

WHEREAS, such Commercial Cannabis facilities shall operate in accordance with all applicable provisions of state and local laws, regulations and policies, including City of Commerce Municipal Code and City of Commerce Ordinance No. 700;

WHEREAS, a Zoning Analysis, providing the Project's general plan designation, specific zone designation, applicable zoning regulations, an environmental assessment, and a project description, was prepared and is Exhibit "F" of the Development Agreement, and is incorporated herein by this reference;

WHEREAS, ultimately, Owner intends upon obtaining a permanent California State License, pursuant to applicable state cannabis laws, and consistent with its Commercial Cannabis Permit application and Development Agreement, to operate at the Site;

WHEREAS, all procedures of the California Environmental Quality Act ("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;

WHEREAS, the City has found that the proposed Project is Categorically Exempt from California Environmental Quality Act (CEQA) requirements under provisions of CEQA Guidelines Section 15301 – Existing Facilities. This exemption applies to projects characterized as alterations to existing facilities meeting the conditions described in Section 15301;

WHEREAS, the City has given public notice of its intention to adopt this Development Agreement and has conducted a public hearing thereon pursuant to California Government Code §65867;

WHEREAS, the Planning Commission considered the provisions of the Development Agreement at a duly noticed public hearings on February 13, 2019 and March 20, 2019, wherein all interested parties were given an opportunity to be heard regarding the Agreement, and recommended denial of the Development Agreement to the City Council, pursuant to an adopted Resolution, which is incorporated herein by this reference;

WHEREAS, Sections 65864-65859.5 of the California Government Code authorize the City to enter into development agreements and requires the planning agency of the City to find the proposed Development Agreement to be consistent with the policies and programs of the General Plan and any applicable specific plan. Government Code Section 65865 authorizes the City to enter into development agreements with any person having a legal or equitable interest in real property, which interest Owner has in the Site, as evidenced by the information within the Development Agreement, and attachments thereto; and

WHEREAS, after conducting a duly noticed hearing on April 30, 2019, in conjunction with the City's applicable ordinances and resolutions, and after independent review, consideration, analysis of staff's recommendations, oral and written testimony, and the record as a whole, the City Council approved the execution of this Development Agreement, and made findings after due study, deliberation, and public hearing, the City Council found the Project: consistent with the goals, objectives, policies, general land uses and programs specified in the

General Plan and any applicable special plan; compatible with the uses authorized in the City's standards, codes, and zoning laws; in conformity with the public necessity, public convenience, general welfare and good land use practices; in accordance with the Development Agreement Statutes, including Government Code Section 65864 through 65869.5; 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; will have a positive fiscal impact on the City; and is in the best interest of the City of Commerce and its residents;

WHEREAS, the City has given public notice of its intention to adopt this Development Agreement and has conducted a public hearing thereon pursuant to California Government Code §65867; specifically, pursuant to California Government Code Sections 65867 and 65090, the City of Commerce, on April 19, 2019, published legal notice in the Los Cerritos News of City Council's consideration of this proposed Development Agreement and mailed out notice to property owners located within 500 feet of the Site, indicating the public hearing to be held by the City of Commerce City of Council on April 30, 2019;

WHEREAS, all other legal prerequisites to the approval and adoption of this Ordinance approving and adopting this Development Agreement have occurred.

NOW, THEREFORE, the City Council of the City of Commerce does ORDAIN as follows:

SECTION 1: RECITALS. That based upon staff reports, presentations, public testimony, and all other matters presented during the public hearing on this item, the City Council hereby finds and declares that the foregoing recitals are true and correct and incorporates them herein as findings and as a substantive part of this Ordinance.

SECTION 2: ADDITIONAL FINDINGS. Pursuant to the Government Section Code 65864 through 65869.5 and in light of the record before it including the staff report (and all attachments), and all evidence and testimony heard at the public hearing for this item, and in light of all evidence and testimony provided in connection with this Project, the City Council makes the following FINDINGS pertaining to the Development Agreement as related to the proposed disposition of the Site for purposes of the Project:

FINDING 1: The proposed Development Agreement is consistent with the goals and policies of the General Plan, its purposes and applicable Specific Plan(s).

Evidence: The proposed use is consistent with the objectives, policies, general, uses, and programs of the Commerce General Plan. This project is consistent with the General Plan in that it contributes to help establish an orderly pattern of development, economic development, and a wide range of activities. The project will also improve an existing building that has been underutilized. It will improve upon that use and help compliment the general vicinity. As determined by staff, the use will promote the improvement of a location where reinvestment and revitalization is needed. Furthermore, the project will provide needed economic development to the community.

Evidence: The proposed use is one compatible and consistent within the subject zone and complies with the intent of all applicable provisions of this Title 19.

Evidence: The proposed use would not impair the integrity and character of the zone in which it is to be located. As proposed, the use will be complimentary to other uses in the immediate vicinity. As such, the proposed use will not impair the integrity of the area or its character. Appropriate conditions of approval have also been crafted in order to

ensure the use operates in a manner so as not to impact the area in which it is located.

Evidence: The subject site is physically suitable for the type of land use being proposed. All proposals to accommodate the commercial cannabis use will occur within the existing footprint of the building.

Evidence: The proposed use would not be detrimental to the public interest, health, safety, convenience, or welfare. The proposed operation of the use will be conditioned to comply with all the applicable standards of the Zoning Ordinance, and with the conditions of approval, the project will not adversely impact the general welfare of the City. To the contrary, the proposed use will be complimentary to the existing operations currently occurring in the general vicinity and operated by the ownership group. Further, the proposed use will be maintained in a safe and efficient manner in accordance with the imposed conditions. The conditions imposed will serve the public interest, health, safety, convenience, and welfare. Therefore, the proposed use would not be detrimental to the public interest, health, safety, convenience, or welfare.

FINDING 2. All procedures of the California Environmental Quality Act ("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 and the City Council has found that the proposed Project is Categorically Exempt from California Environmental Quality Act (CEQA) requirements under provisions of CEQA Guidelines Section 15301 – Existing Facilities. This exemption applies to projects characterized as alterations to existing facilities meeting the conditions described in Section 15301;

Evidence: After a thorough examination of the Project application for the proposed Project and proposed Site, including, but not limited to, standard operating procedures ("SOPs"), security plan, site plan and environmental data form, staff determined that the approval of this Development Agreement and the related commercial cannabis uses pursuant to this Project meet the provisions of CEQA categorical exemptions.

Evidence: Pursuant to CEQA, the City Council finds and determines there is no substantial evidence that the Project could have a significant effect on the environment. The Project is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (CEQA Guidelines 15061(b)(3)). The City Council in its independent judgment finds that there is no possible significant effect directly related to the Project because the Project consists of a small addition, expansion or alteration to an existing structure where there is negligible or no expansion of the use. The City Council finds that commercial cannabis uses will have similar impacts as the uses that have already been evaluated and are permitted by right in the applicable zone. The City Council finds that the Project will not cause any physical change in the environment, that the project is categorically exempt from CEQA under Administrative Code, Title 14, Chapter 3, § 15301(a), Class 1, Existing Facilities, and therefore no further action is required under CEQA.

SECTION 3: INCORPORATION, APPROVAL AND EXECUTION OF DEVELOPMENT AGREEMENT. Based upon the findings outlined hereinabove, the City Council of the City of Commerce hereby approves a Development Agreement, and inclusive of exhibits thereof, [also identified as Commercial Cannabis Permit I.D. No. 18-094] between the City of Commerce and 6436 Corvette, LLC, (a California limited liability company), incorporated herein by this reference, and authorizes the Mayor to execute the Development Agreement subject to final and technical revisions as required and approved by the City Attorney.

SECTION 4: SEVERABILITY. If any section, subsection, line, sentence, clause, phrase, word, part, provision, or portion of this Ordinance, or its application to any individual, entity, or circumstance, for any reason, is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, and shall continue in full force and effect. To this end, any section, subsection, line, sentence, clause, phrase, word, part, provision, or portion of this Ordinance is severable. The City Council of the City of Commerce declares that this Ordinance would have been adopted by the City Council of the fact that any section, subsection, line, sentence, clause, phrase, word, part, provision, or portion thereof, might be declared to be invalid or unconstitutional.

SECTION 5: EFFECTIVE DATE. This Ordinance shall take effect on the thirty-first (31st) day after its adoption.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2019.

John Soria
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

RECORDING REQUESTED BY
City of Commerce
AND WHEN RECORDED MAIL TO:
City of Commerce
2535 Commerce Way
Commerce, CA 90040
Attention: City Administrator

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

**COMMERCIAL CANNABIS BUSINESS DEVELOPMENT
AGREEMENT BETWEEN THE CITY OF COMMERCE AND
6436 CORVETTE, LLC [A CALIFORNIA LIMITED LIABILITY
COMPANY]**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into this _____ day of _____, 2019, (the "Execution Date"), by and between the **CITY OF COMMERCE**, a California municipal corporation ("City") and 6436 Corvette, LLC (a California limited liability company) ("Owner"). City and Owner 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

WHEREAS, 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 an 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;

WHEREAS, 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 in the Owner, and to meet certain public purposes of the local government;

WHEREAS, as authorized by the Development Agreement Statutes, the City has adopted Resolution No. 18-50 ("A Resolution of the City Council of the City of Commerce Approving Procedures and Requirements for the Processing of Development Agreements") establishing the procedures and requirements for the

consideration of development agreements with the City; consideration of development agreements with the City;

WHEREAS, Owner currently holds a legal or equitable interest in real property considered in this Agreement which has a development area approximately 25,508 square feet located at 6436 Corvette Street, City of Commerce, State of California (the "Site"). The Site includes Assessor's Parcel Number: 6336-012-031, and is more fully described in the Legal Description in Exhibit A and shown on the map in Exhibit B. Both exhibits being attached hereto, respectively, and incorporated herein by this reference;

WHEREAS, presently, Owner has property ownership of the Site for the purpose of commercial cannabis related activities which shall include, but not be limited to Cannabis Cultivation (up to 10,000 square feet), Non-Volatile Manufacturing and Distribution. Such Commercial Cannabis facilities shall operate in accordance with all applicable provisions of Business and Professions Code §§26000-26231.2; California Health and Safety Code Safety Code §§ 11357-11362.9 and 11362.7-11362.85; Revenue and Taxation Code §§ 34010-34021.5; Vehicle Code §§ 2429.7 and 23222; Water Code §§ 1831, 1847, and 13276; and the City of Commerce Municipal Code as it applies to such facilities (collectively the "Applicable Cannabis Laws"). Prior to operating a Cannabis Microbusiness Owner shall be required to obtain a Commercial Cannabis Permit from the City, and all related permits and licenses prior to the operation of same, pursuant to City Ordinance No. 700;

WHEREAS, ultimately, Owner intends upon obtaining a permanent California State License, pursuant to Applicable Cannabis Laws, to operate a [type of facility] at the Site. The definition of "Owner" hereunder shall mean and refer to the fee simple owner and/ or any authorized tenant of the Site to the extent such party holds or is covered by a Commercial Cannabis Permit;

WHEREAS, on 26 October, 2018 Owner applied to this City for a Commercial Cannabis Permit (*hereinafter* "CCP") to conduct Commercial Cannabis Activities. No such activities are allowed or authorized without a Development Agreement, a Commercial Cannabis Permit, and all requirements pursuant to City Ordinance No. 700, including all requirements pursuant to Commerce Municipal Code Section 5.61.060.

WHEREAS, Owner presently intends to develop and open a Cannabis Microbusiness on the Site consistent with the Applicable Cannabis Laws and Project Approvals (known as the "Project"). The Project will include Cannabis Cultivation (up to 10,000 square feet), Non-Volatile Manufacturing and Distribution (under the Applicable Cannabis Laws, but would not include any other commercial or non-commercial cannabis activity at the Project Site without further authorization by the City).

WHEREAS, the Project will consist of: one warehouse totaling approximately

11,840 square feet. The complex will employ approximately 10 employees per shift. The building will be divided into major spaces for cultivation, manufacturing, delivery and general business operations as follows:

Cultivation: The cultivation area includes a single room of approximately 8,194 square feet to be used for flowering, trimming, drying, curing and non-commercial nursery activity. Total area of cultivation and processing is 7,298 square feet, including 6,398 square feet for flowering, 400 sq. ft. canopy space for processing the harvested flower, 300 sq. ft. for all drying and curing, and immature plants (including clones) and mothers will be housed in the primary cultivation room in an additional 200 sq. ft in the northern part of the cultivation room. At build-out the total cultivation space for the facility will be 8,194 square feet. Cultivation operations would occur 24-hours daily.

Manufacturing: The facility would include three (3) 472 square foot manufacturing rooms that would be used initially for mechanical extraction, storage and packaging products related to the manufacturing operation. Manufacturing operations would occur 24-hours daily.

Proposed General Business Offices (subject to final approval pursuant to the City-issued regulatory Commercial Cannabis Permit) – The facility will be open from 8 a.m. to 5 p.m., Monday through Friday, with eight (8) employees per shift.

Parking/Loading/Access: The proposed project provides ten (10) parking spaces, including one accessible van space. Loading will take place on-site within an existing covered loading space accessed on the east side of the structure. In no event will loading occur within the public right-of-way. Vehicular access to the site will be through an existing driveway on Corvette Street Avenue. Within the site, access to the structures will be through the secured front office entrance. Pedestrian walkways within the structure and on the west and east sides of the structure allow pedestrian circulation throughout the site. The project complies with the CALGreen Tier 1 by incorporating stormwater pollution prevention measures, installing energy- and water-efficient equipment, and planting native and drought-tolerant landscaping at the front of the property.

Security: The project will secure the facility against unauthorized entry by installing security lights on the exterior of the building to illuminate the side yards and parking area, installing commercial-grade locks, installing an alarm and video surveillance system, establishing procedures for identifying authorized persons, establish inventory controls, and install a secure surveillance vault to maintain the integrity of records. In addition, the applicant will engage a licensed security company to provide an operational security plan in compliance with City Ordinance 700.

The proposed layout of the site is as shown in the attached Site and/or Floor Plans, in Exhibit C.

The Project will consist of a vertically integrated MAUCRSA compliant cannabis facility that will provide several levels of cannabis production, processing, and distribution.

This includes:

- 1) Cultivation and processing of young and mature cannabis plants.
- 2) Research and development of cannabis plants and strains.
- 3) Manufacturing of cannabis and its derivatives through non-volatile extraction.
- 4) Packaging and storage of cannabis products.
- 5) Self-Distribution-of cannabis products

Proposed Hours of Operation (subject to final approval pursuant to the City-issued regulatory Commercial Cannabis Permit):

8 AM to 5 PM for general business hours 24-hours for internal operations

Note MAUCRSA now authorizes a person to apply for and be issued more than one State license at one location provided the licenses premises are separate and distinct.

Owner has applied for one (1) Microbusiness license to include the following activities:

- 1) **Cultivation (up to 10,000 square feet)**
- 2) **Manufacturing (Non-Volatile)**
- 3) **Distribution**

Please see Section _____ of this Development Agreement for details for separate and distinct locations of each operation within the Premises.

WHEREAS, On October 4, 2018, Ordinance No. 700 came into effect authorizing specified Commercial Cannabis Activities within the City of Commerce, in strict compliance with related State of California laws, regulations and policies, under specified conditions and provisions;

WHEREAS, all procedures of the California Environmental Quality Act ("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;

WHEREAS, the City has given public notice of its intention to adopt this Agreement and has conducted public hearings thereon pursuant to California Government Code §65867. The 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;

WHEREAS, the City, in entering into this Agreement, acknowledges that certain City obligations hereby assumed shall survive beyond the terms of the present Council members, that this Agreement will serve to bind City and future 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 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 and the 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 obligation. Owner has represented to City that it would not consider or engage in the Project absent City approving this Agreement;

WHEREAS, the City agrees that Owner's land use entitlements, if any that have been applied for and approved by the City, for the Project shall vest for the term of this Agreement as described below, if any;

WHEREAS, After conducting a duly noticed hearing on February 13, 2019 and March 20, 2019 in conjunction with the City's applicable ordinances and resolutions, the Planning Commission of the City reviewed, considered and recommended denial of the execution of this Agreement to the City Council.

WHEREAS, after conducting a duly noticed hearing on April 30, 2019, in conjunction with the City's applicable ordinances and resolutions, 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 City's zoning laws; 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 Commerce 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. The Recitals above are true and correct and are hereby incorporated into and made a part of this Agreement. In the event of any inconsistency between the Recitals and the provisions of this Agreement, herein below, said provisions of this Agreement shall prevail.

2. Government Code and Municipal Code Required Elements

a. Description of Property. Land situated in the City of Commerce, County of

Los Angeles, State of California; whose street address is 6436 Corvette Street, City of Commerce, State of California (the "Site"). The Site includes Assessor's Parcel Number: 6336-012-031.

b. Owner and Other Person with Legal or Equitable Interest.

Owner: 6436 Corvette, LLC,
Nature of Interest: Grant Deed.

A true and correct copy of a recorded grant deed is attached hereto as Exhibit D, and incorporated herein by this reference.

c. Permitted Uses. The subject property may be used for Cannabis Cultivation (up to 10,000 square feet), Non-Volatile Manufacturing and Distribution as presently authorized under City Ordinance No. 700, including Commerce Municipal Code §§ 5.61.010, 5.61.060(1), and for any other use as authorized under applicable provisions of the Commerce Municipal Code.

d. Zoning. Owner shall guarantee that such activities outlined in Owner's Commercial Cannabis Permit Application ("Application") conducted pursuant to this Agreement and under the Commercial Cannabis Permit shall comply with the City's municipal code, including the zoning ordinance, any applicable zoning development standards, and any and all development and construction requirements contained therein, and/or as required by the City. [See also attached Zoning Analysis, incorporated herein by reference (Exhibit F). Owner shall not conduct any business under this Agreement or under the Commercial Cannabis Permit without having obtained all necessary permits, licenses, and approvals from the City and State of California, as required by all applicable laws, including the City of Commerce Municipal Code, and Ordinance No. 700.

e. Reservation or Dedication of Land for Public Purposes. Sufficient roadway, sidewalk, and utility easements shall be reserved or dedicated to City for such purposes.

f. Community Choice Aggregation Program. The City of Commerce is pursuing the implementation of a community choice aggregation program ("CCA"), which has been named Commerce CCA (the "Program" or "Commerce CCA"). Commerce CCA is structured to offer service to all customers within the City's geographic boundaries. The Implementation Plan related to the Program plans to implement a voluntary CCA program for electric customers within the jurisdictional boundaries of Commerce that currently take bundled electric service from Southern California Edison ("SCE"), referred to as the "IOU". The planned start date for the Program is May 1, 2020. All current IOU customers within the City's service area will receive information describing the Commerce

CCA Program and will have multiple opportunities to opt out, remaining full requirement ("bundled") customers of the IOU, in which case they will not be enrolled or will be returned as customers of the incumbent IOU (if such opt out notification is received following such customer's enrollment in the Commerce CCA). Thus, participation in the Commerce CCA Program is completely voluntary; however, as a term of this Agreement, Owner waives his or her rights to affirmatively elect opt-out, and instead shall participate in the Commerce CCA by enrolling into said program to procure and secure all of its electric demands.

g. Owner shall comply with all Conditions of Approval imposed against this Agreement, as enumerated in attached Exhibit G, and incorporated herein by reference.

3. Term

This Agreement shall commence on the Effective Date and it shall end five (5) years from the starting date, and it shall remain in full force and effect so long as the subject property is used for a commercial cannabis facility as authorized under City Ordinance No. 700; provided, however, such use is not abandoned for a period of more than ninety (90) days.

This Agreement may be extended for one (1) additional_five (5) year period following the expiration of the initial_five (5) year term upon the occurrence of all of the following:

- (i) The Owner shall give written notice to the City no later than one hundred twenty (120) days before the expiration of the initial five (5) year term that the Owner desires to extend this Agreement for an additional_five (5) year period;
- (ii) The Owner shows adequate evidence to the City that it has, and continues to have, a legal and/or equitable interest in the Property and/or will have such interests for the duration of the extended term of the Agreement;
- (iii) The Owner shall deposit all fees required by the City necessary for processing the extension request and drafting necessary documentation;
- (iv) The Owner shall be in compliance with all provisions of Ordinance No. 700, and all terms imposed by the City-issued Commercial Cannabis Permit, including the timely renewal of a Commercial Cannabis Permit; and
- (v) The Owner shall not be in default of any provision of any agreement

between City and Owner relative to the development of the Property, the business operations as allowed by a Commercial Cannabis Permit, or of any condition of approval imposed upon any entitlement or regulatory Commercial Cannabis Permit granted by the City relative to the development of the Property for which Owner has been given a written notice to cure by the City and for which Owner has not cured or commenced to cure such default within thirty (30) days, if and as provided by such agreement or condition of approval.

4. Owner's Site and Floor Plans

a. Owner's site plan and floor plan for the facility are attached hereto as Exhibit C and incorporated into the Application.

b. A preliminary landscape plan shall be prepared and reviewed and approved by the City Administrator and/or the Director of Public Works & Development Services, or their respective designees. A final landscape plan shall be prepared and submitted in conjunction with building and site improvement plans prior to issuance of building permits for construction activities.

c. An exterior signage plan shall be prepared and reviewed and approved by the City Administrator and/or the Director of Public Works & Development Services, or their respective designees, in accordance with the procedures and requirements of the Commerce Municipal Code.

5. Facility Operations

a. Standard Operating Procedures. Owner is a lawful entity that will only sell to other legally permitted persons and entities under the California Cannabis Laws. Prior to operating a Cannabis Microbusiness facility, Owner shall be required to obtain a Commercial Cannabis Permit, and all requirements pursuant to said permit, from the City pursuant to City Ordinance No. 700. Further, and notwithstanding anything to the contrary, Owner may operate such cannabis-related activities as permitted in accordance with California state laws and regulations, as may be amended, including without limitation, as long as such activity is not inconsistent with Ordinance No. 700, this Development Agreement, the City-issued Commercial Cannabis Permit, and the Commerce Municipal Code.

During the term of its CCP and the term of this Agreement, Owner shall lawfully operate in accordance with all applicable state and local laws, regulations and policies. Owner shall employ exemplary operating procedures to comply with applicable state and local laws, regulations and policies. Owner's facility shall

employ safety and security measures for the safety and security of its employees, visitors, vendors, and neighboring communities and properties.

Owner shall fully comply with the minimum Operating Standards regulating the proposed Commercial Cannabis Activity, including, but not limited to those, as set forth in Ordinance No. 700, including Section 5.61.280 ("Operating Requirements Applicable to all Commercial Cannabis Businesses") thereof, "Operational and Business Standards and/or Procedures", as submitted as part of Owner's Commercial Cannabis Permit Application, pursuant to Section 5.61.080 of Ordinance No. 700.

b. Security Plan. Owner shall secure approval of its proposed security plan by the Los Angeles County Sheriff or the City prior to operating. The security plan shall include, at a minimum and as appropriate, provisions for video surveillance, perimeter fencing and security, protection of the building(s) from vehicle intrusion, cash handling procedures, internal accounting controls, product handling and storage procedures, and a professionally monitored alarm system. Equipment and systems used for video surveillance and building alarms shall be approved by City. See Commerce Municipal Code Section 5.61.080(3) (J)(4) for minimum security requirements.

Video surveillance shall include, at a minimum, all site and facility entrances and access points, all spaces accessible by the public, all secured areas of the facility with restricted access, all interior spaces and rooms where cannabis products are handled and processed, shipping and receiving areas, cash storage areas, and other areas necessary to protect the safety of employees and the public and to ensure cannabis products are received, handled, stored, packaged, shipped, and distributed in compliance with applicable state and local laws and regulations. The video surveillance system shall be web-based with direct access provided to the Los Angeles County Sheriff upon request.

The security system shall also include sensors to detect entry and exit from all secure areas, panic buttons in appropriate locations, and a professionally monitored alarm system with glass breakage sensors and motion detectors.

Owner shall employ properly trained and licensed third-party security personnel to protect the welfare and safety of Owner and employees, and to ensure public safety to the neighboring community. Owner shall use security personnel twenty-four (24) hours, Seven (7) days a week through use of video surveillance either on or off the premises. Security personnel may be armed so long as proper licensing and insurance requirements are followed and met by the third-party operator providing such security services. See Commerce Municipal Code Section 5.61.080(3)(J)(4) for minimum security requirements.

c. Fire Department Approval. Owner shall not operate any facility, and no permit, license, or other approval issued by City shall be valid unless and until the Los Angeles County Fire Department has approved Owner's site plan, floor plan, safety plan, and any other plans that require its approval.

d. Possession of Firearms. Except for licensed and bonded security personnel, no person employed by Owner shall be in possession of any firearm while on the premises or location without having first obtained a license from the appropriate state or local agency authorizing the person to be in possession of such firearm. Every such person in possession of a firearm while on the premises or location must provide the City Administrator and the Los Angeles County Sheriff, ten (10) days before bringing the firearm onto the premises, with the following:

- 1) A copy of the license issued to the person by the appropriate state or local agency authorizing him or her to possess such firearm;
- 2) A copy of his or her law enforcement identification (if he or she is employed by a law enforcement agency);
- 3) A copy of his or her California driver's license or California identification card; and
- 4) Any other information reasonably required by the Los Angeles County Sheriff to show that the individual is in compliance with the provisions of all laws regarding the possession and use of a firearm.

e. Identification Display. Each owner, manager, employee, and individual member engaged in the Cannabis Cultivation (up to 10,000 square feet), Non-Volatile Manufacturing and Distribution shall at all times while engaged in the duties of his or her position wear in plain sight, on his or her person and at chest level, a valid identification badge, issued by Owner.

f. Employee Background Checks/Procedures for Inventory Control to Prevent Non-Medical Diversion of Medical Cannabis. Only employees who receive clearance from Brook Fain (Manager) shall be permitted to enter Owner's facility. Each employee may have to meet a criminal background investigation conducted by the Los Angeles County Sheriff, which at minimum shall include a LiveScan criminal history check, which City may make a good faith effort to facilitate within a reasonable time following the issuance of a Commercial Cannabis Permit(s) or license(s) to Owner.

Owner shall take all necessary and reasonable steps to prevent the distribution of any of its cannabis products to minors; prevent revenue from the sale or

distribution of its cannabis and/or infused products from going to criminal enterprises, gangs and cartels; prevent the diversion of cannabis from California to any other state; prevent state-authorized cannabis activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; prevent violence and the use of firearms in the Cannabis Microbusiness Facility of cannabis; discourage and educate against drugged driving and the exacerbation of other adverse public health consequences associated with cannabis use; disavow growing cannabis on public lands that creates attendant public safety and environmental dangers posed by such illegal uses; and discourage and educate against cannabis possession or use on federal property.

g. Quality Control and Testing. Owner shall utilize quality control measures and testing to ensure only the highest quality of commercial cannabis and infused products will be produced. Owner shall inspect the product to insure its identity and quantity, and shall have a testing lab perform testing of random samples prior to distribution. Inspection and testing will be conducted by a testing lab off-site. Testing standards and procedures shall be in accordance with applicable state law and regulations.

All commercial cannabis products will undergo a quality assurance review in accordance with state law prior to distribution. Inventory procedures will be utilized for tracking and taxing purposes by the state. Owner shall employ an efficient record-keeping system to make transparent its financing, testing, and adverse effect recording, as well as recall procedures. Owner shall employ an efficient record-keeping system that will reflect its financing, testing, and adverse effect recording and product recall procedures.

h. Packaging of Commercial Cannabis and Infused Products. All Owner commercial cannabis products shall be packaged and labeled as required by California Cannabis Law and applicable requirements and regulations issued by the State of California pursuant thereto. In addition to those packaging and labeling requirements, and packaging and labeling requirements set forth in Owner's Commercial Cannabis Permit application, as amended or supplemented, all commercial cannabis products shall be packaged in an opaque childproof container which shall contain a label or be accompanied by a leaflet or inset that states, at a minimum:

- 1) The name, address and telephone number of the licensed commercial cannabis facility to which the commercial cannabis product is distributed, sold, or transferred;
- 2) The amount of commercial cannabis in the container; and
- 3) The date the commercial cannabis was transferred to a licensed commercial cannabis facility.

i Point of Sale Tracking System. Owner shall maintain an inventory control and reporting system that accurately documents the location of cannabis products from inception through distribution, including descriptions, weight, and quantity. The inventory control and reporting system shall comply with the track and trace program required by California Cannabis Law and regulations issued thereunder.

Owner shall employ an electronic point of donation/sale system approved by the State of California for all point of donations/sales tracking from seed or inception to product distribution to other licensed commercial cannabis facilities. Such approved system shall track all commercial cannabis products, each edible, harvested flower, and/or manufactured concentrate, as well as gross sales (by weight and sale). Owner's point of sale system shall have the capacity to produce historical transactional data in accordance with City's requirements.

j Record Keeping. Owner shall maintain records for all commercial cannabis and/or infused products. Owner shall comply with all record-keeping responsibilities that are set forth in applicable state law and Ordinance No. 700, including Section 5.61.250 thereof, and complete and up-to-date records regarding the amount of commercial cannabis [cultivated, produced, manufactured, harvested, stored, tested, distributed, delivered or packaged at Owner's facility].

k Processing, Handling, Storing, and Distribution of Commercial Cannabis and Related Products. Commercial cannabis cultivation, handling, storing, and processing shall be concealed from public view at all stages of growth and processing, and there shall be no exterior evidence of cultivation or processing occurring at the premises from a public right-of-way or from an adjacent parcel. Commercial cannabis cultivation, handling, storing, processing, or distribution shall not create offensive odors; create excessive dust, heat, noise, smoke, traffic, or other impacts that are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public; or be hazardous due to use or storage of materials, processes, products, or wastes.

Owner shall store its commercial cannabis and/or commercial cannabis products in a locked safe room with T-card identification access for management only. The safe room shall be constructed of fire-rate walls with numerous cameras installed to view all entries and exits from the safe room, as well as all other activities performed within Owner's facility. Owner will not conduct outdoor operations except as related to lawful delivery and transportation of commercial cannabis and infused products. Owner will not store commercial cannabis or related products in its delivery vehicle outside normal operating hours of the facility.

Commercial cannabis products shall be sold or distributed only to licensed facilities in California. Excess or contaminated product will be securely stored on-site until it is properly disposed. Disposal may include composting, incineration, land-fill disposal through the local waste management hauler, or other disposal methodology in accordance with state and county health and safety codes and regulations.

l. Odor Control. All structures shall have ventilation and filtration systems installed that prevent commercial cannabis plant odors from exiting the interior of the structure. The ventilation and filtration system shall be approved by the Building Official and installed prior to commencing cultivation or manufacturing within the allowable structure. Facility air intake, exhaust, and recirculating system shall be of industrial grade. Activated charcoal, recirculating, and closed loop aeration systems will be utilized as necessary for effective odor control and management. See minimum requirements, pursuant to Section 5.61.280(12).

m. Description of Banking Plan. Owner shall seek to open a bank account under the name of Owner or its associated management company to provide transparency for funds received, operational costs, including payroll, tax payments to the state and federal governments. Should a bank account not be forthcoming, Owner shall implement other industry standard banking and/or other industry standard transactional mechanisms.

n. Transportation Plan. Owner shall comply with all state and local law regarding transportation, including the rules governing delivery service. Owner shall retain a list of names and cellular contact numbers for all employees engaged in transportation of commercial cannabis products and provide it to the applicable oversight authority, keeping the list current and up to date.

Owner will keep complete and up-to-date records documenting each transfer of commercial cannabis to other lawful cooperative corporations, including the amount provided, the form or product category in which the commercial cannabis was provided, the date and time provided, the name of the employee making the transfer, the name and address of the other lawful cooperative corporation to whom delivery is made, and the amount of any related donation or other monetary transaction.

o. Complete Operating Procedures, which may include proprietary, confidential, or other sensitive information, submitted by the Owner as part of its application for a Commercial Cannabis Permit, are on file with the City's records, and are incorporated herein by this reference and applicable to Owner's operations.

6. Community Relations, Employment, and Wages

a. Public Outreach and Education Program. The Owner shall coordinate and cooperate with City and other Owners of commercial cannabis facilities located within City of Commerce in the establishment and implementation of appropriate public outreach and education programs. The public outreach and education programs shall be approved by City.

b. Community Benefits Program. The Owner shall coordinate and cooperate with the City and other Owners of commercial cannabis facilities located within the City of Commerce in the establishment, implementation, and funding of a community benefits program which could include such items as senior citizen programs, City beautification efforts, funding for enforcement against illegal cannabis operations, public safety, housing programs, economic development, infrastructure, capital improvements, including expansion and/or improvement to existing facilities or other physical improvements that provide a benefit to the community, support of holiday and special community events, and support of local public service, public safety, litigation defense, and special social and community organizations. This community benefits program may be implemented by the City. The City may invite public participation in the decision-making process for identifying and prioritizing community needs and benefits, and identifying appropriate projects to be funded by the entity implementing this community benefits program. All projects under the community benefits program must be approved by the City.

Owner agrees, as a business expense, to pay the City of Commerce Community Benefits Program at minimum the yearly sum of **\$32,000.00**. A fifty percent (50%) deposit in the amount of \$16,000.00 shall be made payable to the City thirty (30) days from the Effective Date of this approved and finalized Development Agreement, with payment of the balance thereof within one-hundred eighty (180) days from the date of approval of the applicant's Commercial Cannabis Permit.

This yearly sum shall be deposited **in full** into a dedicated account set up by the City in order to create, fund and implement a City-approved Community Benefits Program.

The amount and schedule of payments may only be modified by the written consent of the City Administrator at his sole and complete discretion.

Thereafter, Owner shall pay to the City, as a business expense, the minimum yearly sum of \$42,000 commencing in 2021, and \$52,000 commencing in 2023, payable in the same manner as set forth above.

If the original Term of this Agreement is mutually extended by the Parties, the annual minimum payment to this program will be amended accordingly.

c. Designation of Community Relations Liaison. Pursuant to Ordinance No. 700, including, Commerce Municipal Code Section 5.61.300, at the time of this Agreement, Owner's day-to-day operations manager, **Brook Fain**, will be responsible for community inquiries and complaints and on-site management during normal business hours.

d. Interface with Los Angeles County Sheriff / Inspections. Owner's day-to-day operations manager, and/or the Owner's Community Relations Liaison, **Brook Fain**, will interface with the Los Angeles County Sheriff Department's assigned designee to ensure its operation complies with state and local laws and regulations. The City Administrator, or designee, or the Los Angeles County Sheriff's Department's assigned designee acting at the City Administrator's request and per his specific and limiting instructions, shall have the right to enter all Premises from time to time unannounced during hours of operation for the purpose of making reasonable inspections to observe and enforce compliance with this Agreement and state and local laws and regulations, without the requirement of a search warrant, subpoena, or court order, and subject to appropriate cost recovery fees set forth in this Agreement, or adopted by the City. See, Ordinance No. 700, as well as Commerce Municipal Code Section 5.61.330.

e. Local Recruitment, Hiring, and Training Programs. Owner is committed to making a good-faith effort to recruit, hire, and train City residents for employment by Owner. A good-faith effort means Owner shall take the following or similar actions to recruit and employ City residents: 1) Contact local recruitment sources to identify qualified individuals who are City residents, 2) Advertise for qualified City residents in trade papers and newspapers of general circulation in the area, and 3) Develop a written plan to recruit and employ City residents as a part of the its workforce. At a minimum, the Owner commits to a local annual hiring goal of 60% of total operational jobs for permanent and apprentice employees. This goal shall apply horizontally, across all departments and managerial positions. The Owner shall not be penalized or deemed in default under this Agreement if it is unable to achieve such a goal. "Local" is defined as within a 3-mile radius of the boundaries of the City's boundaries. The Owner shall contact and work with a job referral agency assigned by the City Administrator to implement a local hiring policy for permanent and apprentice employees. The purpose of the hiring policy is to facilitate the training and employment of local and disadvantaged job applicants for jobs within the City's jurisdiction, and 3-mile radius of City boundaries. Applicants for jobs shall not be disqualified from hiring solely on the basis of an arrest or conviction for a Cannabis-related crime that occurred prior to November 8, 2016, and could have been prosecuted as a misdemeanor or

citation under current California law. The Owner shall report on compliance with the local hiring goals as part of its annual audit report.

f Living Wages. Living Wages. Owner shall pay all employees of the Facility, at a minimum, a Living Wage. A "Living Wage" is the higher of whatever the Owner currently pays its employees for similar work elsewhere or the following: the Full Cash Wage required to be paid by an employer to any individual under the [EXAMPLE: City of Los Angeles Minimum Wage Ordinance [LAMC Sections 187 and 188], as adjusted annually.]

g Full-time Work. Owner shall make its best efforts to fill every position with a full-time employee. However, at no time shall Owner have a labor force that is composed of less than 50% full-time employees within its labor force, and Owner shall make a good faith effort to maintain a full-time employee level of 75%. Owner agrees to provide to its eligible employees leave benefits, health and wellness benefits and other employee benefits to the extent such benefits are required to be paid for by Owner under applicable state and federal employment laws.

h Labor Peace Agreement. For Owner(s) with twenty (20) or more employees, the Owner(s) shall attest that the Owner(s) will enter into a labor peace agreement and will abide by the terms of the agreement, and the Owner(s) shall provide a copy thereof to the City. For Owner(s) that have not yet entered into a labor peace agreement, the Owner(s) shall provide a notarized Statement of Intent, indicating that the Owner(s) will enter into and abide by the terms of a labor peace agreement. Attached as Exhibit H , and incorporated herein is true and correct copy of the actual or Proposed Labor Peace Agreement; or Notarized Statement of Intent.

7. Indemnification Agreement by each Cannabis Permittee

Pursuant to Ordinance No. 700, and including, Commerce Municipal Code Section 5.61.240, to the fullest extent permitted by local, state and/or federal law, the City of Commerce shall not assume any liability whatsoever with respect to having issued a Commercial Cannabis Permit or executed a Development Agreement pursuant Ordinance No. 700, or otherwise approving the operation of any commercial cannabis business. As a condition to the approval of any Commercial Cannabis Permit and to the execution and approval of a Development Agreement, the Owner shall be required to meet all the conditions enumerated in Commerce Municipal Code Section 5.61.240, before they can receive the Commercial Cannabis Permit and before this Agreement may be executed. The City Administrator shall require each Commercial Cannabis Permittee to execute an [a separate] Indemnification Agreement prepared by the City that fully indemnifies the City for all liabilities associated with the Commercial Cannabis Permit, the Commercial Cannabis Permittee's Commercial Cannabis

Activities, and any action taken by the Cannabis Permittee. The Indemnification Agreement shall include the defense of the City and reimbursement of all fees, costs and expenses incurred by the City related to any action arising from this Agreement. [Commerce Municipal Code Section 5.61.240]. Attached as Exhibit], and incorporated herein by this reference, is true and correct copy of a fully executed Indemnification Agreement.

8. Fees, Costs, and Future Taxes

a. Fees. Owner agrees to pay all permit fees and charges referenced in Ordinance No. 700, and in the amounts adopted by City Council by Fee Resolution No. 18-121, effective October 4, 2018, as well as any fees set forth in this Agreement. Permit application, processing, and renewal fees shall be due and payable at the time application is made.

b. Costs. As defined in Article 9, Owner agrees to reimburse City for all additional reasonable costs of City resulting from the operation of a commercial cannabis facility authorized under applicable provisions of the municipal code, council resolutions and administrative policies and regulations. Reimbursement to City for such costs shall be due and payable as set forth in Article 9.

c. Operating Fees.

As used herein, "**Premises**" means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the Commercial Cannabis Permittee applicant or Commercial Cannabis Permittee where the Commercial Cannabis Activity will be or is conducted. The parties stipulate and agree that the square footage for the **Premises** upon the Effective Date of this Agreement is and shall be during the term of this Agreement: **25,508** square feet.

As used herein, "**Commercial Cannabis Activities**" means all permitted activities: e.g., cultivation, possession, manufacture, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or distribution of Cannabis and/or Cannabis Products.

As used herein, "**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.

As used herein, "**Production Space**" means the area on or within the **Premises** intended for **Commercial Cannabis Activities** excluding non-operational

common areas such as restrooms, cafeterias, break rooms, hallways, corridors, vestibules, parking structures or surface street lots. The parties stipulate and agree that the square footage for the **Production Space** shall be determined by the City Administrator in his sole and complete discretion as the Project is completed.

The City Administrator is specifically authorized to set and adjust the square footage for the Production Space and to determine the corresponding operating fee as the Project is completed.

Owner agrees to pay to City, in order to enable City to promote, protect, and enhance the healthy, safety, and welfare of the community and its residents and its quality of life, the greater operating fee of the following, as noted below.

Owner agrees to pay the following percentage of gross receipts for cannabis operations, if the requested and approved use is applicable, as follows, paid on a quarterly basis to the City:

Manufacturing: 3% of gross receipts
Distribution: 3% of gross receipts
Testing: 1.5% of gross receipts
Non-Storefront Retail, Delivery: 5% of gross receipts
Microbusiness: 4% of gross receipts
Cultivation: \$13 square foot for canopy space

But at no time, will Owner pay an annual operating fee less than \$91,218.00, which is the mandatory annual minimum operating fee for the first year in operations. If after a review of the Owner's records the City determines that above percentages of gross receipts resulted in Owner not paying the City the annual minimum operating fee, Owner shall pay the City the remaining balance upon noticed written request.

The annual minimum operating fee for the years of operations thereafter shall be as follows:

Second year: \$100,810
Third year: \$109,090
Fourth year: \$118,000
Fifth year: \$127,000

(Any subsequent years shall be as negotiated by the Parties).

Facilities with multiple licenses must not commingle respective sales proceeds, and blend percentage rate of **Gross Receipts**.

Operating Fees shall begin to accrue **ninety (90)** days after the end of month of the Effective Date of this Agreement. Notwithstanding, the first payment due and payable to the City shall be due one-hundred twenty (120) days from the date Owner secures a City of Commerce Commercial Cannabis Permit authorizing Owner to commence lawful operations (pursuant to all Ordinance No. 700 requirements to secure same). Owner shall make payments to the City on a quarterly basis, within thirty (30) calendar days after the last day of each quarter. The first quarter is defined as January 1 through March 31, the second quarter as April 1 through June 30, the third quarter as July 1 through September 30, and the fourth quarter as October 1 through December 31. First payment to the City may be prorated, if applicable, to adhere to the latter, uniform quarterly payment schedule.

Failure to pay the fee within thirty (30) calendar days after the due date shall result in a penalty for nonpayment in a sum equal to 25% of the total amount due. Additional penalties will be assessed in the following manner: 10% shall be added to the first day of each calendar month following the month of the imposition of the 25% penalty if the fees remain unpaid in whole or in part – up to a maximum of 100% of the fee payable on the due date.

d. Owner understands and agrees that the fees set forth above shall be paid in a manner and in accordance with a payment schedule set or modified by City. The cultivation, manufacturing, testing, distribution, and delivery space to which the fee applies is as identified on the City-issued final approved floor plan.

e. If Owner makes any changes to the interior layout of the facility that increases the amount of space allocated to those uses to which the per-square-foot fee applies, Owner shall notify City of such changes at least fourteen (14) calendar days prior to making such changes, and the per-square-foot fee shall be modified accordingly. If Owner fails to give City notice as required herein, Owner shall be responsible for paying to City a per-square-foot fee based on any increase in the amount of space allocated to those uses to which the per-square-foot fee applies retroactive to the date the Regulatory Permit became effective.

f. Monthly Non-Operating Fee: A monthly fee of \$10,250.00 shall be payable to the City of Commerce if after ninety (90) days from the Effective Date of this Agreement Owner has not secured a City of Commerce Commercial Cannabis Permit authorizing Owner to commence operations (see Ordinance No. 700 for all requirements to secure same). Said monthly payment shall be due and payable to the City every 10th day of each month.

9. Cost Recovery Fee

City shall assess to Owner fees to recover City's reasonable processing and

monitoring costs relating to Owner's business upon issuance of Owner's Manufacturing, Cultivation, Testing, Distribution, Non-Storefront Retailer Delivery, and Microbusiness Permits or any Additional Permits (hereinafter "CRF"). CRFs are separate and apart from any operating fees set forth in Article 8.

a. Processing Fees. Processing fees for the Application are based upon the direct and indirect costs that City incurs in reviewing the Application. The processing fees for the Application shall be based only on costs that are necessary for processing the Application and implementing the Ordinance, including staff time, legal fees, and consultant fees. "Necessary for" means that but for the Application, the costs would not have been incurred. The processing fee shall not include costs for other City management objectives, unless they are necessary for processing the Application.

b. Monitoring Fees. Monitoring fees for the Manufacturing, Cultivation and Distribution Permits are based upon the direct and indirect costs City incurs in confirming the use of the Property in accordance with the municipal code, the Ordinance, this Agreement, and the Application. The monitoring fees shall be based only on costs that are necessary for conducting these reviews. "Necessary for" means that but for the Manufacturing, Distribution, Testing, Delivery and Cultivation Permits, or any Additional Permits, the costs would not have been incurred. The monitoring fee shall not include costs for other City management objectives, unless they are necessary for monitoring the permitted activities.

c. Billing and Payment. The City may elect to bill the Owner the Initial CRF on the first day of the month following the Effective Date of this Agreement. Thereafter, City shall bill Owner the CRF on the first day of each Quarter with an invoice providing the time spent by City and its representatives. Owner shall pay the CRF invoice within thirty (30) days of the date the bill for the CRF is received by Owner.

d. Disputes If Owner disagrees with the dollar amount provided by City on the CRF invoice, Owner may submit a written request before the disputed fee is due for a substitution of alternative CRF invoice to the City Administrator. The written request must include supporting documentation. After review of Owner's written request, Owner and City shall work, in good faith to resolve Owner's written request. The dispute shall be decided in favor of Owner if City does not respond to the written request within thirty (30) days of actual receipt.

10. Additional Owner Obligations

a. Reporting of Gross Receipts from Operations

1) Quarterly Receipts. No later than one-hundred twenty (120) days from the date Owner secures a City of Commerce Commercial Cannabis Permit, and every three months thereafter (Owner shall deliver to City a report (the "Quarterly Report"), pursuant to the quarterly payment schedule discussed hereinabove) showing (i) Gross Receipts from operations for the immediate prior three months received by Owner, and a cumulative total of all amounts of Gross Receipts from Operations received by Owner for the calendar year, (ii) a calculation of the quarterly payment due to City for the prior three months, and (iii) a calculation of the cumulative total of all quarterly payments for the calendar year.

2) Statement of Receipts/Annual Audit. The Owner shall keep complete, accurate and appropriate books and records of all receipts from operations in accordance with generally accepted accounting principles. For purposes herein, "books and records" shall mean all bookkeeping or accounting documents Owner typically utilizes in managing its business operations relating to the Project. Such books and records, as well as all other relevant documents as the City Administrator may reasonably require, shall, upon reasonable written notice, be open for inspection by City, its auditors or other authorized representatives. If at any time during the term such books and records prove inadequate in the reasonable judgment of City to record the Gross Receipts from Operations as herein required, Owner shall, upon the written request of the City, procure and maintain such books and records as shall be of a character and from adequate for such purpose. City shall have the right to audit and examine such books, records and documents and other relevant items in the possession of Owner, on no less than an annual basis, or at any time upon reasonable request by the City, to the extent necessary for a proper determination of Gross Receipts from Operations, and all such books, records, documents and other items shall be held available for such audit and examination. The City's audit shall be performed by a non-contingency fee independent auditor approved in advance by the City. Upon request by City, Owner shall make all such books, records and documents available to the City Administrator, his designee, or to the City approved auditor, and provide removable copies thereof, within thirty (30) of the date of City's request. Owner shall pay all costs of such audits. Owner shall preserve such books, records, documents, and other items in Commerce for a period of not less than one (1) years for the purpose of auditing or re-auditing these accounts upon reasonable notice; except that, if an audit is made within the seven-year period and Owner claims that errors or omissions have occurred, the books and records shall be retained and made available until those matters are resolved. City shall keep strictly confidential all statements of revenue furnished by Owner and all other information concerning Owner's operation of the Premises obtained by City as a result of the inspection audit and examination

privileges of City hereunder, except as otherwise required by law. If City receives a request for such information pursuant to the Public Records Act (California Government Code Section 6250, et seq.), City shall provide Owner notice of any such request prior to disclosing any such information and afford Owner the opportunity to obtain a protective order. Within seven (7) years after the receipt of any statement of receipts under this Agreement, City at any time shall be entitled to carry out an audit of such revenue either by City or agent to be designated by City. If it shall be determined as a result of such audit that there has been a deficiency in any payment due under this Agreement made on the basis of such statement, then such deficiency shall become immediately due and payable within thirty (30) days of such determination.

1) Copies of Tax Filings. Owner shall provide the City with courtesy copies of each and every report Owner is required to provide to the County of Los Angeles or the State of California for sales, use, or other tax purposes at the time such filings are made.

b. Future Revenue Mechanisms. During the term of this Agreement, if the City imposes (by Citizen Initiative or otherwise) an alternative revenue mechanism specifically related to cannabis operations (e.g., a cannabis tax), Owner agrees to renegotiate in good faith the terms of this Development Agreement with the City so as to comply with an alternative revenue mechanism. As used in this section, "alternative revenue mechanism" does not include taxes, fees, or assessments levied on or collected from both medicinal cannabis and non-cannabis operations.

11. Insurance and Indemnity

a. Insurance. Owner shall require all persons doing work on the Project, including its contractors and subcontractors (collectively, "Owner" for purposes of this Article 6 only), to obtain and maintain insurance of the types and in the amounts described in this section and its subsections with carriers reasonably satisfactory to City.

b. General Liability Insurance. Owner shall maintain commercial general liability insurance or equivalent form with a limit of not less than Two Million Dollars (\$2,000,000) (or as otherwise approved, in writing, by City) per claim and Two Million Dollars (\$2,000,000) each occurrence. Such insurance shall also:

1) Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as "Additional Insureds" by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection

afforded to the above-listed additional insured.

2) Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

3) Contain standard separation of insured provisions.

c. Automotive Liability Insurance. Owner shall maintain business automobile liability insurance or equivalent form with a limit of not less than Two Million Dollars (\$2,000,000) for each accident for the vehicles Owner operates in connection with its cannabis business. Such insurance shall include coverage for owned, hired, and non-owned automobiles. Such insurance shall also:

1) Name City, and work in good faith with the City and the insurers to name additional insureds as deemed reasonably necessary. "Additional Insureds" by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed additional insureds;

2) Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives;

3) Contain standard separation of insured provisions.

d. Workers' Compensation Insurance. Owner shall take out and maintain during the term of this Agreement, workers' compensation insurance for all of Owner's employees employed at or on the Project, and in the event any of the work is subcontracted, Owner shall require any general contractor or subcontractor similarly to provide workers' compensation insurance for such contractor's or subcontractor's employees, unless such employees are covered by the protection afforded by Owner. In case any class of employee engaged in work on the Project is not protected under any workers' compensation law, Owner shall provide and shall cause each contractor and subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Owner hereby indemnifies City for any damage resulting from failure of Owner, its agents, employees, contractors, or subcontractors to take out or maintain such insurance. Workers' compensation insurance with statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) each accident shall be maintained.

e. Other Insurance Requirements. Owner shall do all of the following:

1) Prior to taking any actions under this Agreement, furnish City with properly executed certificates of insurance that clearly evidenced all

insurance required in this Article, including evidenced that such insurance will not be canceled, allowed to expire, or be materially reduced in coverage without thirty (30) days prior written notice to City.

2) Provide to City, upon request, and within seven (7) calendar days of said request, certified copies of endorsements and policies, and properly executed certificates of insurance evidencing the insurance required herein.

3) Replace or require the replacement of certificates, policies and endorsements for any insurance required herein expiring prior the termination of this Agreement.

4) Maintain all insurance required herein from the Effective Date of this Agreement to the earlier of the expiration of the term or the mutual written termination of this Agreement.

5) Place all insurance required herein with insurers licensed to do business in California with a current Best's Key Rating Guide reasonably acceptable to City.

f. Indemnity. Owner agrees to indemnify, defend, and hold City, and its elected and appointed council, boards, commissions, officers, agents, employees, contractors, consultants and representatives, harmless from any and all claims costs and liability for any personal injury or property damage which may arise as a result of any actions or negligent omissions by Owner or Owner's contractors, subcontractors, agents, or employees in connection with the construction, improvement, or operation of the Project.

12 Termination

a. Termination Upon End of Term. This Agreement shall terminate upon the expiration of the term, unless it is terminated earlier pursuant to the terms of this Agreement. Upon termination of this Agreement, City shall record a notice of such termination and this Agreement shall be of no further force or effect except as otherwise set forth in this Agreement.

b. Effect of Termination on Owner's Obligations. Termination of this Agreement shall eliminate any further obligation of Owner to comply with this Agreement, or some portion thereof, if such termination relates to only part of the Site or Project. Termination of this Agreement, in whole or in part, shall not, however, eliminate the rights of Owner to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

c. Effect of Termination on City's Obligations. Termination of this Agreement shall eliminate any further obligation of City to comply with this Agreement, or some portion thereof. Termination of this Agreement shall not, however, eliminate the rights of City to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

d. Survival After Termination. The rights and obligations of the Parties set forth in Article 16, Article 22, and Section 24(d), Section 23(e), and Section 24(g), and any right or obligation of the Parties in this Agreement which, by its express terms or nature and context is intended to survive termination of this Agreement, will survive any such termination.

13. Resources Efficiency

Owner shall endeavor to reduce its environmental impact when possible. The design of the facility shall include reasonable water and energy conservation measures in accordance with applicable State regulations.

14. Standard Conditions for Construction

During any on-site construction activities related to development of the project site and any buildings thereon, or renovation or remodeling of existing buildings, Owner shall comply with all applicable terms and conditions of City's Standard Conditions for Construction.. The Project shall comply with the applicable parking standards established by the City for cannabis activities.

15. Defaults and Remedies

a. Remedies in general. It is acknowledged by the parties that City would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof, except as hereinafter expressly provided. Subject to extensions of time by mutual consent in writing, failure to delay by either party to perform any term or provision of this Agreement beyond a reasonable notice and cure period shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) day notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured during any such thirty (30) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings. Notwithstanding the foregoing to the contrary, if the alleged default is of such a nature that it cannot be cured within thirty (30) days, the alleged defaulting party shall not be deemed in default as long as such party commences to cure such default within such thirty (30) day period and

thereafter diligently prosecutes such cure to completion.

After notice and expiration of the thirty (30) day period, the other party to this Agreement, at its option, may institute legal proceedings pursuant to this Agreement.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that City shall not be liable in monetary damages, unless expressly provided for this Agreement, to Owner, to any mortgagee or lender, or to any successors in interest of Owner or mortgagee or lender, or to any other person, and Owner covenants on behalf of itself and all successors in interest to the Property or any portion thereof, not to sue for damages or claim any damages.

- 1) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or
- 2) For the impairment or restriction of any right or interest conveyed or provided under, with, or pursuant to this Agreement, including, without limitation, any impairment or restriction which Owner characterizes as a regulatory taking or inverse condemnation; or
- 3) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

Nothing contained herein shall modify or abridge Owner's rights or remedies (including its rights for damages, if any) resulting from the exercise by City of its power of eminent domain. Nothing contained herein shall modify or abridge Owner's rights or remedies (including its rights for damages, if any) resulting from bad faith intentional acts, the grossly negligent or malicious acts of City and its officials, officers, agents and employees. Nothing herein shall modify or abridge any defenses or immunities available to City and its employees pursuant to the Government Liability Act and all other applicable statutes and decisional law.

Except as set forth in the preceding paragraph relating to eminent domain, Owner's remedies shall be limited to those set forth in this Section 15(a), Section 15(b), and Section 15(c).

Notwithstanding anything to the contrary contained herein, City covenants as provided in Civil Code Section 3300 not to sue for or claim any consequential damages or, in the event all or a portion of the Property is not developed, for lost profits or revenues which would have accrued to City as a result of the development of the Property.

b. Specific Performance. The parties acknowledge that money damages and remedies at law are inadequate, and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:

1) Except as provided in Sections 15(a) and 15(e), money damages are unavailable against City as provided in Section 15(a) above.

2) Due to the size, nature and scope of the Project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, Owner may be foreclosed from other choices it may have had to use the Property or portions thereof. Owner has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate Owner for such efforts; the parties acknowledge and agree that any injunctive relief may be ordered on an expedited, priority basis.

c. Release. Except for those remedies set forth in Sections 15(a), 15(b), and 15(c), Owner, for itself, its successors and assignees, hereby releases City, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, based or asserted, pursuant to Article 1, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon City because it entered into this Agreement or because of the terms of this Agreement.

Owner acknowledges that it may have suffered, or may suffer, damages and other injuries that are unknown to it, or unknowable to it, at the time of its execution of this Agreement. Such fact notwithstanding, Owner agrees that the release provided in this Section 15(c) shall apply to such unknown or unknowable claims and damages. Without limiting the generality of the foregoing, Owner acknowledges the provisions of California Civil Code Section 1542, which provide:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

Owner hereby waives, to the maximum legal extent, the provisions of California Civil Code Section 1542 and all other statutes and judicial decisions of similar effect.

d Termination of Agreement for Default of City. Owner may terminate this Agreement in the event of a default by City in the performance of a material term of this Agreement and only after providing written notice to City of default setting forth the nature of the default and the actions, if any, required by City to cure such default and, where the default can be cured, City has failed to take such actions and cure such default within sixty (60) days after the effective date of such notice or, in the event that such default cannot be cured within such sixty (60) day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such sixty (60) day period and to diligently proceed to complete such actions and cure such default. Notwithstanding anything to the contrary, in the event that Owner deem it is necessary and/or advisable to cease operations in Commerce, then Owner may terminate this Agreement, and such termination shall be effective upon the date of written notice to the City.

e Attorneys' Fees and Costs. In any action or proceeding between City and Owner brought to interpret or enforce this Agreement, or which in any way arises out of the existence of this Agreement or is based upon any term or provision contained herein, the "prevailing party" in such action or proceeding shall be entitled to recover from the non-prevailing party, in addition to all other relief to which the prevailing party may be entitled pursuant to this Agreement, the prevailing party's reasonable attorneys' fees and litigation costs, in an amount to be determined by the court. The prevailing party shall be determined by the court in accordance with California Code of Civil Procedure Section 1032. Fees and costs recoverable pursuant to this Section 15(e) include those incurred during any appeal from an underlying judgment and in the enforcement of any judgment rendered in any such action or proceeding.

f Owner Default. No building permit shall be issued or building permit application accepted for any structure on the Property after Owner is determined by City to be in default of the terms and conditions of this Agreement until such default thereafter is cured by Owner or is waived by City. If City terminates this Agreement because of Owner's default, then City shall retain any and all benefits, including money or land received by City hereunder.

16. Third Party Litigation

a General Plan Litigation. City has determined that this Agreement is consistent with its General Plan. Owner has reviewed the General Plan and concurs with City's determination.

City shall have no liability under this Agreement or otherwise for any failure of City to perform under this Agreement, or for the inability of Owner to develop the Property as contemplated by the **Agreement**, which failure to perform or inability to develop is as the result of a judicial determination that the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law, or that this Agreement or any of City's actions in adopting it were invalid, inadequate, or not in compliance with the law.

b. **Hold Harmless Agreement.** Owner hereby agrees to, and shall hold City, its elective and appointive boards, commissions, officers, agents, attorney's, contractors, consultants and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Owner or Owner's contractors, subcontractors, agents, or employees' operations under this Agreement, whether such operations be by Owner, or by any of Owner's contractors, subcontractors, agents, or employees operations under this Agreement, whether such operations be by Owner, or by any of Owner's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Owner or any of Owner's contractors or subcontractors. Owner agrees to and shall defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damage caused, or alleged to have been caused, by reason of any of the aforesaid operations.

c. **Indemnification.** Owner shall defend, indemnify, and hold harmless City and its elective and appointive boards, commissions, officers, agents, attorney's, contractors, consultants and employees against and from any and all liabilities, demands, claims, actions or proceedings and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees),

which any or all of them may suffer, incur, be responsible for or pay out as a result of or in connection with any challenge to the legality, validity or adequacy of any of the following: (i) this Agreement and the concurrent and subsequent permits, licenses and entitlements approved for the Project or Property; (ii) the environmental impact report, mitigated negative declaration or negative declaration, as the case may be, prepared in connection with the development of the Property; (iii) any claims based on or alleging inverse condemnation by any person or entity with an interest in the Property; and (iv) the proceedings undertaken in connection with the adoption or approval of any of the above. In the event of any legal or equitable action or other proceeding instituted by any third party (including a governmental entity or official) challenging the validity of any provision of this Agreement or any portion thereof as set forth herein, the parties shall mutually cooperate with each other in defense of said action or

proceeding. Notwithstanding the above, City, at its sole option, may tender the complete defense of any third-party challenge as described herein. In the event City elects to contract with special counsel to provide for such a defense, City shall meet and confer with Owner regarding the selection of counsel, and Owner shall pay all costs related to retention of such counsel.

d Environmental Contamination. Owner shall indemnify and hold City, its elective and appointive boards, commissions, officers, agents, attorney's, contractors, consultants and employees free and harmless from any liability, based or asserted, upon any act or omission of Owner, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors, excepting and acts or omissions of City as successor to any portions of the Property dedicated or transferred to City by Owner, for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and Owner shall defend, at its expense, including attorneys' fees, City, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. City may in its discretion participate in the defense of any such claim, action or proceeding.

The provisions of this Section 16(d) do not apply to environmental conditions that predate Owner's ownership or control of the Property or applicable portion; provided, however, that the foregoing limitation shall not operate to bar, limit or modify any of Owner's statutory or equitable obligations as an owner or seller of the Property.

e City to Approve Counsel. With respect to Sections 16(a) through 16(d), City reserves the right to approve the attorney(s) which Owner selects, hires or otherwise engages to defend City hereunder, which approval shall not be unreasonably withheld.

f Accept Reasonable Good Faith Settlement. With respect to Article 16, City shall not reject any reasonable good faith settlement. If City does reject a reasonable, good faith settlement that is acceptable to Owner, Owner may enter into a settlement of the action, as it relates to Owner, and City shall thereafter defend such action (including appeals) at its own cost and be solely responsible for any judgment rendered in connection with such action. This Section 16(f) applies exclusively to settlements pertaining to monetary damages or damages which are remedial by the payment of monetary compensation. Owner and City expressly agree that this Section 16(f) does not apply to any settlement that requires an exercise of City's police powers, limits City's exercise of its police powers, or affects the conduct of City's municipal operations.

g Survival. The provisions of Sections 16(a) through 16(f) inclusive, shall

survive the termination or expiration of the Agreement.

17. California Environmental Quality Act

Owner shall reimburse City for any and all costs incurred by City related to project review under the California Environmental Quality Act (CEQA), Public Resources Code, §§21000-21189.3, and the Guidelines for California Environmental Quality Act, California Code of Regulations, Title 14, §§15000-15387. If reasonably requested by City, Owner shall conduct and pay for any required CEQA reviews and analyses. The City has found that the proposed Project is Categorical Exempt from California Environmental Quality Act (CEQA) requirements under provisions of CEQA Guidelines **Section 15301 – Existing Facilities**. This exemption applies to projects characterized as alterations to existing facilities meeting the conditions described in **Section 15301**.

18. Rules, Regulations, and Official Policies

Except as otherwise provided in this Agreement, the rules, regulations, and official policies of City governing permitted uses of the land, governing density, and governing the design, improvements, and construction standards and specifications applicable to the development of the Project subject of this Agreement, shall be those rules, regulations, and official policies of City in force at the time of the execution of this Agreement. This Agreement does not prevent City, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth herein, nor does this Agreement prevent City from denying or conditionally approving any subsequent development project application based on such existing or new rules, regulations, or policies.

19. Commercial Cannabis Permit Conditions of Approval

Owner shall comply with all conditions of approval of the City-issued Commercial Cannabis Permit.

20. Periodic Reviews

This Agreement shall be subject to annual review. Owner and Landlord executing this Agreement, or successor in interest thereto, shall demonstrate good faith compliance with the terms of this Agreement. If, as a result of such periodic review, City finds and determines, based on substantial evidence, that Owner or Landlord executing this Agreement, or successor in interest thereto, has not complied in good faith with the terms or conditions of this Agreement, City may terminate or modify this Agreement (except no modification shall increase Owner's liability nor reduce Owner's rights), provided that City shall first provide Owner notice of its intent to terminate, with a detailed explanation as to why, and provide Owner the reasonable right to cure the same.

a. Periodic Review. City Council shall review this Agreement annually, on or before each anniversary of the Effective Date, in order to ascertain Owner's good faith compliance with this Agreement. During the periodic review Owner shall be required to demonstrate good faith compliance with the terms of the Agreement, through submitting an annual monitoring report, records, or equivalent written materials to the Planning Department. The Planning Department will schedule a hearing on the periodic review of the Development Agreement on or following the anniversary of the Effective Date, but Owner has no obligation to compel such hearing, and no implication will be made to Owner's detriment if a hearing is not in fact held. Owner shall document any request for an extension of the term due to delays beyond the control of Owner (see Section 24(i), "Force Majeure"). Owner shall submit an annual review and administration fee deposit not to exceed City's estimated internal and third-party costs associated with the review and administration of this Agreement during the succeeding year, consistent with Section 24(j) ("Deposit with City") below. City shall provide Owner said estimate a reasonable time in advance of the annual review and administration fee deposit being due.

b. Conditional Use Permit. For all intents and purposes, the Commercial Cannabis Permit to be issued under this Agreement shall be treated as if it were a Conditional Use Permit issued to Owner for the establishment and operation of its business. The operation of the business at all times shall be required to comply with the terms of this Agreement.

c. Special Review. City Council may order a special review of compliance with this Agreement at any time. The City Administrator, Planning Director or his or her designee(s) shall conduct such special review. During a special review, Owner shall be required to demonstrate good faith compliance with the terms of the Agreement. The burden of proof on this issue shall be on Owner.

d. Review Hearing. At the time and place set for the review hearing, Owner shall be given an opportunity to be heard. If City Council finds, based upon substantial evidence, that Owner has not complied in good faith with the terms or conditions of this Agreement, City Council may terminate this Agreement notwithstanding any other provision of this Agreement to the contrary, or modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of City. The decision of City Council shall be final, subject only to judicial review pursuant to Code of Civil Procedure Section 1094.5.

e. Certificate of Agreement Compliance. If, after a periodic or special review, Owner is found to be in compliance with this Agreement, and if Owner requests it, City shall issue a Certificate of Agreement Compliance ("Certificate") to Owner stating that after the most recent periodic or special review, and based upon the information known or made known to the Planning Director and City Council,

that (i) this Agreement remains in effect and (ii) Owner is not in default.

City shall not be bound by a Certificate if a default existed at the time of the periodic or special review, but was concealed from or otherwise not known to the Planning Director and City Council, regardless of whether the Certificate is relied upon by assignees or other transferees or Owner.

f Failure to Conduct Review. City's failure to conduct a periodic review of this Agreement shall not constitute a breach of this Agreement.

g Cost of Review. The costs incurred by City in connection with the periodic reviews shall be borne by Owner.

21. Assignment

Assignment by Owner. Owner shall not transfer, delegate, sublet or assign its interest, rights, duties, and obligations under this Agreement without the prior written consent of City, which consent shall not be unreasonably withheld. Owner shall submit a transfer application to the City Administrator or City Administrator's designee and pay any applicable transfer fee. The proposed transferee must show proof of lawful transfer of possession of the applicable location as may be acceptable to the City. Owner is aware it may take the City approximately six (6) months to process a transfer application.

Any assignment, delegation, subletting or assignment without the prior written consent of City shall be null and void. Any transfer, delegation, subletting or assignment by Owner as authorized herein shall be effective only if and upon the party to whom such transfer, delegation, subletting or assignment is made is issued a Commercial Cannabis Permit as required under Sections 5.61.150 and 5.61.170 of the Commerce Municipal Code.

Owner shall also comply with all proposed assignments and changes, including assignment and changes impacting a Development Agreement or a Commercial Cannabis Permit, as required pursuant state law, City Resolution No. 18-50 regulating amendments to Development Agreements, and Ordinance No. 700, including Sections 5.61.150 through 5.61.210 thereof.

22. Operating Commercial Cannabis Facility

Any party to this Agreement, or successor in interest thereto, shall not operate a commercial cannabis facility authorized under the municipal code unless:

a It is the holder of a valid Commercial Cannabis Permit issued by City in accordance with the procedures and requirements of Ordinance No. 700; and,

b. At such time as the State of California requires commercial cannabis facilities and businesses to hold a valid license or permit issued by the State of California, it also holds such license or permit, unless, however, such permit or license is not required by the State of California for the type of commercial cannabis facility or business operation that is the subject of this Agreement.

23. Notice

Any notice or communication required hereunder between City and Owner must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered, as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City: City of Commerce
2535 Commerce Way Commerce, CA 90040
Attention: City Administrator

and City Attorney
13181 Crossroads Parkway North
Suite 400 – West Tower
City of Industry, California 91746

If to Owner: 6436 Corvette, LLC
6436 Corvette Street
Commerce, CA 90040

24. Miscellaneous Provisions

a. Amendment or Cancellation. This Agreement may be amended, or

canceled in whole or in part, only by the written mutual consent of the parties to this Agreement or their successors in interest, except that minor amendments that do not affect a substantive provision of this Agreement may be approved by the City Administrator on behalf of the City. The decision whether a proposed amendment is "minor" shall be in the exclusive discretion of the City Administrator, and consistent with Sections 5.61.150 through 5.61.210 of Ordinance No. 700.

b. **Waiver.** Waiver by City of any one or more of the terms or conditions of this Agreement shall not be construed as waiver of any other term or condition under this Agreement.

c. **Enforcement/Reserved Powers.** Unless amended or canceled pursuant hereto, this Agreement shall be enforceable by any party hereto, or successor in interest thereto, notwithstanding any subsequent change in any applicable general or specific plan, zoning, subdivision or building regulation, or municipal code amendment adopted by City that conflicts with the terms of this Agreement. However, this Agreement is subject to the City's "Reserved Powers." For purposes of this Agreement, "Reserved Powers" means the rights and authority excepted from this Agreement's restrictions on the City's police powers and which are instead reserved to the City. The Reserved Powers include the powers to enact regulations or take future discretionary actions after the Effective Date of this Agreement that: (1) are necessary to protect the public health and safety, and are generally applicable on a City-wide basis (except in the event of natural disasters as found by the City Council such as floods, earthquakes and similar acts of God); (2) are amendments to California Marijuana Laws or California Uniform Codes, as adopted by the City of Commerce, and/or the Commerce Municipal Code, as applicable, regarding the construction, engineering and design standards for private and public improvements to be constructed on the Site; (3) are necessary to comply with state or federal laws and regulations; or (4) involve sign and parking ordinances and guidelines, changes to the City's zoning laws, Specific Plan or the City's General Plan, whether adopted previous or subsequent to the Effective Date of this Agreement).

If any City ordinance, rule or regulation or addition to the Commerce Municipal Code is enacted or imposed by a citizen-sponsored initiative or referendum after the Effective Date that would conflict with this Agreement or an associated Commercial Cannabis Permit, business license or other authorizations and City approvals, or reduce development rights or assurances provided to the Owner in this Agreement, then such changes, additions or deletions to the Commerce Municipal Code shall not be applied to the Site or Project; provided, however, the parties acknowledge that the City's approval of this Agreement is a legislative action subject to referendum. The parties shall cooperate with each other and undertake such reasonable actions as may be

appropriate to ensure this Agreement remains in full force and effect and is implemented in accordance with its terms and to the fullest extent permitted by state or federal law.

Notwithstanding anything to the contrary in this Agreement, site improvements contemplated by this Agreement shall be completed pursuant to the development standards and design guidelines to be adopted by the zoning code amendment.

d. Joint and Several Liability. Owner shall be jointly and severally liable for any amount due under this Agreement, and any breach of this Agreement or failure to pay by one Party shall also constitute a breach of this Agreement by the other Party.

e. Severability. If any part of this Agreement is found to conflict with applicable state laws or regulations, such part shall be inoperative, null, and void insofar as it conflicts with said laws or regulations, or modified or suspended as may be necessary to comply with such state laws or regulations, but the remainder of this Agreement shall continue to be in full force and effect.

f. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The execution of this Agreement may be by actual, facsimile, or electronic signature.

g. Jurisdiction. The law governing this Agreement shall be that of the State of California. Any suit brought by any party against any other party arising out of the performance of this Agreement or the breach, termination, enforcement, interpretation or validity thereof, shall be filed and maintained in the County of Los Angeles Superior Court.

h. Disclaimer. Despite California's commercial cannabis laws and the terms and conditions of this Agreement, any Conditional Use Permit, or any Commercial Cannabis Permit issued pertaining to Owner or the property specified herein, California commercial cannabis cultivators, transporters, distributors, or possessors may still be subject to arrest by state or federal officers and prosecuted under state or federal law. The Federal Controlled Substances Act, 21 USC § 801, prohibits the manufacture, distribution, and possession of cannabis without any exemptions for medical use.

i. Force Majeure. If delays are caused by unforeseen events beyond the control of Owner, such delays will entitle Owner to an extension of time as provided in this section. Such unforeseen events ("Force Majeure") shall mean war, insurrection, acts of God, local, state or national emergencies, strikes and other labor difficulties beyond the party's control, or any default by City

hereunder, which Force Majeure event substantially interferes with the development, construction or operation of the Project.

j. Costs and Fees. Intentionally omitted.

k. Constructive Notice and Acceptance. Every person who after the Effective Date and recording of this Agreement owns or acquires any right, title, or interest to any portion of the Site, is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Site, and all rights and interests of such person in the Site shall be subject to the terms, requirements, and provisions of this Agreement.

l. Binding Effect of Agreement. The Parties agree that the Recitals above are true and correct and intend to be bound by same. Except as otherwise provided, the burdens of this Agreement are binding upon, and the benefits of this Agreement inure to, all authorized successors-in-interest of the Parties and constitute covenants which run with the Site. In order to provide constructive notice thereof, the City Clerk will record this Agreement with the Los Angeles County Recorder within the period required by Government Code Section 65868.5.

m. Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between the City and the Owner is that of a government entity regulating the development of private property and the owner of such property.

n. Changes to Project. The parties acknowledge that changes to the Project or Development Plans and related approvals may be appropriate and mutually desirable to carry out the intent and purpose of this Agreement. This Agreement shall not prevent the City from applying, with the consent or at the request of the Owner, *Subsequent Land Use Regulations* or *Subsequent Development Approvals* that do not directly conflict with the Project, Site or Development Plan authorized under this Agreement. The granting of one such change or request shall not obligate the City to grant other similar changes or requests. As used herein, "*Subsequent Development Approvals*" include, without limitation, all excavation, grading, building, construction, demolition, encroachment or street improvement permits, occupancy certificates, utility connection authorizations, or other non-discretionary permits or approvals necessary, convenient or

appropriate for the Project. As used herein, "*Subsequent Land Use Regulations*" means ordinances, resolutions and codes adopted or approved by the City after the Effective Date of this Agreement governing the development and use of the land, including general plan amendments, zone changes, variances or conditional use permits affecting the permitted use of the land including density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions of reservation or Dedication of land for public purposes, and the design, improvement and construction and initial occupancy standards and specifications applicable to the Development of the Property.

o. Conflicting Federal or State Rules. In the event that any conflicting federal or state laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, *this Agreement shall remain in full force and effect as to those provisions not affected*; and

(i) Notice of Conflict. Either party, upon learning of any such matter, will provide the other party with written notice thereof and provide a copy of any such law, regulation or policy together with a statement of how any such matter conflicts with the provisions of this Agreement; and

(ii) Modification Conferences. The parties shall, within thirty (30) days of the notice referenced to in the preceding subsection, meet and confer in good faith and attempt to modify this Agreement to bring it into compliance with any such federal or state law or regulation.

(iii) City Council Hearings. In the event the City believes that an amendment to this Agreement is necessary due to the effect of any federal or state law or regulation, the proposed amendment shall be scheduled for hearing before the City Council. The City Council shall determine the exact nature of the amendment necessitated by such federal or state law or regulation. Owner shall have the right to offer oral and written testimony at the hearing. Any modification ordered by the City Council pursuant to such hearing is subject to judicial review in accordance with California law.

(iv) City Cooperation. The City shall cooperate with Owner in securing any City permits, licenses or other authorizations that may be required as a result of any amendment resulting from actions initiated by the City. As required by this Agreement, Owner shall be responsible to pay all applicable fees in connection with securing of such permits, licenses or other authorizations.

p. Effective Date. "Effective Date" means the date on which all of the following are true: (i) thirty (30) days have elapsed since the second reading of

the Ordinance adopting and approving this Development Agreement and (ii) all Exhibits to this Agreement are finalized, executed and notarized by all affected parties (if applicable) and attached hereto; provided, however, that if these conditions have not been fully satisfied by the Owner the Effective Date may not thereafter occur and this Agreement may not thereafter become effective.

q. Authority to Sign. Each Party or responsible officer or governing body therefore, has read this Agreement and understands and knows the contents thereof, and represents and warrants that each of the officers or agents executing this Agreement on behalf of their respective corporations, partnerships, or other organizations is empowered to do so and hereby binds the respective corporation, partnership, or other organization.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CITY OF COMMERCE

6436 Corvette, LLC OWNER

Mayor

Name: Brook Fain
Title: Manager

OTHER PARTY

Name:
Title:

APPROVED AS TO FORM:

City Attorney
City of Commerce

EXHIBITS

- A LEGAL DESCRIPTION
- B PARCEL MAP
- C SITE AND/OR FLOOR PLANS
- D RECORDED GRANT DEED
- E PROPERTY OWNER SIGNED AND NOTARIZED CONSENT FORM (N/A)
- F ZONING ANALYSIS
- G CONDITIONS OF APPROVAL
- H LABOR PEACE AGREEMENT OR NOTARIZED STATEMENT OF INTENT
- I INDEMNIFICATION AGREEMENT

Development Agreement

Addendum

As determined by the City of Commerce Development Agreement, 6436 Corvette will demonstrate compliance with the CALGreen Tier 1. This company places great importance on environmental sustainability, and plans to build a rain catchment system around the facility, to prevent stormwater pollution and use as an auxiliary water source. Los Angeles' average rainfall per year is approximately 15.1 inches. Assuming a ninety percent efficiency catchment rate, for this 11,000 square foot roof the facility should collect approximately 6,160 gallons per inch of rain, resulting in water savings per year of approximately 93,016 gallons. Furthermore, we plan to install energy and water-efficient equipment, and ensure that all landscaping is native and drought-tolerant.

As determined by the City of Commerce Development Agreement, 6436 Corvette, LLC will participate in the Commerce CCA (Community Choice Aggregation) Program. The Implementation Plan seeks to provide electric customers within the jurisdictional boundaries of Commerce with renewable energy alternatives to "IOUs". 6436 Corvette endorses the City's plan to decentralize energy distribution services in promoting its production facility as optimally "green". Recent studies indicate that IOUs account for 64% of all electrical services in California.¹ We hope to promote green energy through municipal initiatives such as this.

1

<http://innovation.luskin.ucla.edu/sites/default/files/The%20Promises%20and%20Challenges%20of%20Community%20Choice%20Aggregation%20in%20CA.pdf>

As determined by the City of Commerce Development Agreement, 6436 Corvette is committed to providing the public with adequate educational resources concerning the health and safety risks associated with recreational cannabis use. As an increasing number of medical studies demonstrate, cannabis can also provide numerous health benefits which must also be disseminated in conjunction with the risks involved in consumption. As part of our marketing and outreach plan, 6436 Corvette will design and distribute educational pamphlets, and hold annual workshops with members of the Commerce community addressing the risk-benefit ratio of cannabis use in the community so as to ensure total compliance with local agencies and maintain a healthy relationship with the existing community in the City.

As determined by the City of Commerce Development Agreement, 6436 Corvette, LLC plans on fully integrating with the local business community. We pledge to make a good-faith effort to hire 60% of our workforce from the City of Commerce. Doing so will ensure that residents of the City are provided ample employment opportunities that we have not previously been available. Not only will this secure a higher level of integration with the community, but it will foster growth in the local economy.

As determined by the City of Commerce Development Agreement, 6436 Corvette will pledge up to 5% of gross receipts from both Cultivation and Manufacturing, along with 3% to be awarded to the City of Commerce as a monthly operating fee. These fees are at the higher end of the range contemplated by the City, as we understand that the fees are needed to

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maintain health and safety standards as outlined in the Development
Agreement.

EXHIBIT A

LEGAL DESCRIPTION

Legal Description of Property

Beginning at the Intersection of the Southeasterly line of Tract No. 7185 as per Map recorded in Book 135, Page(s) 65 to 80 of Maps, in the Office of the County Recorder of said County, with the Southerly line of the 100 foot wide railroad right of way of the Los Angeles and Salt Lake Railroad as described in the Deed recorded in Book 4536, Page 54 of Deeds, in the office of the County Recorder of said County; thence along the Southeasterly Tract Line South 26° 21' 20" West 1330.72 feet to the Northwesterly said centerline South 63° 38' 40" East 799.42 feet; thence South 26° 21' 20" West 35.00 feet to a point in the Southwesterly line of said Corvette Street, which point in the Northwesterly corner of that certain property described in Deed to Jack H. Macdonald and Roberta Shaw Macdonald recorded as Instrument No. 1 307 on August 19, 1955, of Official Records, said Northwesterly corner being the true point of beginning for this description; thence South 26° 21' 20" West 177.00 feet along the Northwesterly line of said Macdonald property; thence continuing along a line of said property North 69° 21' 18" West 40.20 feet to a line that is parallel with and distant Southwesterly 181 feet at right angles from said Southwesterly street line, said parallel line being the Northwesterly line of that certain 20 foot railway, right of way described as Parcel No. 1 in the Deed to the Atchison, Topeka and Santa Fe Railway Company, recorded as Instrument No. 3696 on July 26, 1955 in Book 4864, Page 326 of Official Records; thence South along said railway right of way line North 63° 38' 40" West 137.18 feet; thence South 69° 21' 18" East 40.20 to a line that is parallel with and distant Northeasterly 137.18 feet at right angles from the Northwesterly line of said Macdonald Property; thence along said last mentioned parallel line North 26° 21' 20" East 177.00 feet to said Southwesterly street line; thence South 63° 38' 40" East thereon 137.18 feet to the point of beginning.

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EXHIBIT B

MAP

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EXHIBIT C

SITE AND/OR FLOOR PLANS

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EXHIBIT D

RECORDED GRANT DEED

EXHIBIT E

PROPERTY OWNER SIGNED AND NOTARIZED CONSENT FORM

[N/A]

EXHIBIT F

ZONING ANALYSIS



ZONING ANALYSIS

LAND USE, ZONING AND APPLICABLE REGULATIONS:

Project Site – 6436 Corvette Street	
General Plan Designation:	Industrial
Zoning:	M-2 (Heavy Manufacturing)
Applicable Zoning Regulations:	Commerce Municipal Code Chapter 19.11, Manufacturing Zones; CMC Chapter 19.19, Development Standards; CMC Chapter 19.21, Off-Street Parking; CMC Chapter 19.23, Landscaping; CMC Chapter 19.39 Division 10, Site Plan Review; CMC Section 19.39.680 Basis for Approval.

SURROUNDING ZONING AND LAND USES:

Direction	Zoning	Land Use
North	M-2	Railroad
South	M-2	Industrial
East	M-2	Industrial
West	M-2	Industrial

ENVIRONMENTAL ASSESSMENT:

A Notice of Exemption from CEQA was prepared by ejma Planning & Development pursuant to CEQA (Public Resources Code §21000 et seq.) and the State CEQA Guidelines (Title 14, California Code of Regulations, Division 6, Chapter 3, §15000 et seq.), the subject application is a "project" that is subject to environmental review.

The proposed project is exempt from CEQA pursuant to the CEQA Guidelines Section 15301. The proposed project does not include any new construction beyond interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances, in accordance with CEQA Section 15301(a).



PROPERTY DESCRIPTION:

The project site is currently developed with one approximately 11,840 square foot industrial building, currently vacant, located north of Corvette Street and east of Saybrook Avenue and measures approximately 0.59 acres (25,508 square feet). It is generally flat in nature and is situated in the City's Heavy Industrial Zoning District (M-2), surrounded by railroad to the north and industrial warehouses to the south, east and west. The proposed project includes a Commercial Cannabis Permit, which is a type of regulatory permit, to allow for a Commercial Cannabis Facility and a Development Agreement (DA) for commercial cannabis activities including cultivation, manufacturing, distribution, and non-storefront retail delivery.

EXHIBIT G

CONDITIONS OF APPROVAL

See Attachment E on Agenda Report

EXHIBIT H

LABOR PEACE AGREEMENT OR NOTARIZED STATEMENT OF INTENT

6436 Corvette, LLC - Labor Peace Agreement

I, Brook Fain, am the owner of 6436 Corvette, LLC and attest we do not propose to employ 20 or more employees. If at the time 6436 Corvette, LLC hires 20 or more employees, I attest we will enter into a Labor Peace Agreement and will abide by the terms of the Labor Peace Agreement.

Signature: _____



Date: _____

1-18-2019

EXHIBIT I

INDEMNIFICATION AGREEMENT

See Attachment F on Agenda Report

