

**DA 720**

**APP NO 18-047**

**SUMMIT MANUFACTURING, LLC**

UNCODIFIED ORDINANCE NO. \_\_\_\_\_

**AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE APPROVING AND ADOPTING FIRST AMENDMENT TO DEVELOPMENT AGREEMENT NO. 720 [ALSO IDENTIFIED AS COMMERCIAL CANNABIS PERMIT I.D. NO. 18-047] BETWEEN THE CITY OF COMMERCE AND SUMMIT MANUFACTURING, LLC [A CALIFORNIA LIMITED LIABILITY COMPANY] FOR ADDITION OF CULTIVATION AS A LICENSE TYPE TO AN APPROVED COMMERCIAL CANNABIS BUSINESS; MAKING FINDINGS CONSISTENT WITH AND PURSUANT TO GOVERNMENT CODE SECTION 65867.5; AND MAKING FINDINGS OF A CEQA CATEGORICAL EXEMPTION**

**WHEREAS**, the State of California enacted California Government Code Sections 65864 et seq. ("Development Agreement Statutes") to authorize municipalities to enter into development agreements with those having an interest in real property to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development in connection with the development of real property within their jurisdiction;

**WHEREAS**, the purpose of the Development Agreement Statutes is to authorize municipalities, in their discretion, to establish certain development rights in real property for a period of years regardless of intervening changes in land use regulations, to vest certain rights in the Applicant, and to meet certain public purposes of the local government;

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

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

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

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

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

**WHEREAS**, Owner presently has a duly approved and executed Development Agreement with the City which allows for the operation of a commercial cannabis business for manufacturing and distribution at 3019 Vail Street, in the City of Commerce (“Site”), consistent with all applicable local and State of California laws, regulations and policies;

**WHEREAS**, a request was placed with CCP staff for the City to consent and agree to make modifications to the Development Agreement to add cultivation as a license type to the already approved manufacturing and distribution commercial cannabis business activities at the Site;

**WHEREAS**, Article 21 of the Development Agreement requires that an Owner comply with all requirements proposing changes impacting a Development Agreement or a Commercial Cannabis Permit, as required pursuant to state law, City Resolution No. 18-50 regulating amendments to Development Agreements, and Ordinance No. 700, including Sections 5.61.150 through 5.61.210 thereof;

**WHEREAS**, in accordance with the terms of the Development Agreement, including Article 21, Owner has provided to the City of Commerce a written request to a modification to the Development Agreement for City’s consent to add an additional commercial cannabis business activity, to include cultivation to their approved manufacturing and distribution facility. The City has received the application materials, information and requisite fees, and deems same to be sufficient, appropriate and complete for the purpose of determining that the additional business activity meets the criteria as required in Ordinance No. 700 and the original Commercial Cannabis Permit application, and the addition is cohesive with the overall proposed operation, for purposes of the foregoing terms of the Development Agreement;

**WHEREAS**, this First Amendment is intended to meet the requirements of Article 21 of the Development Agreement and Ordinance No. 700 for changes, amendments and modification to a Development Agreement, and is executed with the consent of City of Commerce as contemplated in the Development Agreement;

**WHEREAS**, this First Amendment is entered into pursuant to Government Code sections 65868 and 65867.5, which require that this Amendment be approved by City ordinance;

**WHEREAS**, all procedures of the California Environmental Quality Act (“CEQA”), California Public Resources Code §21000 et seq., and the CEQA guidelines, title 14 of the California Code of Regulations, chapter 3, §15000 et seq. have been satisfied;

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

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

**WHEREAS**, the Planning Commission considered the provisions of the First Amendment to the Development Agreement at a duly noticed public hearing on November 26, 2019 wherein all interested parties were given an opportunity to be heard regarding the Agreement, and recommended approval of the First Amendment to the Development Agreement to the City Council, pursuant to an adopted Resolution, which is incorporated herein by this reference;

**WHEREAS**, Sections 65864-65859.5 of the California Government Code authorize the

City to enter into development agreements and requires the planning agency of the City to find the proposed Development Agreement to be consistent with the policies and programs of the General Plan and any applicable specific plan. Government Code Section 65865 authorizes the City to enter into development agreements with any person having a legal or equitable interest in real property, which interest Owner has in the Site, as evidenced by the information within the Development Agreement, and attachments thereto. Government Code Sections 65867.5 and 65868 further allow for amendments to a Development Agreement;

**WHEREAS**, after conducting a duly noticed hearing on December 17, 2019, in conjunction with the City's applicable ordinances and resolutions, and after independent review, consideration, analysis of staff's recommendations, oral and written testimony, and the record as a whole, the City Council approved the execution of this First Amendment to the Development Agreement, and made findings after due study, deliberation, and public hearing, the City Council found the Project: consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable special plan; compatible with the uses authorized in the City's standards, codes, and zoning laws; in conformity with the public necessity, public convenience, general welfare and good land use practices; in accordance with the Development Agreement Statutes, including Government Code Section 65864 through 65869.5; will not be detrimental to the health, safety and general welfare of the City; will not adversely affect the orderly development of property or the preservation of property values; will have a positive fiscal impact on the City; and is in the best interest of the City of Commerce and its residents;

**WHEREAS**, the City has given public notice of its intention to adopt this First Amendment to the Development Agreement and has conducted a public hearing thereon pursuant to California Government Code §65867; specifically, pursuant to California Government Code Sections 65867 and 65090, the City of Commerce, on December 5, 2019, published legal notice in the Los Angeles Wave News of City Council's consideration of this proposed First Amendment to the Development Agreement and mailed out notice to property owners located within 500 feet of the Site, indicating the public hearing to be held by the City of Commerce City of Council on December 17, 2019;

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

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

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

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

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

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

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

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

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

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

**FINDING 2.** All procedures of the California Environmental Quality Act (“CEQA”), California Public Resources Code §21000 et seq., and the CEQA guidelines, title 14 of the California Code of Regulations, chapter 3, §15000 et seq. have been satisfied and the City Council has found that the proposed Project is Categorical Exempt from California Environmental Quality Act (CEQA) requirements under provisions of CEQA Guidelines Section 15301 – Existing Facilities. This exemption applies to projects characterized as alterations to existing facilities meeting the conditions described in Section 15301;

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

**Evidence:** Pursuant to CEQA, the City Council finds and determines there is no substantial evidence that the Project could have a significant effect on the environment. The Project is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (CEQA

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

**SECTION 3: INCORPORATION, APPROVAL AND EXECUTION OF FIRST AMENDMENT TO DEVELOPMENT AGREEMENT.** Based upon the findings outlined hereinabove, the City Council of the City of Commerce hereby approves a First Amendment to Development Agreement, and inclusive of exhibits thereof, [also identified as Commercial Cannabis Permit I.D. No. 18-047] between the City of Commerce and Summit Manufacturing, LLC (a California limited liability company), incorporated herein by this reference, and authorizes the Mayor to execute the First Amendment to Development Agreement subject to final and technical revisions as required and approved by the City Attorney.

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

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

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
John Soria  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City

\_\_\_\_\_  
Attorney







E. WHEREAS, this First Amendment is entered into pursuant to Government Code sections 65868 and 65867.5, which require that this Amendment be approved by City ordinance.

**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:

**Section 1: Recitals.**

The Recitals above are true and correct and are hereby incorporated into and made a part of this First Amendment. In the event of any inconsistency between the Recitals and the provisions of this First Amendment, herein below, said provisions of this First Amendment shall prevail.

**Section 2: Exhibits.**

Owner has submitted new, applicable, and current Exhibits, or caused the re-execution of the following Exhibits, which are deleted in their entirety from the Development Agreement, and are incorporated herein by this reference and shall be inserted in lieu thereof.

- 2.6.a. Exhibit C: Site and/or Floor Plans
- 2.6.b. Exhibit F: Zoning Analysis
- 2.6.c. Exhibit H: Labor Peace Agreement or Notarized Statement of Intent

**Section 3: Amendments to Development Agreement.** The following articles, sections, paragraphs or portions of the Development Agreement are hereby amended to read as follows:

**3.1. Recitals:**

*3.1.a. 4<sup>th</sup> Recital shall read:*

WHEREAS, Owner currently holds a legal or equitable interest in real property considered in this Agreement which has a development area approximately **31,898** square feet located at 3019 Vail Ave, City of Commerce, State of California (the "Site"). The Site includes Assessor's Parcel Number: 6336-006-012, and is more fully described in the Legal Description in Exhibit A and shown on the map in Exhibit B. Both exhibits being attached hereto, respectively, and incorporated herein by this reference;

*3.1.b. 5<sup>th</sup> Recital shall read:*

WHEREAS, presently, Owner has an ownership interest for the purpose of commercial cannabis related activities which shall include, but not be limited to manufacturing, distribution, and cultivation of cannabis goods. Such Commercial Cannabis facilities shall operate in accordance with all applicable provisions of Business and Professions Code §§26000-26231.2; California Health and Safety Code §§ 11357-11362.9 and 11362.7- 11362.85; Revenue and Taxation Code §§ 34010-34021.5; Vehicle Code §§ 2429.7 and 23222; Water Code §§ 1831, 1847, and 13276; and the City of Commerce Municipal Code as it applies to such facilities (collectively the "Applicable Cannabis Laws"). Prior to operating a cannabis manufacturing, distribution and cultivation facility Owner shall be required to obtain a Commercial

Cannabis Permit from the City, and all related permits and licenses prior to the operation of same, pursuant to City Ordinance No. 700;

3.1.b. *9<sup>th</sup> Recital shall read:*

WHEREAS, the Project will consist of one industrial warehouse building totaling approximately 31,898 square feet. The complex will employ approximately 120 employees at peak operations. The building will be divided into major spaces for manufacturing, distribution, cultivation, and general administrative offices as follows:

**Manufacturing, Distribution and Cultivation:** The proposed facility would include approximately 2,334 square feet of office space for marketing and general administrative activities, approximately 3,000 square feet of Type 7 Manufacturing, approximately 23,564 square feet of cultivation, and approximately 3,000 square feet of cannabis distribution activities. The facility will operate on a single 12 hour shift for manufacturing activities and a single 12 hour shift for distribution activities as ultimately approved by the City-issued regulatory Commercial Cannabis Permit.

**Proposed General Business Offices:** (subject to final approval pursuant to the City-issued regulatory Commercial Cannabis Permit)– The facility will be open for approved employees from 7:00 a.m. to 9:00 p.m., Monday through Friday, with approximately 40 employees per shift at peak operations.

**Parking/Loading/Access:** The proposed project provides 36 parking spaces, including two accessible van spaces. Loading will take place on-site within an existing loading space accessed on the east side of the structure. In no event will loading occur within the public right-of-way. Vehicular access to the site will be through an existing driveway on Vail Avenue. Within the site, public access to the structure will be through the secured front office entrance. Approved employee access to the structure will be through the secured front office entrance or secured entrance through the access controlled parking lot. Pedestrian walkways within the structure and on the west and south sides of the structure allow pedestrian circulation to the front entry of the site. The project complies with the CALGreen Tier 1 by incorporating stormwater pollution prevention measures, installing energy- and water-efficient equipment, and planting native and drought-tolerant landscaping at the front of the property.

**Security:** The project will secure the facility against unauthorized entry by installing security lights on the exterior of the building to illuminate the side yards and parking area, installing commercial-grade locks, installing an alarm and video surveillance system, establishing procedures for identifying authorized persons, establish inventory controls, and install a secure surveillance vault to maintain the integrity of records. In addition, the applicant will engage a licensed security company to provide an operational security plan in compliance with City Ordinance 700 and 24/7 armed security at the facility. There shall be no less than 1 guards on site at all times. All doors to the facility will be controlled by multi-tier access control systems requiring authorized RFID keycards to enter every door in the facility or fingerprints to access secure sensitive rooms. This will allow the operator to track authorized and unauthorized employee movement throughout the facility. Furthermore, the operator will install no less than 48 interior cameras, and no less than 16 exterior cameras monitored by qualified security personnel.

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

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

This includes:

- 1) Manufacturing of cannabis and its derivatives through volatile and non-volatile extraction.
- 2) Packaging and storage of cannabis products.
- 3) Distribution of cannabis products.
- 4) Cultivation of cannabis.

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

7:00am to 9:00pm for general business hours.

Owner has applied for [3] licenses:

- 1) **Distribution**
- 2) **Manufacturing**
- 3) **Cultivation**

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

### **3.2. Section 6.h. Labor Peace Agreement.**

If Owner has ten (10) or more employees at the time of this Agreement's signing, then Owner shall in good faith work with any labor organization for the purpose of collective bargaining and shall enter into and provide the City a copy of a labor peace agreement no later than one hundred and twenty (120) days after this Agreement's signing. Such Owner with ten (10) or more employees but without a labor peace agreement at the time of this Agreement's signing shall in good faith provide a notarized Statement of Intent to the City no later than this Agreement's signing, indicating that the Owner will enter into and abide by the terms of a labor peace agreement with any labor organization no later than one hundred and twenty (120) days after this Agreement's signing.

If Owner has less than ten (10) employees at the time of this Agreement's signing, such Owner shall in good faith provide a notarized Statement of Intent to the City no later than this Agreement's signing, indicating that the Owner will enter into and abide by the terms of a labor peace agreement with any labor organization if and when Owner has ten (10) or more employees at any time during the Term of this Agreement. Such Owner with less than ten (10) employees at the time of this Agreement's signing shall also provide the City a copy of the labor peace agreement no later than one hundred and twenty (120) days from hiring its tenth (10<sup>th</sup>) employee, if and when such event occurs during the Term of this Agreement. Attached as Exhibit H and incorporated herein is a true and correct copy of the actual Labor Peace Agreement; or applicable Notarized Statement of Intent. Owner shall abide by the terms of the labor peace agreement if and when so

adopted in accordance with this Subsection. If Owner fails to comply with the labor peace agreement requirement in accordance with this Subsection, such failure shall constitute a default of this First Amendment and Development Agreement.

**3.3. Section 8.c. Fees, Costs, and Future Taxes; Operating Fees.**

As used herein, "**Premises**" means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the Commercial Cannabis Permittee applicant or Commercial Cannabis Permittee where the Commercial Cannabis Activity will be or is conducted. The parties stipulate and agree that the square footage for the **Premises** upon the Effective Date of this Agreement is and shall be during the term of this Agreement: **31,898** squarefeet.

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

As used herein, "**Gross receipts**" shall mean the total amount actually received or receivable in the course of business in a calendar year or calendar month from sales or the performance of acts or services for which charge is made or credit allowed. "**Gross receipts**" include, without limitation, all receipts, cash, credit, property received in lieu of cash, and any other valuable consideration taken in exchange for goods, services or other valuable consideration.

As used herein, "**Production Space**" means the area on or within the **Premises** intended for **Commercial Cannabis Activities** excluding non-operational common areas such as restrooms, cafeterias, break rooms, hallways, corridors, vestibules, parking structures or surface street lots. The parties stipulate and agree that the square footage for the **Production Space** shall be determined by the City Administrator in his sole and complete discretion as the Project is completed.

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

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

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

<u>  X  </u>	Manufacturing: 3% of gross receipts
<u>  X  </u>	Distribution: 3% of gross receipts
_____	Testing: 1.5% of gross receipts
_____	Non-Storefront Retail, delivery: 5% of gross receipts
_____	Microbusiness: 4% of gross receipts
<u>  X  </u>	Cultivation: \$13 square foot for canopy space

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

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

Second year:	\$100,810	
Third year:	\$109,090	
Fourth year:	\$118,000	
Fifth year:	\$127,000	(Any subsequent years shall be as negotiated by the Parties).

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

Operating Fees shall begin to accrue **ninety (90)** days after the end of month of the Effective Date of this Agreement. Notwithstanding, the first payment due and payable to the City shall be due one-hundred twenty (120) days from the date Owner secures a City of Commerce Commercial Cannabis Permit authorizing Owner to commence lawful operations (pursuant to all Ordinance No. 700 requirements to secure same).

Owner shall make payments to the City on a quarterly basis, within thirty (30) calendar days after the last day of each quarter. The first quarter is defined as January 1 through March 31, the second quarter as April 1 through June 30, the third quarter as July 1 through September 30, and the fourth quarter as October 1 through December 31. First payment to the City may be prorated, if applicable, to adhere to the latter, uniform quarterly payment schedule.

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

**Section 4: Additional Provisions.**

**4.1. Indemnification and Hold Harmless.** As a condition of the City processing, considering, approving, and executing the First Amendment, Owner has agreed to voluntarily fully execute the “Indemnification and Hold Harmless Agreement: Release of Liability, Assumption of Risk, and Waiver of Vested Rights” prior to City Council taking any action on this First Amendment, which is attached hereto and incorporated herein by this reference, as Exhibit J.

**4.2. Effect of First Amendment and Continued Effectiveness of Development Agreement.** Except as expressly modified herein, the Development Agreement shall remain in full force and effect, and all the terms and provisions of the Development Agreement are hereby

reaffirmed. The provisions of this First Amendment are severable and separate, and should a legal challenge be brought challenging the First Amendment, including but not limited to, an action or proceeding – in equity or in law - initiated by any person, organization, or entity, including anyone who is not a Party to this First Amendment, to attack, review, set aside, void, or annul the decision of City Council to adopt an Ordinance approving and adopting this First Amendment, such challenge shall in no way affect or impact the continued validity and existence of the Development Agreement.

**Section 5: Effective Date.** “First Amendment Effective Date” means the date on which all of the following are true: (i) thirty (30) days have elapsed since the second reading of the Ordinance adopting and approving this First Amendment; (ii) this First Amendment has been signed by all Parties; and (iii) all Exhibits to this First Amendment are finalized, executed and notarized by all affected parties (if applicable) and attached hereto; provided, however, that if these conditions have not been fully satisfied by the Owner, the Effective Date may not thereafter occur and this First Amendment may not thereafter become effective.

IN WITNESS HEREOF, the Parties hereto have executed this First Amendment as of the dates herein below.

*[Signatures on the following page]*

**CITY OF COMMERCE**

**SUMMIT MANUFACTURING, LLC  
[OWNER]**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Sachin Gulaya

Title: President/CEO/Managing Member

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

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney  
City of Commerce

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

**EXHIBIT C**



**EXHIBIT F**



# ZONING ANALYSIS

## LAND USE, ZONING AND APPLICABLE REGULATIONS:

<b>Project Site – 3019 Vail Avenue</b>	
General Plan Designation:	Industrial
Zoning:	M-2 (Heavy Manufacturing)
Applicable Zoning Regulations:	Commerce Municipal Code Chapter 19.11, Manufacturing Zones; CMC Chapter 19.19, Development Standards; CMC Chapter 19.21, Off-Street Parking; CMC Chapter 19.23, Landscaping; CMC Chapter 19.25, Signs; CMC Chapter 19.39 Division 10, Site Plan Review; CMC Section 19.39.680 Basis for Approval; Chapter 19.39, General Zoning Provisions.

## SURROUNDING ZONING AND LAND USES:

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

## ENVIRONMENTAL ASSESSMENT:

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

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



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### **PROPERTY DESCRIPTION:**

The project site is currently developed with one approximately 20,070 square foot industrial building, currently vacant, located west of Vail Avenue and measures approximately 1.26 acres (54,754 square feet). It is generally flat in nature and is situated in the City's Heavy Manufacturing Zoning District (M-2), surrounded by railroad to the west and industrial warehouses to the north, south and east. The proposed project includes a Commercial Cannabis Permit, which is a type of regulatory permit, to allow for the addition of Cultivation as an activity to a Commercial Cannabis Facility and a Development Agreement (DA) already approved for manufacturing and distribution commercial cannabis.