

# **ATTACHMENT F.2**

## **Development Agreement**

PLEASE RECORD AND WHEN RECORDED  
RETURN TO:  
City Clerk  
City of Covina  
125 East College Street  
Covina, California 91723

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Space above this line for Recorder's use only  
No recording fee under Government Code Section 27383

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY OF COVINA AND ZEN GW CALI PARTNERS LLC**

**ARTICLE 1. PARTIES AND DATE.**

This Government Code Statutory Development Agreement ("Agreement") is dated July XX, 2025 for references purposes only and is entered into between (i) the City of Covina ("City"), a California municipal corporation, and (ii) Alejandro Calleres, Angela Thomas, Corey Travis, Randall Szameit, and Macy Newell ("Co-Owner"). This Agreement shall become effective on the Effective Date defined in Section 3.1.12 below.

**ARTICLE 2. RECITALS.**

2.1 WHEREAS, the City and Owner wish to enter into Statutory Development Agreement pursuant to the Government Code and Covina Municipal Code to facilitate the development of the Property for commercial cannabis activities compliant with all applicable state and local laws, and any regulations promulgated thereunder (collectively, the "Project"); and

2.2 WHEREAS, the City is authorized pursuant to Government Code Section 65864 et seq. to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property; and

2.3 WHEREAS, Owner has an equitable interest in all of the real property ("Property") described on Exhibit Document No. 1 and depicted on Exhibit Document No. 2.

2.4 WHEREAS, Owner commenced its efforts to obtain approvals and clearances to conduct a commercial cannabis business in the City; and at that time the City determined that the uses authorized in this Agreement were lawfully permitted and authorized to occur on Owner's Property, subject to Owner's acquisition of various entitlements, as discussed herein; and

2.5 WHEREAS, Covina Municipal Code Section 17.84.040.E requires applicants for authorized commercial cannabis activity to enter into a development agreement with the City setting forth the terms and conditions under which the cannabis business will operate; and

2.6 WHEREAS, Condition of Approval (15) of Conditional Use Permit 25-004 requires Owner to enter into a development agreement with the City setting forth the terms and conditions under which the cannabis business will operate; and

2.7 WHEREAS, Owner and City intend for this Agreement to satisfy the development agreement requirements of Covina Municipal Code Section 17.84.040.E and Conditional Use Permit 25-004; and

2.8 WHEREAS, Owner voluntarily enters into this Agreement and after extensive negotiations and proceedings have been taken in accordance with the rules and regulations of the City, Owner has elected to execute this Agreement as it provides Owner with important economic and development benefits; and

2.9 WHEREAS, this Agreement and the Project are consistent with the City's General Plan and Zoning Code and applicable provisions of the City's applicable Zoning Map and the Covina Municipal Code as of the Agreement Date; and

2.10 WHEREAS, all actions taken and approvals given by the City have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

2.11 WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Project and/or Property, and provide for public services appropriate to the development of the Project; and

2.12 WHEREAS, in implementation of the promulgated state policy to promote private participation in comprehensive planning and to strengthen the public planning process and to reduce the economic risk of development, the City deems the implementation of this Agreement to be in the public interest and intends that the adoption of this Agreement be considered an exercise of the City's police powers to regulate the development of the Property during the Term of this Agreement; and

2.13 WHEREAS, this Agreement is consistent with the public health, safety and welfare needs of the residents of the City and the surrounding region and the City has specifically considered and approved the impact and benefits of the development of the Property in accordance with this Agreement upon the welfare of the region; and

2.14 WHEREAS, Owner intends to develop [a cannabis retail store] pursuant to the Covina Municipal Code Chapters 5.80 and 17.84 and all applicable state and City laws, rules, and regulations; and

2.15 WHEREAS, on [June 24<sup>th</sup>, 2025], the Planning Commission of the City held a duly-noticed public hearing on Owner's application for approval of this Agreement, made certain findings and determinations with respect thereto, and recommended to the City Council that this

Agreement be approved. On [July XX, 2025], the City Council also held a duly-noticed public hearing on Owner's application for approval of this Agreement (as well as the other Development Approvals), considered the recommendations of the Planning Commission, and found that this Agreement (and the other Development Approvals) are consistent with and helps to implement City's General Plan. On March 7, 2023 the City Council adopted Ordinance No. 23-01, enacting this Agreement ("DA Ordinance"); and

2.16 WHEREAS, concurrently with execution of this Agreement, City acknowledges that Owner has been authorized to [operate a cannabis retail store].

### **ARTICLE 3. GENERAL TERMS.**

3.1 Definitions and Exhibits. The following terms when used in this Agreement shall be defined as follows:

3.1.1 "Agreement" means this Statutory Development Agreement pursuant to Government Code Section 65864 et seq.

3.1.2 "CEQA Determination" means the process required by State of California Public Resources Code 21000 – 21189.57 by the Lead Agency of evaluating the potential environmental impacts and/or physical changes to the environment that may or may not occur because of a particular project; and, subsequently the decision by the Lead Agency if the potential environmental impacts and/or physical changes that will or will not result, will fall within one of three (3) thresholds defining the significance of the environmental effects caused by the project. For the purposes of this Development Agreement, the CEQA Determination will be a Section 15301 - Class 1 Exemption (Existing Facilities).

3.1.3 "City" means the City of Covina, a California municipal corporation.

3.1.4 "City Council" means the City Council of the City.

3.1.5 "CMC" means the City of Covina Municipal Code.

3.1.6 "Commercial Cannabis Business" means [retail sale of cannabis for medical or adult-use purposes consistent with the Medicinal and Adult-Use Cannabis Regulation and Safety Act.]

3.1.7 "Conditions of Approval" mean those conditions of approval, if any, which are not set forth in this Agreement and which are otherwise imposed by the City in connection with City's approval of the Development Approvals.

3.1.8 "Days" mean calendar days unless otherwise specified.

3.1.9 "Development", if applicable, includes grading, construction or installation of public and private facilities and the right to maintain, repair or reconstruct any private building, structure, improvement or facility after the construction and completion thereof; provided, however, that such maintenance, repair, or reconstruction take place within the Term of this Agreement on the Property.

3.1.10 “Development Approvals” means a conditional use permit and other entitlements for the Development of the Property, including any and all Conditions of Approval, subject to approval or issuance by the City in connection with Development and operation of the Property. “Development Approvals” also include both the Existing Development Approvals and the Subsequent Development Approvals approved or issued by the City that are consistent with this Agreement. Development Approvals include:

- a. Conditional Use Permit (“CUP”) 25-004;
- b. Cannabis Business Permit XX;
- c. Business License XX;
- d. Site Plan SPR25-39;
- e. Operation and Management Plan;
- f. Security Plan; and
- g. This Agreement (“DA”) 25-002.

3.1.11 “Development Plan”, if applicable, means the Existing Development Approvals and the Existing Land Use Regulations applicable to development of the Property for the Project, as modified and supplemented by Subsequent Development Approvals.

3.1.12 “Effective Date” means the day on which all of the following are true: (i) thirty (30) days have elapsed since the second reading of the DA Ordinance; (ii) this Agreement is executed by the Mayor of the City of Covina and persons authorized to execute the Agreement on behalf of Owner; (iii) all Exhibits to this Agreement are finalized; 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.

3.1.13 “Existing Development Approvals”, if applicable, means all Development Approvals approved or issued prior to or on the Effective Date. Existing Development Approvals include the approvals set forth in Section 3.1.10 and all other approvals which are a matter of public record prior to or on the Effective Date.

3.1.14 “Existing Land Use Regulations” if and where applicable, means all Land Use Regulations in effect on the Effective Date. Existing Land Use Regulations include all regulations that are a matter of public record on the Effective Date as they may be modified by the Existing Development Approvals.

3.1.15 “Gross Revenues” means the total of all revenue, income, compensation, sales proceeds or other monies of whatever kind or nature received by the Commercial Cannabis Business without deduction or offset of any kind.

3.1.16 “Land Use Regulations” if and where applicable means all ordinances, resolutions and codes adopted by the City governing the development and use of land, including

the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction and initial occupancy standards and specifications applicable to the Development of the Property. "Land Use Regulations" does not include any City ordinance, resolution, code, rule, regulation or official policy, governing:

- (a) the conduct of businesses, professions, and occupations;
- (b) taxes and assessments;
- (c) the control and abatement of nuisances;
- (d) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; and/or
- (e) the exercise of the power of eminent domain.

3.1.17 "Owner" means [Corey Travis, Alejandro Calleres, Angela Tomas, Randall Szameit, and Macy Newell].

3.1.18 "Processing Fees" means all application, inspection and other regulatory processing fees and charges required by City that are adopted for the purpose of defraying City's actual costs incurred or to be incurred in the processing and administration of any form of regulatory permit, license, land use entitlement or other approval, which are applied uniformly to all development related activity within City, including fees for land use applications. Processing Fees are not vested under this Agreement.

3.1.19 "Project", if applicable means the Development of the Property contemplated by the Development Plan, as such Development Plan may be further defined, enhanced, or modified pursuant to the provisions of this Agreement. The Project shall consist of this Agreement, the Development Plans, the application any and all entitlements licenses, and permits related to the Project.

3.1.20 "Property" means the real property described in Owner's application and incorporated herein by this reference, as described and depicted in Exhibit Documents 1 and 2.

3.1.21 "Reasonable" means using due diligence to accomplish a stated objective that the subject party is capable of performing or providing under the circumstances in a manner that is consistent with the intent and objectives of the Agreement.

3.1.22 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to Owner under this Agreement and reserved to the City as described in Section 4.7.

3.1.23 "Subsequent Development Approvals" if applicable, means all future discretionary approvals and all ministerial Development Approvals required subsequent to the Effective Date in connection with development of the Property, including without limitation, subdivision improvement Agreements that require the provision of bonds or other securities.

Subsequent Development Approvals include, but are not limited to, all excavation, grading, building, construction, demolition, encroachment or street improvement permits, occupancy certificates, utility connection authorizations, or other permits or approvals necessary, convenient or appropriate for the grading, construction, marketing, use and occupancy of the Project within the Property at such times and in such sequences as Owner may choose consistent with the Development Plan and this Agreement.

3.1.24 “Subsequent Land Use Regulations”. If applicable, means any Land Use Regulations defined in Section 3.1.16 that are adopted and effective after the Effective Date of this Agreement, as further defined in Section 4.7.

3.2 Exhibit Documents. The following documents, by this reference, are made part of this Agreement:

No. 1 - Legal Description of the Property;

No. 2 - Map showing Property and its location;

No. 3 - Operations Plan (in reference to the RFP);

No. 4 - Conceptual Plans - For final plans refer to the approved tenant improvement plan checks by Building and Safety Division (BLD 25-XXXX); and

No. 5 - Labor Peace Agreement; or applicable Notarized Statement of Intent.

3.3 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Subject to Owner’s receipt of all Development Approvals relative thereto, the Development of the Property is hereby authorized and shall, except as otherwise provided in this Agreement, be carried out only in accordance with the terms of this Agreement.

3.4 Ownership of Property. Owner represents and covenants that it has a legal or equitable interest in the Property, which has an Assessor’s Parcel Number(s) of 8405-003-032 and is more particularly described in the application and Exhibit Document No. 1 in Section 3.2 and incorporated herein.

3.5 Term. The parties agree that the Term of this Agreement shall be 15 years commencing on the Effective Date subject to the written extension and early termination provisions described in this Agreement. Upon termination of this Agreement, this Agreement shall be deemed terminated and of no further force and effect, except terms that are expressly stated in this Agreement to survive termination without the need of further documentation from the parties hereto. The Agreement’s Community Benefit Fee(s) are subject to renegotiation after the first five years, and every five years thereafter. If the parties are unable to re-negotiate the Community Benefit Fee, then the Community Benefit Fee set forth in this Agreement shall continue to apply.

3.5.1 Term Extension. This Agreement may be extended by mutual written Agreement of City and Owner in writing and signed by Owner and the Mayor of Covina. If the Mayor of Covina does not sign the Agreement or renegotiated Agreement, any such Agreement or renegotiated Agreement is null and void.

### 3.6 Immediate Termination.

3.6.1 Automatic and Immediate Termination. This Agreement shall automatically and immediately terminate (without any hearing or opportunity to be heard) upon the occurrence of any of the following events:

- (i) Expiration of the Term of this Agreement as set forth in Section 3.5.
- (ii) Termination or revocation of Conditional Use Permit 25-004 or applicable Cannabis Business Permit.

3.6.2 Discretionary Immediate Termination. This Agreement shall, at the discretion of the City, immediately terminate (without any hearing or opportunity to be heard) upon the occurrence of any of the following events:

(i) Failure to timely pay any fees or monies to the City. If fees or monies due to the City pursuant to this Agreement, including but not limited to Community Benefit Fee payments, are not paid on time pursuant to this Agreement, the City may, at the election of the City, terminate this Agreement without any need for a hearing and without any opportunity to be heard by anyone. Accordingly, Article 8 “Defaults and Remedies” does not apply to a failure to pay fees because the City may terminate immediately and automatically for failure to pay fees and no opportunity to cure and no opportunity to be heard is available for failure to pay fees.

(ii) Failure to obtain a Certificate of Occupancy and operate the business within six (6) months from the date the Mayor signs this Agreement. The permitted uses must be commenced within six (6) months of issuance of the cannabis business permit. If Owner fails to move forward in a timely way to obtain a Certificate of Occupancy and commence the permitted use then the City may seek to revoke the commercial cannabis permit and the conditional use permit, and seek to terminate this Agreement.

3.6.3 Delay Not Attributable to Owner. Regulatory and/or bureaucratic delays, meaning delays attributable solely to the City, Department of Cannabis Control, or other applicable regulatory authority, and not attributable to the Owner, will not trigger the automatic termination in this Section.

3.6.4 Effect of Termination. Termination of this Agreement shall constitute termination of all land use entitlements and permits approved for the Owner and/or Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination, or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination, or with respect to any obligations which are specifically and expressly set forth as surviving this Agreement.

### 3.7 Notices.

3.7.1 Notice Defined. As used in this Agreement, notice includes, without limitation, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment, or other communication required or permitted hereunder.



3.7.2 Written Notice and Delivery. All notices shall be in writing and shall be considered given:

- (i) when delivered in person to the recipient named below; or
- (ii) five (5) days after deposit in the United States mail, postage prepaid, addressed to the recipient named below; or
- (iii) on the date of personal delivery shown in the records of the delivery company after delivery to the recipient named below; or
- (iv) on the date of delivery by facsimile transmission to the recipient named below if a hard copy of the notice is deposited in the United States mail, postage prepaid, addressed to the recipient named below. All notices shall be addressed as follows:

If to the City:                      City of Covina Community Development Department  
  ATTN: Community Development Director  
  125 E College St, Covina, CA 91723  
  (tel) (626) 384-5460  
  (email) blee@covinaca.gov

With courtesy copy:                City of Covina City Attorney's Office  
  ATTN: City Attorney  
  125 E College St, Covina, CA 91723.  
  (tel) (213) 626-8484  
  (email) clee@rwglaw.com

If to the Owner:                    Zen GW Cali Partners LLC  
  ATTN: Corey Travis  
  1 P.O Box 254606  
  Sacramento, CA, 95865  
  (tel) (415) 890-4480  
  (email) corey@zen209.com

With courtesy copy:                Zen GW Cali Partners LLC  
  ATTN: Alejandro Calleres  
  135 E Badillo St, Unit 302  
  Covina, CA, 91723  
  (tel) (323) 719-7376  
  (email) [angthomas27@gmail.com](mailto:angthomas27@gmail.com)

With courtesy copy: Zen GW Cali Partners LLC  
ATTN: Angela Thomas  
135 E Badillo St, Unit 302  
Covina, CA, 91723  
(tel) (626) 488-9674  
(email) angthom27@gmail.com

With courtesy copy: Zen GW Cali Partners LLC  
ATTN: Randall Szameit  
4072 Harlan Ave,  
Baldwin Park, CA, 91706  
(tel) (626) 856-6991  
(email) dolphan1311@verizon.net

3.7.3 Address Changes. Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3.8 Validity of this Agreement. Owner and the City each acknowledge that neither party has made any representations to the other concerning the enforceability or validity of any one or more provisions of this Agreement. The parties acknowledge and agree that neither party shall allege in any administrative or judicial proceeding that the entering into or the performance of any obligations created in this Agreement violates federal or state law, with respect to all federal, state, and local statutes, ordinances, or regulations in effect as of the Effective Date.

3.9 Fee. Fee means the amount(s) set by the City or negotiated with or by the Owner, to provide City commensurate benefit based on a private benefit conferred upon Owner. Fee shall include City's cost to research cannabis and cannabis laws and regulations, conduct public meetings, draft and negotiate this Agreement, process applications, and any other acts taken by the City in furtherance of medical and adult commercial use of cannabis in the City.

#### **ARTICLE 4. DEVELOPMENT OF THE PROPERTY.**

4.1 Right to Develop. Owner shall, subject to the terms of this Agreement, develop the Property with a Commercial Cannabis Business in accordance with the Development Plan. The Property shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan.

4.2 Conditional Use Permit. Pursuant to CMC Section 17.84.040.A, Owner shall not engage in the permitted uses set forth above pertaining to the Project on the Property without first obtaining and maintaining the Conditional Use Permit for the conduct of cannabis business activities.

4.3 Cannabis Business Permit. Pursuant to CMC Chapter 5.80 and Section 17.84.040.B, no person may engage in commercial cannabis activity in the City without obtaining a cannabis business permit issued by the City.

4.4 State Cannabis Licenses. Pursuant to California Cannabis Laws, Owner shall not engage in the permitted uses set forth above pertaining to the Project on the Property without first obtaining a State Cannabis License to conduct cannabis business activities on the Property.

4.5 Effect of Agreement on Land Use Regulations. Except as otherwise provided by this Agreement, the Development Plan shall establish the rules, regulations and official policies and conditions of approval governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement, occupancy and construction standards and specifications applicable to development of the Property. Provided, however, that in approving tentative subdivision maps, if any, the City may impose ordinary and necessary dedications for rights-of-way or easements for public access, utilities, water, sewers, and drainage, having a nexus with the particular subdivision; provided, further, that the City may impose and will require normal and customary subdivision improvement Agreements and commensurate security to secure performance of Owner's obligations thereunder.

4.6 Changes to Project. The parties acknowledge that changes to the Project or Development Approvals may be appropriate and mutually desirable. The City shall act on such applications, if any, in accordance with the Existing Land Use Regulations, subject to the Reservations of Authority, or except as otherwise provided by this Agreement. If approved in writing by the City Council, any such change in the Existing Development Approvals shall be considered an additional Existing Development Approval.

4.7 Reservations of Authority. Any other provision of this Agreement to the contrary notwithstanding, the Development of the Property shall be subject to subsequently adopted ordinances, resolutions ("Subsequent Land Use Regulations" or sometimes referred to as "Reservation of Authority") only on the following topics:

(i) Processing Fees imposed by the City to cover the estimated or actual costs to the City of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, which fees are charged to reimburse the City's lawful expenses attributable to such applications, processing, permitting, review, and inspection and which are in force and effect on a general basis at such time as said approvals, permits, review, inspection, or entitlement are granted or conducted by the City.

(ii) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

(iii) Regulations governing engineering and construction standards and specifications including, any and all uniform codes adopted by the State of California and subsequently adopted by the City.

(iv) Regulations which may be in conflict with the Development Plan but which are reasonably necessary to protect the public health and safety; provided, however, the following shall apply:

(a) That to the extent possible, such regulations shall be applied and construed so as to provide Owner with the rights and assurances provided in this Agreement;

(b) That such regulations apply uniformly to all new development projects of the same uses within the City; and

(v) Regulations that do not conflict with the Development Plan. The term “do not conflict” means new rules, regulations, and policies which: (a) do not modify the Development Plan, including, without limitation, the permitted land uses, the density or intensity of use, the phasing or timing of Development of the Project, the maximum height and size of proposed buildings on the Property, provisions for dedication of land for public purposes and development exactions, except as expressly permitted elsewhere in this Agreement, and standards for design, development and construction of the Project; (b) do not prevent Owner from obtaining any Subsequent Development Approvals, including, without limitation, all necessary approvals, permits, certificates, and the like, at such dates and under such circumstances as Owner would otherwise be entitled by the Development Plan; or (c) do not prevent Owner from commencing, prosecuting, and finishing grading of the land, constructing public and private improvements, and occupying the Property, or any portion thereof, all at such dates and schedules as Owner would otherwise be entitled to do so by the Development Plan.

(vi) Contemplated City Rules and Guidelines for Commercial Cannabis Businesses. The City anticipates issuing rules and administrative guidelines associated with the implementation of Ordinance No. 23-01. City may establish requirements that are identical to or place a higher standard of care as existing provisions of California Cannabis Laws, State Cannabis Regulations, or any amendments thereto. City reserves the right to adopt additional categories of rules or guidelines not listed in this Section as part of the City’s commercial cannabis regulatory program. Owner shall comply with any and all administrative guidelines adopted by the City that govern or pertain to the City’s commercial cannabis regulatory program. Nothing this Agreement shall be construed as limiting the City to amend the CMC or issue guidelines following the effective Date of this Agreement that Developer is required to adhere to.

(vii) The City shall not be prohibited from applying Subsequent Land Use Regulations that do not affect permitted uses of the land, density, design, public improvements (including construction standards and specifications) or the rate of development of the Development, nor shall the City be prohibited from denying or conditionally approving any Subsequent Development applications on the basis of such Subsequent Land Use Regulations.

4.8 Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of the City possess authority to regulate aspects of the Commercial Cannabis Business and development of the Property separately from or jointly with the City, and this Agreement does not limit the authority of such other public agencies. The City and Owner shall reasonably cooperate with other public agencies processing approvals or State licenses for the Project.

4.9 Tentative Subdivision Map and Development Approvals Lifespan. The term of any tentative subdivision map approved as a part of the project, if any, shall be in effect for the Term of this Agreement, and may be extended pursuant to the provisions of the California Subdivision Map Act (Government Code §§ 66410 et seq.).

4.10 Satisfaction of Conditions of Approval. Owner shall comply with all county and state laws and City ordinances and regulations and any and all conditions of approval for any entitlement, permit, or license it receives from the City, state, county, and Health and Fire Departments.

4.11 Subsequent Entitlements. Prior to commencement of construction of the Project, Owner shall be required to submit applications for any and all subsequent entitlements, if any, consistent with the terms and conditions set forth in this Agreement.

4.12 City Records Inspection. Owner acknowledges and agrees that the City is empowered to examine Owner's books and records, including tax returns. The City has the power and authority to examine such books and records at any reasonable time, including but not limited to, during normal business hours. If the City wishes to inspect the areas of the Property where the cannabis is being manufactured or cultivated, if applicable, City may do so at any time with 24 hours prior notice to Owner except in exigent circumstances or when the City reasonably believes a crime is being committed on the premises. If there are exigent circumstances or the City reasonably believes a crime is being committed on the premises, then the City may inspect with no notice whatsoever. In addition, City agrees that all of its employees or agents which enter the manufacturing or cultivation areas shall follow all of the policies and guidelines imposed on Owner's employees, including without limitation, the wearing of any clothing or equipment to insure that no pests or impurities shall enter the manufacturing and cultivation areas.

4.13 Inspections. The City may conduct non-record inspections as set forth in Section 7.7.

4.14 Initiatives and Referenda. If any City ordinance, rule, regulation, or addition to the CMC is enacted or imposed by a citizen-sponsored initiative or referendum after the Effective Date that would conflict with this Agreement or any associated Development Approval, such CMC changes shall not be applied to the Site or the Project; provided, however, the parties acknowledge the City's approval of this Agreement is a legislative action subject to referendum.

## **ARTICLE 5.       ARTICLE 5. PUBLIC BENEFITS.**

5.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs and adverse effects which will not be fully met by the Development Plan and further acknowledge and agree that this Agreement confers substantial private benefits on Owner which should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the negative impacts on the City, and private benefits conferred on Owner by providing more fully for the satisfaction of the public needs resulting from the Project.

5.2 Community Benefits Fee(s). In addition to the benefits provided by the operation of the business, the City's primary benefit and its primary consideration for entering into this

Agreement is the agreement and covenant of the Owner to pay to the City an annual amount equal to five percent (5%) of the annual Gross Revenues of the Commercial Cannabis Business, referred to herein as the Community Benefit Fee.

5.2.1 Installment Payments. As used herein, the term Owner shall make quarterly installments towards the annual amount of the Community Benefit Fee payment, based upon the Commercial Cannabis Business' Gross Revenue as reflected in its quarterly financial reports. Such installment payments shall be made at the time and in the manner as directed by the City Manager. However, the Parties agree that the amount of the total Community Benefit Fee payment made for the full fiscal year shall be adjusted to reflect the Gross Revenues as reflected in Owner's annual audited financial statement, a copy of which shall be provided by Owner's auditor directly to the City. Such audited financial report shall be produced within ninety (90) days of the end of the fiscal year. If the audited annual financial statement is not provided to the City within that time frame, the City may initiate an audit at Owner's sole expense, and may continue said audit even if the independent audited financial statement is subsequently provided.

5.2.2 Accounting. Owner agrees to maintain its books and records in a manner consistent with standard accounting procedures and good practices, and to fairly report all monies received by the Commercial Cannabis Business. during the relevant period. As provided in Section 4.12, the City shall have the right to conduct audits of the books and records, and the operational procedures, of Owner as they relate to the Commercial Cannabis Business. Such audits shall not unreasonably interfere with the operation of the Commercial Cannabis Business either as to frequency or procedure, but may take such audit steps as is necessary to achieve a real evaluation of the accuracy of the Commercial Cannabis Business's accounting records and the amounts of Community Benefit Fee payment owed to the City.

5.2.3 Audits. Owner agrees to pay the costs of not more than two (2) audits of its records per year (not including any year-end audit occasioned by a failure of Owner to produce an audited annual financial report within the required ninety (90) day period, which shall also be at Owner's expense), whether conducted by the City's in-house staff, based upon comparable labor and other costs to private organizations, or by private accounting or audit firms. The costs of such audits shall be reasonable given the purpose and scope of the audit. The City may undertake additional audits if it has a reasonable concern that the Community Benefit Fee payments are not being made in the correct amount. Such additional audits shall be at the cost of the City, except that if an audit determines that the amount of Gross Revenue received by the Commercial Cannabis Business for the relevant audit period has been understated by seven percent (7%) or more, Owner shall reimburse the City for the full costs of the audit. If any audit of the Commercial Cannabis Business as permitted under this Agreement demonstrates that Owner has underpaid the annual Community Benefit Fee payment, Owner shall, within ten (10) days of receiving the results of the audit, make payment to the City of any shortfall in the Community Benefit Fee payment, together with interest thereon from the date each portion of the shortfall should have been paid until it is in fact paid, at the annual rate of seven percent (7%). If the amount of the shortfall exceeds the amount actually paid by seven percent (7%) or more, Owner shall also pay to the City, as compensation for its efforts in enforcing the payment provisions of this Agreement and not as a penalty, an amount equal to ten percent (10%) of the shortfall (including interest).

5.2.4 Preferred Payment for Community Benefit Fee. The preferred method of payments made by Owner to City under the terms of this Agreement shall be made by check, money order or wire transfer.

5.3 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), the parties agree to renegotiate in good faith the terms of this Agreement so as to comply with an alternative revenue mechanism. As used in this section, “alternative revenue mechanism” does not include generally applicable taxes, fees, or assessments levied on or collected from both cannabis and non-cannabis operations.

5.4 Public Outreach and Education. Owner shall coordinate and cooperate with the City and other Owners of Commercial Cannabis Business located within City of Covina in the establishment and implementation of appropriate public outreach and education programs. The public outreach and education programs shall be approved by City.

5.5 Labor Peace Agreement. If the Owner has ten (10) or more employees, the Owner shall enter into a Labor Peace Agreement, as defined by Business and Profession’s Code Section 26001(aa), within sixty (60) days of employing its tenth (10th) employee, and abide by the terms of such Labor Peace Agreement. If Owner has less than ten (10) employees at the time of this Agreement’s signing, such Owner shall in good faith provide a notarized Statement of Intent to the City no later than this Agreement’s signing indicating that within thirty (30) days of issuance of the Cannabis Business Permit the Owner will enter into and abide by the terms of a Labor Peace Agreement with any labor organization. Attached as Exhibit Document No. 5 and incorporated herein is a true and correct copy of the actual Labor Peace Agreement; or applicable Notarized Statement of Intent. Owner shall abide by the terms of the Labor Peace Agreement if and when so adopted in accordance with this Subsection. If Owner fails to comply with the Labor Peace Agreement requirement in accordance with this Subsection, such failure shall constitute a default of this Agreement.

5.6 Jobs and Wage Creation.

5.6.1 Local Outreach. Owner agrees to use its reasonable efforts to market employment opportunities at the Project to Covina residents. Job announcements shall be posted at City Hall, along with proof that the job announcements were advertised in at least two (2) newspapers published, printed, or distributed in the City and on various social media sites accessible to the general public. In addition, Owner shall make a good faith effort to advertise job announcements at local job fairs, on local radio and through public agencies and organizations.

5.6.2 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 seventy five percent (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.

5.6.3 Living Wage. Owner shall provide a living wage to employees. “Living Wage” means one hundred fifty percent (150%) more than the applicable amount of the hourly minimum wage mandated by California state or federal law, whichever is greater.

5.7 Development Agreement Administrative Fee Deposit. Owner shall be responsible for all of the City’s actual costs associated with processing Development Approvals for the Project including, but not limited to, costs associated with the City’s review and processing of the Project, including but not limited to reviewing the Project’s entitlements, including all environmental clearance documents, permits, licenses and all documents evidencing compliance with state and local law. Upon approval of the Agreement, within five business days of approval, Owner must deposit twenty thousand dollars (\$20,000) with the City for the purpose of reimbursing the City for any associated costs with processing the Project, as detailed above, and reimbursing the City for its actual costs incurred in drafting and processing this Agreement. Owner will be liable for the City’s actual costs incurred in processing future Development Approval applications. City acknowledges and agrees that this payment is not merely a deposit, but is a cap on the amount of the City’s actual costs incurred in processing this Agreement.

## **ARTICLE 6. DISTRIBUTION AND TRANSPORTATION**

6.1 Transportation of Cannabis. All pick ups and drop offs of cannabis and cannabis products into and out of the City of Covina shall be by a licensed distributor. Owner shall not, on its own or through any person or entity, arrange for pick ups or drop offs of cannabis or cannabis products into or out of the City of Covina for any purpose, except by a licensed distributor. This provision shall not apply if the Owners is a license microbusiness that includes distribution as part of its business.

6.2 Distribution of Cannabis. Owner shall distribute its cannabis and cannabis products only through a licensed distributor. Owner shall cooperate fully with the distributor regarding the accounting for product, revenue, and tax collection.

6.3 Distributor Fees. Owner and any licensed distributor shall reach their own Agreement regarding fees for the distributor’s services.

## **ARTICLE 7. REVIEW FOR COMPLIANCE.**

7.1 Periodic Review. The City may 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 compliance with all the terms of the Agreement. The review shall be conducted by the Director of Community Development. In connection with this periodic review, Owner shall demonstrate good faith compliance with the terms of this Agreement. If, as a result of the review, the City finds and determines that Owner has not complied in good faith with the terms and conditions of this Agreement, the City may serve on Owner a notice to cure setting forth in detail the nature of Owner’s non-compliance with this Agreement. If Owner fails to cure the non-compliance within sixty (60) days of the date of the notice or, if such cure cannot be effected within such sixty (60) day period and Owner fails to commence and proceed in good faith in an effort to cure such non-



compliance within such sixty (60) day period, City may, by written notice to Owner, terminate this Agreement.

7.2 Special Review. The City may order a special review of compliance with this Agreement at any time, if the City reasonably believes that Owner is in breach of this Agreement. If the City finds that Owner has not complied in good faith with the terms or conditions of this Agreement, the City 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 the City.

7.3 The termination provision in Sections 7.1 and 7.2 do not apply to restrict the termination provisions in Section 3.6 regarding failure to pay fees and failure to move forward in a timely way to get all necessary permits, licenses, and a Certificate of Occupancy.

7.4 Certificate of Compliance. If, at the conclusion of a periodic or special review, the City determines that Owner is in compliance with this Agreement, upon request of the Owner the City shall issue a Certificate of 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 City, that (i) this Agreement remains in effect and (ii) Owner is not in default. The 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 City, regardless of whether or not the Certificate is relied upon by Owner.

7.5 Failure to Conduct Review. The City’s failure to conduct a periodic review of this Agreement shall not constitute a breach of this Agreement.

7.6 Cost of Review. The costs incurred by City in connection with the periodic or special reviews shall be borne by the City. The Owner is not liable for any costs associated with any City periodic or special review of this Agreement. The Owner is not liable for costs incurred for reviews.

7.7 Inspections. The City has the right to inspect the premises at any time with 24 hours’ notice to Owner in writing. Exception to 24 hours’ notice: In case of exigent circumstances or if the City reasonable believes a crime is being committed, no notice whatsoever is required. Failure of the Owner to allow access to its facilities when the City requests an inspection, subject to the notice provisions described in the Section, is a violation of this Agreement.

## **ARTICLE 8. DEFAULTS AND REMEDIES.**

8.1 Remedies in of City after Default. In the event of a Default by Owner, City may terminate this Agreement and shall otherwise have hereunder all legal and equitable remedies as provided by law. Before City may terminate this Agreement or take action to obtain judicial relief, the City shall comply with the notice and cure provisions of Section 8.3.

Owner hereby agrees to waive and/or release the City of Covina for any claim or claims or cause of action, not specifically and expressly reserved herein, which Owner may have at the time of execution of Agreement relating to any application to the City of Covina including but not limited

to, any application for any type of Commercial Cannabis Business license or conditional use permit from the City of Covina.

### **CALIFORNIA CIVIL CODE SECTION 1542**

The Owner expressly acknowledges that this Agreement is intended to include in its effect, a waiver without limitation, of all claims or causes of actions which have arisen and of which each side knows or does not know, should have known, had reason to know or suspects to exist in their respective favor at the time of execution hereof, that this Agreement contemplates the extinguishment of any such Claim or Claims. The Owner specifically acknowledges and waives and releases the rights granted to Owner under **California Civil Code Section 1542**, which states as follows:

“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.”

By expressly waiving the rights granted to Owner under **California Civil Code Section 1542**, the Owner represents that they understand and acknowledge that if they have suffered any injury, damage as a result of the application for or request for any permit from the City of Covina and (i) they are not presently aware of any damage or injury, or (ii) any damage or injury has not yet manifested itself, any claims for any such damage or injury are forever released and discharged.

Nothing contained herein shall modify or abridge Owner’s rights or remedies (including its rights for damages, if any) resulting from the exercise by the 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 the grossly negligent or malicious acts of the City and its officials, officers, agents, and employees. Nothing herein shall modify or abridge any defenses or immunities available to the City and its employees pursuant to the Government Tort 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 8.1, Section 8.2, and Section 8.3 except for those in Section 3.6.

**8.2 Specific Performance.** The nature of a development agreement under the Development Agreement Law is a very unusual contract involving promoting a development project facing many complex issues including but not limited to environmental, financial, market, regulatory and other constantly evolving factors over an extremely long time frame. The high level of uncertainty and risk involved justify the extraordinary commitments made to Owner by City. The parties acknowledge that City would not have entered into this Agreement had it been exposed to monetary damages claims from Owner for any termination, or Default hereunder. As such, the parties agree that in no event shall Owner be entitled to recover monetary damages of any amount or of any kind against City for City’s termination or Default under this Agreement. For purposes of enforcement, therefore, Owner’s sole remedy for any Default of this Agreement shall be the remedy of specific performance. Before Owner takes action to obtain a judicial order

for specific performance against City, Owner shall comply with the notice and cure provisions of Section 8.3.

8.3 Notice and Opportunity to Cure. A non-Defaulting Party in its discretion may elect to declare a Default under this Agreement in accordance with the procedures hereinafter set forth for any alleged Default of the other party (“Defaulting Party”). However, the non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by the Defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in Default under this Agreement, if the breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such Default within sixty (60) days after the date of such notice. However, if such Default cannot be cured within such sixty (60) day period, and if the Defaulting Party does each of the following:

1. Notifies the non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted Default is not curable within the sixty (60) day period;
2. Notifies the non-Defaulting Party of the Defaulting Party’s proposed cause of action to cure the Default;
3. Promptly commences to cure the Default within the sixty (60) day period;
4. Makes periodic reports to the non-Defaulting Party as to the progress of the program of cure; and
5. Diligently prosecutes such cure to timely completion, then:

The Defaulting Party shall not be deemed in Default of this Agreement once the Default has been timely cured.

8.4 Termination Notice. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any Default, or fail to diligently pursue such cure as prescribed above, the non-Defaulting Party may, in its discretion, provide the Defaulting Party with a written notice of intent to terminate this Agreement (“Termination Notice”). The Termination Notice shall state that the non-Defaulting Party will elect to terminate the Agreement within sixty (60) days and state the reasons therefor (including a copy of any specific charges of Default) and a description of the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, the non-Defaulting Party’s election to terminate this Agreement shall only be rescinded (i) if the Defaulting Party fully and completely cures all Defaults prior to the date of termination, or (ii) if the non-Defaulting Party elects to revoke the Termination Notice.

8.5 Waiver of Breach. By not filing a legal challenge to City’s action to approve or issue any Development Approval within the period established by applicable law, Owner shall be deemed to have waived any claim that any condition of approval attached to said Development Approval is improper or that the action, as approved, constitutes a breach of the provisions of this Agreement. By recordation of a final subdivision map on any portion of the Property, Owner shall be deemed to have waived any claim that any Condition of Approval of such final subdivision map is improper or that the Condition of Approval constitutes a breach of the provisions of this Agreement.

8.6 Attorney's Fees. In the event either party to this Agreement is forced to bring legal action to enforce its rights under this Agreement, and notwithstanding the limitation of the parties' remedies under Section 8.2, the prevailing party in any such action shall be entitled to recover its reasonable attorney's fees and costs of suit.

## **ARTICLE 9. THIRD PARTY LITIGATION.**

9.1 Non-liability of Parties. As set forth above, City has determined that this Agreement is consistent with the General Plan and meets all of the legal requirements of State law. The parties acknowledge that:

A. In the future there may be challenges to the legality, validity and adequacy of the Development Approvals, the CEQA Determination, and/or this Agreement; and

B. If successful, such challenges could delay or prevent the performance of this Agreement and the Development of the Property.

C. In addition to the other provisions of this Agreement, including, without limitation, the provisions of this Article 9, neither party shall have liability under this Agreement for any failure of either party to perform its respective obligations under this Agreement under this Agreement as the direct result of a judicial determination resulting from any claim or litigation that on the Effective Date, or at any time thereafter, the Land Use Regulations, the Development Approvals, or any related CEQA Determination for the Project, this Agreement, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Revision of Land Use Regulations. If, for any reason, the Land Use Regulations, the Development Approvals (including, without limitation, this Agreement), the CEQA Determination or any part thereof is hereafter judicially determined, as provided above, to not be in compliance with applicable laws or regulations and, if such noncompliance can be cured by an appropriate action otherwise conforming to the provisions of this Agreement, then this Agreement shall remain in full force and effect to the extent permitted by law. If required by a judicial decision, City shall process any of Owner's applications for amendments to any of the Development Approvals, the CEQA Determination, and this Agreement, as necessary in response to such judicial decision. The Parties understand and agree that no promise can be made as to any future approval, however, because land use regulations involve the exercise of City's police power and it is settled California law that government may not contract away its right to exercise its police power in the future. *Avco Community Developers Inc. v. South Coast Regional Com.*, 17 Cal.3d 785, 800 (1976); *City of Glendale v. Superior Court*, 18 Cal.App.4th 1768 (1993).

9.3 Participation in Litigation: Indemnity. To the full extent permitted by law, Owner agrees to and shall fully indemnify, hold harmless, and defend, City and its respective elected and appointed officials, officers, members, agents, employees, and representatives (each an "Agent" and collectively "Agents") from any and all claims, suits, causes of action, fines, penalties, proceedings, damages, injuries or losses of any name, kind or description, specifically including attorneys' fees (collectively, "Claim(s)"), arising in any way out of or challenging the validity of this Agreement, any of the other Development Approvals, or the CEQA Determination. Owner's indemnification obligation shall include, but not be limited to, actions to attack, set aside, void, or

annul any approval, should it occur, related to this Agreement, any of the other Development Approvals, or the CEQA Determination, including actions invoking Planning and Zoning Law or CEQA, and shall also include actions related to enforcement of conflicts between State and Federal law. Owner shall reimburse City for any court costs and attorneys' fees that City may be required by a court to pay as a result of such Claim(s). City may, at its sole and absolute discretion, participate in the defense of any such Claim(s) undertaken by Owner, or (b) retain separate counsel whose attorneys' fees and costs shall be paid by Owner. Such participation in the defense of such Claim(s) or the retention of separate counsel by City shall not relieve Owner of its obligations under this Agreement.

9.4 City shall promptly provide written notice to Owner of any Claim(s). City shall take all necessary and reasonable steps to provide such notice to Owner in a timely fashion and in a manner that will not result in any substantial prejudice to Owner's ability to defend the relevant Claim(s). Such notice shall contain a copy of any relevant pleadings filed in connection with the relevant Claim(s). City acknowledges that Owner desires to provide the defense of any Claim(s) in a cost efficient manner. City and Owner shall coordinate and cooperate in their defense activities, whether City is participating in defense undertaken by Owner or is retaining separate counsel. As used in this Agreement, cooperation does not include City having to take any action or make any decision that City does not believe, in the exercise of its good faith judgment, is in its own best interest. Unless expressly provided to the contrary, nothing in this Agreement shall be construed in a manner that requires City to exercise its discretion in a particular manner.

9.5 Owner may not resolve such Claim(s) without City's prior written consent. In all events, City shall have the right to resolve any such Claim(s) in any manner, in its discretion, provided, however, Owner's consent shall be required (and may be granted or withheld in Owner's discretion) if the resolution of the Claim(s) shall require a payment by Owner or limit Owner's rights under the Development Approvals, including, without limitation, this Agreement. Owner's obligation to pay the cost of any such Claim(s), including judgment, post-judgment motions, and any and all appeals, shall extend until any Claim is completely concluded, judgment is entered and completely satisfied.

9.6 In the event Owner fails or refuses to reimburse City for its cost to defend any Claim(s), City shall have the right to terminate this Agreement, subject to the notice and cure requirements of Section 8.3 above. Additionally, in the event of any such Claim(s), the Term of this Agreement shall be tolled for the period during which such Claim(s) are proceeding until fully and finally resolved

9.7 In order to ensure compliance with this Article 9, within twenty (20) days after notification by City of the receipt of any Claim(s), Owner shall deposit with City cash or other security in the amount of one hundred thousand dollars (\$100,000), satisfactory in form to the City Attorney, guaranteeing indemnification or reimbursement to City of all costs and fees related to any action triggering the obligations of this Article 9. If City is required to draw on that cash or security to indemnify or reimburse itself for such costs or fees, Owner shall restore the deposit to its original amount within fifteen (15) days after notice from City that replenishment is required. Additionally, if at any time the City Attorney determines that an additional deposit or additional security in an amount not to exceed an additional fifty thousand dollars (\$50,000) is necessary to

secure the obligations of this Article 9, Owner shall provide such additional payment or security within fifteen (15) days of notice from the City Attorney.

9.8 Hold Harmless: Owner's Construction and Other Activities. Owner shall indemnify, defend, save and hold City and its Agents, as defined in this Article 9 above, and shall hold and save them and each of them harmless from any and all claims, damages of any kind and litigation which may arise from Owner's or Owner's agents, contractors, subcontractors, agents, or employees' operations under this Agreement, whether such operations be by Owner or by any of Owner's agents, contractors or subcontractors or by any one or more persons directly or indirectly employed by or acting as agent for Owner or any of Owner's agents, contractors or subcontractors. Notwithstanding anything to the contrary in this Section 9.8, nothing herein shall make Owner liable for the negligence or willful misconduct of City's Agent(s).

9.9 Survival of Indemnity Obligations. All indemnity provisions set forth in this Agreement shall survive termination of this Agreement for any reason other than City's Default as provided herein and shall continue to be the liability and obligation of Owner, binding upon Owner, until the final resolution of all Claims, and shall survive the completion, partial completion, or abandonment of the Project.

9.10 Environmental Contamination. Owner shall indemnify and hold the City, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of the Owner, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors, excepting any 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, the City, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. The City may in its discretion participate in the defense of any such claim, action or proceeding. The provisions of this Section 9.10 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.

## **ARTICLE 10. THIRD PARTY LENDERS, ASSIGNMENT & SALE.**

10.1 Encumbrances. The parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property.

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

purposes of this Agreement and as long as such requests do not minimize, reduce, curtail, negate or in any way limit City's rights under this Agreement.

10.3 Assignment/Transfer/Sale. No assignment, transfer or sale of the rights or obligations of the Owner under this Agreement is permitted. Any sale, transfer, or assignment without City Council approval is a breach of this Agreement.

## **ARTICLE 11. MISCELLANEOUS PROVISIONS.**

### **11.1 Penalty.**

11.1.1 Owner acknowledges that to ensure proper compliance with the terms of this Agreement and any applicable laws, City must engage in costly compliance review, inspections, and if necessary enforcement actions to protect health, safety, and welfare of its residents. Penalty and interest provisions are necessary to assist City in compliance review and enforcement actions. If Owner fails to make any payment due, as required by this Agreement, including the Public Benefit Fee(s) in Article 5, City may impose a "Non-Performance Penalty." A "Non-Performance Penalty" of ten percent (10%) shall be applied to all past due payments. Payment of Non-Performance Penalty shall be in a single installment due on or before fifteen (15) days following delivery of a notice of non-performance penalty by the City to the Owner. This provision shall survive the termination of this Agreement.

11.1.2 If Owner fails to pay the Non-Performance Penalty, then, in addition to the principal amount of the Non-Performance Penalty, Owner shall pay City interest at the rate of eighteen percent (18%) per annum, computed on the principal amount of the Non-Performance Penalty, from fifteen (15) days following delivery of a notice of Non-Performance Penalty. This provision shall survive the termination of this Agreement.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and Agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or Agreements that are not contained or expressly contained herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement, provided, however, City at its option may rely on statements by Owner's agents at the public hearings leading to the City's approval of the project or on written documents by Owner's agents that are a part of the public record.

11.3 Severability. If any term, provision, covenant, or condition of this Agreement shall be determined invalid, void, or unenforceable, by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. The foregoing notwithstanding, the provision of the public benefits set forth in Article 5, including the payment of the fees set forth therein, are essential elements of this Agreement and the City would not have entered into this Agreement but for such provisions, and therefore in the event that any portion of such provisions are determined to be invalid, void, or unenforceable, at the City's option this entire Agreement shall terminate and from that point on be null and void and of no force and effect whatsoever. The foregoing notwithstanding, the development rights set forth in Article 4 of

this Agreement are essential elements of this Agreement and Owner would not have entered into this Agreement but for such provisions, and therefore in the event that any portion of such provisions are determined to be invalid, void or unenforceable, at Owner's option this entire Agreement shall terminate and from that point on be null and void and of no force and effect whatsoever.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California without regard to principles of conflicts of laws. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, since all parties were represented by counsel in the negotiation and preparation hereof.

11.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

11.6 Singular and Plural; Gender, and Person. Except where the context requires otherwise, the singular of any word shall include the plural and vice versa, and pronouns inferring the masculine gender shall include the feminine gender and neuter, and vice versa, and a reference to "person" shall include, in addition to a natural person, any governmental entity and any partnership, corporation, joint venture or any other form of business entity.

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

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

11.9 No Third Party Beneficiaries. The only parties to this Agreement are Owner and the City. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit, or be enforceable by any other person whatsoever.

11.10 Supersedes Previous Agreements. This Agreement when signed and executed by Owner and the Mayor of Covina supersedes any previous Agreements and renders them null and void.

11.11 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.12 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.



11.13 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and prosecuted in the Superior Court of the County of Los Angeles, State of California, and the parties hereto waive all provisions of federal or state law or judicial decision providing for the filing, removal or change of venue to any other state or federal court, including, without limitation, Code of Civil Procedure Section 394.

11.14 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 Owner is that of a government entity regulating the development of private property and the owner of such property.

11.15 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

11.16 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by the City of its power of eminent domain.

11.17 Agent for Service of Process. In the event Owner is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer, resident of the State of California, or if it is a foreign corporation, then Owner shall file, upon its execution of this Agreement, with the Chief Executive Officer or his or her designee, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon Owner. If for any reason service of such process upon such agent is not feasible, then in such event Owner may be personally served with such process out of the County of Los Angeles and such service shall constitute valid service upon Owner. Owner is amenable to the process so described, submits to the jurisdiction of the Court so obtained, and waives any and all objections and protests thereto.

11.18 Authority to Execute. The person or persons executing this Agreement on behalf of Owner warrants and represents that he/she/they have the authority to execute this Agreement on behalf of his/her/their corporation, partnership or business entity and warrants and represents that he/she/they has/have the authority to bind Owner to the performance of its obligations hereunder. Owner shall each deliver to City on execution of this Agreement a certified copy of a resolution and or minute order of their respective board of directors or appropriate governing body authorizing the execution of this Agreement and naming the officers that are authorized to execute

this Agreement on its behalf. Each individual executing this Agreement on behalf of his or her respective company or entity shall represent and warrant that:

(i) The individual is authorized to execute and deliver this Agreement on behalf of that company or entity in accordance with a duly adopted resolution of the company's board of directors or appropriate governing body and in accordance with that company's or entity's articles of incorporation or charter and bylaws or applicable formation documents; and

(ii) This Agreement is binding on that company or entity in accordance with its terms; and

(iii) The company or entity is a duly organized and legally existing company or entity in good standing; and

(iv) The execution and delivery of this Agreement by that company or entity shall not result in any breach of or constitute a default under any mortgage, deed of trust, loan agreement, credit agreement, partnership agreement, or other contract or instrument to which that company or entity is party or by which that company or entity may be bound.

11.19 Nexus/Reasonable Relationship Challenges. Owner agrees that the fees imposed are in fact reasonable and related to the mitigation of the negative impacts of the business on the City and consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, policies or programs set forth in this Agreement including, without limitation, any claim that the terms in this Agreement constitute an abuse of the police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, and/or impose an unlawful tax.

11.20 No Money Damages Relief Against the City. The parties acknowledge that the City would not have entered into this Agreement had it been exposed to damage claims from Owner, or anyone acting on behalf of Owner for any breach thereof. As such, the parties agree that in no event shall Owner, or Owners' partners, or anyone acting on behalf of Owner be entitled to recover money damages against City for breach of this Agreement.

11.21 Laws. Owner agrees to comply with all applicable state, regional, and local laws, regulations, policies and rules. In addition, Owner further agrees to comply with all issued entitlements, permits, licenses, including any and all applicable development standards. Specifically, Owner agrees to comply with all applicable provisions of CMC.

11.22 Compliance with Conditions of Approval. Owner agrees to comply with and fulfill all conditions of approval for any and all entitlement, permits, and/or licenses it receives from the City. All conditions of approval for all entitlements, permits and/or licenses are attached hereto and incorporated herein by this reference.

11.23 Consistency with Applicable Commercial Cannabis Regulation. The City and Owner acknowledge that this Agreement shall be read consistent with any statewide or national regulation of commercial cannabis that is promulgated in the future, either by legislative action or voter approval.

(SIGNATURES FOLLOW ON NEXT PAGE)

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the dates written above.

**CITY OF COVINA**

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

Date: \_\_\_\_\_

**OWNER**

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Fabian Velez, Chief Deputy City Clerk

Date: \_\_\_\_\_

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

*(Two signatures of corporate officers  
required unless corporate documents  
authorize only one person to sign the  
agreement on behalf of the corporation)*

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Candice Lee, City Attorney

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Legal Counsel for \_\_\_\_\_

Date: \_\_\_\_\_

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

State of California )  
County of Los Angeles )

On \_\_\_\_\_, 202\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature\_\_\_\_\_

(Seal)

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

State of California )  
County of Los Angeles )

On \_\_\_\_\_, 202\_\_, before me, \_\_\_\_\_,  
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foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature\_\_\_\_\_

(Seal)

### **List of Exhibit Documents**

No. 1 - Legal Description of the Property

No. 2 - Map showing Property and its location

No. 3 - Operations and Management Plan (refer to the RFP)

No. 4 – Conceptual Plans – For final plans refer to the approved tenant  
improvement plan check by Building and Safety Division (BLD 25-XXXX)

No. 5 - Labor Peace Agreement; or applicable Notarized Statement of Intent

**Exhibit Document No. 1**  
**Legal Description of the Property**

**WILL BE ADDED PRIOR TO CITY COUNCIL MEETING**



**Exhibit Document No. 2**  
**Map showing Property and its location**

**WILL BE ADDED PRIOR TO CITY COUNCIL MEETING**

**Exhibit Document No. 3**  
**Operations Plan (in reference to the RFP)**

**WILL BE ADDED PRIOR TO CITY COUNCIL MEETING**

**Exhibit Document No. 4**  
**Conceptual Plans – for final plans refer to the approved**  
**tenant improvement plan check by the Building and Safety**  
**Division**

**WILL BE ADDED PRIOR TO CITY COUNCIL MEETING**

**Exhibit Document No. 5**  
**Labor Peace Agreement; or applicable Notarized Statement of Intent**

**WILL BE ADDED PRIOR TO CITY COUNCIL MEETING**