

ORDINANCE NO. 1949

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA, PURSUANT TO AN EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, APPROVING A DEVELOPMENT AGREEMENT WITH HS FONTANA RETAIL, LLC, CONCERNING A RETAIL CANNABIS BUSINESS, AND DIRECT STAFF TO FILE A NOTICE OF EXEMPTION

WHEREAS, California Government Code Sections 65864 et seq. (“Development Agreement Statutes”) and Section 30-322 of the City’s Development Code authorizes the City Council of the City of Fontana to enter into a development agreement with those having a legal or equitable interest in real property in order to establish certain development rights in such property; and 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 its jurisdiction; and

WHEREAS, Planning Commission has found that development agreements will strengthen the public planning process, encourage private participation in comprehensive planning by providing a greater degree of certainty in that process, reduce the economic costs of development, allow for the orderly planning of public improvements and services, allocate costs to achieve maximum utilization of public and private resources in the development process, and ensure that appropriate measures to enhance and protect the environment are achieved; and

WHEREAS, pursuant to Section 30-322 of the City’s Development Code and Section 4 of City Council Resolution No. 85-217, the Planning Commission shall conduct a public hearing concerning any proposed development agreement in accordance with Government Code Section 65867 and shall, by resolution, render a recommendation to the City Council concerning the proposed development agreement, including the reasons for the recommendation and the relationship of the proposed development agreement to applicable general and specific plans and zoning requirements; and

WHEREAS, on July 26, 2022, in accordance with state law, the City Council adopted Ordinance No. 1899 adding Chapter 33 to the Fontana Municipal Code (“FMC”) to regulate commercial cannabis businesses within the City by establishing a regulatory permit scheme for commercial cannabis activities, such that each proposed commercial activity must have a regulatory permit and enter into a development agreement and operating agreement with the City Council; and

WHEREAS, on October 25, 2022, the City Council adopted Ordinance No. 1906

amending FMC Chapter 30 and Chapter 33 to rename “commercial cannabis” to “cannabis retailer-storefront” and reference special regulations for same and to make minor modifications to FMC Chapter 33 related to phasing, authorization letters, and locations for permit applications along with limiting the number of permits to be issued to any applicant to one; and

WHEREAS, Section 33-7 of the FMC limits the maximum number of commercial cannabis businesses authorized and designated locations to three, one in the north area, one in the central area and one in the south area of the City; and

WHEREAS, the City of Fontana received an application from HS Fontana Retail, LLC, (the “Applicant”) on May 3, 2023 for a Retail Commercial Cannabis Business Activity Permit for a location within the south area of the City, and on January 24, 2024 received a request for a development agreement with the Applicant (collectively the “Project”) to establish certain assurances including timing and the provision of public benefits for a commercial cannabis retail sales business at the Project site, an approximately 4,475 square feet of commercial building area on an approximately 1.50 to 3.50 acres,

Project Applicant: HS Fontana Retail, LLC
2151 E. Convention Center Way, Suite 235
Ontario, CA 91764

Project Location: The project site is located at 11275 Sierra Avenue, Suite 3-E (APN: 0194-381-46)

WHEREAS, the Project site is within the General Plan Land Use Designation of General Commercial (C-G) and is zoned General Commercial (C-2); and

WHEREAS, when the application for the retail commercial cannabis business activity permit was submitted by the Applicant, the zoning designation was verified as permissible by the City on May 3, 2023 for the Project site, located in the General Commercial (C-2), a permissible zoning district where a commercial cannabis business could operate in the City; and

WHEREAS, on September 19, 2023, the Applicant was notified of its top-ranking and of being selected/approved for a Commercial Cannabis Regulatory Permit, effectively establishing the use at the Project site; and

WHEREAS, the City wishes to protect and preserve the quality of life throughout the City, through careful consideration of the proposed development agreement and imposition of the requirements of FMC Chapter 33 upon the Applicant; and

WHEREAS, the City and the Applicant agree that, as a condition of allowing the Project, as further defined in the proposed Development Agreement, and due to the unique circumstances of the proposed Project, the Applicant shall be entitled to the assurances timeframes identified in the Development Agreement and shall in turn provide

public benefits, including by paying to the City a percentage of gross receipts of the Applicant's commercial cannabis retail sales by providing benefits to nonprofit organizations within the City and priority to and opportunities for local jobs, and work for the residents and contractors of the City; and

WHEREAS, because of the logistics, magnitude of the expenditure, and considerable lead time required to plan and develop the Property, HS Fontana Retail, LLC has proposed to enter into a development agreement concerning the Property ("Development Agreement"), to provide assurances that the Property can be developed without disruption caused by a change in the City's planning policies and requirements except as provided in the Development Agreement, which assurances will thereby reduce the actual or perceived risk of planning for and proceeding with development of the Property; and

WHEREAS, Applicant's interest in the Property, including that interest reflected in the Development Agreement, constitutes a legal or equitable interest in real property pursuant to California Government Code section 65865; and

WHEREAS, the Applicant proposes to develop and operate a commercial cannabis retail business in an approximately 4,475 square feet commercial building area on an approximately 1.501 to 3.500 acre lot which includes minor interior tenant improvement; and

WHEREAS, the terms and conditions of the Development Agreement have undergone review by the Planning Commission at a publicly noticed hearing held on April 2, 2024 and recommended that the City Council enter into the Development Agreement;

WHEREAS, the terms and conditions of the Development Agreement have undergone review by the Planning Commission at a publicly noticed hearing and have been found to be fair, just and reasonable, and that (i) the economic interests of the City's citizens and the public health, safety and welfare will be best served by entering into the Development Agreement; (ii) the Development Agreement is consistent with the General Plan; (iii) the Development Agreement is in conformity with the public convenience, general welfare and good land use practice; (iv) the Development Agreement will not be detrimental to the public health, safety and general welfare; and (v) the Development Agreement will not adversely affect the orderly development or the preservation of property values for the Property or any other property; and

WHEREAS, pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code §21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs., tit. 14, §15000 et seq.), the whole of the Project, including the Development Agreement, has been reviewed and found to be exempt from CEQA pursuant to State CEQA Guidelines Section 15301, Existing Facilities and a Notice of Exemption will be filed upon adoption of this Resolution; and

WHEREAS, notice of the public hearing was duly published and posted in

accordance with all legal requirements; and

WHEREAS, all other legal prerequisites to the adoption of this resolution have occurred.

THE CITY COUNCIL OF THE CITY OF FONTANA DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The above recitals are true, correct and incorporated herein by reference.

SECTION 2. Pursuant to California Government Code sections 65865 et seq., the City Council hereby approves the development agreement on file with the City Clerk and incorporated by reference herein, entitled "Development Agreement No. 24-003 among the City of Fontana and HS Fontana Retail, LLC."

SECTION 3. Based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds this Ordinance promotes the public health, safety and welfare of the community because the Development Agreement will enable needed improvements at the Property and the economic development within the Property, its surrounding communities and the citizens of the City.

SECTION 4. Pursuant to Government Code section 65868.5, within 10 days following the entering into of the Development Agreement, as evidenced by the full execution thereof, the City Clerk shall cause to be recorded with the San Bernardino County Recorder a copy of the executed Development Agreement.

SECTION 5. CEQA. The whole of the Project, including the Development Agreement, has been reviewed and found to be exempt from California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15301, Existing Facilities, as the cannabis retail use will be located in an existing commercial facility with no proposed expansion to the building and only making minor interior improvements.

SECTION 6. This Ordinance shall take effect thirty (30) days after the date of its adoption, and prior to the expiration of the fifteen (15) days from the passage thereof, the Ordinance or a summary of the Ordinance shall be published at least once in the Herald News, a newspaper of general circulation in the City of Fontana. Thereafter this Ordinance shall be in full force and effect.

PASSED, APPROVED, AND ADOPTED this 23rd day of April, 2024.

READ AND APPROVED AS TO LEGAL FORM:

ATTACHMENT NO. 2

4

City Attorney

Ordinance No. 2024-1949

I, Germaine Key, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council, do hereby certify that the foregoing Ordinance is the actual Ordinance introduced at a regular meeting of said City Council on the 23rd day of April, 2024, and was finally passed and adopted not less than five days thereafter on the 14th day of May, 2024 by the following vote to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

City Clerk of the City of Fontana

Mayor of the City of Fontana

ATTEST:

City Clerk

EXHIBIT A

**DEVELOPMENT AGREEMENT
WITH HS FONTANA RETAIL, LLC DBA HIGH SEASON**

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

City of Fontana
8353 Sierra Ave.
Fontana, CA 92335

Attention: City Clerk

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

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into this ___th day of _____, 2024 (the "Execution Date"), by and between the CITY OF FONTANA, a California municipal corporation ("City") and ("**HS Fontana Retail, LLC dba High Season**"), with its principal address located at 2151 E. Convention Center Way, Suite 235 Ontario California 91764, ("Permittee"). City and Permittee are sometimes referenced together herein as the "Parties." In instances when a provision hereof applies to each of the Parties individually, either may be referenced as a "Party." The Parties hereby jointly render the following statement as to the background facts and circumstances underlying this Agreement.

RECITALS

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

- D. Permittee currently owns legal or equitable interest in real property considered in this Agreement, located at 11275 Sierra Avenue, Suite 3-E, Fontana California 92337, County of San Bernardino, State of California (the “Site”). The Site includes Assessor’s Parcel Numbers: 0194-381-46-0000 as is more fully described in Exhibit A and shown on the map in Exhibit B, both exhibits being attached hereto and incorporated herein by this reference.
- E. On September 13, 2016, the City Council adopted Ordinance No. 1747 prohibiting all marijuana uses in the City to the extent allowed under California and included a provision requiring a Residential Indoor Marijuana Cultivation (“RIMC”) permit for any individual who desires to grow up to six (6) marijuana plants in their private residence.
- F. On November 8, 2016, California voters approved Proposition 64, titled the “Adult Use of Marijuana Act” (the “AUMA”) and enacted a state statutory scheme legalizing, controlling, and regulating the cultivation, processing, manufacturing, distribution, testing, and sale of nonmedical (“adult-use” or “recreational”) cannabis, including cannabis products, for use by adults twenty-one (21) years of age and older.
- G. On June 27, 2017, Governor Brown signed Senate Bill 94, the “Medicinal and Adult- Use Cannabis Regulation and Safety Act” (“SB 94” or the “MAUCRSA”). SB 94 creates one state regulatory structure for medical and adult-use cannabis use and commercial cannabis activities, reconciling AUMA, with Proposition 215 and MAUCRSA. SB 94 continues to provide that a state license will not be approved for a business to engage in Commercial Cannabis Activity if the business activity violates any local ordinance or regulation.
- H. The City Council adopted Ordinance No. 1899, on July 12, 2022, as amended on October 25, 2022, establishing a regulatory permit scheme for commercial cannabis activities, such that each proposed commercial activity must have an agreement and a regulatory permit prior to operation.
- I. Presently, Permittee intends to utilize the Site for the sale of cannabis. Permittee is an authorized corporation as allowed by law duly formed under California law for the purpose of commercial cannabis sales (“Commercial Cannabis Activity”). Such Commercial Cannabis Activity facilities shall operate in accordance with the California State Compassionate Use Act (Health & Saf.Code, § 11362.5) (“CUA”), the Medical Marijuana Program Act (Health & Saf. Code, §§ 11362.7 et seq.) (“MMP”), the Control, Regulate and Tax Adult Use of Marijuana Act of 2016 (“AUMA”), and the Medicinal and Adult Use Regulation and Safety Act (“MAUCRSA”), Fontana Municipal Code Ordinance Chapter 33 and regulations promulgated thereunder, and any additional California state law related to Commercial Cannabis Activity (collectively “State Cannabis Law”). Prior to operating a Commercial Cannabis Activity facility, Permittee shall be required to obtain a Commercial Cannabis Activity regulatory permit from City pursuant to City ordinance.
- J. Permittee shall obtain all required state licenses issued under State Cannabis Law.
- K. Pursuant to the California Environmental Quality Act (“CEQA”) (Public Resources Code §21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs.,tit. 14, §15000 et seq.), the whole of the Project, including the Development Agreement, has been reviewed and

found to be exempt from CEQA pursuant to State CEQA Guidelines Section 15301, Existing Facilities and a Notice of Exemption will be filed upon adoption of this Resolution.

- L. Permittee presently intends to develop and open Commercial Cannabis Activity facilities (“Commercial Cannabis Activity Facility”) on the Site consistent with State Cannabis Law, all other applicable California law, and Project Approvals (known as the “Project”).
- M. The Project will include commercial retail cannabis sales to individuals under State Cannabis Law at the Project Site (“Commercial Cannabis Activity Facility”).
- N. The Project will consist of a total planning area of approximately 4475 square feet of commercial building area on a lot of approximately 1.501 to 3.500 acres. The Project is designed to integrate seamlessly into the City of Fontana’s General Plan Goals and Policies for Commercial Districts, including the latest provisions for Commercial Cannabis Activity. The Project includes interior improvements to the existing building.
- O. City and Permittee have agreed that, as a condition of allowing the Project, as defined herein, and due to the unique circumstances of the proposed Project, shall pay to the City a retail fee based on the gross receipts of Developer’s commercial cannabis retail sales, as hereinafter defined.
- P. City has given public notice of its intention to adopt this Agreement and has conducted public hearings thereon pursuant to California Government Code section 65867 and Municipal Code Section 30-322. City has found that the provisions of this Agreement and its purposes are consistent with the objectives, policies, general land uses and programs specified in City’s General Plan, zoning code and municipal ordinances.
- Q. City, in entering into this Agreement, acknowledges that certain City obligations hereby assumed shall survive beyond the terms of the present City Council members, that this Agreement will serve to bind City and future City Councils to the obligations hereby undertaken, and that this Agreement shall limit the future exercise of certain governmental and proprietary powers of City. By approving this Agreement, the City Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than defer its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by City staff, the Planning Commission, and the City Council and have been found to be fair, just, and reasonable. City has concluded that the pursuit of the Project will serve the best interests of its citizens and that the public health, safety, and welfare are best served by entering into this Agreement. Permittee has represented to City that it would not consider or engage in the Project absent City approving this Agreement, *i.e.*, assuring Permittee that it will enjoy the development rights given in this Agreement. The City Council specifically finds that this Agreement satisfies each and every one of the required findings in Municipal Code Section 30-322.
- R. The City agrees that Permittee’s land use entitlements for the Project shall vest for the term of this Agreement as described below, including, but not limited to, the right to commercial

cannabis retail sales and related development in compliance with State Cannabis Law and local ordinances.

- S. After conducting a duly noticed hearing on April 2, 2024, in conjunction with Section 30-322 of the City's Municipal Code, the Planning Commission of the City reviewed, considered, and approved Resolution No. PC 2024-026. The Planning Commission found the Project consistent with the objectives, policies, general land uses and programs specified in the general plan; compatible with the uses authorized in the General Commercial (C-G) ; is in conformity with the public necessity, public convenience, general welfare and good land use practices; will not be detrimental to the health, safety and general welfare of the city; will not adversely affect the orderly development of property or the preservation of property values; and will have a positive fiscal impact on the City.
- T. After conducting a duly noticed hearing on April 23, 2024, in conjunction with Section 30-322 of the City's Municipal Code, and after independent review and consideration, the City Council approved the execution of this Agreement. The City Council found the Project consistent with the objectives, policies, general land uses and programs specified in the general plan; compatible with the uses authorized in the Commercial zone; is in conformity with good land use practices; will not be detrimental to the health, safety and general welfare of the City; and is in the best interest of the City of Fontana and its residents.

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

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

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

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

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

3.2 Request by Permittee of Term Extension. The Term of this Agreement may be extended at the request by Permittee by written notice no later than one hundred twenty (120) calendar days before the expiration of the term and Permittee shall not be in default with respect to any provision of this Agreement or any subsequent agreement or understanding between the Parties arising from or related to this Agreement, having received notice from City of said default per this Agreement, or if Permittee did in fact default as to this Agreement, upon notice from City, that Permittee did cure said default during the period to cure provided herein to City's satisfaction.

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

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

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

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

4.3 Gross Receipts. Except as otherwise specifically provided, means the total amount actually received or receivable from all sales and transfers; the total amount of compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; and discounts, gifts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

4.3.1 Cash discounts were allowed and taken on sales;

4.3.2 Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;

4.3.3 Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;

4.3.4 Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;

4.3.5 Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business; and

4.3.6 Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar.

4.3.7 Retail sales of non-cannabis products, such as t-shirts, sweaters, hats, stickers, key chains, bags, books, posters, rolling papers, cannabis accessories such as pipes, pipe screens, vape pen batteries (without cannabis) or other personal tangible property.

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

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

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

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

4.5.3 The control and abatement of nuisances;

ATTACHMENT NO. 2

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

4.5.5 The exercise of the power of eminent domain.

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

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

5. Fee Payments.

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

5.1.1 Retail Fee shall be paid quarterly. Retail Fees shall be due to the City by the 15th of each month succeeding Operational Quarter. Failure to pay the Retail Fee within thirty 30 days after the due date shall result in an additional penalty for nonpayment in a sum equal to twenty-five (25%) of the total amount due. The provisions of this subsection shall survive any termination or expiration of this Agreement for any reason.

5.2 Community Benefits. Permittee shall contribute the greater of one percent (1%) of its Gross Receipts or \$250,000 annually (“Community Benefit Contribution” or “CBC”), which funds shall exclusively be used in support of the design, development, construction, or operation of a children’s museum or affiliated services, operations, and appurtenant uses of a children’s museum to be constructed in the downtown area of the City of Fontana. CBC Payments shall be made annually for the term of this agreement, as extended. CBC contributions equal to 1% shall be calculated on an annual calendar year basis with payments of \$250,000 or 1% of Gross Receipts, whichever is greater, due and payable on or before March 1 of the year following calendar year. By way of example, CBC payments for calendar year 2024 shall be made on or before March 1, 2025. All funds are to be directed by The Fontana Community Foundation, which shall direct expenditures as appropriate for the design, development, construction, or operation of the children’s museum or appurtenant uses. Permittee must provide a written record of all funds and their recipients, provided to the City each year during the renewal process.

5.2.1 Permittee shall encourage employees of Permittee to provide individual volunteer services within the Fontana Community. Employees that provide verifiable volunteer service to the Fontana community shall be entitled to compensation by Permittee at their regular pay rate for up to 40 hours annually. Verification of service performed shall be in the sole discretion of Permittee. Permittee shall provide documentation to City of any such employee volunteer services.

5.2.2 The provisions of this subsection shall survive any termination or expiration of this Agreement for any reason.

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

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

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

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

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

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

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

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

8. Indemnification. Permittee shall defend (with Counsel reasonably approved by the City), indemnify, and hold harmless the City and its Council, boards and commissions, officers, officials, employees, and agents from and against any and all actual and alleged liabilities, demands, claims, losses, damages, injuries, actions or proceedings and costs and expenses incidental thereto (including costs of defense, settlement and attorney's fees), which arise out of, or which are in any way related to i) the cannabis business permit and any land use entitlement related thereto, ii) the proceedings undertaken in connection with the approval, denial, or appeal of the cannabis business permit and any land use entitlement related thereto, iii) any subsequent approvals or licensing/permits relating to the cannabis business permit and any land use entitlement related thereto, iv) the processing of the cannabis business permit and any land use entitlement related thereto, v) any amendments to the approvals for the cannabis business permit and any land use entitlement related thereto, vi) the City's approval, consideration, analysis, review, issuance, denial or appeal of the cannabis business permit; vii) the City's approval, consideration, analysis, review, issuance, denial or appeal of any land use entitlement related thereto, viii) the City's drafting, adoption and passage of an ordinance, and related resolutions, policies, rules and regulations, allowing for cannabis businesses, ix) the City's drafting, adoption and passage of an ordinance, and related resolutions if necessary in the future regarding any zoning law amendment(s) related to Permittee, x) the operation of Project or activity, xi) the process used by the City in making its decision to approve, consider, analyze, review, issue, or deny, my cannabis business permit or any related land use entitlement, or the appeal of either, xii) City's compliance or failure to comply with applicable laws and regulations or xiii) the alleged violation of any federal, state or local laws by Permittee or any of its officers, employees or agents, except where such liability is caused by the sole negligence or willful misconduct of the City.

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

8.2 Permittee shall fund a deposit account ("Fund") to reimburse the City's cost, including attorney's fees, to defend any claim, action, or proceeding that is or may be subject to the agreement on limitations of City's Liability, and Certifications, Assurances Warranties, and Indemnification to City. In the event that any such claim, action, or proceeding is filed against the

City, Permittee shall within 30 days of the filing deposit an initial sum of \$25,000 to the Fund to reimburse my portion of the City defense costs, as determined by the City in its sole discretion. The Fund shall, once established, shall at all times contain an amount necessary to cover not less than three months' worth of budgeted expenditures by the City relating to the City's defense of the claim, action, or proceeding, including all time to appeal, or as long as expenditures made by the City relating to its defense remain unreimbursed, whichever is later. The City may, from time to time, in the City's sole and absolute discretion, request additional deposits from the Permittee to ensure the fund balance is adequate to defend any claim, action or proceeding, including appeals related thereto. Once all remaining and outstanding reimbursements have been paid to the City by Permittee, City shall return to me any remaining unused portion of my deposit.

8.3 The provisions of this subsection shall survive any termination or expiration of this Agreement for any reason.

9. Hold Harmless.

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

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

9.1.3 The provisions of this subsection shall survive any termination or expiration of this Agreement for any reason.

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

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

project's development processing. Permittee shall pay such costs and expenses of Private Contractors via reimbursement to City, per City's applicable policies and procedures. City shall have absolute discretion in the selection of such Private Contractors.

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

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

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

11. Effect of Agreement.

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

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

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

12. Specific Criteria Applicable to Development of the Project.

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

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

13. Supersedure of Subsequent Laws or Judicial Action.

13.1 The provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with any new Law or decision issued by a court of competent jurisdiction (a “Decision”), enacted or made after the Execution Date which prevents or precludes compliance with one or more provisions of this Agreement. Promptly after enactment of any such new Law, or issuance of such Decision, the Parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. In addition, Permittee and City shall have the right to challenge the new Law or the Decision preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect, except that the Term shall be extended, in accordance with Section 3.1 above, for a period of time equal to the length of time the challenge was pursued, to extent such challenge delayed the implementation of the project.

13.2 The Parties recognize that California adopted, through ballot initiative, the AUMA and may adopt through initiative or legislative action other laws and regulations pertaining

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

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

15. CEQA. Pursuant to the California Environmental Quality Act (“CEQA”) (Public Resources Code §21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs., tit. 14, §15000 et seq.), the whole of the Project, including the Development Agreement, has been reviewed and found to be exempt from CEQA pursuant to State CEQA Guidelines Section 15301, Existing Facilities and a Notice of Exemption will be filed upon adoption of this Resolution.

16. Building Permits. Nothing set forth herein shall impair or interfere with the right of City to require the processing of building permits as required by law relating to any specific improvements proposed for the Project pursuant to the applicable provisions of the City’s municipal code, inclusive of such California and International Codes as have been adopted in accord therewith, that are in effect at the time such permits are applied for; provided, however, no such permit processing shall authorize or permit City to impose any condition on and/or withhold approval of any proposed improvement the result of which would be inconsistent with this Agreement.

17. Review for Compliance.

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

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

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

20. Meet and Confer. Upon notice by one Party to another as to preemption or frustration of this Agreement by law or regulation, the Parties shall promptly meet and confer in good faith and make a reasonable attempt to modify or suspend this Agreement to comply with

such applicable Federal or State law or regulation. If the Parties cannot agree on a manner or method to comply with such Federal or State law or regulation, the Parties may, but shall not be required to, engage in alternative dispute resolution.

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

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

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

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

If to Permittee: HS Fontana Retail, LLC
2151 E. Convention Center Way, Suite 235
Ontario, CA 91764
Attention Compliance

With copy to: Ezri Vargas, Esq.
2151 E. Convention Center Way, Suite 222
Ontario, CA 91764
Attention : Legal

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

22. Breach and Remedies. Notwithstanding any provision of this Agreement to the contrary, Permittee shall not be deemed to be in default under this Agreement with respect to any obligation owed solely to City, and City may not terminate or modify Permittee’s rights under this Agreement, unless City shall have first delivered a written notice of any alleged default to Permittee that specifies the nature of such default. If such default is not cured by Permittee within fourteen (14) calendar days after receipt of such notice of default, City may terminate Permittee’s rights under this Agreement. In the event that a breach of this Agreement occurs, irreparable harm

is likely to occur to the non-breaching Party and damages will be an inadequate remedy. To the extent permitted by law, therefore, it is expressly recognized that injunctive relief and specific enforcement of this Agreement are proper and desirable remedies, and it is agreed that any claim by Permittee against City for an alleged breach of this Agreement shall be remedied by injunctive relief or an appropriate action for specific enforcement of this Agreement and not by a claim or action for monetary damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Signatures on following pages]

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

“CITY”

CITY OF FONTANA, CA
a California Municipal Corporation

Date: _____, 2024

By: _____
Acquanetta Warren
Mayor

By: _____
Matt C. Ballantyne
City Manager

Attest
By: _____
Germaine McClellan Key
City Clerk

Approved as to form:

Best, Best & Krieger, LLP

By: _____
Ruben Duran, Esq.
City Attorney

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA } COUNTY OF _____ }

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

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

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

WITNESS my hand and official seal.

Signature of Notary

“PERMITTEE” _____

Date: _____, 2023

By: _____
Its: Managing Member

Approved as to form:

By: _____
Eric Lightman
_____, Esq.
Attorney for Permittee

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA }
COUNTY OF _____ }

On _____ before me _____
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature of Notary

Development Agreement Acknowledgement and Authorization to Record

Re: Acknowledgement of Recording of Development Agreement Upon Property

I acknowledge I am the owner of the property located at 11275 Sierra Avenue, Suite 3-E, Fontana, California, 92337 (“Property”). It is my understanding that as part of the City of Fontana Commercial Cannabis Permit process, HS Fontana Retail, LLC dba High Season (“Tenant”) must enter into a Development Agreement with the City.

Pursuant to Government Code section 65868.5 a development agreement shall be recorded against real property with the county recorder. By means of this acknowledgement, I am consenting for the foregoing Development Agreement to be recorded against the Property. I also acknowledge that all the conditions and requirements of the Development Agreement are the sole responsibility of the Tenant, and not of the undersigned owner of the Property.

“Owner”

Date: _____, 2024

By: _____

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA }
COUNTY OF _____ }

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

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

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

WITNESS my hand and official seal.

Signature of Notary

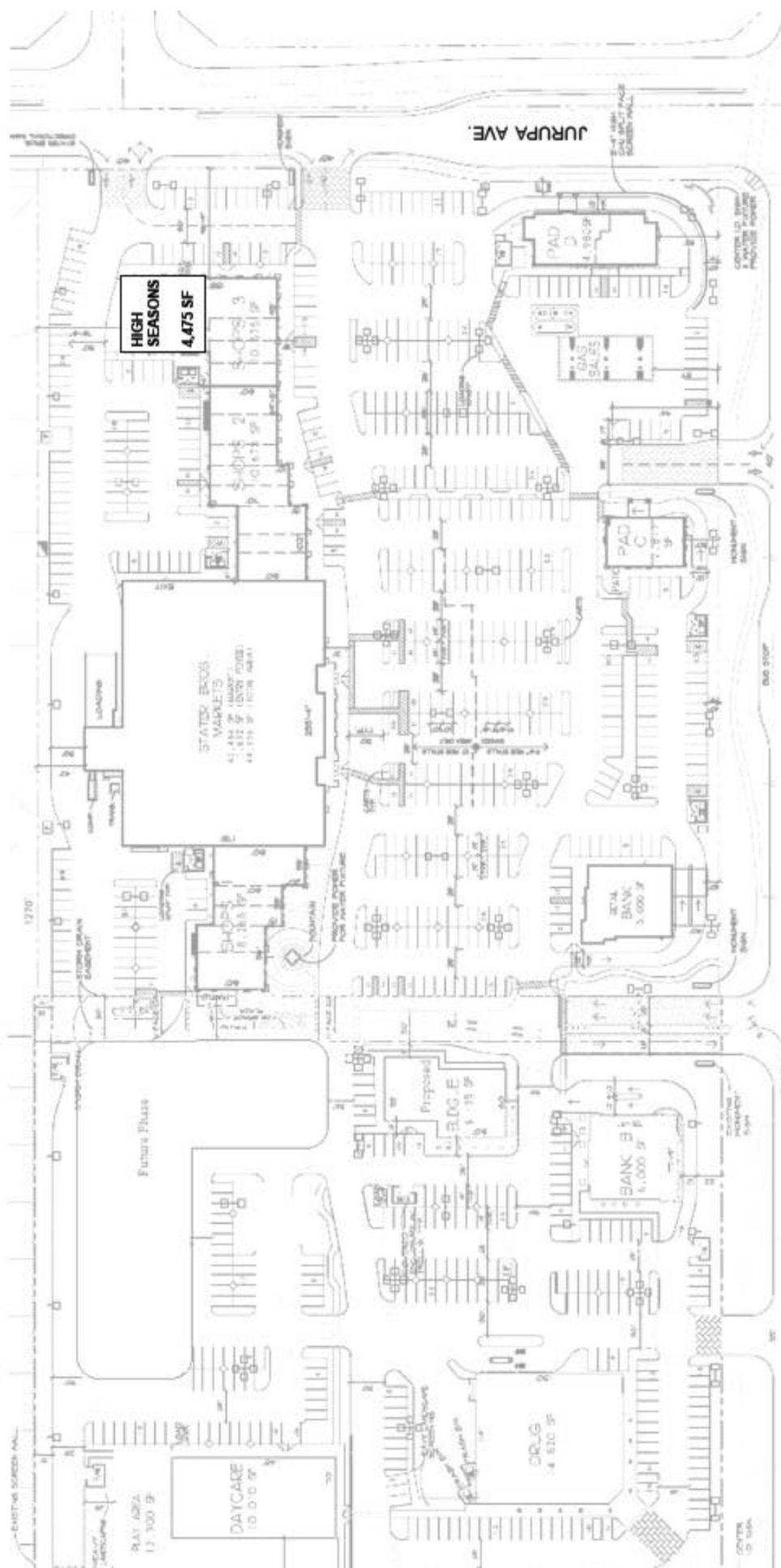
EXHIBIT A

PARCEL NO. 0194-381-46-0000 DESCRIPTION

Parcels 1 through 8 inclusive and 11 of Parcel Map No. 18450, in the City of Fontana, County of San Bernardino, State of California, as per Map recorded in Book 229 Page(s) 15 through 18 of Parcel Maps in the Office of the County Recorder of said County.

0194-381-46

EXHIBIT B
MAP OF THE SITE



PROJECT INFORMATION

SITE AREA	+/- 0.00 AC	+/-	0.000 SF
BUILDING:	4,475		
LAND / BLDG RATIO:	00/00		
COVERAGE:	0.0%		
PARKING REQUIRED:	00 STALLS		
RETAIL (1/175 SF X 4,485)	00 STALLS		
PARKING PROVIDED:	00 STALLS		



EXHIBIT C
OPERATING AGREEMENT

OPERATING AGREEMENT FOR COMMERCIAL CANNABIS BUSINESS LOCATED IN THE CITY OF FONTANA, CALIFORNIA

THIS OPERATING AGREEMENT (this “Operating Agreement”) for a Commercial Cannabis Business is made and entered into this ___th day of _____, 2024 (“Effective Date”), by and between the CITY OF FONTANA, a California municipal corporation (“City”) and HS Fontana Retail, LLC dba High Season, with its principal address located at 2151 E. Convention Center Way, Suite 235 Ontario California 91764, (“Commercial Cannabis Business”). The City and Commercial Cannabis Business may be referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

A. The City of Fontana, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California.

B. The City Council adopted Ordinance No. 1899, on July 12, 2022, as amended on October 25, 2022, establishing a regulatory permit scheme for commercial cannabis activities, such that each proposed commercial activity must have an Agreement and a regulatory permit prior to operation.

C. The Commercial Cannabis Business submitted an application to the City for a use permit to conduct certain commercial cannabis business in the City, located at 11275 Sierra Avenue, Suite 3-E, Fontana California 92337 (“Subject Property”).

D. The City issued a Commercial Cannabis Permit to the Cannabis Business on September 19 2023, a true and correct copy of which is attached hereto as Exhibit A, to permit cannabis retail sales at the Subject Property, consistent with the provisions and requirements of Chapter 33 of the Fontana Municipal Code, permitting cannabis sales in the City.

E. As required by Chapter 33 of the Fontana Municipal Code, the Parties now wish to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, conditions, and covenants set forth herein, the Parties agree as follows:

AGREEMENT

1. Incorporation of Recitals. The Recitals, and all defined terms set forth in this Agreement, are hereby incorporated into this Agreement as if set forth herein in full.

2. Public Benefit and Social Equity.

2.1 Intent. The purpose of this Agreement is to ensure positive community impacts from commercial cannabis business operations through local sourcing, community benefit and sustainable business practices, and the collection of required fees as applicable for the operation

of a commercial cannabis business and to provide mitigation options to be used by City to compensate for impacts to City services, residents, and/or businesses as set forth in Fontana Municipal Code Chapter 33. The Parties agree that this Agreement confers substantial private benefits on Commercial Cannabis Business which should be balanced by commensurate public benefits. As part of the cannabis Regulatory Safety Permit process, Commercial Cannabis Business agrees to enter into this Agreement. Commercial Cannabis Business acknowledges that City and Commercial Cannabis Business have had extensive negotiations and proceedings prior to entering into this Agreement. Commercial Cannabis Business has elected to execute this Agreement as it provides Commercial Cannabis Business with important economic benefits. Accordingly, the Parties intend to provide consideration to the public to balance the private benefits conferred on Commercial Cannabis Business by providing mitigation measures to the public and to pay for City services.

2.2 Local Hiring and Sourcing. Commercial Cannabis Business agrees to use its reasonable efforts to hire qualified City of Fontana residents, currently living in Fontana, to work at its commercial cannabis businesses. Commercial Cannabis Business shall also use reasonable efforts to retain the services of qualified contractors and suppliers who are located in the City of Fontana or who employ a significant number of City of Fontana residents. Commercial Cannabis Business shall make a good faith effort to advertise on various social media sites, at local job fairs, and through public agencies and organizations.

3. Definitions. The following terms shall have the following meanings for purposes of this Agreement, but other terms may be defined elsewhere in this Agreement.

3.1 “Commercial Cannabis Permit” means the regulatory permit issued by the City to the Commercial Cannabis Business pursuant to the provisions of Chapter 33 of the Fontana Municipal Code.

3.2 “City Permits” means and includes all building permits, use permits, zoning amendments, operating agreements, development agreements, and other permits, including the cannabis business permit, licenses, entitlements, and agreements that the City, acting in its governmental capacity, must issue or approve for the Cannabis Business to operate in accordance with the City’s regulations and this Agreement.

3.3 “Commencement Date” means the date that all of the following have occurred: (1) the City has issued all necessary City Permits; (2) the Cannabis Business has obtained all necessary State Licenses to operate; and (3) the Cannabis Business has obtained a certificate of occupancy.

3.4 “City Manager” means the City Manager and his or her designee.

3.5 “Effective Date” means the date first entered above as the Effective Date and is the date that both Parties have signed this Agreement.

3.6 “Manager” means a person with responsibility and authority over the establishment, management, supervision, or oversight of the operation of the Commercial Cannabis Business.

3.7 “State License(s)” means all licenses required to be issued by the State of California for operation of the Commercial Cannabis Business pursuant to Division 10 of the Business and Professions Code and applicable state regulations, including but not limited to Division 42 of Title 16, Division 8 of Title 3, and Division 1 of Title 17 of the California Code of Regulations (“CCR”), as those provisions may be amended.

3.8 “Term” means the period of time this Agreement is in effect as specified in Section 5.

4. Consideration. As consideration for the rights and benefits it enjoys under this Agreement, including its operation of approved cannabis uses in the City during the Term, the Commercial Cannabis Business shall pay the City fees as set forth by Resolution by the City Council.

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

5.1 Term Extension. This Agreement shall be subject to two (2) year extensions at the sole discretion of the City. If at the sole discretion of the City, the City finds that Permittee demonstrates to have complied in good faith with the terms and conditions of this Agreement, the Parties may enter into a written extension signed by both Parties.

5.2 Request by Permittee of Term Extension. The Term of this Agreement may be extended at the request by Permittee by written notice no later than one hundred twenty (120) calendar days before the expiration of the term and Permittee shall not be in default with respect to any provision of this Agreement or any subsequent agreement or understanding between the Parties arising from or related to this Agreement, having received notice from City of said default per this Agreement, or if Permittee did in fact default as to this Agreement, upon notice from City, that Permittee did cure said default during the period to cure provided herein to City’s satisfaction.

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

6. Business License Required. A valid City of Fontana Business License is required for all persons engaged in transacting and carrying on any commercial cannabis business activity in the City of Fontana. It is unlawful for any person or legal entity to commence, transact or carry-on cannabis business activity in the City of Fontana without first having procured a City of Fontana cannabis business license.

7. Bond Requirement. Commercial Cannabis Business shall provide proof of a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) to cover the cost of enforcing the terms of Chapter 33 and this Agreement if necessitated by a violation of the licensing requirements.

8. Records and Recordkeeping.

8.1 Commercial Cannabis Business shall maintain accurate books and records in an electronic format, detailing all of the revenues and expenses of the business, and all of its assets and liabilities. On no less than an annual basis, or at any time upon reasonable request of the City, Commercial Cannabis Business shall file a sworn statement detailing the Commercial Cannabis Business's revenue and number of sales during the previous 12-month period (or shorter period based upon the timing of the request), provided on a per-month basis. The statement shall also include gross revenues for each month, and all applicable taxes paid or due to be paid. On an annual basis, Commercial Cannabis Business shall submit to the City a financial audit of the Commercial Cannabis Business operations conducted by an independent certified public accountant. Each permittee shall be subject to a regulatory compliance review and financial audit as determined by the City.

8.2 Commercial Cannabis Business shall maintain a current register of the names and the contact information (including the name, address, and telephone number) of anyone owning or holding an interest in the Commercial Cannabis Business, and separately of all the officers, managers, employees, agents and volunteers currently employed or otherwise engaged by the Commercial Cannabis Business. The register required by this paragraph shall be provided to the City upon request.

8.3 All records collected by Commercial Cannabis Business shall be maintained for a minimum of seven years and shall be made available by the Commercial Cannabis Business to the agents or employees of the City upon request, except that private medical records shall be made available only pursuant to a properly executed search warrant, subpoena, or court order.

8.4 Subject to any restrictions under the Health Insurance Portability and Accountability Act (HIPAA) regulations, Commercial Cannabis Business shall allow City officials to have access to the business's books, records, accounts, together with any other data or documents relevant to its permitted commercial cannabis activities, for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data or documents will be produced no later than 24 hours after receipt of the City's request, unless otherwise stipulated by the City. The City may require the materials to be submitted in an electronic format that is compatible with the city's software and hardware.

9. Records Inspection, Examination and Audit. Commercial Cannabis Business acknowledges and agrees that City is empowered under this Agreement to inspect, examine and audit Commercial Cannabis Business's books and records (including tax filings and returns). City or its authorized agents shall have the power and authority to conduct a full inspection, examination and audit of such books and records (including tax filings and returns) at any reasonable time, including but not limited to, during normal business hours. In the event any such books, records,

tax filings and returns cannot be made fully available within the City of Fontana, Commercial Cannabis Business acknowledges and agrees that it shall reimburse City for the cost of all transportation, lodging, meals, portal-to-portal travel time, and other incidental costs reasonably incurred by City or its authorized agents in obtaining said full inspection, examination and audit. In the event that said records inspection, examination and audit determines that a net operating agreement or development agreement fee payment deficiency of greater than five percent (5%) exists; Commercial Cannabis Business acknowledges and agrees that it shall reimburse City for the full cost of said records inspection, examination and audit reasonably incurred by City or its authorized agents.

10. General Terms and Conditions. The Commercial Cannabis Business shall comply with all of the following terms and conditions for the Term of this Agreement:

10.1 This Agreement is only valid for the Commercial Cannabis Business to operate at the Subject Property identified in this Agreement. The rights and obligations set forth in this Agreement shall not be transferred, assigned, or assumed unless agreed to in advance in writing by the City. The Commercial Cannabis Business expressly acknowledges, understands and agrees that nothing in this Agreement confers any ongoing vested property right or entitlement to conduct the Commercial Cannabis Business, or any other commercial cannabis activity, at the Subject Property; this Agreement sets forth only the operational requirements of the Commercial Cannabis Business as otherwise approved by the City and the Commercial Cannabis Business will be required to obtain a permit in accordance with Chapter 33 of the Fontana Municipal Code which the City shall issue in accordance with this Agreement.

10.2 Conditions placed on any City Permits, expressly including the Commercial Cannabis Business Permit shall be conditions and requirements of this Agreement. Violations of the City Permits shall be deemed violations of this Agreement and shall constitute a material breach of this Agreement. Violations of any applicable State Licenses shall be deemed violations of this Agreement and shall constitute a material breach of this Agreement.

10.3 The Commercial Cannabis Business shall obtain and maintain at all times a valid Commercial Cannabis Permit, Use Permit, and applicable State License(s) prior to and during operation of the Cannabis Business. The City shall issue a Commercial Cannabis Permit and any other City Permits to the Commercial Cannabis Business provided that the Cannabis Business is in compliance with the provision of Chapter 33 of the Fontana Municipal Code and State Law.

10.3.1 As soon as practicable, the Commercial Cannabis Business shall inform the City when it obtains its necessary State License(s), and shall provide a copy of the State License(s) to the City Manager. The City shall cooperate with the Commercial Cannabis Business as appropriate and as needed to facilitate the State's issuance of a State License(s) to the Commercial Cannabis Business. Failure of the Commercial Cannabis Business to procure and produce evidence of receipt of any required state licenses within eighteen months of the effective date of this Agreement shall be deemed a material and incurable breach of the Agreement and, this Agreement, along with any permits issued by the City for a Commercial Cannabis Business shall immediately be deemed null and void and the Commercial Cannabis

Business shall be prohibited from application for a future Commercial Cannabis Business permit in the City for a period of ten years.

10.3.2 The Commercial Cannabis Business agrees to provide City with copies of any reports provided to a State Cannabis Licensing Agency, including any required financial or compliance reports, within thirty (30) days of that submission and further agrees to keep such records in accordance with State law and Chapter 33 of the Fontana Municipal Code.

10.3.3 The City shall diligently process the Commercial Cannabis Business's applications for all City Permits. This Agreement commits the City in advance to approve the City Permits provided that the Commercial Cannabis Business complies with all the provisions of Chapter 33 of the Fontana Municipal Code and the requirements to obtain City Permits. Nothing in this Agreement relieves the Commercial Cannabis Business of the obligation to comply with all requirements of the Fontana Municipal Code.

10.4 The Commercial Cannabis Business agrees to comply with all applicable State Law and local laws and regulations applicable to operation of the Commercial Cannabis Business, including Chapter 33 of the Fontana Municipal Code.

10.5 The Commercial Cannabis Business agrees to conduct an annual financial audit and/or compliance review, at Commercial Cannabis Business's cost, as requested by the City.

11. Operational Requirements. In addition to all operating requirements set forth in Chapter 33 of the Fontana Municipal Code, the Commercial Cannabis Business shall comply with the following specific operational requirements:

11.1 The Commercial Cannabis Business shall immediately notify the Fontana Police Department of any criminal activity, or suspected criminal activity, occurring at the Subject Property. In the event of any internal security system breach, including a faulty alarm system, broken or damaged surveillance cameras or other video recording equipment, or broken or damaged locks, doors, or lighting which may increase risk of criminal activity at the Subject Property, the Manager of the Commercial Cannabis Business shall notify the City Police Department as soon as practicable after becoming aware of the security system breach. The Commercial Cannabis Business shall diligently attempt to fix or resolve any such security breach immediately; if circumstances require additional time and delay to remedy, the Commercial Cannabis Business shall so notify the City Police Department and provide an estimated timeline the security breach will be cured.

11.2 If the Commercial Cannabis Business receives any criminal threats, or otherwise suspects any criminal targeting related to movement of product or cash from or to the Subject Property, the Commercial Cannabis Business shall immediately notify the City Police Department.

11.3 Commercial Cannabis Business shall abide by the operating procedures submitted to the City, as set forth in Section 33-8(a)(8) and that are hereby attached and incorporated into

this Agreement as Exhibit B. The Commercial Cannabis Business shall immediately notify City of any modifications to the operating procedures.

11.4 Commercial Cannabis Business shall abide by the operating requirements set forth in Sections 33-29, 33-30 and 33-31, including but not limited to, hours of operation not to exceed 9:00 am to 9:00 pm, no consumption of cannabis on premises, no cannabis or cannabis products shall be visible from exterior of property, and no persons under 21 years shall be allowed on the premises. The provisions of Sections 33-29, 33-30 and 33-31 shall be strictly enforced by Commercial Cannabis Business.

11.5 Commercial Cannabis Business shall abide by the requirements of Development Agreement.

12. Inspections.

12.1 The city manager, police chief, fire marshal, code compliance representative and their designees charged with enforcing the provisions of the Fontana Municipal Code may enter the Commercial Cannabis Business at any time during regular business hours, without notice, and inspect the location of the Commercial Cannabis Business as well as any recordings and records required to be maintained pursuant to this chapter or under applicable provisions of state law.

12.2 It is unlawful for any person having responsibility over the operation of the Commercial Cannabis Business, to impede, obstruct, interfere with, or otherwise not to allow, the City to conduct an inspection, review or copy records, recordings or other documents required to be maintained by the Commercial Cannabis Business under Chapter 33 or under state or local law. It is also unlawful for a person to conceal, destroy, deface, damage, or falsify any records, recordings or other documents required to be maintained by the Commercial Cannabis Business under Chapter 33 or under state or local law.

13. Default and Termination for Cause. Without prejudice to its other remedies at law or in equity, the City may terminate this Agreement for cause with thirty (30) days' written notice to Commercial Cannabis Business provided that Commercial Cannabis Business does not cure as set forth in section 13.7 below. Caused as used in this section is defined as:

13.1 Failure to comply with the terms of the City of Fontana Commercial Cannabis Permit issued to Commercial Cannabis Business by City;

13.2 Failure of Commercial Cannabis Business to maintain a valid active City of Fontana Business License as the commercial cannabis business approved by the Commercial Cannabis Permit and as operating;

13.3 Failure by Commercial Cannabis Business to accurately report gross receipts information or other data necessary for City to calculate/confirm operating or development agreement fees;

13.4 Failure by Commercial Cannabis Business to pay operating agreement fees and related reimbursement costs within thirty (30) days of the date those fees are due;

13.5 Failure by Commercial Cannabis Business to cooperate with City or City's authorized agents in any inspection, examination and audit of Commercial Cannabis Business's commercial cannabis business books and records (including tax filings and returns).

13.6 This Agreement will automatically terminate if:

13.6.1 Commercial Cannabis Business's Commercial Cannabis Permit is revoked by City or is not renewed by City, or

13.6.2 Commercial Cannabis Business transfers its Commercial Cannabis Permit in violation of Fontana Municipal Code section 33-15.

13.7 Cure Period. Commercial Cannabis Business shall cure the default resulting from the cause for termination within thirty (30) days of the date of the notice of termination. If Commercial Cannabis Business fails to cure the default within thirty (30) days of the date of the notice of termination for cause, this Agreement will be terminated.

14. Termination.

14.1 The Commercial Cannabis Business may terminate this Agreement prior to expiration of the Term for the reasons and subject to the requirements set forth below. The Commercial Cannabis Business understands and acknowledges that the right to operate the Commercial Cannabis Business is expressly contingent on full compliance with Chapter 33 of the Fontana Municipal Code. As such, termination of this Agreement shall result in the immediate termination of the Commercial Cannabis Business's operations, unless and until a new Operating Agreement is executed by the Parties.

14.2 Commercial Cannabis Business's Termination Rights. The Commercial Cannabis Business may, at any time and in its sole discretion, effective thirty (30) days after the Commercial Cannabis Business provides written notice of termination to the City. Such termination shall not relieve Commercial Cannabis Business of any outstanding or previously incurred liability, payment, or obligation to City. All fees due pursuant to the Commercial Cannabis Permit, this Operating Agreement or any Development Agreement between the Parties shall immediately be due and payable.

15. Indemnification.

15.1 Commercial Cannabis Business shall defend (with Counsel reasonably approved by the City), indemnify, and hold harmless the City and its Council, boards and commissions, officers, officials, employees, and agents from and against any and all actual and alleged liabilities, demands, claims, losses, damages, injuries, actions or proceedings and costs and expenses incidental thereto (including costs of defense, settlement and attorney's fees), which arise out of, or which are in any way related to i) the cannabis business permit and any land use

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

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

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

Cannabis Business, and upon resolution of the claim, proceeding or action, City shall return any remaining unused portion of deposit.

15.4 The provisions of this subsection shall survive any termination or expiration of this Agreement for any reason.

16. Waiver, Release and Hold Harmless

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

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

16.3 The provisions of this subsection shall survive any termination or expiration of this Agreement for any reason.

17. Notice. Any notice or other communication provided pursuant to this Agreement must be in writing and shall be considered properly given and effective only when mailed or delivered in the manner provided by this Section to the persons identified below. A mailed notice or other communication shall be considered given and effective on the third day after it is deposited in the United States Mail (certified mail and return receipt requested). A notice or other communication sent in any other manner will be effective or will be considered properly given when actually delivered. A Party may change its address for these purposes by giving written notice of the change to the other Party in the manner provided in this Section.

If to City:

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

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

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

If to Permittee:

HS Fontana Retail, LLC
2151 E. Convention Center Way, Suite 235
Ontario, CA 91764
Attention Compliance

With copy to: Ezri Vargas, Esq.
2151 E. Convention Center Way, Suite 222
Ontario, CA 91764
Attention : Legal

17.1 “Force Majeure Event” means a cause of delay that is not the fault of the Party who is required to perform under this Agreement and is beyond that Party’s reasonable control, including the elements (such as floods, earthquakes, windstorms, and unusually severe weather), fire, energy shortages or rationing, riots, acts of terrorism, war or war-defense conditions, acts of any public enemy, epidemics, pandemics, the actions or inactions of any governmental entity (excluding the City) or that entity’s agents, including any “stay at home” or “safer at home” and/or any other governmental order requiring the Commercial Cannabis Business to temporarily cease operations, litigation, labor shortages (including shortages caused by strikes or walkouts), and materials shortages.

17.2 Except as otherwise expressly provided in this Agreement, if the performance of any act required by this Agreement to be performed by either the City or Commercial Cannabis Business is prevented or delayed because of a Force Majeure Event, then the time for performance shall be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused.

18. Waiver. A Party’s failure to insist on strict performance of this Agreement or to exercise any right or remedy upon the other Party’s breach of this Agreement shall not constitute a waiver of any performance, right, or remedy. A Party’s waiver of the other Party’s breach of any provision in this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in writing and signed by the waiving Party.

19. Relationship of Parties. This Agreement does not create any employment relationship, ownership interest, or other association between the City and Commercial Cannabis Business. Nothing herein shall be construed to create the relationship of principal and agent, partnership or other joint venture between the City and Commercial Cannabis Business.

20. Attorneys' Fees. The Party prevailing in any litigation concerning this Agreement, the Subject Property, or the Commercial Cannabis Business operations, shall be entitled to an award by the court of reasonable attorneys' fees and litigation costs. If the City is the prevailing party, then this Section shall apply whether the City is represented in the litigation by the designated City Attorney or by outside counsel.

21. Jurisdiction and Venue. This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that San Bernardino County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

22. Severability. If a court with competent jurisdiction finds any provision of this Agreement to be invalid, void, or unenforceable, then the remaining provisions shall remain in full force and effect, and to this end this Agreement shall be severable.

23. Counterparts. The Parties may execute this Agreement in counterparts, each of which shall constitute an original, but all of which shall collectively constitute this same Agreement.

24. Disclaimer. Despite California's commercial cannabis laws and the terms and conditions of this Agreement or any Commercial Cannabis Permit issued pertaining to Commercial Cannabis Business or the hereinabove specified property location, California commercial cannabis cultivators, transporters, distributors, cannabis testing facility/laboratory businesses or possessors may still be subject to arrest by federal officers and prosecuted under federal law. The Federal Controlled Substances Act, 21 USC § 801 et seq., prohibits the manufacture, manufacturing, and possession of cannabis without any exemptions for medical or non-medical use.

25. Integration and Modification. This Agreement sets forth the Parties' entire understanding and agreement regarding the matters addressed herein. This Agreement supersedes all prior or contemporaneous agreements, representations, and negotiations (written, oral, express, or implied) and may be modified only by written agreement signed by both Parties.

IN WITNESS WHEREOF, the parties enter into this Agreement as of the Effective Date.

City of Fontana

HS Fontana Retail, LLC

By: _____
City Manager
Dated: _____, 2024

By: _____
James Previti
Dated: _____, 2024

Approved as to Form Fontana
City Attorney

By: _____
City Attorney