

Recording fees exempt pursuant to
Government Code § 27383

Prepared by and after Recording Return to:

City of Imperial Beach
c/o City Clerk
825 Imperial Beach Blvd.
Imperial Beach, CA 91932

Space above this line for Recorder's use

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (the "Agreement") is made this 1st day of December, 2021, between the City of Imperial Beach, California, a general law city ("City"), and March and Ash Imperial Beach, Inc., dba March and Ash, a California corporation ("Operator"). City and Operator are individually referred to as "Party" or collectively as "Parties."

RECITALS

- A. WHEREAS, Operator is the tenant of a long-term lease for the real property located at 740 Palm Avenue, Imperial Beach, CA 91932 (the "Property"); and
- B. WHEREAS, Operator plans to operate a cannabis outlet business (the "Business") on the Property pursuant to a regulatory safety permit ("RSP") that may be issued to Operator pursuant to the requirements of Imperial Beach Municipal Code ("IBMC") Chapter 4.60, as outlined in Resolution No. 2021-23;
- C. WHEREAS, the Parties mutually desire to enter into this Agreement to facilitate the development and expansion of community programs and infrastructure; and
- D. WHEREAS, California Government Code Sections 65864 *et seq.*, authorizes municipalities to enter into development agreements at 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 land use rights in the Operator, and to meet certain public purposes in local government.

NOW, THEREFORE, in consideration of the above Recitals and mutual promises, conditions and covenants of the Parties in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. AUTHORITY FOR THIS AGREEMENT

- a. This Agreement is authorized by Section 65865 of the Government Code of the State of California and IBMC Chapter 19.89.
- b. Pursuant to this Agreement, City and Operator have taken all actions mandated by and fulfilled all requirements set forth in the Development Agreement Ordinance of the City of Imperial Beach, Chapter 19.89 of the IBMC.
- c. Pursuant to Section 19.89.030 of the IBMC, having duly examined and considered this Agreement and having held a properly noticed public hearing regarding this Agreement before the City Council on December 1, 2021, the City Council declared this Agreement:
 - i. Is consistent with the objectives, policies, general land uses and programs specified in the general plan, the local coastal plan and any applicable specific plan;
 - ii. Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located;
 - iii. Is in conformity with public convenience, general welfare and good land use practice;
 - iv. Will not be detrimental to the health, safety and general welfare; and
 - v. Will not adversely affect the orderly development of the property or the preservation of property values.

2. AGREEMENT

- a. **TERM.** The term of this Agreement (the “Term”) shall commence upon the Effective Date defined below and continue perpetually, unless terminated earlier under Sections 7, 8 or 9 of this Agreement. “Effective Date” is defined as the first date on which all of the following are true: (i) the ordinance adopting this Agreement is effective, expected to be 30 days after second reading; and (ii) the Operator has obtained a RSP to operate the Business.
- b. **OPERATOR OBLIGATIONS.**
 - i. In consideration for the rights granted by this Agreement, the Operator agrees to contribute to a community benefits program to be implemented by the City:
 - 1. A one-time, non-refundable payment of \$1.5 million (“Advance Payment”) within sixty (60) days of the Effective Date of this Agreement; and

2. The greater of either: (1) a monthly fee of seven (7) percent of Gross Receipts from operation of the Business on the Property; or (2) such other amount as the City of Chula Vista may from time to time impose as a tax on retail cannabis commerce operating in the City of Chula Vista (in either case, the “Fee”). The City will monitor the City of Chula Vista tax rate periodically and will provide thirty (30) days’ notice to Operator before implementing any increase to the Fee based on the increased tax rate that the City of Chula Vista has implemented.
- ii. Although the funds collected pursuant to the Advance Payment and Fee may be appropriated for any lawful purpose in the discretion of the City Council, the Parties understand that the Advance Payment and Fee may be devoted to: (1) drug awareness programs; (2) community service programs; and (3) City facility improvements.
 - iii. “Gross receipts” shall include the total amounts 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 part of or in connection with the sale of materials, goods, wares or merchandise from the Business. 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. Excluded from “gross receipts” shall be the following:
 - A. Cash discounts allowed and taken on sales;
 - B. Credit allowed on property accepted as part of the purchase price and which property may later be sold;
 - C. Any tax required by law to be included in or added to the purchase price and collected from the consumer to the purchaser;
 - D. Such part of the sale price of property returned by purchasers upon recession of the contract of sale as is refunded either in case or by credit;
 - E. Amounts collected for others where the businesses acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent or trustee has furnished the collector with the names and addresses of the others and the amounts paid to them;

F. Receipts of refundable deposits, except that refundable deposits forfeited and taken into income of the business shall not be excluded.

- iv. The Fee shall be abated and shall not be due to and/or collected by the City until such time as the total amount of the accrued Fee calculated in accordance with Section 2(b)(i)(2) after the Effective Date exceeds the amount of the Advance Payment. From and after such time, the Fee shall be due and payable to the City with respect to the amount that exceeds the Advance Payment in accordance with Section 2(b)(i)(2). If the Fee never exceeds the Advance Payment, the City has no obligation to return any portion of the Advance Payment to Operator.
- v. In addition to other reporting requirements described in this Agreement, Operator shall make a monthly return to City as provided in IBMC Section 3.24.080 for returns of transient occupancy taxes. The other provisions of Chapter 3.24 of the IBMC for the administration and enforcement of the transient occupancy tax shall apply to the administration and enforcement of the Fee except to the extent this Agreement is inconsistent with that chapter.
- vi. Operator shall keep complete, accurate and appropriate books and records of all receipts from operations of the Business in accordance with generally accepted accounting principles. For purposes herein, "books and records" shall mean all bookkeeping or accounting documents Operator typically utilizes in managing its Business operations. Operator shall make available to the City, its auditors, and other authorized representatives all books and records, and other relevant documents as the City may reasonably require, upon reasonable written notice. If the City determines at any time, in its sole discretion, such books and records are inadequate to record the Gross Receipts, Operator shall, upon the written request of the City, procure and maintain books and records adequate for such purpose.
- vii. Operator shall provide the City with courtesy copies of every report Operator must provide to the State of California as to sales and use or other taxes when such filings are made.
- viii. At all times during the Term of this Agreement, Operator agrees to comply with all of the requirements of IBMC Chapter 4.60 as amended by the City from time to time and to hold and comply with the provisions of a valid RSP issued by the City for operation of the Business.

c. CITY OBLIGATIONS.

- i. Provided that Operator maintains a current RSP in compliance with IBMC Chapter 4.60 and applicable State law, as they now exist or may hereafter be amended, City hereby grants Operator the vested land use right to locate the Business on the Property consistent with the land use entitlements the City has issued to Operator as of the date this Agreement is executed. City shall not

promulgate any land use rules, ordinances or restrictions other than those in effect as of the Effective Date, which would unreasonably restrict, impair or prohibit the location of the Business on the Property, unless: (i) the Parties agree to such land use rules, ordinances or restrictions in writing; or (ii) such land use rules, ordinances or restrictions are proposed by voters and adopted by initiative, or (iii), such land use rules, ordinances or restrictions apply City-wide to any cannabis outlet. In such an event, Operator will nevertheless be subject to those new land use rules, ordinances or restrictions but Operator may give a notice of default under section 9 of this Agreement and, upon resolution of that notice, shall thereafter be relieved of the obligations of this Agreement.

- ii. During the Term of this Agreement, if the City or voters adopt and impose an alternative revenue mechanism specifically related to cannabis operations (e.g., a cannabis tax), Operator's payments under this Agreement after the effective date of that alternative revenue mechanism shall be credited against the alternative revenue mechanism such that Operator shall only pay the greater of the two; in no circumstance shall Operator be required to pay both. As used in this subsection, "alternative revenue mechanism" does not include taxes, fees, or assessments levied on or collected from both cannabis and non-cannabis businesses in the City or the City's application of regulatory fees under IBMC Chapter 4.60.
- iii. City shall keep strictly confidential all statements of revenue furnished by Operator related to operation of the Business, except as otherwise required by law. In particular, the City will exercise its right to withhold such documents under Government Code section 6254, subdivisions (i) and (n).

3. GENERAL PLAN CONSISTENCY. Having duly examined and considered the proposed development required for operation of the Business and having held properly noticed requisite public hearings, the City adopted Resolution 2021-22 approving Regular Coastal Permit (CP 21-0001), Design Review Case (DRC 21-0009), Site Plan Review (SPR 21-0010), Administrative Sign Permit (ASP 21-0007), and Categorical Exemption pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15332 Class 32 (Infill-Development) for the construction of a new commercial building at the Property. Resolution 2021-22 made findings that the development conformed to the General Plan/Local Coastal Program by complying with the requirements of the General Commercial & Mixed-Use (C/MU-1) Zone. The findings made in Resolution 2021-22 are equally applicable to this Agreement, which based on the Parties' mutual desire to facilitate the development and expansion of community programs and infrastructure, furthers the intent of those earlier approvals and therefore satisfies the California Government Code section 65867.5(b) requirement of General Plan consistency.

4. REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS.

- a. **INTEREST IN PROPERTY.** Operator represents and warrants that as of the Effective Date, Operator has an enforceable legal interest in the Property and that all persons holding legal or equitable interest in the Property have consented to this Agreement.
 - b. **AUTHORITY.** The Parties represent and warrant that the persons signing this Agreement are duly authorized to enter into and execute this Agreement on behalf of their respective principals.
5. **RELATIONSHIP OF CITY AND OPERATOR.** This Agreement is a contract that has been negotiated and voluntarily entered into by City and Operator related to land use. The relationship of Operator and City is and at all times shall remain solely that of City as a regulatory body and Operator as the operator of the Business. It is specifically understood and agreed by and between the Parties that the development on the Property by Operator and the Business proposed to be conducted on the Property by Operator is a private development and a for-profit business. City and Operator hereby disclaim any form of joint venture or partnership between them, agree that nothing in this Agreement or in any document executed in connection with this Agreement shall be construed as making City and Operator joint venture partners.
6. **PUBLIC HEARING.** City Council approves this Agreement consistent with Government Code section 65867, after the Agreement was duly examined and considered at a properly noticed public hearing by the City Council on December 1, 2021.
7. **APPLICABLE RULES, REGULATIONS AND POLICIES.**
 - a. **LAWS AND REGULATIONS APPLICABLE TO COMMERCIAL CANNABIS ACTIVITIES.** Operator shall comply fully with all existing and future State and local laws, rules and regulations applicable to Operator's Business on the Property, including but not limited to IBMC Chapter 4.60, and shall ensure such compliance by all of Operator's employees, contractors, vendors and members of the public invited or allowed access to the Property. Nothing in this Agreement shall be construed as the City authorizing or condoning any actions that violate federal, state or local law with respect to the Business or the Property. It shall be the responsibility of Operator to ensure that the Business is, at all times, operating in a manner compliant with all applicable laws and regulations, including for as long as applicable, all state laws, any subsequently enacted state or local law or regulatory, licensing, or certification standards or requirements, and any specific, additional operating procedures or requirements which may be imposed as conditions of approval of a state license or of an RSP.
 - b. **LICENSURE OF OPERATIONS.** Operator shall obtain and maintain all State and local licenses and permits required for operation of the Business on the Property.
8. **AMENDMENT.** This Agreement may be amended or canceled, in whole or in part, by mutual consent of the Parties in writing, consistent with Government Code section 65868, unless the City Manager determines that the amendment is insubstantial. If the City Manager determines an amendment is both insubstantial and consistent with the Agreement

and the City's existing land use regulations, then the City Council may approve the proposed amendment without notice and a public hearing. An insubstantial amendment may not relate to the Term; conditions, terms, restrictions, and requirements relating to subsequent modification or termination; monetary contributions; or any conditions or covenants relating to the use of the Property. An insubstantial amendment may include interpretation of terms contained herein, and clarification of ambiguities. An insubstantial amendment may also include logical extensions of terms and provisions of this Agreement which are not inconsistent with its provisions.

9. ANNUAL REVIEW OF AGREEMENT.

- a. **IN GENERAL.** City shall annually review performance of this Agreement in accordance with this section, California Government Code Section 65865.1 and IBMC section 19.89.060. Operator shall provide any information the City requests to facilitate the annual review within fourteen (14) days of such request.
- b. **MODIFICATION OR TERMINATION.** If the City Council finds and determines through an annual review, based on substantial evidence, that Operator has not complied in good faith with this Agreement, City may terminate or modify the Agreement pursuant to IBMC section 19.89.070 and Section 9 of this Agreement.
- c. **OTHER INVESTIGATIONS AND EVALUATIONS.** City may investigate or evaluate, from time to time and as a part of an annual review or otherwise, any matter properly the subject of an annual review of this Agreement.

10. TERMINATION.

A. DEFAULT BY OPERATOR.

- i. **Termination.** If City determines, based on substantial evidence, that Operator has not complied in good faith with the terms and conditions of the Agreement, City may terminate the Agreement as indicated herein.
- ii. **Notice of Proposed Termination.** If Operator fails to address the identified default(s), City may give Operator a written notice specifically identifying those obligations Operator has not performed and providing for a period of not less than five (5) business days in which the Operator may cure the alleged breach. If Operator does not cure the breach in that time or, if the breach is such that more time is needed to complete it, commence the cure and inform the City of Operator's efforts in the applicable time period, the City may give notice of a hearing on termination of this Agreement. The written notice shall include the time and place of the hearing and any other information that City considers necessary to inform Operator of the nature of the proceeding. Nothing herein shall entitle the City to rescind or adversely affect any land use entitlement held by Operator other than in compliance with the IBMC and other applicable law.

- iii. **Public Hearing on Proposed Termination.** City shall give notice of the public hearing under Government Code sections 65090 and 65091. On conclusion of the public hearing, the City Council may, in lieu of termination, impose such conditions on Operator as it considers reasonably necessary to protect City's interests.
- iv. **Modification of Agreement.** City may, instead of termination, modify the terms of the Agreement if it determines that Operator has not complied in good faith with the terms and conditions of this Agreement. If City modifies this Agreement under this subdivision, it must follow the procedures in sections 9(a)(ii), (a)(iii) of this Agreement.

B. DEFAULT BY CITY.

- a. If City defaults under the provisions of this Agreement, Operator shall have only the right to compel specific performance of City's obligations under this Agreement or, as to the imposition of new land use rules, ordinances or restrictions other than those in effect as of the Effective Date, that unreasonably restrict, impair or prohibit the location of a cannabis outlet on the Property in violation of section 2.C.i of this Agreement, Operator may terminate this Agreement after complying with this section.
- b. Operator shall submit to City a written notice of default stating with specificity those obligations the City has not performed. Upon receipt of the notice of default, City may cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure within ninety (90) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that City shall continuously and diligently pursue such remedy at all times until such default(s) is cured and regularly notify Operator of City's efforts to remedy the default(s). Alternatively, City may dispute that a default exists and inform Operator in writing of the basis for City's conclusion that no default has occurred. In the event City disputes the alleged default, the Parties shall seek to resolve their differences by good faith dialog, with or without the assistance of a mediator. If the dispute remains unresolved after sixty (60) days of such dialog, either Party may seek declaratory relief or other appropriate judicial assistance.

- 11. SPECIFIC PERFORMANCE.** Both Parties agree and recognize that Operator has invested considerable time and financial resources in establishment of the Business. For this reason, it may not be possible to determine an amount of monetary damages which would adequately compensate Operator for this work, nor calculate the consideration City would require to enter into this Agreement to justify such exposure. The Parties acknowledge that City would not enter into this Agreement if it might expose its assets and the public to the risk of damages arising from failed expectations in continued operation of

the Business. Therefore, the Parties agree that monetary damages shall not be an adequate remedy for Operator if City is in default under this Agreement and City fails to remedy the default(s). The Parties further agree that specific performance (or writ of mandate for performance of a required act) shall be the sole available and appropriate remedy for Operator under this Agreement, and Operator shall not seek monetary damages if a default by City occurs under this Agreement or under any otherwise applicable legal basis for monetary damages. Operator agrees that in no event will City or its officers, agents, or employees, be liable for damages for any default under this Agreement; it being expressly understood and agreed by Operator that the sole legal remedy available to Operator for a default under this Agreement by City shall be a legal action in mandamus, specific performance, or other injunctive or declaratory relief to enforce the provisions of this Agreement except that, as to a default under section 2.C.i, Operator may also terminate this Agreement.

- 12. INSURANCE.** Operator shall at all times maintain insurance at coverage limits and with conditions thereon determined necessary and appropriate by the City's Risk Manager pursuant to Section 4.60.090 of the IBMC.
- 13. ASSIGNMENT.** The provisions hereof shall be binding upon, and inure to the benefit of, City and Operator and their successors and permitted assigns, as the case or context may require. This Agreement shall likewise be binding upon and obligate the Property and any successors in interest to the Property. Operator must obtain the City's prior written consent to any assignment and comply with IBMC Chapter 4.60 as to any transfer of the RSP associated with the Property.
- 14. INDEMNITY.**
 - a.** Operator agrees to protect, defend (with legal counsel acceptable to City), indemnify and hold harmless City, its council members, officers, agents, independent contractors and employees from any and all claims, damages, penalties, losses, costs, expenses (including reasonable attorneys' fees and court costs), injuries and liabilities of every kind: (1) arising out of or caused by Operator's alleged negligence, gross negligence or intentional wrongdoing under this Agreement, whether such alleged activities or performance thereof is by Operator or anyone directly employed or contracted with by Operator, and (2) all claims challenging the City approval, legality, constitutionality, or enforceability of this Agreement.
 - b.** City's rights of indemnity, as expressly set forth in this Agreement, shall not depend upon the actual payment of any claim, damage, penalty, loss, cost, expense (including reasonable attorneys' fees and court costs), injury or liability sustained by Operator or its contractors, subcontractors, agents or employees. Operator shall not be entitled to a refund of any sums spent pursuant to this indemnity promise if Operator is adjudicated or determined to have been non-negligent.

- c. If City tenders the defense and indemnification of a claim contemplated by this Agreement to Operator and its contractors, subcontractors, agents or employees, City shall be entitled to actively supervise defense of the claim, and may select and retain separate counsel, at Operator's or its contractors, subcontractors, agents or employees' expense, as necessary, which decision shall be made solely and exclusively by City. City must consent to the disposition of any such claim, including but not limited to, the settlement of any such claim.
 - d. Within ten (10) days of the service of any claim or lawsuit against the City challenging this Agreement, the RSP or any other action of the City with respect to Operator's operation of the Business, the Operator shall submit to the City a ten thousand dollar (\$10,000) cash deposit or irrevocable letter of credit in favor of the City in a form acceptable to the City, to pay the City's fees and costs in connection with the defense of any such claim or lawsuit and shall thereafter replenish the funds in increments of five thousand dollars (\$5,000) when requested by the City upon receipt of an accounting, so that the deposit is continuously maintained at ten thousand dollars (\$10,000) or more. Failure to provide funds sufficient to satisfy this indemnification obligation shall constitute grounds for the City to take action to nullify the approvals associated with this Agreement and terminate this Agreement. If the City holds remaining defense funds after any claim or lawsuit is resolved, the City shall refund them to Operator within thirty (30) days of the resolution of the claim or lawsuit.
- 15. CEQA.** Nothing in this Agreement shall authorize any development without compliance with the Planning and Zoning Law, the IBMC, CEQA, the CEQA Guidelines, and other applicable law, policies and procedures. Having duly examined and considered the proposed development required for operation of the Business and having held properly noticed requisite public hearings, the City adopted Resolution 2021-22 approving an application for a Regular Coastal Permit (CP 21-0001), Design Review Case (DRC 21-0009), Site Plan Review (SPR 21-0010), Administrative Sign Permit ASP (21-0007), and a Categorical Exemption pursuant to CEQA Guidelines Section 15332 Class 32 (Infill-Development) for the construction of a new commercial building at the Property. . A Notice of Exemption for the Categorical Exemption was filed with the San Diego County Clerk following approval of Resolution 2021-22. The Categorical Exemption is equally applicable to this Agreement, which is based on the Parties' mutual desire to facilitate the development and expansion of community programs and infrastructure, and therefore, furthers the intent of those earlier approvals.
- 16. MISCELLANEOUS.**
- a. **Notices.** All notices required by this Agreement or by law shall be in writing and personally delivered or sent by certified mail to the following addresses. Notice may be provided by email as well if receipt of that email notice is acknowledged by recipient. Either Party may change the address stated here by notice in writing to the

other Party, and thereafter notices shall be addressed and transmitted to the new address. Notice shall be deemed delivered on the date of personal delivery or email, 1 day after delivery to an overnight delivery service and three (3) days after deposit in the U.S. Mail as certified mail.

Notice to City shall be addressed:

CITY OF IMPERIAL BEACH
ATTN: City Manager
825 Imperial Beach Blvd.
Imperial Beach, California 91932

With a copy to

Jennifer Lyon, Imperial Beach City Attorney
McDougal, Love, Boehmer, Foley, Lyon & Mitchell
8100 La Mesa Blvd., Ste. 200
La Mesa, CA 91942

Notice to Operator shall be addressed:

March and Ash Imperial Beach, Inc.
dba March and Ash
2835 Camino del Rio S. #100
San Diego, CA 92108

With a Copy to:

Heather S. Riley
Allen Matkins
600 West Broadway, 27th Floor
San Diego, CA 92101

- b. **CONSTRUCTION OF AGREEMENT.** Operator acknowledges that it has been advised to have this Agreement reviewed by counsel, and agrees that Operator and its counsel (and/or such other business and financial advisers as Operator desires) have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement or any amendments or exhibits.
- c. **THIRD PARTY BENEFICIARIES.** This Agreement is entered into for the sole benefit of the Parties and any successors. No other party (other than a permitted assignee under Paragraph 12 shall have any cause of action or the standing to assert any rights under this Agreement.

- d. **ATTORNEY FEES.** If any action at law or in equity is brought by either Party to enforce or interpret provisions of this Agreement against the other Party, then the prevailing Party shall be entitled to reimbursement by the non-prevailing Party for its reasonable and actual attorneys' fees and costs in the action.
- e. **SEVERABILITY.** Should any provision of this Agreement be found invalid or unenforceable by a court of law, the decision shall affect only the provision interpreted and all remaining provisions shall remain enforceable.
- f. **INTEGRATION.** This Agreement constitutes the entire understanding and agreement of the Parties regarding the subject matter hereof and supersedes any previous oral or written agreement. This Agreement may be modified or amended only by a subsequent instrument executed by both Parties.
- g. **COUNTERPARTS; ELECTRONIC SIGNATURES.** This Agreement may be signed in one or more counterparts and will be effective when the Parties have affixed their signatures to counterparts, at which time the counterparts together shall be deemed one original document. Signatures may be given by emailed pdf or other electronic means with the same force as hard copy signatures.
- h. **INCORPORATION.** The recitals and all defined terms in this Agreement are part of this Agreement.
- i. **COVENANTS.** City and Operator acknowledge that all covenants, obligations, and rights run with the Property. Each and every purchaser, assignee, or transferee of an interest in the Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Property, or such portion thereof, sold, assigned, or transferred to it. Any such purchaser, assignee, or transferee shall observe and fully perform all the duties and obligations of Operator in this Agreement, as such duties and obligations pertain to the Property, or such portion thereof, sold, assigned, or transferred to it.
- j. **GOOD FAITH AND FAIR DEALING.** City and Operator agree to execute all documents and instruments and to take all action and shall use commercially reasonable efforts to accomplish the purposes of this Agreement. City and Operator shall each diligently, reasonably and in good faith pursue the satisfaction of any conditions or contingencies subject to their approval.
- k. **ENFORCEMENT.** This Agreement shall in all respects be interpreted, enforced, and governed under the laws of the State of California. Parties agree that any action to enforce this Agreement shall be filed and maintained in the San Diego County Superior Court and Operator hereby concedes the existence of personal jurisdiction and consents to the jurisdiction of that Court for this purpose.

1. **FEDERAL LAW.** The Agreement involves the operation of a business or businesses involving cannabis cultivation, manufacturing, distribution and retail sales. Under federal criminal law, marijuana remains a Schedule I narcotic, manufacture and distribution of which is prohibited, and for which there is no federally approved use. (Controlled Substances Act, 21 U.S.C. Section 801 *et seq.*) The U.S. Department of Justice takes the position that the federal law is valid and enforceable even against individuals and companies engaged in cultivation, transportation, delivery or use of medical or recreational marijuana under State regulatory law. Operator's direct or indirect involvement in cultivation, dispensing, delivery and retail sale of medical or recreational use of cannabis could expose Operator to criminal liability for violating federal law. (See the federal Criminal Accessory statute, 18 U.S.C. Section 2, which imposes accessorial liability against a person who intentionally aids or abets another in violating the narcotics law.) City shall not be obligated to defend or indemnify Operator or any person associated with Operator, if any criminal prosecution occurs arising out of activities related to this Agreement. The Parties agree the City's role as to the Operator's operation of the Business is solely that of a regulator.
- m. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written:

City of Imperial Beach

By: _____
Signature
 Printed: _____
 Title: _____
 Date: _____

March and Ash Imperial Beach, Inc.

By: _____
Signature
 Printed: Breton Peace
 Title: _____
 Date: _____

By: _____
Signature
 Printed: Blake Marchand
 Title: _____
 Date: _____

By: _____
 Jacqueline Kelly, City Clerk

Date: _____

Approved as to form:

By: _____
Michael G. Colantuono, Special Counsel
Date: _____

Property Owner Acknowledgement:
740 Palm Avenue LLC

By: _____
Signature
Printed: _____
Title: _____
Date: _____

DRAFT

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 _____) ss.

On _____, 2021, before me, _____,
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(ies) 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.

(SEAL)

Notary's Signature

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 _____) ss.

On _____, 2021, before me, _____,
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(ies) 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.

(SEAL)

Notary's Signature