

**CITY OF RIVERBANK
PLANNING COMMISSION
STAFF REPORT**

ITEM NO: 3.1 **September 1, 2020**

APPLICATION: **Development Agreement 03-2019 and Conditional Use Permit 01-2020 – DT California, LLC, Aeriz - 2906 Santa Fe Street (APN: 132-034-020, 132-023-020, 132-034-017)** - The project consists of a Development Agreement and a Conditional Use Permit to permit commercial cannabis activities in three Phases at 2906 Santa Fe Street. Phase 1 consists of existing Building 4 (cultivation) and existing Building 5 (extraction, manufacture, distribution, and limited retail). Phase 2 consists of existing Building 1 (cultivation), existing Building 2 (cultivation), and existing Building 3 (cultivation). Phase 3 may consist of the construction of new building(s) (cultivation), parking improvements, and new landscaping. The project site has a General Plan Land Use Designation of Mixed Use (MU) and is zoned Cannery District (CD) within the Downtown Specific Plan.

OWNER/APPLICANT: David Thomas
DT California, LLC
330 North Wabash Avenue, Suite 1700
Chicago, IL 60611

LOCATION/APN: 2906 Santa Fe Street (APN: 132-034-020, 132-023-020, 132-034-017). The applicant also purchased APN 132-010-017 with the other three parcels. It is located east of the railroad tracks and is zoned Downtown Neighborhood, which does not permit cannabis uses; therefore, this parcel is not a part of the Project or any approvals.

GENERAL PLAN: Mixed Use (MU)

ZONING: Downtown Specific Plan – Cannery District (CD)

ENVIRONMENTAL DETERMINATION: Phase 1 and Phase 2 of the proposed Project qualify for a categorical exemption pursuant to Section 15301 of Title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility that will not have a significant effect on the environment. Phase 3, the permitting of new building(s) with parking and landscape improvements, will require additional

CEQA analysis and will be based on the Downtown Specific Plan Program EIR.

PROJECT PLANNER: Donna M. Kenney, Planning and Building Manager

RECOMMENDATION: Adopt Planning Commission Resolution No. 2020-009 recommending that the City Council adopt an Ordinance approving a development agreement by and between the City of Riverbank and DT California, LLC., a Delaware limited liability company doing business as Aeriz and adopt Planning Commission Resolution No. 2020-010 approving a Conditional Use Permit for Aeriz.

ACRONYMS: COA – Conditions of Approval
CUP – Conditional Use Permit
DA – Development Agreement
RMC – Riverbank Municipal Code
SF – Square Foot or Feet

I. EXECUTIVE SUMMARY

DT California, LLC and its representative David Thomas (“Applicant”) is requesting a Development Agreement and Conditional Use Permit to allow for commercial cannabis activities at 2906 Santa Fe Street, north of and adjacent to Railroad/Roselle Avenue and Patterson Road. The former Gangi Canning Company site is proposed to be developed in three (3) Phases. Phase 1 would consist of cannabis cultivation in existing Building 4 and cannabis extraction, manufacture, distribution, and limited retail in existing Building 5. Phase 2 would consist of cannabis cultivation in existing Building 1, existing Building 2, and existing Building 3. Phase 3 could consist of new building(s) for cultivation with parking and landscaping improvements.

The project site has a General Plan Land Use Designation of Mixed Use (MU) and is zoned Cannery District (CD) within the Downtown Specific Plan. The project site is surrounded by active commercial and industrial zoned buildings to the south across Patterson Road; a vacant commercial building, a church, and Mixed-Use Neighborhood residential uses to the west; the Highway 108 viaduct to the north; and several sets of active railroad tracks to the east.

II. BACKGROUND

On November 8, 2016, the citizens of California approved Proposition 64 (Adult Use of Cannabis). In accordance with Proposition 64, the recreational use of cannabis is legal

throughout the state, but local jurisdictions have the right to police commercial activities such as cannabis dispensaries, cultivation, manufacture, and distribution.

On August 8, 2017 and August 22, 2017, the Riverbank City Council adopted Ordinance #2017-007, which provides a regulatory structure for commercial cannabis activities in the City of Riverbank ONLY in the General Commercial (C-2), Commercial – Industrial (CM), **Cannery District (CD)**, Highway Boulevard (HB), Downtown General (DG), Downtown Core (DC), Light industrial (M-1), and Research and Development (R&D) zoning districts. In addition, this ordinance banned all commercial cannabis activities within 600 feet from a school, licensed day care facility, or youth center. There are no schools, commercial daycare facilities, or teen centers within 600 feet of the project site. Although the Riverbank skate park is across the railroad tracks from the project site, it is 3,200 linear feet walking distance from the project site's north gate, north on Callander Avenue, over the Highway 108 viaduct to First Street, then south on First to the skate park.

As a part of the regulatory structure established by City Council Ordinance No. 2017-007, an applicant seeking to establish a commercial cannabis business must apply for a Development Agreement (DA). Under this approach, the DA regulates the business. Development Agreements require a Conditional Use Permit. A Conditional Use Permit regulates the project site itself.

Light industrial uses are permitted in Cannery District buildings including warehouse buildings existing at the time of the Downtown Specific Plan's adoption. These conditional uses include:

- Warehouse, storage, distribution, cheese manufacturing, auto repair and similar light industrial uses. Concerns related to employee parking and commercial truck traffic must be addressed as part of the review process. It is highly encouraged that manufacturing businesses conduct retail sales out of the operation on the same site.

Staff has no concerns with employee parking and commercial truck traffic in Phases 1 and 2, which will use existing buildings and existing parking. Commercial truck traffic will be rare and may be limited to construction activities. Product will arrive and depart in 8-10 sprinter vans per week.

III. PROJECT INFORMATION

PHASE 1

- **Building 4**

The Applicant is proposing to conduct a cannabis cultivation operation in Building 4, which was constructed in 1959. This building is located at the southern end of the project near Building 5 and Patterson Road. It is 100,000 sf in size. The operation would be regulated

by the California Department of Food and Agriculture (CDFA) under the category of: 5,001-10,000 sf small indoor cultivation (Type 2A). Most recently, Building 4 has been used to store empty cans for packing fruits and vegetables.

- **Building 5**

The Applicant is proposing the extraction, manufacture, distribution, and limited retail sales of commercial cannabis in Building 5. Built in 1960, Building 5 is 50,000 sf in size and has been dry, cold storage in the past. This building is the closest to Patterson Road at the south end of the project site. The BHO and CO2 cannabis extraction process proposed, as well as a manufacturing operation, requires a Type 7 (volatile) license from the Manufactured Cannabis Safety Branch (MCSB) of the State. Regulated by the Bureau of Cannabis Control (BCC), the distribution of cannabis requires a Type 11 license and is defined as the transporting of cannabis, the arranging for the testing of cannabis, and for conducting a quality assurance review of the cannabis products to ensure they comply with all packaging and labeling required by the State. A limited cannabis retail use requires a general Type 10 license from the State like a dispensary does.

Access to Buildings 4 and 5 by employees and shippers will be through a controlled-access gate on Sierra Street by an existing weigh station. Employees and shippers exiting the facility will follow Sierra Street east to Railroad Avenue, then south on Railroad Avenue to the Roselle Avenue/Patterson Road intersection. These roads are all existing truck routes. Building 5 is expected to generate 8 -10 sprinter vans per week.

PHASE 2

- **Buildings 1, 2, and 3**

In Phase 2, the Applicant is proposing to conduct a cannabis cultivation operation in Buildings 1, 2, and 3. Again, cultivation is regulated by the California Department of Food and Agriculture (CDFA). These buildings are existing and located at the northern end of the project near the Highway 108 viaduct. Building 1 is 49,200 sf in size and was built in 1956. Built in 1952, Building 2 is 25,000 sf in size and adjacent to Building 1. Building 3, constructed in 1969 is 109,500 sf in size and across Topeka Street from Buildings 1 and 2.

PHASE 3

- **New Building(s)**

In Phase 3, new building(s) could be constructed as well as parking improvements and landscaping. Any additional building would house cultivation operations and require architectural review and environmental analysis. An amendment to the Downtown Specific Plan may be required.

The parking lot, which covers almost half of the site, will be reconstructed or resurfaced and restriped. ADA parking spaces and safe paths of travel will be added to meet 2019 California Building Code requirements. Trees and irrigation will be added to provide shade to the parking lot and its perimeter.

Any landscaping in the attached plans is purely conceptual. The Conditional Use Permit requires that landscape and irrigation plans be submitted under separate permit after project approval.

IV. ANALYSIS

DEVELOPMENT AGREEMENT (DA)

The applicant seeks to enter a development agreement (Attachment 3) with the City for the purpose of operating a commercial cultivation, manufacturing, distribution, and limited retail facility at the former cannery site.

The major elements of the development agreement are summarized below:

- The term of the agreement is twenty (20) years.
- The plan is to operate a cannabis cultivation facility in Buildings 1, 2, 3, and 4. Building 5 will house manufacturing, distribution, and limited retail uses.
- The project would provide the applicant with substantial private benefits that will place burdens upon City infrastructure, services, and neighborhoods. The applicant seeks to offset these impacts through a monthly payment classified as a “Public Benefit” amount. The Public Benefit is designed and intended to offset or mitigate any potential impacts of the project on the community.
- The applicant will be applying for the following license types:

All Indoor Types	Cultivation
Type 6,7	Manufacturer
Type 10	Limited Retailer
Type 11	Distribution

- a. **All Indoor Types - Cultivation.** For cultivation in Buildings 1, 2, 3, and 4, Aeriz agrees to pay to the City the following Public Benefit:

Years 1-4	\$2.50 per square foot
Years 5-8	\$2.75 per square foot
Years 9-12	\$3.25 per square foot
Years 13-16	\$3.50 per square foot
Years 17-20	\$4.00 per square foot

b. **Type 6, 7 - Manufacturer.** For manufacturing within Building 5, Aeriz will pay to the City a Public Benefit of:

Years 1-4	1% of gross receipts
Years 5-8	1.25% of gross receipts
Years 9-12	1.75% of gross receipts
Years 13-16	2% of gross receipts
Years 17-20	2.5% of gross receipts

c. **Type 10 - Limited Retailer.** Developer’s retail activity at the Site will be limited to commercial cannabis industry operators and will not be open to the general public. Developer shall maintain visitor logs and sale records of retail activity at the Site which shall be subject to periodic inspection by City upon 24-hour notice to ensure compliance with this Section. Developer may seek authorization from City to open retail activity to the general public. Any such request shall be processed as a Major Amendment to the Development Agreement. Approximately 1,600 square feet of Building 5 is proposed for future limited retail with a Public Benefit as described below:

Years 1-20	The greater of \$7,000 or 5% gross receipts	Monthly when operations begin
------------	---	-------------------------------

d. **Type 11 - Distribution.** Concerning a distribution Public Benefit, zero (\$0) is due for “wholesale” distribution from this facility to retailers. If the facility begins to distribute for other third party (non Aeriz affiliated product):

Year 1	4% gross receipts	Every quarter following the 2 nd quarter after issuance of the conditional use permit
Years 2-20	5% gross receipts	Every quarter following the 5 th quarter after issuance of the conditional use permit to end of term

- **Fair Share Improvements** - The City is currently adding a signal and improving the Patterson Road and Railroad/Roselle Avenue intersection, which is adjacent to the south property line of the project site. The applicant agrees to pay a 10%

fair share (\$180,000) of the total cost of the improvements. Frontage dedications to the City have already been made.

In accordance with Government Code section 65864 *et seq*, the City Council must find that the Development Agreement:

- Is consistent with the objectives, policies, general land uses, and programs specified in the Riverbank General Plan and any applicable specific plan.

The Project has been found to be consistent with the General Plan policies listed below:

- *Policy LAND-4.1: The City will encourage, through incentives, streamlining, flexible standards, and other means, development of employment-generating uses.*
- *Policy LAND 4.5: The City will review industrial development applications and apply appropriate conditions to ensure compatibility with nearby existing and planned land uses.*
- *Policy ED-2.5: The City of Riverbank will take a targeted approach to business attraction that focuses on industry sectors that help the City address the following priorities:*
 - *Attract business that tie into regional growth opportunities*
 - *Attract businesses that address local-serving and regional retail market opportunities*
 - *Attract uses that contribute towards a vibrant and revitalized downtown district.*
- Will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area nor detrimental to the general welfare of the residents of the City as a whole.

As with other cannabis businesses in the City, safety is paramount. A sound security plan with cameras, alarms, and guards will ensure the safety of Aeriz employees, contractors, and the neighborhood.

- Will not adversely affect the orderly development of property or the preservation of property values.

The cannery site is currently an eyesore that sits vacant, surrounded by commercial and industrial businesses and neighborhood housing. Property

around it is already developed. Rehabilitating the cannery with a prosperous and growing business should raise surrounding property values.

- Is consistent with the provisions of Government Code sections 65864 through 65869.5.

The project is consistent with the provisions of Government Code sections 65864 through 65869.5 in that a Development Agreement will provide assurance to the applicant that upon approval of the project, the applicant may proceed with the project under existing codes and policies and that the project is not located in an area with a local coastal program.

- Contains a legal description of the property.

The Development Agreement contains Exhibit A, a legal description of the property.

CONDITIONAL USE PERMIT (CUP)

Prior to commencing operation of any commercial cannabis activity on the site, the developer shall obtain a Conditional Use Permit and any subsequent City approvals. The developer shall be required to comply with all provisions of the Riverbank Municipal Code and any City rules and administrative guidelines associated with implementation of the Cannabis Business Pilot Program. A public notice for this requirement was posted at the City's usual locations for the special Planning Commission meeting of September 1, 2020 on August 19, 2020. Conditions of Approval can be found attached to Resolution 2020-010 (Attachment 2).

ARCHITECTURE AND SITE PLAN REVIEW (ASPR)

The potential development of new building(s) in Phase 3 will require Architecture and Site Plan Review and CEQA analysis to ensure the proposal is in conformance with the Downtown Specific Plan EIR, adopted in 2015. An amendment to the Downtown Specific Plan may be required.

IV. STRATEGIC GOALS

The City of Riverbank Strategic Planning Session is a plan and set of goals that Riverbank will work towards for the next three (3) years. The completion of development agreements for cannabis activities is a specific objective. It is consistent with the

established General Plan goal to Achieve and Maintain Financial Stability and Sustainability as part of the City's Vision "To be recognized as a premier community where individuals, families and businesses thrive in a safe and beautiful environment."

V. ENVIRONMENTAL DETERMINATION

Phases 1 and 2, existing Buildings 1, 2, 3, 4, and 5 of the proposed project qualify for a Class 1 categorical exemption pursuant to Section 15301 of Title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility that will not have a significant effect on the environment.

Phase 3, potential new building(s) for cultivation with parking and landscape improvements, will require additional CEQA analysis and tier off the Downtown Specific Plan EIR at time of development.

VI. RECOMMENDATION

Adopt Resolution No. 2020-009 recommending the City Council adopt an Ordinance approving a development agreement by and between the City of Riverbank ("City") and DT California, LLC., a Delaware limited liability company doing business as Aeriz and adopt Resolution No. 2020-010 approving a Conditional Use Permit.

VII. ATTACHMENTS

Attachment 1 - Resolution No. 2020-009 Development Agreement
Exhibit A - Ordinance No. 2020-XXX

Attachment 2 – Resolution No. 2020-010 Conditional Use Permit
Exhibit A – Site Plan
Exhibit B – Floor Plans

Attachment 3 – Aeriz Development Agreement and Exhibits

Respectfully Submitted By:

Donna M. Kenney

Donna M. Kenney
Planning and Building Manager

**CITY OF RIVERBANK
RESOLUTION NO. 2020-009**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RIVERBANK,
RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE
APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF
RIVERBANK AND DT CALIFORNIA, LLC, A CALIFORNIA LIMITED LIABILITY
CORPORATION DOING BUSINESS AS AERIZ**

WHEREAS, on October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643), which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA established the first statewide regulatory system for medical cannabis businesses; and

WHEREAS, in 2016, the voters of California approved Proposition 64 entitled the "Control, Regulate and Tax Adult Use of Marijuana" ("AUMA"). AUMA legalized the adult-use and possession of cannabis by persons 21 years of age and older and the personal cultivation of up to six cannabis plants within a private residence; and

WHEREAS, on June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which created a single regulatory scheme for both medical and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction; and

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 *et seq.*, which authorizes the City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application; and

WHEREAS, the City adopted Resolution No. 99-39 authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City; and

WHEREAS, Resolution No. 99-39 requires a written application with specified data to be submitted to the City for consideration of any development agreement; and

WHEREAS, DT California, LLC, a California limited liability company doing business as "Aeriz" submitted an application to the City for consideration of a development agreement to operate a cannabis cultivation, extraction, manufacture, distribution, and limited retail facility (the "Project"); and

WHEREAS, DT California, LLC proposes to improve, develop, and use real property for the Project, in strict accordance with applicable state and local law, including, but not limited to, the Riverbank Municipal Code; and

WHEREAS, DT California, LLC has purchased that certain real property located at 2906 Santa Fe Street in the City of Riverbank, Assessor's Parcel Numbers 132-034-020, 132-034-017, and 132-023-020 on which DT California, LLC intends to develop the Project; and

WHEREAS, the City and DT California, LLC seek to enter a development agreement for the Project (the "Development Agreement") pursuant to Government Code section 65864 *et seq.* and all applicable local and state laws; and

WHEREAS, the Planning Commission held a duly noticed public hearing on September 1, 2020, to consider the Development Agreement and make recommendations to the City Council; and

WHEREAS, Phase 1 and Phase 2 of the proposed Project qualify for a categorical exemption pursuant to Section 15301 of Title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility that will not have a significant effect on the environment. Phase 3, a new building with parking and landscape improvements, will require additional CEQA analysis and will be based on the Downtown Specific Plan Program EIR; and

WHEREAS, the Planning Commission finds that an ordinance approving the Development Agreement will allow the City to adequately regulate and address all impacts of the Project in the City in accordance with state law; and

WHEREAS, the Planning Commission finds that the ordinance is in the best interest of the health, welfare, and safety of the public.

NOW, THEREFORE, BE IT RESOLVED THAT THE PLANNING COMMISSION OF THE CITY OF RIVERBANK HEREBY RECOMMENDS CITY COUNCIL APPROVAL OF ORDINANCE NO. 2020-XXX, APPROVING THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF RIVERBANK AND DT CALIFORNIA, LLC DOING BUSINESS AS AERIZ, ATTACHED HERETO AS EXHIBIT "A" AND INCORPORATED HEREIN BY THIS REFERENCE.

PASSED AND ADOPTED by the Planning Commission of the City of Riverbank at a regular meeting held on the 1st day of September 2020; motioned by Commissioner _____, seconded by Commissioner _____, and upon roll call was carried by the following Planning Commission vote of __-__:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Attest:

Approved:

Donna M. Kenney
Secretary to the Planning Commission

Mallorie Fenrich
Chairperson

**City of Riverbank
Planning Commission
Resolution No. 2020-010**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RIVERBANK
APPROVING THE REQUEST OF DT CALIFORNIA, LLC FOR CONDITIONAL USE
PERMIT APPLICATION NO. 01-2020 FOR THE AERIZ PROJECT WITHIN THE
CANNERY DISTRICT (CD) OF THE DOWNTOWN SPECIFIC PLAN AT 2906 SANTA
FE STREET, (APNS 132-034-020, 132-034-017, 132-023-020).**

WHEREAS, the Planning Commission of the City of Riverbank has heretofore held a duly noticed special public hearing, as required by law, on the requested Conditional Use Permit, in accordance with the Riverbank Municipal Code, Section 153.360-153.374; and

WHEREAS, the project proponent is David Thomas of DT California, LLC; and

WHEREAS, the applicant is requesting to develop a cannabis cultivation, extraction, manufacture, distribution, and retail facility within the Cannery District (CD) of the Downtown Specific Plan; and

WHEREAS, the property has a general plan designation of Mixed Use (MU); and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred; and

WHEREAS, the proposed Use Permit is consistent with all applicable general and specific plans; and,

WHEREAS, the proposed Conditional Use Permit with the conditions of approval is in conformity with both the intent and provisions of the Zoning Ordinance, RMC 153.216 (c) of the City of Riverbank Code of Ordinances; and

WHEREAS, Phase 1 and Phase 2 of the proposed Project qualify for a categorical exemption pursuant to Section 15301 of Title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility that will not have a significant effect on the environment. Phase 3, a new building with parking lot and landscape improvements, will require additional CEQA analysis and be based on the Downtown Specific Plan Program EIR; and

WHEREAS, the request of David Thomas for Conditional Use Permit 01-2020 is hereby granted and approved, subject to the following conditions:

- 1) This approval is dependent upon and limited to the proposals and plans contained, supporting documents submitted, presentations made to staff, Planning Commission and/or City Council as affirmed to by the applicant. Any

variation from these plans, proposals, supporting documents or presentations is subject to review and approval by staff prior to implementation.

- 2) The applicant shall secure and comply with all applicable federal, state and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- 3) The applicant shall comply with all regulations and code requirements of the Community Development Director, City Engineer, Building Official, Stanislaus Consolidated Fire Protection District, the Police Chief and any other agencies requiring review of the project. If required, these agencies shall be supplied copies of the final maps, site plans, public improvement plans, grading plans and building plans.
- 4) All conditions of approval for this project shall be written by the project developer on all building permit plan check sets submitted for review and approval. These conditions of approval shall be on, at all times, all grading and construction plans kept on the project site. It is the responsibility of the building developer to ensure that the project contractor is aware of, and abides by, all conditions of approval. Prior approval from the Community Development Director must be received before any changes are constituted in site design, grading, building design, building colors or materials, etc.
- 5) Site plans shall be in substantial conformance to the approved site plan and must be submitted, in English units, to the City Engineering Department for review and approval. Plans shall be prepared, wet signed and sealed by a civil engineer, land surveyor, or architect registered in the State of California and licensed to prepare site plans.
- 6) Should the project be found, at any time, not to be in compliance with any of the Conditions of Approval, or should the applicant construct or operate this development in any way other than specified in the Application or Supporting Documents or presentations to staff, Planning Commission or City Council, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to be violated.
- 7) Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the applicant a copy of this signed resolution and an approved building permit.
- 8) The hours of construction, including equipment warm-up, shall be limited to 7:00 a.m. to 6:30 p.m. on weekdays and 8:00 a.m. to 5:00 p.m. on weekends and legal holidays

- 9) All new construction requires building permits in accordance with all applicable building and fire codes and submission of a plot and grading plan prepared by a registered professional civil engineer showing property lines, building locations, topography and such other data as required by the Community Development Department.
- 10) The applicant shall defend, indemnify and hold harmless the City of Riverbank, its agents, officers, and employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void or annul this approval, or any aspect of the City's consideration of applicant's project. The applicant recognizes and agrees that applicant's voluntary commitment to meet the obligations described in this condition is an integral factor in the City's approval of this project. The intent of this condition is to require the applicant to bear the cost of any and all litigation instituted to overturn or in any way modify the City's approval of this project. Such costs include without limitation, any award of attorney's fees and costs to a prevailing plaintiff or petitioner.
- 11) This approval may be recalled to the Planning Commission for review at any time due to complaints regarding lack of compliance with conditions of approval, traffic congestion, noise generation, or other adverse operating characteristics. At such time, the Commission may revoke the approval or add/modify conditions approval.
- 12) All improvements, public and private, shall be designed and constructed in accordance with the most recent edition of the Standard Plans and Specifications all applicable state and local ordinances, standards and requirements. Should a conflict arise, the governing specification shall be determined by the City Engineer.
- 13) All exterior light fixtures shall be shown on plans subject to staff review and approval. All lights attached to buildings shall provide a soft "wash" of light against the wall. All building and parking or yard lights shall conform to City Standards and shall compliment the site and building architecture.
- 14) During construction activities, the project sponsor shall reduce or prevent to the maximum extent practicable the direct or indirect discharge of any pollutant into the storm drain system utilizing best management practices contained in the California Storm Water Best Management Practices Handbook for Construction Activities. Construction activities include, but are not limited to: watering operations; roadwork and paving operations; concrete and painting; structure construction and painting; construction material storage and handling; construction waste/debris storage and disposal; and, construction equipment/vehicle cleaning, maintenance and fueling operations. The project

sponsor is also responsible for training all contractors and subcontractors on the best management practices which are identified in the California Storm Water Best Management Practices Handbook for Construction Activities.

- 15) The City is currently adding a signal and improving the Patterson Road and Railroad/Roselle Avenue intersection, which is adjacent to the south property line of the project site. The applicant agrees to pay a 10% fair share (\$180,000) of the total cost of the improvements to the satisfaction and timing of the City Engineer.
- 16) Phase 3 of the Project requires Architecture and Site Plan Review of any new structures, the parking lot improvements, and a landscape/irrigation review and approval.
- 17) The design of any new structures, including fences, shall be consistent with the guidelines of the Downtown Specific Plan.
- 18) Any necessary lot merges and/or lot line adjustments shall be completed to the satisfaction and timing of the City Engineer.
- 19) Trash enclosures shall be constructed to Riverbank City Standards 1101 through 1104.
- 20) All signage will be reviewed under separate permit.

NOW THEREFORE, BE IT RESOLVED by the City of Riverbank Planning Commission that requested Conditional Use Permit Application 01-2020 is approved subject to those conditions established by Resolution No. 2020-010 and Exhibit "A" Site Plans and Exhibit "B" Floor Plans.

Passed and adopted by the Planning Commission of the City of Riverbank at a special meeting held on the 1st of September 2020, by the following vote ___ - ___:

AYES: Commissioners:

NOES:

ABSENT:

ABSTAIN:

Attest:

Riverbank Planning Commission
Resolution No. 2020-010
Meeting of September 1, 2020
Page 4 of 5

Approved:

**Donna M. Kenney, Secretary
Planning and Building Manager**

**Mallorie Fenrich, Chairperson
Planning Commission**

**Exhibits: A – Site Plans
 B – Floor Plans**

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

City of Riverbank
6707 3rd Street
Riverbank, CA 95367
Attention: City Clerk

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

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this ___ day of _____ 2020, by and between the **CITY OF RIVERBANK**, a California municipal corporation ("City"), and **DT California, LLC**, a Delaware limited liability company ("Developer"). City and Developer may be referred to herein individually as a "Party" or collectively as the "Parties." There are no other parties to this Agreement.

RECITALS

- A. On October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers.
- B. On November 8, 2016, California voters enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, also known as the Adult Use of Marijuana Act ("AUMA"), which establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis, including cannabis products, for use by adults 21 years and older, and to tax the growth and retail sale of cannabis for nonmedical use.
- C. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which creates a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in Commercial Cannabis

Activity, as defined in Section 1.4 of this Agreement, may operate in a particular jurisdiction.

- D. Developer proposes to improve, develop, and use (including the leasing of) real property to conduct Commercial Cannabis Activity, as defined in Section 1.4 (v) of this Agreement and to operate a Cannabis Dispensary, as defined in Section 1.4(n) of this Agreement, in strict accordance with California Cannabis Laws, as defined in Section 1.4 (k) of this Agreement, as amended from time to time (the "Project") and the Municipal Code of the City of Riverbank as amended to comply with changes in the California Cannabis Laws. The Project is phased as shown in Recital I.
- E. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 *et seq.* (the "Development Agreement Statute"), which authorizes City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application.
- F. Consistent with the requirements of the Development Agreement Statute, City has adopted Resolution No. 99-39 ("City Development Agreement Resolution") authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City.
- G. The City Development Agreement Resolution requires a written application with specified data to be submitted to City for consideration of any development agreement.
- H. Developer submitted an application to City for consideration of a development agreement for the Project.
- I. Developer holds an agreement to purchase that certain real property located at 2906 Santa Fe Street in the City of Riverbank, County of Stanislaus, State of California, Assessor's Parcel Numbers 132-023-020, 132-034-017, and 132-034-020 (collectively, the "Site"), more particularly described in the legal description attached hereto as **Exhibit A** and the Site Map attached hereto as **Exhibit B**. The site historically was operated as a cannery that processed the region's fruits and vegetables and, at one time, consisted of buildings totaling at least 503,900 square feet and perhaps as much as 785,000 square feet. The Project area is depicted in the Site Plan attached hereto as **Exhibit C**. Phase 1 of the Project includes use of Buildings 4 and 5 on the Site Plan. Phase 2 of the Project includes use of Buildings 1, 2, and 3 on the Site Plan. A potential Phase 3 may consist of future new construction on the vacant areas of the Property.

- J. Government Code section 65865 requires that an applicant for a development agreement hold a legal or equitable interest in the real property that is the subject of the development agreement.
- K. Developer holds a legal and equitable interest in the form of an agreement to purchase the Site for the purpose of owning the Site and operating the Project.
- L. On August 22, 2017, the City Council adopted Ordinance No. 2017-007 to revise Riverbank Municipal Code 120 to establish a Cannabis Business Pilot Program to regulate all cannabis businesses within the City.
- M. Government Code section 65867.5 and the City Development Agreement Resolution require the Planning Commission hold a public hearing to review an application for a development agreement.
- N. On September 1, 2020, the Planning Commission, in a duly noticed and conducted public hearing, considered Developer's applications for this Agreement and for Conditional Use Permit No. 01-2020.
- O. On _____, 2020, the Planning Commission recommended the City Council adopt Ordinance No. 2020-__, which would allow Developer to develop and operate the Project at the Site and approved Conditional Use Permit No. _____.
- P. On _____, 2020, pursuant to Government Code section 65867.5 and the City Development Agreement Resolution, the City Council reviewed, considered, adopted, and entered into this Agreement pursuant to Ordinance No. 2020-__.
- Q. This Agreement is entered into pursuant to the Development Agreement Statute and the City Development Agreement Resolution.
- R. City and Developer desire to enter into this Agreement to (i) facilitate the orderly development of the Site; (ii) redevelop an infill location in the City center (iii) create a physical environment that is consistent with and complements City's goals and visions; (iv) protect natural resources from adverse impacts; (v) improve, upgrade, and create additional community facilities and infrastructure, enhance services, and assist in implementing the goals of the General Plan; (vi) reduce the economic risk of development of the Site to both City and Developer; and (vii) create opportunities for job creation.
- S. The Parties intend, through this Agreement, to allow Developer to develop and operate the Project in accordance with the terms of this Agreement.
- T. The City Council has determined that this Agreement is consistent with City's General Plan, City's Downtown Specific Plan ("Specific Plan") and its associated

Cannery District zone (“Zoning”) and has conducted all necessary proceedings in accordance with Riverbank Municipal Code for the approval of this Agreement.

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:

AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

Section 1.1. Findings. City hereby finds and determines that entering into this Agreement furthers the public health, safety, and general welfare and is consistent with City’s General Plan, including all text and maps in the General Plan.

Section 1.2. Recitals. The Recitals above are true and correct and are hereby incorporated into and made a part of this Agreement. In the event of any inconsistency between the Recitals and the provisions of Articles 1 through 10 of this Agreement, the provisions of Articles 1 through 10 shall prevail.

Section 1.3. Exhibits. The following “Exhibits” are attached to and incorporated into this Agreement:

<u>Designation</u>	<u>Description</u>
Exhibit A	Legal Description
Exhibit B	Site Plan
Exhibit C	Floor Plans
Exhibit D	Notice of Non-Performance Penalty
Exhibit E	Indemnity Agreement
Exhibit F	Notice of Termination
Exhibit G	Assignment and Assumption Agreement

Section 1.4. Definitions. In this Agreement, unless the context otherwise requires, the terms below have the following meaning:

- (a) “Additional Insureds” has the meaning set forth in Section 6.1.
- (b) “Additional Licenses” has the meaning set forth in Section 2.4.

(c) “Adult-use cannabis” means a product containing cannabis, including, but not limited to, concentrates and extractions, intended for use by adults 21 years of age or over in California pursuant to the California Cannabis Laws.

(d) “Agreement” means this Development Agreement, inclusive of all Exhibits attached hereto.

(e) “Application” means the cannabis business application for a development agreement required by Riverbank Municipal Code Chapter 120 and Section 4 of the City Development Agreement Resolution.

(f) “Assignment and Assumption Agreement” has the meaning set forth in Section 10.1.

(g) “AUMA” means the Adult Use of Marijuana Act (Proposition 64) approved by California voters on November 8, 2016.

(h) “Authorized Licenses” has the meaning set forth in Section 2.3.

(i) “Bureau” means the Bureau of Cannabis Control within the Department of Consumer Affairs, formerly named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation.

(j) “California Building Standards Codes” means the California Building Code, as amended from time to time, in Part 2, Volumes 1 and 2, as part of Title 24 of the California Code of Regulations, as may be adopted by the Riverbank Municipal Code.

(k) “California Cannabis Laws” includes AUMA, MAUCRSA, CUA, the Medical Marijuana Program Act of 2004 codified as Health and Safety Code sections 11362.7 through 11.62.83, and any other applicable laws that may be enacted or approved.

(l) “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code. Cannabis and the term “marijuana” may be used interchangeably.

(m) “Cannabis Business Pilot Program” means the cannabis business program established and authorized by Riverbank Municipal Code chapter 120.

(n) “Cannabis Dispensary” means a business that engages in Commercial Cannabis Activity related to the retail sale of cannabis pursuant to a Type 10 license.

(o) “CEQA” means the California Environmental Quality Act, as set forth in Division 13 (Commencing with Section 21000) of the California Public Resources Code, and the CEQA Guidelines as set forth in Title 14 (Commencing with Section 15000) of the California Code of Regulations.

(p) “City” means the City of Riverbank, a municipal corporation having general police powers.

(q) “City Council” means the City of Riverbank City Council, as described in Riverbank Municipal Code Section 10.05.

(r) “City Development Agreement Resolution” has the meaning set forth in Recital F.

(s) “City Manager” means the City Manager of the City of Riverbank, or his or her designee, as described in Riverbank Municipal Code Section 31.03.

(t) “Charged Party” has the meaning set forth in Section 8.1.

(u) “Charging Party” has the meaning set forth in Section 8.1.

(v) “Commercial Cannabis Activity” includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, delivery, or sale of cannabis or a cannabis product that requires a state license pursuant to MAUCRSA.

(w) “Conditional Use Permit” means a Conditional Use Permit No. 01-2020 approved by the Planning Commission and issued by City pursuant to the Riverbank Municipal Code.

(x) “CUA” means the Compassionate Use Act (Proposition 215) approved by California voters on November 5, 1996.

(y) “Cultivation Area” means the square footage where any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis within the Canopy (as defined in 3 Cal.C.Reg.§8000(f)) takes place on the Site. Developer shall notify City of the Cultivation Area by the Effective Date of this Agreement. In the event Developer wishes to expand the Cultivation Area at any time during this Agreement, Developer shall notify City within ten (10) days after any expansion. Developer agrees to

allow City access to the Site at any time between the hours of 6:00 a.m. and 11:00 p.m. on any day of the week, or at any reasonable time, to ensure compliance with this requirement.

(z) “Developer” means DT California, LLC, a Delaware limited liability company. Developer also has the meaning set forth in Section 6.1.

(aa) “Development Agreement Statute” has the meaning set forth in Recital E.

(bb) “Exhibits” has the meaning set forth in Section 1.3.

(cc) “Gross Receipts from Operations” means total revenue actually received or receivable from operation of the Project, or from a particular category of the Project such as retail or cultivation or manufacturing, including: all sales; 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 part of or in connection with the sale of materials, goods, wares, or merchandise; and gains realized from trading in stocks or bonds, interest discounts, rents, royalties, fees, commissions, dividends, or other remunerations, 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:

1. Cash discounts allowed and taken on sales;
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”;
3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
4. Such part of the sale price of property returned by purchasers upon rescission of a contract of sale as is refunded either in cash or by credit;
5. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded.

The intent of this definition is to ensure that in calculating the payment required under Section 4.2, all sales of cannabis products through the Project are captured. This definition shall therefore be given the broadest possible interpretation consistent with this intent.

(dd) “Indemnification Agreement” has the meaning set forth in Section 6.3.

(ee) “Major Amendment” means an amendment that shall have a material effect on the terms of the Agreement. Major Amendments shall require approval by the City Council.

(ff) “Marijuana” has the same meaning as “Cannabis” as defined in Subsection 1.4 (e) and those terms may be used interchangeably.

(gg) “MAUCRSA” means the Medicinal and Adult-Use Cannabis Regulation and Safety Act, codified as Business and Professions Code section 26000 *et seq.*, as may be amended from time to time.

(hh) “MCRSA” has the meaning set forth in Recital A.

(ii) “Ministerial Fee” or “Ministerial Fees” has the meanings set forth in Section 4.1.

(jj) “Minor Amendment” means a clerical amendment to the Agreement that shall not materially affect the terms of the Agreement and any amendment described as minor herein.

(kk) “Mortgage” has the meaning set forth in Article 7.

(ll) “Non-Performance Penalty” has the meaning set forth in Section 4.5.

(mm) “Notice of Non-Performance Penalty” has meaning set forth in Section 4.5.

(nn) “Notice of Termination” has the meaning set forth in Section 9.1.

(oo) “Planning Commission” means the City of Riverbank Planning Commission as established by Riverbank Municipal Code section 32.35.

(pp) “Processing Costs” has the meaning set forth in Section 1.11.

(qq) “Project” has the meaning set forth in Recital D.

(rr) “Project Litigation” has the meaning set forth in Section 10.7.

(ss) “Public Benefit” has the meaning set forth in Section 4.2.

(tt) “Public Benefit Amount” has the meaning set forth in Section 4.2.

(uu) “Site” has the meaning set forth in Recital G.

(vv) “State” means the State of California.

(ww) “State Licensing Authority” means the state agency responsible for the issuance, renewal, or reinstatement of a state cannabis license, or the state agency authorized to take disciplinary action against a business licensed under the California Cannabis Laws.

(xx) “State Cannabis Regulations” means the regulations promulgated by the State Licensing Authorities pursuant to the California Cannabis Laws.

(yy) “State Taxing Authority” has the meaning set forth in Section 4.2.

(zz) “Subsequent City Approvals” has the meaning set forth in Section 3.1.

(aaa) “Term” has the meaning set forth in Section 1.7.

Section 1.5. Project is a Private Undertaking. The Parties agree that the Project is a private development and that City has no interest therein, except as authorized in the exercise of its governmental functions. City shall not for any purpose be considered an agent of Developer or the Project.

Section 1.6. Effective Date of Agreement. This Agreement shall become effective upon the date that the ordinance approving this Agreement becomes effective (the “Effective Date”).

Section 1.7. Term. The “Term” of this Agreement is twenty (20) years from the Effective Date, unless terminated or extended earlier, as set forth in this Agreement.

(a) **Government Tolling or Termination.** City may provide written notice to Developer to cease all Commercial Cannabis Activity, upon which Developer shall immediately comply, if City is required, directed, or believes, in its sole and absolute discretion, it must temporarily halt or terminate Commercial Cannabis Activity within the City to comply with federal or state law. If City temporarily halts this Agreement to comply with federal or state law, this Agreement shall be tolled for no longer than one (1) year (the “Tolling Period”). Developer shall not accrue or be liable to City for any Ministerial Fees or Public Benefit Amount during the Tolling Period. Developer shall resume paying any applicable fees after the Tolling Period ends. City and Developer shall discuss in good faith the termination of this Agreement if the Tolling Period exceeds five (5) calendar years to comply with federal or state law.

(b) **Developer’s Tolling or Termination.** Developer may not temporarily halt or terminate this Agreement for any purpose without causing a default of this Agreement, except as otherwise allowed by this Agreement.

Section 1.8. Priority of Enactment. In the event of a conflict between the various land use documents referenced in this Agreement, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval

superior to the approvals listed thereafter: (a) General Plan, (b) Specific Plan, (c) Zoning, (d) Agreement, (e) Conditional Use Permit, and (f) Subsequent City Approvals.

Section 1.9. Amendment of Agreement. This Agreement shall be amended only by mutual consent of the Parties. All amendments shall be in writing. The City Council hereby expressly authorizes the City Manager to approve a Minor Amendment to this Agreement, upon notification of the City Council. A Major Amendment to this Agreement shall be approved by the City Council, in accordance with the requirements set forth in the Development Agreement Statute. The City Manager shall, on behalf of City, have sole discretion for City to determine if an amendment is a Minor Amendment or a Major Amendment. Nothing in this Agreement shall be construed as requiring a noticed public hearing, unless required by law.

Section 1.10. Recordation of Development Agreement. The City Clerk shall cause a copy of this Agreement to be recorded against the title of the Site within ten (10) business days of the Effective Date.

Section 1.11. Funding Agreement for Processing Costs. Developer has deposited Thirty Thousand Dollars (\$30,000) with City to pay for the Application, all actual fees and expenses incurred by City that are related to the preparation and processing of this Agreement, including recording fees, publishing fees, staff time, consultant and attorney fees and costs (collectively, "Processing Costs"). The Processing Costs are refundable solely to the extent of non-expended Processing Costs. Developer shall be entitled to a refund of available Processing Costs only after City determines all financial obligations associated with the Project have been received and paid by City.

(a) Apportionment of Processing Costs. If the amount deposited for purposes of Processing Costs is insufficient to cover all Processing Costs, Developer shall deposit with City such additional funds necessary to pay for all Processing Costs within thirty (30) calendar days of written request by City. The failure to timely pay any such additional amounts requested by City shall be considered a material default of this Agreement and City may terminate this Agreement.

(b) Accounting. Developer may request, and City shall issue within a reasonable time, an accounting and written acknowledgement of Processing Costs paid to City.

ARTICLE 2 DEVELOPMENT OF PROPERTY

Section 2.1. Vested Right of Developer. During the Term, in developing the Site consistent with the Project described herein, Developer is assured that the development rights, obligation terms, and conditions specified in this Agreement, including, without limitation, the terms, conditions, and limitations set forth in the Exhibits, are fully vested

in Developer and may not be modified or terminated by City except as set forth in this Agreement or with Developer’s written consent.

Section 2.2. Vested Right to Develop. In accordance with Section 2.1, Developer shall have the vested right to develop and use the Project consistent with this Agreement, the Conditional Use Permit, and Subsequent City Approvals.

Section 2.3. Permitted Uses and Development Standards.

(a) **Authorized Licenses.** Developer shall be authorized to develop, construct, and use, or have one or more affiliates use, the Site for Commercial Cannabis Activity consistent with the following license types (the “Authorized Licenses”):

All Indoor Types	Cultivation
Type 6,7	Manufacturer
Type 10	Retailer
Type 11	Distribution

(b) **Limited Retail Activity.** Developer’s retail activity at the Site will be limited to commercial cannabis industry operators and will not be open to the general public. Developer shall maintain visitor logs and sale records of retail activity at the Site which shall be subject to periodic inspection by City upon 24-hour notice to ensure compliance with this Section. Developer may seek authorization from City to open retail activity to the general public. Any such request shall be processed as a Major Amendment.

(c) **Affiliate Access and Operation.** Developer shall be permitted to use, or have one or more affiliates use, the Site consistent with the Authorized Licenses for the Term of this Agreement and during the time Developer is, or affiliates are, applying for the Authorized Licenses with the applicable State Licensing Authority, subject to the applicable assignment provisions in section 10.1 of this Agreement. Notwithstanding the foregoing, Developer is, or its affiliates are, required to apply for and obtain the Authorized Licenses from the State of California. If the State Licensing Authority does not grant an Authorized License to Developer or Developer’s affiliate, Developer or affiliate, as the case may be, shall immediately cease the Commercial Cannabis Activity sought under the Authorized License denied by the State Licensing Authority. Developer shall within thirty (30) calendar days of receiving notice from the State Licensing Authority, notify City of the State Licensing Authority’s denial or rejection of any license to Developer or an affiliate. If no Authorized Licenses are granted by the State of California, Developer shall immediately cease operations. In this situation, the Agreement shall terminate immediately. The Parties intend for this Agreement and the Conditional Use Permit to serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to development of the Site and Project.

Section 2.4. Major Amendment to Permitted Uses. Developer may request to add to the Authorized Licenses additional license types once that license is applied for or obtained from the appropriate State Licensing Authority (the “Additional Licenses”). Any such Additional License shall be processed as a Major Amendment.

Section 2.5. Conditional Use Permit. Prior to commencing operation of any Commercial Cannabis Activity on the Site, Developer shall obtain the Conditional Use Permit and any applicable Subsequent City Approvals. Developer shall be required to comply with all provisions of the Riverbank Municipal Code and any City rules and administrative guidelines associated with implementation of the Cannabis Business Pilot Program.

Section 2.6. Subsequent Entitlements, Approvals, and Permits. Successful implementation of the Project shall require Developer to obtain additional approvals and permits from City and other local and state agencies. City shall comply, as necessary, with CEQA in the administration of all Subsequent City Approvals. In acting upon any Subsequent City Approvals, City’s exercise of discretion and permit authority shall conform to this Agreement. Notwithstanding the foregoing, in the course of taking action on the Subsequent City Approvals, City will exercise discretion in adopting environmental mitigation measures as part of the Conditional Use Permit. The exercise of this discretion is not prohibited or limited in any way by this Agreement. Nothing in this Agreement shall preclude the evaluation of environmental impacts or consideration of environmental mitigation measures or alternatives, as required by CEQA. Developer may provide City information on the infeasibility of any mitigation measures and related issues and City shall consider such information in its decision making.

(a) Future Development at Site. Developer may seek Subsequent City Approvals, as defined in Section 3.1 below, for the construction of additional buildings on the Site. Such approvals may necessitate revisions or amendments to the Specific Plan. In the event Developer’s proposed development of the Site requires an amendment to the Specific Plan, Developer shall pay for all costs related to the preparation of the Specific Plan amendment and any applicable environmental analysis required under CEQA. Such approvals also may necessitate amendment of the Conditional Use Permit or the processing of a new conditional use permit and Developer shall pay for the processing costs of either.

(b) Contemplated City Rules and Guidelines. City anticipates issuing additional rules and administrative guidelines associated with implementation of the Cannabis Business Pilot Program. City may establish requirements that are identical to or place a higher standard of care as existing provisions of the California Cannabis Laws, State Cannabis Regulations, or any amendments thereto. City reserves the right to adopt additional categories of rules or guidelines that are not listed in this section as part of the Cannabis Business Pilot Program.

Developer shall comply with any and all administrative guidelines adopted by City that govern or pertain to the Project as set forth in this section. For Commercial Cannabis Activity of a retail nature, nothing in this Agreement shall be construed as limiting the ability of City to amend the Riverbank Municipal Code or issue rules or administrative guidelines associated with implementation of the Cannabis Business Pilot Program consistent with Developer's operation of the Project under this Agreement, or Developer's obligation to strictly comply with the same. For Commercial Cannabis Activity of a manufacturing or cultivation nature, City shall limit any amendments to the Riverbank Municipal Code and issuance of rules and regulations and guidelines to those needed to comply with changes to State or applicable Federal law or as necessary to address public health and safety emergencies at the Site.

Section 2.7. Initiatives and Referenda. If any City ordinance, rule or regulation, addition to the Riverbank Municipal Code or other measure of any kind ("Ballot Measure Matters") is enacted or imposed by a city council – sponsored or citizen-sponsored initiative or referendum after the Effective Date that would conflict with this Agreement, the Conditional Use Permit, Subsequent City Approvals, including any amendment to the Conditional Use Permit or a subsequent conditional use permit, or reduce, limit or otherwise prevent the development rights or assurances provided to Developer in this Agreement, such Ballot Measure Matters shall not be applied to the Site or Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. City shall cooperate with Developer and shall undertake such reasonable actions as may be appropriate to ensure this Agreement remains in full force and effect and is implemented in accordance with its terms to the fullest extent permitted by state or federal law.

Section 2.8. Regulation by Other Government Entities. Developer acknowledges that City does not have authority or jurisdiction over any other government entities' ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may negatively affect the Project or the ability of City to issue a permit to Developer or comply with the terms of this Agreement. Any moratorium imposed by another government entity, including the State Licensing Authority, on City shall not cause City to be in breach of this Agreement.

Section 2.9. Developer's Right to Rebuild. Developer may renovate or rebuild any portions or buildings of or on the Site any time within the Term of this Agreement consistent with the Riverbank Municipal Code. Any such renovation or rebuild shall be subject to all design, building code, and other requirements imposed on the Project by this Agreement.

Section 2.10. Changes in California Building Standards Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring from time to time to the California Building Standards Codes.

Section 2.11. Changes Mandated by Federal or State Law. The Site and Project shall be subject to subsequently enacted state or federal laws or regulations that may preempt the Riverbank Municipal Code, or mandate the adoption or amendment of local regulations, or are in conflict with this Agreement or local rules or guidelines associated with the Cannabis Business Pilot Program. As provided in Section 65869.5 of the Development Agreement Statute, in the event state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Upon discovery of a subsequently enacted federal or state law meeting the requirements of this Section, City or Developer shall provide the other Party with written notice of the state or federal law or regulation, and a written statement of the conflicts thereby raised with the provisions of the Riverbank Municipal Code or this Agreement. Promptly thereafter, City and Developer shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation provided City shall not be obligated to agree to any modification materially increasing its obligations or materially adversely affecting its rights and benefits hereunder. In such discussions, City and Developer will attempt to preserve the terms of this Agreement and the rights of Developer derived from this Agreement to the maximum feasible extent while resolving the conflict. If City, in its judgment, determines it necessary to modify this Agreement to address such conflict, City shall have the right and responsibility to do so, and shall not have any liability to Developer for doing so or be considered in breach or default of this Agreement. City also agrees to process, in accordance with the provisions of this Agreement, Developer's proposed changes to the Project that are necessary to comply with such federal or state law and that such proposed changes shall be conclusively deemed to be consistent with this Agreement without further need for any amendment to this Agreement.

Section 2.12. Health and Safety Emergencies. In the event that any future public health and safety emergencies arise with respect to the development contemplated by this Agreement, City agrees that it shall attempt, if reasonably possible as determined by City in its discretion, to address such emergency in a way that does not have a material adverse impact on the Project or the Site. If City determines, in its discretion, that it is not reasonably possible to so address such health and safety emergency, then City may select that option for addressing the situation which, in City's discretion, minimizes, so far as reasonably possible, the impact on development and use of the Project in accordance with this Agreement, while still addressing such health and safety emergency in a manner acceptable to City. City shall allow Developer to provide input on the matters addressed in this Section 2.12. In addition, before and after City's determination under this Section 2.12, the Parties shall meet and confer on methods to minimize any adverse effect on the Project or the Site, including, without limitation, an adjustment in the Public Benefit rates.

ARTICLE 3
ENTITLEMENT AND PERMIT PROCESSING, INSPECTIONS

Section 3.1. Subsequent City Approvals. City shall permit the development and construction, of the uses contemplated in this Agreement. City agrees to timely grant, pursuant to the terms of this Agreement and the Riverbank Municipal Code, any Subsequent City Approvals reasonably necessary to complete the goals, objectives, policies, standards, and plans described in this Agreement. The Subsequent City Approvals shall include any applications, permits, and approvals required to complete the improvements necessary to develop the Site, in general accordance with this Agreement (“Subsequent City Approvals”). Nothing herein shall require City to provide Developer with Subsequent City Approvals prior to, or without complying with, all of the requirements in this Agreement, the Riverbank Municipal Code, and any applicable state law.

Section 3.2. Timely Processing. City shall use its reasonable best efforts to process and approve, within a reasonable time, any Subsequent City Approvals or environmental review requested by Developer during the Term of this Agreement.

Section 3.3. Cooperation between City and Developer. Consistent with the terms set forth herein, City agrees to cooperate with Developer, on a timely basis, in securing all permits or licenses that may be required by City or any other government entity with permitting or licensing jurisdiction over the Project.

Section 3.4. Further Consistent Discretionary Actions. The exercise of City's authority and independent judgment is recognized under this Agreement, and nothing in this Agreement shall be interpreted as limiting City's discretion or obligation to hold legally required public hearings. Except as otherwise set forth herein, such discretion and action taken by City shall, however, be consistent with the terms of this Agreement and not prevent, hinder or compromise development or use of the Site as contemplated by the Parties in this Agreement.

ARTICLE 4
PUBLIC BENEFIT, PROCESSING, AND OVERSIGHT

Section 4.1. Processing Fees and Charges. Developer shall pay to City those processing, inspection, plan checking, and monitoring fees and charges required by City which are in force and effect at the time those fees and charges are incurred (including any post-Effective Date increases in such fees and charges) for processing applications and requests for building permits, inspections, other permits, approvals and actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions (each a “Ministerial Fee” and collectively, the “Ministerial Fees”).

Section 4.2A. Public Benefit – Retail.

(a) The Parties acknowledge and agree that this Agreement confers substantial private benefits upon Developer that will place burdens upon City infrastructure, services, and neighborhoods. Accordingly, the Parties intend to provide consideration to City to offset these impacts that commensurate with the private benefits conferred on Developer (the “Public Benefit-Retail”). In consideration of the foregoing, Developer shall remit to City as follows:

Effective Date	Public Benefit Due.
First (1 st) Business Day, of the 1 st Month Following Opening of the On-Site Store to the Public through the entire term of the Agreement so long as retail facility is in operation.	\$7,000 or 5% of Gross Receipts from Operations (Retail), whichever amount is greater, and due each month.

(b) Collectively, these amounts shall be known as the “Public Benefit Amount-Retail”.

(c) Developer shall file an applicable statement that complies with the California State Board of Equalization, California Department of Tax and Fee Administration, or either’s successor agency (the “State Taxing Authority”) for sales tax purposes showing the true and correct amount of Gross Receipts from Operations (Retail) of the Project during the applicable time period. Developer shall provide a copy of such statement to City upon request by City.

(d) The Public Benefit Amount-Retail shall, at all times, be no higher than the lowest amount charged by the City for public benefit on any other retail cannabis use in the City.

Section 4.2.B. Public Benefit – Other Than Retail.

(a) The Parties acknowledge and agree that this Agreement confers substantial private benefits upon Developer that will place burdens upon City infrastructure, services, and neighborhoods. Accordingly, the Parties intend to provide consideration to City to offset these impacts that commensurate with the private benefits conferred on Developer (the “Public Benefit – Other Than Retail”). In consideration of the foregoing, Developer shall remit to City for the various categories of Commercial Cannabis Activity other than retail as follows:

Cultivation		
Years Covered	Public Benefit Rate	When Applied and Due

Years 1-4	\$2.50 per square foot per year of the Cultivation Area	Applied when space is used for commercial cannabis cultivation within the Cultivation Area and is due annually.
Years 5-8	\$2.75 per square foot per year of the Cultivation Area	
Years 9-12	\$3.25 per square foot per year of the Cultivation Area	
Years 13-16	\$3.50 per square foot per year of the Cultivation Area	
Years 17-20	\$4.00 per square foot per year of the Cultivation Area	

Manufacturing		
Years Covered	Public Benefit Rate	When Applied and Due
Years 1-4	1.0% of Gross Receipts from Operations (Manufacturing)	Applied when space is used for manufacturing and is due quarterly.
Years 5-8	1.25% of Gross Receipts from Operations (Manufacturing)	
Years 9-12	1.75% of Gross Receipts from Operations (Manufacturing)	
Years 13-16	2.0% of Gross Receipts from Operations (Manufacturing)	

Years 17-20	2.5% of Gross Receipts from Operations (Manufacturing)	
-------------	--	--

Distribution from Project of Products of Third Parties (Type 11 License)		
Years Covered	Public Benefit Rate	When Applied and Due
Year 1	4% of Gross Receipts from Third-Party Product Distribution Operations	Starting the second (2 nd) quarter following the issuance of the Conditional Use Permit and is due quarterly.
Years 2-20	5% of Gross Receipts from Third-Party Product Distribution Operations	Due quarterly.

Distribution from Project's Cultivation and Manufacturing Facilities (Type 11 License)		
Years Covered	Public Benefit Rate	When Applied and Due
Years 1-20	None	N/A

(b) Collectively, these amounts shall be known as the "Public Benefit Amount-Other Than Retail."

(c) Developer shall file an applicable statement that complies with the California State Board of Equalization, California Department of Tax and Fee Administration, or either's successor agency (the "State Taxing Authority") for sales tax purposes showing the true and correct amount of Gross Receipts from Operations of the Project during the applicable time period. Developer shall provide a copy of such statement to City upon request by City.

(d) The cultivation and manufacturing rates in subsection (a) shall be reviewed by the Parties every twenty-four (24) months to ensure that the rates of public benefit paid pursuant to this Section 4.2.B are on a par or more favorable than similar payments required in other local jurisdictions (cities and counties) in the State, whatever form such payments take (i.e., public benefit payments, taxes, charges, assessments, fees or other similar payments.)

Section 4.2.C. Other Public Benefits. The Parties agree that the Project will provide public benefits other than the payments provided for in Section 4.2.A and Section 4.2.B and may provide additional public benefits. For example, Developer estimates that development of Phase 1 and Phase 2 of the Project should provide between 200 and 400 jobs in the City. Further, the Project involves reuse of a currently unused property near the City center constituting in-fill development that will put the Site back into active economic use. In addition, the Project may have additional benefits such as an internship program for the new careers available in the Project and a program for training developmentally disabled persons for employment on the site. The Parties shall cooperate and use reasonable efforts to achieve these additional benefits and any others the Parties agree to pursue.

Section 4.3. Reporting. Developer shall provide City with copies of any reports provided to a state cannabis licensing agency within forty-five (45) calendar days of that submission.

Any failure or refusal of Developer to provide any statement or report to City, the State Taxing Authority, or any other State Licensing Authority as required within the time required, or to pay such sums due hereunder when the same are due and payable in accordance with the provisions of this Agreement, may constitute full and sufficient grounds for the revocation or suspension of the Conditional Use Permit or a subsequent conditional use permit issued in the future.

Section 4.4. Records. Developer shall keep records of all Commercial Cannabis Activity in accordance with Chapter 16 (commencing with Section 26160) of Division 10 of the Business and Professions Code and the applicable State Cannabis Regulations. All records required by this Section shall be maintained and made available for City's examination and duplication (physical or electronic) at the Site or at an alternate facility as approved in writing by the City Manager or his or her designee.

Section 4.5. Penalty. Developer acknowledges that to ensure proper compliance with the terms of this Agreement and any applicable laws, City must engage in costly compliance review, inspections, and, if necessary, enforcement actions to protect the health, safety, and welfare of its residents. Penalty and interest provisions are necessary to assist City in compliance review and enforcement actions. If Developer fail to make any payment when due as required by this Agreement, including the Public Benefit

Amount, City may impose a “Non-Performance Penalty.” A Non-Performance Penalty of one percent (1%) shall be applied to all past due payments. City shall deliver to Developer a “Notice of Non-Performance Penalty,” attached hereto as **Exhibit D**. Payment of the Non-Performance Penalty shall be in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Penalty.

Section 4.6. Interest on Unpaid Non-Performance Penalty. If Developer fails to pay the Non-Performance Penalty after City has delivered the Notice of Non-Performance Penalty, then, in addition to the principal amount of the Non-performance Penalty, Developer shall pay City interest at the rate of eighteen percent (18%) per annum, computed on the principal amount of the Non-Performance Penalty, from a date fifteen (15) calendar days following delivery of the Notice of Non-performance Penalty.

Section 4.7. Protections from City Tax. Notwithstanding Section 4.2, for the Term of this Agreement, Developer shall be exempt from any City tax, including a business license tax, on commercial cannabis businesses. Notwithstanding the foregoing, Developer and the Project shall be subject to any and all taxes, assessments, or similar charges or fees of general applicability enacted by the federal government, state government, or County of Stanislaus, including any tax applicable to an area greater than the City limits to which City may be a party (i.e., county tax sharing agreement). In the event the Public Benefit Amount is invalidated for any reason, Developer shall be subject to any applicable tax on commercial cannabis businesses from the start date of such invalidation through the remaining Term of this Agreement.

ARTICLE 5 PUBLIC FACILITIES, SERVICES, AND UTILITIES

City shall use the Public Benefit Amount to pay for the impact on and maintenance or improvement of City neighborhoods and the existing level of service of City infrastructure and services to accommodate for the Project.

ARTICLE 6 INSURANCE AND INDEMNITY

Section 6.1. Insurance. Developer shall require all persons doing work on the Project, including its contractors and subcontractors (collectively, “Developer” for purposes of this Article 6 only), to obtain and maintain insurance of the types and in the amounts described in this Article with carriers reasonably satisfactory to City.

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

(i) Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as “Additional Insureds” by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed additional insured.

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

(iii) Contain standard separation of insured provisions.

(b) Automotive Liability Insurance. Developer shall maintain business automobile liability insurance or equivalent form with a limit of not less than One Million Dollars (\$1,000,000) for each accident. Such insurance shall include coverage for owned, hired, and non-owned automobiles. Such insurance shall also:

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

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

(iii) Contain standard separation of insured provisions.

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

Section 6.2. Other Insurance Requirements. Developer shall do all of the following:

(a) Prior to taking any actions under this Agreement, furnish City with properly executed certificates of insurance that clearly evidence all insurance required in this

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

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

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

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

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

Section 6.3. Indemnity. To the fullest extent permitted by law, Developer shall defend, indemnify, and hold harmless City and its agents, elected and appointed officials, officers, employees, consultants, and volunteers (collectively, "City's Agents") from any and all liability arising out of a claim, action, or proceeding against City, or City's Agents, to attack, set aside, void, or annul an approval concerning the Project, this Agreement, any applicable conditional use permit, or Subsequent City Approvals. Developer shall execute the indemnification agreement ("Indemnification Agreement") attached hereto as **Exhibit E**.

Section 6.4. Failure to Indemnify; Waiver. Failure to indemnify City, when required by this Agreement, shall constitute a material breach of this Agreement and of any applicable conditional use permit and Subsequent City Approvals, which shall entitle City to all remedies available under law, including, but not limited to, specific performance and damages. Failure to indemnify shall constitute grounds upon which City may rescind its approval of any applicable conditional use permit. Developer's failure to indemnify City shall be a waiver by Developer of any right to proceed with the Project, or any portion thereof, and a waiver of Developer's right to file a claim, action or proceeding against City or City's Agents based on City's rescission or revocation of any conditional use permit, Subsequent City Approvals, or City's failure to defend any claim, action, or proceeding based on Developer's failure to indemnify City.

Section 6.5. Waiver of Damages; Exclusion. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge that City would not have entered into this Agreement had it been exposed to liability for damages from Developer other than those expressly specified in this Section 6.5.

- (a) Initial Approval or Disapproval of Agreement. Developer acknowledges that under the Development Agreement Statute, land use approvals (including development agreements) must be approved by the City Council and that, under law, the City Council's discretion to vote in any particular way may not be constrained by contract. Developer therefore waives all claims for damages against City in the event that this Agreement or the Conditional Use Permit, are: (1) not approved by the City Council or (2) are approved by the City Council, but with new changes, amendments, conditions, or deletions to which Developer is opposed.
- (b) Referendum. Developer further acknowledges that, as an instrument which must be approved by ordinance, a development agreement is subject to referendum; and that, under law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and Developer waives all claims for damages against City in this regard.
- (c) Breach of Agreement. Developer waives all claims for damages against City for breach of this Agreement, except that Developer may make a claim for damages against City for breach of this Agreement in a sum not to exceed the amount actually paid by Developer in Public Benefit – Other Than Retail payments under Section 4.2.B of this Agreement in the twelve (12) full months prior to the breach asserted by Developer.

ARTICLE 7 MORTGAGEE PROTECTION

This Agreement, once executed and recorded, shall be superior and senior to any lien placed upon the Site or any portion thereof following recording of this Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. This Agreement shall immediately be deemed in default and immediately terminate upon the foreclosure or transfer of any interest in the Site or Project, whether by operation of law or any other method of interest change or transfer, unless the City Manager has authorized such change or transfer in advance, in writing.

ARTICLE 8 DEFAULT

Section 8.1. General Provisions.

(a) Subject only to any extensions of time by mutual consent in writing, or as otherwise provided herein, the failure or delay by any Party to perform in accordance with the terms and provisions of this Agreement shall constitute a default. Any Party alleging

a default or breach of this Agreement ("Charging Party") shall give the other Party ("Charged Party") not less than ninety (90) calendar days written notice, which shall specify the nature of the alleged default and the manner in which the default may be cured. During any such ninety (90) calendar day period, the Charged Party shall not be considered in default for purposes of termination of this Agreement or institution of legal proceedings for the breach of this Agreement.

(b) After expiration of the ninety (90) calendar day period, if such default has not been cured or is not in the process of being diligently cured in the manner set forth in the notice, or if the breach cannot reasonably be cured within ninety (90) calendar days, the Charging Party may, at its option, institute legal proceedings pursuant to this Agreement, give notice of its intent to terminate this Agreement pursuant to Government Code section 65868. In the event City is the Charging Party, City may, in its sole discretion, give notice, as required by law, to the Charged Party of its intent to revoke or rescind any operable conditional use permit related to or concerning the Project.

(c) Prior to the Charging Party giving notice to the Charged Party of its intent to terminate, or prior to instituting legal or equitable proceedings, the matter shall be scheduled for consideration and review by City in the manner set forth in Government Code sections 65865, 65867, and 65868 within thirty (30) calendar days from the expiration of the ninety (90) day notice period.

(d) Following consideration of the evidence presented and said review before City, and after providing the Charged Party an additional forty-five (45) calendar day period to cure, the Charging Party may institute legal proceedings against the Charged Party or may give written notice of termination of this Agreement to the Charged Party.

(e) Evidence of default may arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code section 65865.1, as set forth in Section 8.2. If any Party determines that another Party is in default following the completion of the normally scheduled periodic review, without reference to the procedures specified in Section 8.1(c), said Party may give written notice of termination of this Agreement, specifying in the notice the alleged nature of the default and potential actions to cure said default where appropriate. If the alleged default is not cured in ninety (90) calendar days or within such longer period specified in the notice or the defaulting Party is not diligently pursuing a cure or if the breach cannot reasonably be cured within the period or the defaulting party waives its right to cure such alleged default, this Agreement may be terminated by the non-defaulting Party by giving written notice.

(f) In the event Developer is in default under the terms and conditions of this Agreement, no permit application shall be accepted by City nor will any permit be issued to Developer until the default is cured, or the Agreement is terminated.

Section 8.2. Annual Review. City shall, at least every twelve (12) months during the Term of this Agreement, or if required more frequently under the conditions of approval

of any operable conditional use permit for the Project, review the extent of good faith, substantial compliance of Developer and City with the terms of this Agreement. Such periodic review by City shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section 65865.1. City shall deposit in the mail or fax to Developer a copy of all staff reports and, to the extent practical, related exhibits concerning this Agreement or the Project's performance, at least twenty (20) calendar days prior to such periodic review. Developer shall be entitled to appeal a determination of City or City Manager to the City Council. Any appeal must be filed within ten (10) calendar days of the decision of City or the City Manager, respectively. Developer shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before City, the City Manager, or City Council, as applicable. The reasonable cost for City's annual review of this Agreement shall be paid by Developer, not to exceed the actual costs incurred by City in connection with the review.

Section 8.3. Estoppel Certificates.

(a) City shall, with at least twenty (20) calendar days prior written notice, execute, acknowledge, and deliver to Developer, Developer's lender, potential investors, or assignees an Estoppel Certificate in writing which certifies that this Agreement is in full force and effect, that there are no breaches or defaults under the Agreement, and that the Agreement has not been modified or terminated and is enforceable in accordance with its terms and conditions.

(b) At Developer's option, City's failure to deliver such Estoppel Certificate within the stated time period shall be conclusive evidence that the Agreement is in full force and effect, that there are no uncured breaches or defaults in Developer's performance of the Agreement or violation of any City ordinances, regulations, and policies regulating the use and development of the Site or the Project subject to this Agreement.

Section 8.4. Default by City. In the event City does not accept, review, approve, or issue any permits or approvals in a timely fashion, as defined by this Agreement, or if City otherwise defaults under the terms of this Agreement, City agrees that Developer shall not be obligated to proceed with or complete the Project, and shall constitute grounds for termination or cancellation of this Agreement by Developer. This section shall not limit in any way Developer's other remedies if Developer chooses not to terminate or cancel the Agreement.

Section 8.5. Cumulative Remedies of Parties. In addition to any other rights or remedies, City or Developer may institute legal or equitable proceedings, including, without limitation, specific performance, to cure, correct, or remedy any default, enforce any covenant, or enjoin any threatened or attempted violation of the provisions of this Agreement, so long as any such action conforms to section 8.1(c) of this Agreement.

Section 8.6. Enforced Delay, Extension of Times of Performance. Delays in performance, by either Party, shall not be deemed a default if such delays or defaults are due to war, insurrection, terrorism, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental or public utilities' restrictions or delays imposed where mandated or created by governmental entities or public utilities other than City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations enacted by the state or federal government, litigation, or other force majeure events. An extension of time for such cause shall be in effect for the period of forced delay or longer, as may be mutually agreed upon.

Section 8.7. Appeals. Developer may appeal any adverse decision or action of City pursuant to Riverbank Municipal Chapter 99.

ARTICLE 9 TERMINATION

Section 9.1. Termination Upon Completion of Development. This Agreement shall terminate upon the expiration of the Term, unless extended or unless it is terminated earlier, by mutual written agreement of the Parties or for cause pursuant to the terms of this Agreement. Upon termination of this Agreement, City shall record a notice of such termination in substantial conformance with the "Notice of Termination" attached hereto as **Exhibit F**, and this Agreement shall be of no further force or effect except as otherwise set forth in this Agreement.

Section 9.2. Effect of Termination on Developer's Obligations. Termination of this Agreement shall eliminate any further obligation of Developer to comply with this Agreement, or some portion thereof, if such termination relates to only part of the Site or Project. Termination of this Agreement, in whole or in part, shall not, however, eliminate the rights of Developer to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

Section 9.3. Effect of Termination on City's Obligations. Termination of this Agreement shall eliminate any further obligation of City to comply with this Agreement, or some portion thereof. Termination of this Agreement shall not, however, eliminate the rights of City to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

Section 9.4. Survival After Termination. The rights and obligations of the Parties set forth in this Section 9.4, Section 2.8, Section 6.3, Section 10.3, Section 10.4, Section 10.5, Section 10.7, and any right or obligation of the Parties in this Agreement which, by its express terms or nature and context is intended to survive termination of this Agreement, will survive any such termination.

ARTICLE 10 OTHER GENERAL PROVISIONS

Section 10.1. Assignment and Assumption. Developer in its sole discretion may sell, assign, or transfer all or any part of its rights, title, and interest in the Site under this Agreement. Developer shall not have the right to sell, assign, or transfer all or any part of its rights, title, and interests in all or a portion of the Commercial Cannabis Activity subject to or a part of this Agreement, to any person, firm, corporation, or entity during the Term of this Agreement without the advance written consent of the City Manager. Notwithstanding the above, the City Manager shall evaluate in good faith any request for a transfer of rights to a third party under this Agreement, and shall not unreasonably withhold approval of such request. The City Manager's evaluation shall take into consideration the experience of and resources available to the prospective transferee relative to their ability to competently assume the Commercial Cannabis Activity for the Project. Additionally, the City Manager may, at his or her discretion, deny a transfer request for any of the reasons contemplated in California Code of Regulations, tit. 16, sections 5017-5018.

Any assignment or transfer prohibited by this Agreement will be considered an immediate breach of this Agreement and City may elect to immediately terminate this Agreement. If the City Manager approves an assignment or transfer of any interest detailed in this Section 10.1, or if Developer assigns its rights and responsibilities to an affiliate as allowed in this Section 10.1, City and Developer shall execute an "Assignment and Assumption Agreement" in the form attached hereto as **Exhibit G**.

Section 10.2. Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of interest in the Site or Project, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law, including California Civil Code Section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Site, and is binding upon Developer.

Section 10.3. Notices. Any notice or communication required hereunder between City and Developer must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day, or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by

any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered, as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City: City of Riverbank
6707 3rd Street
Riverbank, California 95367
Attention: City Manager

and Churchwell White LLP
1414 K Street, 3rd Floor
Sacramento, California 95814
Attention: Douglas L. White, Esq.

If to Developer: DT California, LLC
330 North Wabash Avenue, Suite 1700
Chicago, IL 60611
Attention: David Thomas

With copy to: Aronberg Goldghen
330 N. Wabash Avenue, Suite 1700
Chicago, IL 60611-3596
Attention: Paul A. Gilman

and: Petrulakis Law & Advocacy, APC
P.O. Box 92
Modesto, CA 95354
Attention: George A. Petrulakis

Section 10.4. Governing Law and Dispute Resolution. The governing law and dispute resolution mechanisms under this Agreement are as follows:

(a) Governing Law. The validity, interpretation, and performance of this Agreement shall be controlled by and construed pursuant to the laws of the State of California.

(b) Negotiation. In the event of any dispute, claim, controversy, or breach arising out of or relating to this Agreement, other than unlawful detainer and any action

for equitable or injunctive relief, the Parties will use their good faith efforts to settle the dispute, claim, controversy, or breach by negotiating in good faith, and they will attempt to reach a solution satisfactory to both parties no later than forty-five (45) days from the date that either Party gives written notice of its intent to negotiate in good faith to the other Party. Each party may bring up to three (3) people to this negotiation. Should the parties be unable to resolve the dispute, claim, controversy, or breach giving rise to the negotiation, any written claim notice or response will be admissible in any subsequent proceeding for the sole purpose of demonstrating the Parties completed negotiations pursuant to this subsection (b).

(c) Mandatory Mediation. If the negotiation under subsection (b) is unsuccessful, the Parties shall initiate mandatory mediation under this subsection (c) whereby any dispute, claim, controversy or breach arising out of or relating to this Agreement, will be submitted to mediation. The Parties shall select one mediator. If the Parties cannot agree on a mediator, either Party may petition the Superior Court of Stanislaus County for the appointment of a mediator by the presiding judge. Each Party shall submit a brief memorandum setting forth its position on the issues that need to be resolved. The mediation shall be held in Stanislaus County, California or another place chosen by the Parties. Before the mediation proceedings begin, the mediator and all parties to the mediation will execute an agreement to maintain confidentiality of the proceedings under California Evidence Code §§703.5 and 1115–1129 and California Code of Civil Procedure §1775.10, or successor statutes, in order to exclude the use of any testimony or evidence produced at the mediation in any subsequent dispute resolution including court proceedings, arbitration, or reference hearings. The City Manager and Mr. David Thomas will attend the mediation sessions in person with other representatives of the Parties. Persons other than the Parties, the Parties' representatives and the mediator may attend the mediation sessions only with the permission of the Parties. Confidential information disclosed to a mediator by the Parties or by witnesses during the course of the mediation will not be divulged by the mediator. All records, reports, or other documents received by the mediator will be confidential. There will be no stenographic or tape recording of the mediation process.

(d) Post-Mediation Dispute Resolution. If mediation under subsection (c) does not result in a resolution of the dispute, claim, controversy, or breach within ninety (90) days from the date the matter was submitted to mediation, the Parties may proceed to litigation. Notwithstanding the foregoing, the Parties may agree, under a separate agreement, to submit the dispute, claim, controversy, or breach to binding or non-binding arbitration or to hearing by a referee in accordance with California Code of Civil Procedure §§ 638-645.2.

Section 10.5. Invalidity of Agreement / Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any term or provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any term or provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, any provisions that are not invalid or unenforceable shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement. The Parties expressly agree that each Party is strictly prohibited from failing to perform any and all obligations under this Agreement on the basis that this Agreement is invalid, unenforceable, or illegal. By entering into this Agreement, each Party disclaims any right to tender an affirmative defense in any arbitration or court of competent jurisdiction, that performance under this Agreement is not required because the Agreement is invalid, unenforceable, or illegal.

Section 10.6. Cumulative Remedies. In addition to any other rights or remedies, City and Developer may institute legal or equitable proceedings to cure, correct, or remedy any default, to specifically enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of the provisions of this Agreement. The prevailing party in any such action shall be entitled to reasonable attorneys' fees and costs. Notwithstanding the foregoing or any other provision of this Agreement, in the event of City default under this Agreement, Developer agree that Developer may not seek, and shall forever waive any right to, monetary damages against City, but excluding therefrom the right to recover any fees or charges paid by Developer in excess of those permitted hereunder.

Section 10.7. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity challenging this Agreement or any associated entitlement, permit, or approval granted by City to Developer for the Project (collectively, "Project Litigation"), the Parties agree to cooperate with each other as set forth herein. City may elect to tender the defense of any lawsuit filed and related in whole or in part to Project Litigation with legal counsel selected by City. Developer will indemnify, hold City harmless from, and defend City from all costs and expenses incurred in the defense of such lawsuit, including, but not limited to, damages, attorneys' fees, and expenses of litigation awarded to the prevailing party or parties in such litigation. Developer shall pay all litigation fees to City, within thirty (30) days of receiving a written request and accounting of such fees and expenses, from City. Notwithstanding the aforementioned, City may request, and Developer will provide to City within seven (7) days of any such request, a deposit to cover City's reasonably anticipated Project Litigation fees and costs.

Section 10.8. Constructive Notice and Acceptance. Every person who after the Effective Date and recording of this Agreement owns or acquires any right, title, or interest to any portion of the Site is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this

Agreement is contained in the instrument by which such person acquired an interest in the Site, and all rights and interests of such person in the Site shall be subject to the terms, requirements, and provisions of this Agreement.

Section 10.9. Statute of Limitations and Laches. City and Developer agree that each Party will undergo a change in position in detrimental reliance upon this Agreement from the time of its execution and subsequently. The Parties agree that section 65009(c)(1)(D) of the California Government Code, which provides for a ninety (90) day statute of limitations to challenge the adoption of this Agreement, is applicable to this Agreement. In addition, any person who may challenge the validity of this Agreement is hereby put on notice that, should the legality or validity of this Agreement be challenged by any third party in litigation, which is filed and served more than ninety (90) days after the execution of this Agreement, City and Developer shall each assert the affirmative defense of laches with respect to such challenge, in addition to all other available defenses. This Section in no way limits the right of a Party, claiming that the other Party breached the terms of this Agreement, to bring a claim against the other Party within the four (4) year statute of limitations set forth in Section 337 of the California Civil Code.

Section 10.10. Change in State Regulations. In no event shall Developer operate the Project in violation of the Agreement, or State Cannabis Regulations, as many be amended from time to time.

Section 10.11. Standard Terms and Conditions.

(a) **Venue.** Venue for all legal proceedings shall be in the Superior Court of California in and for the County of Stanislaus.

(b) **Waiver.** A waiver by any Party of any breach of any term, covenant, or condition herein contained or a waiver of any right or remedy of such Party available hereunder, at law or in equity, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition herein contained or of any continued or subsequent right to the same right or remedy. No Party shall be deemed to have made any such waiver unless it is in writing and signed by the Party so waiving.

(c) **Completeness of Instrument.** This Agreement, together with its specific references, attachments, and Exhibits, constitutes all of the agreements, understandings, representations, conditions, warranties, and covenants made by and between the Parties hereto. Unless set forth herein, no Party to this Agreement shall be liable for any representations made, express or implied.

(d) **Supersedes Prior Agreement.** It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, or representations, written, electronic, or oral, between the Parties hereto with respect to the Site and the Project.

(e) Captions. The captions of this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

(f) Number and Gender. In this Agreement, the neuter gender includes the feminine and masculine, and the singular includes the plural, and the word “person” includes corporations, partnerships, firms, or associations, wherever the context requires.

(g) Mandatory and Permissive. “Shall” and “will” and “agrees” are mandatory. “May” or “can” are permissive.

(h) Term Includes Extensions. All references to the Term of this Agreement shall include any extensions of such Term.

(i) Counterparts. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(j) Other Documents. The Parties agree that they shall cooperate in good faith to accomplish the objectives of this Agreement and, to that end, agree to execute and deliver such other instruments or documents as may be necessary and convenient to fulfill the purposes and intentions of this Agreement.

(k) Time is of the Essence. Time is of the essence in this Agreement in each covenant, term, and condition herein.

(l) Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, no Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

(m) Document Preparation. This Agreement will not be construed against the Party preparing it, but will be construed as if prepared by all Parties.

(n) Advice of Legal Counsel. Each Party acknowledges that it has reviewed this Agreement with its own legal counsel and, based upon the advice of that counsel, freely entered into this Agreement.

(o) Attorney's Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

(p) Calculation of Time Periods. All time referenced in this Agreement shall be calendar days, unless the last day falls on a legal holiday, Saturday, or Sunday, in which case the last day shall be the next business day.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and City as of the Effective Date of the Agreement, as defined above.

“CITY”

Date: _____, 2020

CITY OF RIVERBANK, CA
a California Municipal Corporation

By: _____
Sean Scully
City Manager

Attest:

By: _____
Annabelle Aguilar
City Clerk

Approved to as Form

By: _____
Tom Hallinan
City Attorney

“DEVELOPER”

Date: _____, 2020

DT California, LLC, a Delaware limited liability company

By: DT Management Group, LLC, an Illinois limited liability company
Its: Manager

By: _____
David Thomas
Its: Manager

Exhibit A Legal Description

Order No. 140-1007000-00

Exhibit "A"

Parcel 1:

Lots 1 and 2 in Block 1 of the City of Riverbank, as per Map thereof recorded October 11, 1910 in Book 5 of Maps, Page 16, Stanislaus County Records.

Parcel 2:

Lots 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 42, 43, 44, 45, 46, 47, 48, 49, 50, and the North 100 feet of the East 1/2 of Lot 51 of Riverbank Acreage Tract, as per Map thereof recorded March 23, 1912 in Volume 6 of Maps, at Page 33, Stanislaus County Records.

Excepting that portion granted to the State of California by Instrument recorded June 8, 1971 in Book 2398 Page 697, Official Records, described as portion of Lots 11 and 12 of the Riverbank Acreage Tract, as per Map thereof recorded March 23, 1912 in Volume 6 of Maps at Page 33, Stanislaus County Records, said portion described as follows:

Beginning at the intersection of the Westerly line of said Lot 11 with the Southerly line of existing State Highway Route 10-STA-100 P.M. 32 3; thence (1) along said Southerly line North 89° 54' 00" East, 185.33 feet; thence South 81° 59' 08" West, 181.56 feet; thence South 89° 54' 00" West, 5.50 feet to said Westerly line; thence along last said line North 60° 00' 00" E., 25.00 feet to the point of beginning.

Excepting therefrom:

The following described portion of Lot 11 of Riverbank Acreage Tract as per map of said tract recorded in Volume 6 of Maps at Page 33, Stanislaus County Records, and being located in the Northeast 1/4 of Section 26, Township 7 South, Range 9 East, Mount Diablo Meridian more particularly described as follows:

Beginning at the Southwest corner of said Lot 11; thence along west line of said Lot 11, North 01°05'00" East 265.00 feet to the South line of the right of way granted to the State of California by Instrument recorded June 8, 1971 in Book 2398 Page 697, Official Records; thence, along said South line, South 88°55'00" East 5.50 feet; thence, continuing along said South line, North 83°10'08" East 82.28 feet; thence, parallel with and 87.00 feet Easterly from said west line of Lot 11, South 01°05'00" West 276.33 feet to a point on the South line of said Lot 11; thence, along said South line, North 88°55'00" West 87.00 feet to the point of beginning.

Parcel 3:

That portion of Riverbank Acreage Tract, in the County of Stanislaus, State of California, as per Map filed in Volume 6 of Maps, at Page 33, Stanislaus County Records, being land within the boundaries of certain streets shown on said Map heretofore been abandoned, described as follows, to wit:

- A. That portion of 60 foot wide Topoka Street, running Easterly from the East lines of Lots 13 and 20 of said tract to the Westerly line of Railroad Avenue.
- B. That portion of 60 foot wide Santa Fe Street, running Easterly from the East line of Lots 20 and 45 of said tract to the Westerly line of Railroad Avenue.
- C. That portion of 60 foot wide Stanislaus Street running Easterly from a point 75 feet West of the East lines of Lots 46 and 51 of said tract to the Westerly line of Railroad Avenue.
- D. That portion of 50 foot wide Railroad Avenue running Northerly, from the North line of Sierra Street produced Easterly to the South line of Atchison Street (Oakdale - Sonoma Highway).
- E. That portion of Railroad Avenue described as follows: Beginning at a point on the East line of Section 26, Township 7 South, Range 9 East, Mount Diablo Base and Meridian, that bears South 6° 10' 25" West 90.00 feet from the intersection of the North right of way line of said Sierra Street and the East line of said Section 26; thence North 0° 10' 25" East along the East line of said Section 26, a distance of 90.00 feet to the North right of way line of said Sierra Street; thence North 88° 55' 32" West along said North right of way line, a distance of 42.00 feet; thence in a Southeasterly direction to the point of beginning.

Excepting that portion of Railroad Avenue granted to the City of Riverbank, in Deed recorded January 26, 1972 in Book 2448 Page 254, described as follows:

Page 13

{CW096294.7}

DEVELOPMENT AGREEMENT
CITY OF RIVERBANK
& DT CALIFORNIA, LLC
Page 37 of 57

Commencing at the intersection of the Northerly prolongation of the East line of Railroad Avenue with the Easterly prolongation of the North line of Sierra Street; thence North 88° 55' West along the prolongation North line of Sierra Street 40.03 feet to the point of beginning; thence South 27° 35' East, 58.50 feet; thence South 21° 52' East 33.96 feet to a point on the East line of Railroad Avenue, said point also being on the East line of said Section 26; thence North 25° 28' 50" West, 92.34 to the point of beginning.

Parcel 4:

An irregular shaped parcel of land in the City of Riverbank, County of Stanislaus, State of California, being a portion of the Northwest quarter of Section 25, Township 2 South, Range 9 East, Mount Diablo Base and Meridian, described as follows:

Beginning at the Southwesterly corner of said Northwest quarter of Section 25; thence North (bearing assumed for purposes of this description) along the Westerly line of said Northwest quarter, said Westerly line being also the Easterly line of Railroad Avenue (50 feet wide) 447.92 feet to the most Southwesterly corner of that certain parcel of land described in that certain Deed from the Atchison, Topeka, & Santa Fe Railway Company to Hershel California Fruit Products Company, Inc. dated June 7, 1955; thence continuing North along the Westerly line of last said parcel, also being the Westerly line of the Northwest quarter of said Section 25, a distance of 422.87 feet to the Southwesterly corner of that certain parcel of land conveyed by the Atchison, Topeka & Santa Fe Railway Company to Riverbank Canning Co. by deed dated April 24, 1936; thence continuing Northerly along the Westerly line of last said parcel, a distance of 183.4 feet to a point hereinafter referred to as point "A"; thence continuing Northerly along said Westerly line 397.77 feet; thence Southeastely along the arc of a curve that is concentric with and distant Southwesterly 200.00 feet measured radially from the Northwesterly line of that certain parcel of land as described in deed to the San Francisco and San Joaquin Valley Railway Company (predecessor in interest to the Atchison, Topeka & Santa Fe Railway Company) recorded May 15, 1899 in Volume 67 of Deeds, Page 162, records of said County, concave Northeastely and having a radius of 11,509.82 feet to a point that is distant Easterly along a direct line 108.2 feet from the hereinabove described point "A"; thence Southeastely along a direct line 133.2 feet to a point in a line that is parallel with and distant Southwesterly 200.5 feet, measured at right angle, from said Northeastely line of last said parcel; thence Southeastely along said parallel line 41.8 feet to a point in the Northerly line of that certain parcel of land as described in deed dated June 7, 1955 from the Atchison, Topeka and Santa Fe Railway Company to Hershel California Fruit Products Co., Inc., said point being in a line that is parallel with and distant Southwesterly at right angles 50.5 feet from the centerline of the main track of the Atchison, Topeka and Santa Fe Railway Company; thence along said parallel line South 17° 24' 30" East 972.55 feet to the Southerly line of said Northwest quarter; thence along last said Southerly line, being the center line of Paterson Road (50 feet wide), North 88° 51' 30" West, a distance of 445.83 feet to the point of beginning.

Parcel 5:

An irregular shaped parcel of land in the City of Riverbank, County of Stanislaus, State of California, being a portion of the 200 foot wide right of way of the Atchison, Topeka and Santa Fe Railway Company in the Northwest quarter of Section 25, Township 2 South, Range 9 East, Mount Diablo Base and Meridian, described as follows:

Commencing at the intersection of the Southerly line of said Northwest quarter, said Southerly line being also the center line of Paterson Road (50 feet wide) with the Easterly line of that certain 16.3 acre parcel of land described in deed dated May 3, 1899, and recorded May 15, 1899, in Volume 67 of Deeds, Page 162, records of said County, said Easterly line being parallel and/or concentric with and distant Easterly 150.00 feet measured at right angles and/or radially from the center line of the Atchison, Topeka and Santa Fe Railway Company's "Original Main Tract"; thence North 17° 24' 30" West (bearing assumed for purpose of this description) along said Easterly line 284.72 feet to a point in a line that is concentric with and distant Northeastely 30.00 feet measured radially from the center line of said Railway Company's "Oakdale Branch Main Track" as said track is designated in the records of said Railway Company, last said point being the true point of beginning for this description; thence North 17° 24' 30" West, continuing along said Easterly line 788.58 feet; thence Northerly, continuing along said Easterly line, along the arc of a curve, tangent to last said course, concave Easterly and having a radius of 11,309.20 feet, a distance of 328.53 feet; thence Northerly, continuing along said Easterly line; to the Southeastely corner of that certain parcel described in easement granted to the Atchison, Topeka and Santa Fe Railway Company to the City of Riverbank, in document dated the 28th of April, 1961, and recorded on December 15, 1961 in Volume 1729 Page 172, Official Records of Stanislaus County, California; thence Westerly, along the Southerly boundary of last said parcel; conveyed to the City of Riverbank, to the Northwesterly corner of that certain parcel described in deed from Carastan Company to Costadma Foods, Inc., dated May 31, 1969, and recorded October 30, 1969 in Volume 2500 Page 180, records of Stanislaus County, said point being on a line that is parallel and/or concentric with and distant Easterly 100 feet, measured at right angles and/or radially, from the Westerly line of said railway right-of-way; thence Southerly, along last said parallel and/or concentric line, to the Northwest corner of that certain parcel of land described in grant deed from the Atchison, Topeka and Santa Fe Railway Company, to Hershel California Fruit Products Co., Inc., dated April 21, 1950, and recorded in Volume 1588 Page 428, Official Records of Stanislaus County, said point being in a line that is parallel with and distant Easterly 46.00 feet measured at right angles from the tangent portion of said "Original Main Track", hereinabove described as having a bearing of North 17° 24' 30" West; thence South 17° 24' 30" East along last said parallel line 743.77 feet; thence South 25° 45' 21" East 199.74 feet to a point in a line

that is concentric with and distant Northeastly 30.00 feet measured radially from the center line of said "Oakdale Branch Main Tract"; thence South 40° 09' 40" East 193.92 feet to the true point of beginning.

Excepting therefrom all minerals, oil and gas as reserved by Atchison, Topeka and Santa Fe in deed recorded November 4, 1964 as Instrument No. 43717 in Volume 1989 of Official Records, Page 65.

An excluding that certain real property described on Exhibit A-1 attached hereto:

Also Excepting therefrom:

Parcel One:

That certain property described as Parcel 1 in the deed dated April 21, 1959 from the Atchison, Topeka, and Santa Fe Railway Company to Hershel California Fruit Products Co., Inc., an Illinois Corporation, recorded January 11, 1960, as Instrument Number 625 in Volume 1588 of Official records, Page 427, Stanislaus County Records, said property lies in the Northwest quarter of Section 25, Township 2 South, Range 9 East, Mount Diablo Base and Meridian, situate in the City of Riverbank, County of Stanislaus, State of California.

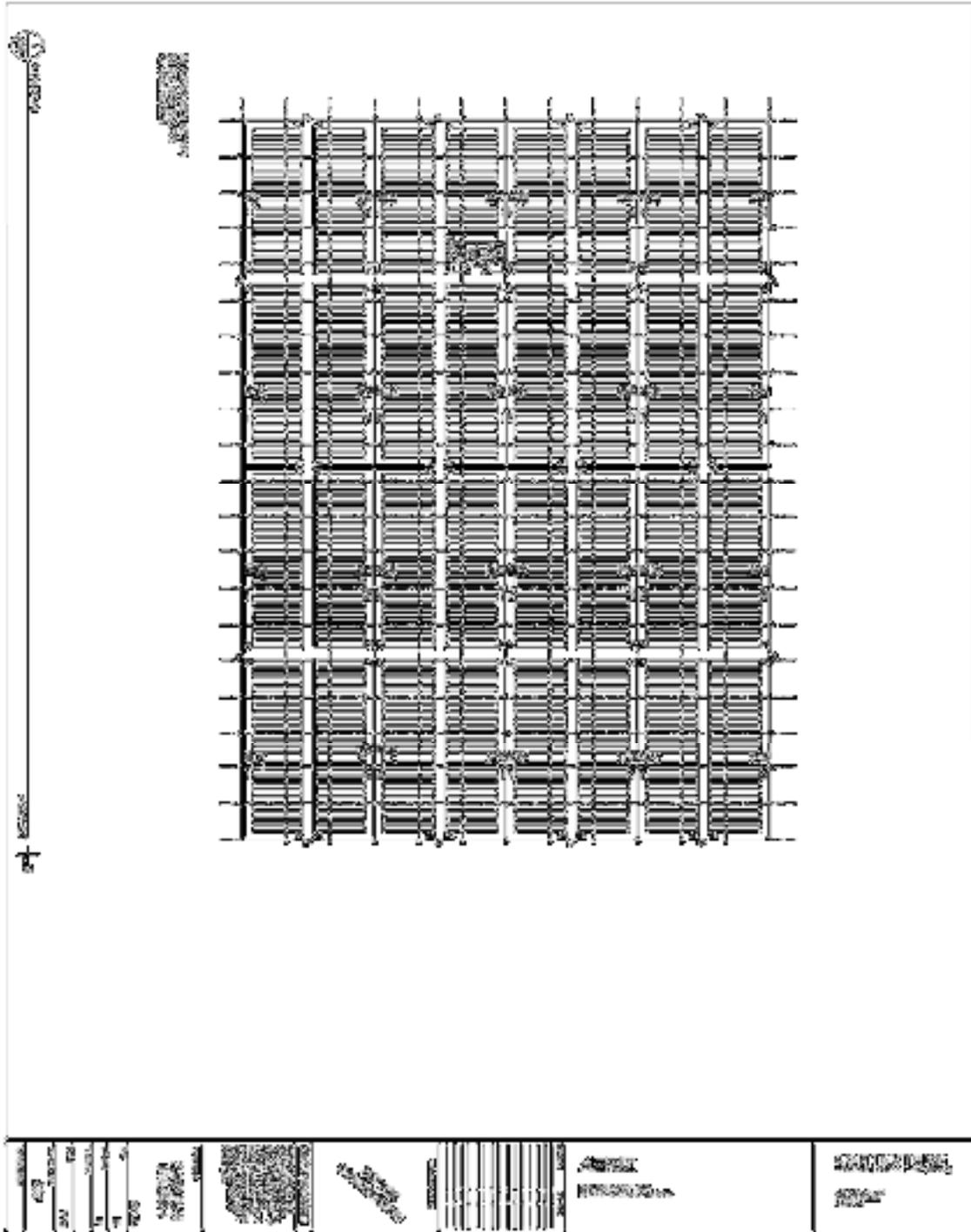
Excepting therefrom all minerals contained therein including, without limiting the generality thereof, oil, gas and other hydrocarbonous substances, as well as metallic or other solid minerals, without, however, the right to go upon or use the surface of said land, or any part thereof, for the purpose of drilling for, mining, or otherwise removing any of said minerals, as excepted in the deed from the Atchison, Topeka, and Santa Fe Railway company, recorded November 4, 1964 in Volume 1989 of Official records, at Page 64, as Instrument number 43717, Stanislaus County records.

Parcel Two:

That portion of the property conveyed to Contadina Foods Inc., a California Corporation by the deed recorded October 30, 1969 in Volume 2300 of Official Records, Page 180, Stanislaus County Records lying in the Northwest quarter of Section 25, Township 2 South, Range 9 East, Mount Diablo Base and Meridian, situate in the City of Riverbank, County of Stanislaus, State of California, more particularly described as follows:

Beginning at the Northeast corner of the property described as Parcel 1 in the deed dated April 21, 1959 from the Atchison, Topeka, and Santa Fe Railway Company to Hershel California Fruit Products Co., Inc. an Illinois corporation, recorded January 11, 1960 as Instrument number 625 in Volume 1588 of Official Records, Page 427, Stanislaus County Records; thence South 74° 15' 22" West along the northerly line of said Hershel California Fruit Products Co. property, a distance of 100.00 feet to the Westerly line of said Contadina Foods property and the beginning of a non-tangent curve concave to the East having a radius of 11409.20 feet to which a radial line bears South 74° 15' 22" West; thence Northerly along said curve through a central angle of 00° 22' 35", a distance of 75.00 feet to a line that lies 75.00 feet northerly of and parallel of said north line of Hershel California Fruit Products Co. property; thence along last said line North 74° 15' 22" East; a distance of 100.00 feet to the Easterly line of said Contadina Foods property and the beginning of a non-tangent curve concave to the East having a radius of 11309.20 feet to which a radial line bears South 74° 34' 10" West; thence Southerly along the arc of said non-tangent curve through a central angle of 00° 22' 48", a distance of 75.00 feet to the point of beginning.

Exhibit C Building 4 and 5 Floor Plans



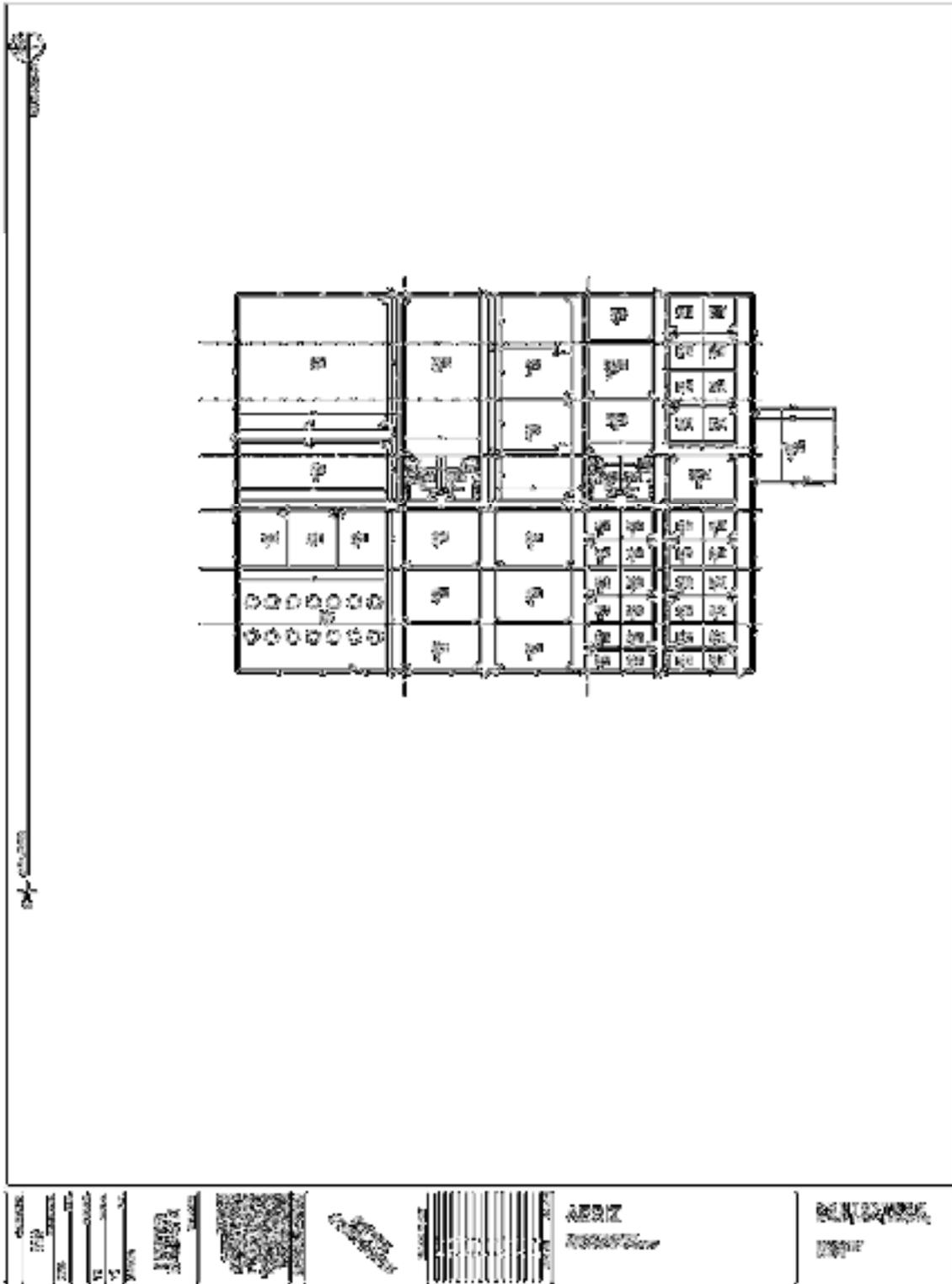


Exhibit D

Notice of Non-Performance Penalty

DATE: _____, 20__

PARTIES: CITY OF RIVERBANK, a California municipal corporation
6707 3rd Street
Riverbank, California 95367

DT California, LLC, a Delaware limited liability company
330 North Wabash Avenue, Suite 1700
Chicago, IL 60611
Attn: David Thomas

THIS NOTICE OF NON-PERFORMANCE PENALTY (“Penalty Notice”) is being executed by the City of Riverbank, a California municipal corporation (“City”), with reference to the following.

- A. By Instrument No. _____, which was recorded in the Official Records of Stanislaus County, California on _____, 2020, City recorded a development agreement between City and DT California, LLC (“Developer”), dated _____, 2020 (the “Development Agreement”), relating to the development and operation of a cannabis _____.
- B. Pursuant to Sections 4.2A and 4.2.B of the Development Agreement, Developer agrees to pay to City a Public Benefit during the term of the Development Agreement as specified in those sections.
- C. On _____, 20__, a Public Benefit – Retail or Public Benefit - Other Than Retail was due to City by Developer. City did not receive payment.
- D. Pursuant to Section 4.5 of the Development Agreement, if Developer fails to make payment when it is due, City may impose a penalty of one percent (1%) of the total of the past due amounts (“Penalty”). As of _____, 20__, the past due amount equals \$ _____. The Penalty owed by Developer equals \$ _____ (“Penalty Amount”).
- E. Pursuant to Section 4.5 of the Development Agreement, Developer shall make payment of the Penalty Amount in a single installment due within fifteen (15) days of delivery of this Penalty Notice (“Penalty Due Date”).

- F. Pursuant to Section 4.6 of the Development Agreement, if Developer fails to pay the Penalty Amount before the Penalty Due Date, then, in addition to the Penalty Amount specified in subdivision (D), Developer shall pay City interest on the Penalty Amount, at the rate of eighteen percent (18%) per annum (“Penalty Interest Payment”), computed from the Penalty Due Date specified in subdivision (E). The Penalty Interest Payment is due fifteen (15) days following delivery of the Penalty Due Date. As of _____, 20__, the Penalty Interest Payment amount equals \$ _____.
- G. Nothing contained herein shall constitute a waiver of City’s future claims for any Public Benefit-Retail, Public Benefit-Other Than Retail, Penalty, or interest on the Penalty.

NOW, THEREFORE, City hereby provides Developer the Penalty Notice required by Section 4.5 of the Development Agreement. This Penalty Notice shall be effective upon notice pursuant to Section 10.3 of the Development Agreement.

CITY OF RIVERBANK,
a California municipal corporation

By: _____
City Manager

Exhibit E

INDEMNITY AGREEMENT FOR LAND USE ENTITLEMENT PROCESSING

THIS INDEMNITY AGREEMENT FOR LAND USE ENTITLEMENT PROCESSING (“Agreement”) is made and entered into on this ___ day of _____ 20__ (“Effective Date”), by and between the City of Riverbank, a California municipal corporation (“City”), and DT California, LLC, a Delaware limited liability company (“Applicant”). City and Applicant may be referred to herein individually as a “Party” or collectively as the “Parties.” There are no other parties to this Agreement.

RECITALS

A. In 1996, the people of the state of California approved Proposition 215, the Compassionate Use Act of 1996 (“CUA”). The CUA enables seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law. In 2003, the California Legislature adopted Senate Bill 420, entitled the Medical Marijuana Program (“MMP”), which authorizes qualified patients and their primary caregivers to cultivate marijuana for medical purposes without being subject to criminal prosecution under the California Penal Code.

B. On October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers.

C. On November 8, 2016, California voters passed Proposition 64, the Adult Use of Marijuana Act (“AUMA”). AUMA legalizes the cultivation, commercial sale, and possession of recreational cannabis for adults age 21 and older.

D. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), which created a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in the MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction.

E. Riverbank Municipal Code (“R.M.C.”) Chapter 120 authorizes cannabis businesses to operate within the City under specified restrictions pursuant to a Cannabis Pilot Program.

F. Applicant intends to improve, develop, and use real property to operate a multi-faceted cannabis business within the City (the “Project”) in strict compliance with MAUCRSA and R.M.C. chapter 120. Applicant must obtain certain land use entitlements including a Development Agreement and a Conditional Use Permit (“Land Use Entitlements”) prior to initiating the Project.

G. Applicant has an agreement to purchase that certain real property located in the City, identified as Stanislaus County Assessor’s Parcel Numbers 132-010-027, 132-023-020, 132-034-017, and 132-034-020 (the “Property”), shown on **Exhibit A** attached hereto (“Property Description”).

H. As a condition of approval of the Land Use Entitlements, City has required Applicant to enter into this Agreement.

I. It is in the public interest for City and Applicant to enter into this Agreement, as Applicant will benefit from City’s processing of the Project.

J. Applicant desires to enter into this Agreement to fulfill a condition of approval of the Project, which is a prerequisite for construction of the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the promises, covenants and agreements set forth below, the Parties agree as follows:

Section 1. Recitals. The recitals set forth above (“Recitals”) are true and correct and are hereby incorporated into and made part of this Agreement by this reference. In the event of any inconsistency between the Recitals and Sections 1 through 19 of this Agreement, Sections 1 through 19 shall prevail.

Section 2. Applicant’s Indemnification Obligations.

2.1. Indemnification for Land Use Entitlements. To the fullest extent permitted by law, Applicant shall indemnify, and hold harmless City and its agents, elected and appointed officials, officers, employees, and volunteers (collectively, “City’s Agents”) from any and all liability arising out of a claim, action, or proceeding against City, or City’s Agents, to attack, set aside, void, or annul an approval concerning the Land Use Entitlements by reason of the action or inaction of City, or City’s Agents. Applicant’s duty to indemnify and hold harmless shall not extend to any claim, action, or proceeding arising from the gross negligence or willful misconduct of City, or City’s Agents.

Applicant's obligations under this Agreement to indemnify City shall apply to any claim, lawsuit, or challenge against City brought against the Project, specifically including, but not limited to, any legal challenge based on the California Environmental Quality Act, codified in California Public Resources Code section 21000 et seq.; actions or proceedings brought to challenge the validity of environmental documents prepared in conjunction with the approval of the Project or Land Use Entitlements, or the requirements of any other federal, state, or local laws, including, but not limited to, general plan, specific plan, and zoning requirements.

2.2. Tender of Defense. Upon receiving notice of a claim and pursuant to Article 6 of the Development Agreement, Applicant shall assume the defense of the claim, action, or proceeding through the prompt payment of all attorneys' fees and costs, incurred in good faith and in the exercise of reasonable discretion, of City's counsel in defending such an action. Regardless of whether Applicant chooses to defend City pursuant to Section 6.4 of the Development Agreement, City shall have the absolute and sole authority to control the litigation and make litigation decisions, including, but not limited to, selecting counsel to defend City and settlement or other disposition of the matter.

2.3. Deposit for Costs. Applicant shall make a refundable deposit to City within thirty (30) days of written notification from City ("Cost Deposit"), to cover the estimated fees and costs associated with City's defense of any claim, action, or proceeding. Applicant shall make any and all additional payments to City to replenish the Cost Deposit within thirty (30) days of written notice from City.

2.4. Failure to Indemnify; Waiver. Failure to indemnify City, when required by this Agreement, shall constitute a material breach of this Agreement and of the Land Use Entitlements, which shall entitle City to all remedies available under law including, but not limited to, specific performance and damages. Failure to indemnify shall constitute grounds upon which City may rescind its approval of the Land Use Entitlements. Applicant's failure to indemnify City shall be a waiver by Applicant of any right to proceed with the Project, or any portion thereof, and a waiver of Applicant's right to file a claim, action, or proceeding against City or City's Agents based on City's rescission or revocation of the Land Use Entitlements, or City's failure to defend any claim, action, or proceeding based on Applicant's failure to indemnify City.

2.5. Satisfaction of Judgment. With respect to any claims, demands, acts, causes of action, damages, costs, expenses, settlements, losses, or liabilities which Applicant has indemnified City against, Applicant shall pay and satisfy any judgment, award, settlement, or decree that may be rendered or agreed against City and City's Agents arising out of any final, non-appealable judicial or administrative action.

2.6. Payment of Costs and Fees. Applicant's obligations under this Agreement to defend and indemnify City shall include, but not be limited to, payment of all court costs and attorneys' fees, all litigation-related costs, all costs of any judgments or awards against City, or all settlement costs which arise out of City's processing or approval of the Project.

With copy to City of Riverbank
6707 3rd Street
Riverbank, California 95367
Attn: City Manager
sscully@riverbank.org

and Churchwell White, LLP
1414 K Street, 3rd Floor
Sacramento, California 95814
Attention: Douglas L. White, Esq.
doug@churchwellwhite.com

If to Applicant: DT California, LLC
330 North Wabash Avenue, Suite 1700
Chicago, IL 60611
Attention: David Thomas

With copy to: Aronberg Goldghen
330 N. Wabash Avenue, Suite 1700
Chicago, IL 60611-3596
Attention: Paul A. Gilman

and: Petrulakis Law & Advocacy, APC
P.O. Box 92
Modesto, CA 95354
Attention: George A. Petrulakis

Section 5. Modification of Agreement. This Agreement may be supplemented, amended, or modified only by a writing signed by City and Applicant.

Section 6. Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the action and supersedes all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement.

Section 7. Agreement is Voluntary. The Parties acknowledge that they have entered into this Agreement voluntarily, on the basis of their own judgment and without coercion, and not in reliance on any promises, representations, or statements made by the other Party other than those contained in this Agreement. This Agreement incorporates the entire understanding of the Parties and recites the sole consideration of the promises and agreements contained within it. The Parties

have read this Agreement and are fully aware of its contents and legal effect.

Section 8. Time of Essence. Time is of the essence for this Agreement, and each section contained within this Agreement is made and declared to be a material, necessary, and essential part of this Agreement.

Section 9. Severability of Agreement. If a court or an arbitrator of competent jurisdiction holds any section of this Agreement to be illegal, unenforceable, or invalid for any reason, the validity and enforceability of the remaining sections of this Agreement shall not be affected.

Section 10. Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement, and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

Section 11. Noninterference. No Party will do anything to interfere with or inhibit the ability of the other to comply with their respective obligations under the terms of this Agreement.

Section 12. Ambiguities. Each Party has participated fully in the review and revision of this Agreement. Any rule of construction that ambiguities are to be resolved against the drafting Party does not apply in interpreting this Agreement.

Section 13. Headings. The headings in this Agreement are included for convenience only, and neither affect the construction or interpretation of any section in this Agreement nor affect any of the rights or obligations of the Parties to this Agreement.

Section 14. Necessary Acts and Further Assurances. The Parties shall, at their own cost and expense, execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement. The Parties will act in good faith to carry out the intent of this Agreement.

Section 15. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

Section 16. Venue. Venue for all legal proceedings shall be in the Superior Court of California, in and for the County of Stanislaus.

Section 17. Attorney's Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret sections of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

Section 18. Waiver. No covenant, term, or condition, or the breach thereof, shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

Section 19. Counterparts. This Agreement may be executed in counterparts and all so executed shall constitute an agreement which shall be binding upon the Parties hereto, notwithstanding that the signatures of all Parties and Parties' designated representatives do not appear on the same page.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS THEREOF, the Parties have executed this Agreement on the day, month and year first above written.

APPLICANT

CITY

DT California, LLC, a Delaware limited liability company

City of Riverbank, a California municipal corporation

By: DT Management Group, LLC, an Illinois limited liability company

By: _____
Sean Scully, City Manager

Its: Manager

By: David Thomas
Its: Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Douglas L. White, Deputy City Attorney

Exhibit F

Notice of Termination

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Riverbank
6707 3rd Street
Riverbank, CA 95367
Attention: City Clerk

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

NOTICE OF TERMINATION AND RELEASE OF DEVELOPMENT AGREEMENT

DATE: _____, 20__

PARTIES: CITY OF RIVERBANK, a California municipal corporation
6707 3rd Street
Riverbank, California 95367

DT California, LLC, a Delaware limited liability company
330 North Wabash Avenue, Suite 1700
Chicago, IL 60611
Attn: David Thomas

THIS NOTICE OF TERMINATION AND RELEASE (the "Release") is being executed by the City of Riverbank, a California municipal corporation ("City"), with reference to the following.

- A. By Instrument No. _____, which was recorded in the Official Records of Stanislaus County, California on _____, 2020, City recorded a development agreement between City and DT California, LLC ("Developer"), dated _____, 2020 (the "Development Agreement"), relating to the development and operation of a commercial cannabis facility.
- B. Pursuant to Sections 1.7 and 9.1 of the Development Agreement, the term of the Development Agreement expires _____ years from _____, 2020, on _____, 20__.

C. Pursuant to Section 9.1 of the Development Agreement, once terminated, the Development Agreement has no further force or effect, unless otherwise set forth in the Development Agreement.

NOW, THEREFORE, City hereby terminates, cancels, and otherwise releases Developer and Developer's heirs, executives, administrators, successors, and assigns from their obligations in the Development Agreement on this ____ day of _____, 20__, and relinquishes any right it may hereafter have to enforce any of the terms and provisions set forth in the Development Agreement, unless otherwise set forth in the Development Agreement. This termination, cancellation, and release shall be effective upon the recordation of this Release in the office of the County Recorder for the County of Stanislaus, State of California.

CITY OF RIVERBANK,
a California municipal corporation

By: _____
City Manager

Exhibit G

Assignment and Assumption Agreement

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Riverbank
6707 3rd Street
Riverbank, CA 95367
Attention: City Clerk

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

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is entered into this ____ day of _____, 20__, by and between DT California, LLC, a Delaware limited liability company ("Developer"), and _____ ("Assignee"). Developer may be referred to herein as ("Assignor").

RECITALS

A. On _____, 2020, Assignor and the City of Riverbank ("City") entered into that certain agreement entitled "Development Agreement by and between the City of Riverbank, a California municipal corporation, and DT California, LLC a Delaware limited liability company relating to the improvement, development, and use of real property to operate commercial cannabis facilities (the "Development Agreement"), originally recorded upon Stanislaus County Assessor's Parcel Numbers 132-010-027, 132-023-020, 132-034-017, and 132-034-020, (the "Property").

B. Section 10.1 of the Development Agreement prohibits the sale, assignment, or transfer by Assignor of any portion of Assignor's interests, rights, or titles described in that section of the Development Agreement ("Assignable Rights") to a third party without prior written approval by the City Manager of the City of Riverbank (the "City Manager").

C. Assignor intends to assign, and Assignee intends to assume, the Assignable Rights under the Development Agreement.

D. In accordance with the terms of the Development Agreement, Assignor has provided to the City Manager a written request for consent to assignment. The City Manager has received the information he or she deems appropriate and consulted with the City Attorney for the purpose of determining that Assignee is a qualified applicant for purposes of the foregoing terms

of the Development Agreement. This Agreement is intended to meet the requirements Section 10.1 of the Development Agreement for an Assignment and Assumption Agreement, and is executed with the consent of the City Manager, as contemplated in the Development Agreement.

NOW, THEREFORE, Assignor and Assignee hereby agree as follows:

1. The foregoing Recitals are true and incorporated herein by this reference as though set forth in full.
2. Assignor hereby assigns to Assignee all of the Assignable Rights of Assignor under the Development Agreement.
3. Assignee hereby assumes all of the burdens and obligations of Assignor under the Development Agreement, and agrees to observe and fully perform all of the duties and obligations of Assignor under the Development Agreement, and to be subject to all the terms and conditions thereof, with respect to the Property and Assignable Rights. It is the express intention of Assignor and Assignee that, upon the execution of this Agreement, Assignee shall become substituted for Assignor as the "Developer" under the Development Agreement.
4. This Agreement shall take effect and be binding only upon the City Manager's consent to and approval of the Agreement.
5. Assignee represents and warrants that it has reviewed and is familiar with the terms and conditions of the Development Agreement. Assignee acknowledges that the Assignable Rights are as set forth in Section 10.1 of the Development Agreement, and the duties of Assignor thereunder and the duties of Assignee hereunder, as between Assignee and City, shall be without reference to any underlying agreements or understandings that may exist between Assignee, Assignor, or any other party with respect to the subject matter hereof, and that City is not party to such other agreements.
6. All of the covenants, terms, and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

[Signatures on the following page]

ASSIGNOR / DEVELOPER:

DT California, LLC., a Delaware limited liability company

By: DT Management Group, LLC, an Illinois limited liability company

Its: Manager

By: _____
David Thomas

Its: Manager

ASSIGNEE

_____, a
California _____

By: _____

AGREED TO AND ACCEPTED:

CITY OF RIVERBANK
a California municipal corporation

City Manager

**CITY OF RIVERBANK
ORDINANCE NO. 2020-XXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK
APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF
RIVERBANK AND DT CALIFORNIA, LLC, A CALIFORNIA LIMITED LIABILITY
CORPORATION DOING BUSINESS AS AERIZ**

WHEREAS, on October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643), which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA established the first statewide regulatory system for medical cannabis businesses; and

WHEREAS, in 2016, the voters of California approved Proposition 64 entitled the "Control, Regulate and Tax Adult Use of Marijuana" ("AUMA"). AUMA legalized the adult-use and possession of cannabis by persons 21 years of age and older and the personal cultivation of up to six cannabis plants within a private residence; and

WHEREAS, on June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which created a single regulatory scheme for both medical and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction; and

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 *et seq.*, which authorizes the City of Riverbank ("City") and an individual with an interest in real property to enter a development agreement that establishes certain development rights in real property that is subject to a development agreement application; and

WHEREAS, the City adopted Resolution No. 99-39 authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City; and

WHEREAS, Resolution No. 99-39 requires a written application with specified data to be submitted to the City for consideration of any development agreement; and

WHEREAS, DT California, LLC, a limited liability company doing business as "Aeriz" submitted an application to the City for consideration of a development agreement to operate a cannabis facility with cultivation, manufacturing, distribution, and limited retail operations (the "Project"); and

WHEREAS, DT California, LLC proposes to improve, develop, and use real property for the Project, in strict accordance with applicable state and local law, including, but not limited to, the Riverbank Municipal Code; and

WHEREAS, DT California, LLC has agreed to purchase that certain real property located at 2906 Santa Fe Street in the City of Riverbank, Assessor's Parcel Numbers 132-034-012, 132-023-020, and 132-034-017 which DT California, LLC intends to develop the Project; and

WHEREAS, City and DT California, LLC seek to enter a development agreement for the Project (the "Development Agreement") pursuant to Government Code section 65864 *et seq.* and all applicable local and state laws; and

WHEREAS, environmental impacts for the Project have been reviewed and assessed by the City pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code section 21000 *et seq.*; California Code of Regulations Title 14, section 15000 *et seq.*), and the City determined the Project site is categorically exempt from CEQA pursuant to Section 15332 (a-e) of Article 19 of the California Code of Regulations applicable to in-fill development projects; and

WHEREAS, the Planning Commission held a duly noticed public hearing on September 1, 2020, to consider the Development Agreement and make recommendations to the City Council; and

WHEREAS, on _____, and _____, the City Council held duly noticed public hearings to consider the Development Agreement; and

WHEREAS, the City Council of the City, based on its independent review and analysis of staff's recommendations, oral and written testimony, and the record as a whole, finds, after due study, deliberation, and public hearing, and based on its independent judgment, that the following circumstances exist:

1. The Project is consistent with the goals, policies, and standards of the City of Riverbank General Plan and all other applicable standards and ordinances of the City of Riverbank.
2. In accordance with Government Code section 65864 *et seq.*, the City Council finds that the Development Agreement:
 - a. Is consistent with the objectives, policies, general land uses, and programs specified in the Riverbank General Plan and any applicable specific plan; and
 - b. Will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area nor detrimental to the general welfare of the residents of the City as a whole; and

- c. Will not adversely affect the orderly development of property or the preservation of property values; and
- d. Is consistent with the provisions of Government Code sections 65864 through 65869.5; and
- e. Contains a legal description of the property.

NOW, THEREFORE, THE CITY OF RIVERBANK CITY COUNCIL DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Riverbank approves a Development Agreement by and between DT California, LLC., a limited liability corporation doing business as Aeriz, and the City of Riverbank for the development of the Project, and instructs the City Manager to execute the Development Agreement subject to final, technical revisions as required and approved by the City Attorney.

SECTION 2. The City shall review the Development Agreement for compliance with its terms and conditions not less than once every twelve (12) months from the effective date of the Development Agreement; or as otherwise required pursuant to the terms of the Development Agreement.

SECTION 3. Notice of the public hearing on the proposed Development Agreement was published in the Riverbank News, a newspaper of general circulation; and notices of the public hearing on the proposed Development Agreement were mailed to all interested parties and property owners within 300 feet of the property, according to the most recent assessor's roll.

SECTION 4. Environmental impacts for the Project have been reviewed and assessed by the City pursuant to CEQA (Public Resources Code section 21000 *et seq.*; California Code of Regulations Title 14, section 15000 *et seq.*). The Project site is categorically exempt from CEQA pursuant to Section 15332 (a-e) of Title 14 of the California Code of Regulations applicable to in-fill development projects.

SECTION 5. If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Riverbank hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 6. This Ordinance shall become effective thirty (30) days from and after its final passage and adoption, and publication of the Ordinance shall occur in a

newspaper of general circulation at least fifteen (15) days prior to its effective date, or a summary of the Ordinance published in a newspaper of general circulation at least five (5) days prior to adoption and again at least fifteen (15) days prior to its effective date.

The foregoing was introduced at a regular meeting of the City Council of the City of Riverbank held on the ___ day of _____, 2020; motioned by Councilmember _____, seconded by Council Member _____, and upon roll call was carried by the following vote ___:

AYES:

NAYS:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Annabelle Aguilar, CMC
City Clerk

Richard D. O'Brien
Mayor

DRAFT

