

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Lake Elsinore
130 South Main Street
Lake Elsinore, CA 92530
Attn: City Clerk

(Space Above Line For Recorder's Use Only)
(Exempt from Recording Fees Per Gov. Code § 27383)

FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE
CITY OF LAKE ELSINORE
AND
MODERN LEAF CULTURE, INC.

Approved _____, 2020

Ordinance No. 2020-_____

**FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF LAKE ELSINORE
AND MODERN LEAF CULTURE, INC.**

This First Amendment to Development Agreement (“First Amendment”), dated for identification only as of September 1, 2020, is made by and between the City of Lake Elsinore, a California municipal corporation (“City”), and Modern Leaf Culture, Inc., a California corporation (“Developer”). This Amendment shall take effect on the “Effective Date,” as this term is hereafter defined. City and Developer may each be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

A. On _____, _____, pursuant to City Ordinance No. _____, the City approved and adopted that certain “DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF LAKE ELSINORE AND MODERN LEAF CULTURE, INC.,” which Development Agreement was recorded on _____, 2019 in the Official Records of Riverside County, California as Instrument No. _____ (the “Development Agreement”).

B. On November 28, 2017, the City Council approved Ordinance No. 1382 amending the Lake Elsinore Municipal Code (“LEMC”) Chapter 17.156 to: (i) require all cannabis businesses in the City to have a State license and a City cannabis business permit; (ii) establish procedures for the review and issuance of a cannabis business permit; (iii) to allow cannabis dispensaries, cannabis distribution, indoor cannabis cultivation, cannabis manufacturing and cannabis testing laboratories in M-1 (limited manufacturing) and M-2 (general manufacturing) zoning districts; and (iv) establish regulations related to such activities.

C. Ordinance No. 1382 allows persons to engage in a permissible “Cannabis Business” upon the City’s issuance of a “Cannabis Business Permit,” which requires City approval of a conditional use permit, development agreement, and other applicable approvals.

D. In connection with the Developer Agreement, Developer acquired an equitable interest in that certain real property located at 31877 Corydon Road, Suite 120, in the City of Lake Elsinore, County of Riverside, State of California, Assessor’s Parcel Number 370-051-016, which is within a manufacturing zoning district (the “Original Site”). The Floor Area of the Original Site is estimated at 2,074 square feet.

E. Developer has also recently acquired an equitable interest in that certain real property located at 31881 Corydon Road, Suite 150, in the City of Lake Elsinore, County of Riverside, State of California, Assessor’s Parcel Number 370-051-030, which is within a manufacturing zoning district (the “Suite 150 Site”). The Floor Area of the Suite 150 Site is estimated at 4,450 square feet.

F. The Original Site and the Suite 150 Site are hereinafter referred to collectively as the “Site.” The estimated Floor Area of the Site is 6,524 square feet.

G. The Site is more particularly described in the Legal Description attached hereto as Exhibit A, the Site Plan is attached hereto as Exhibit B, and the Site Floor Plan is attached hereto as Exhibit C.

H. Developer affirms that it has an equitable interest in the Site, evidenced in writing with: (i) the owner of the Original Site, Joshua Grant, and (ii) the owner of the Suite 150 Site, Proventure LLC, a California limited liability company (the “Suite 150 Property Owner”), for the purpose of carrying out the Project. The Original Site Property Owner and the Suite 150 Property Owner are hereinafter referred to collectively as the “Property Owners.”

I. The Property Owners have provided notarized written consent to the terms of this Amendment and the recordation thereof, attached hereto as Exhibit D.

J. Developer proposes to improve, develop, and use the Site for a Cannabis Business, in accordance with California Cannabis Laws (as defined below) and the LEMC, as each may be amended from time to time (the “Project”).

K. 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 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.

L. Consistent with the requirements of the Development Agreement Statute, the City adopted LEMC, Chapter 19.12 (“Development Agreement Ordinance”) authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City along with amendments thereto. LEMC, Section 19.12.020 provides for amendments to a development agreement “is the same as the procedure for entering into an agreement in the first instance.” LEMC, Section 19.12.010 requires submittal of an application along with information and supporting data as requested by the Director of Community Development for consideration of any development agreement. Developer has satisfied this requirement.

M. On _____, 2020, the City of Lake Elsinore Planning Commission held a duly noticed public hearing to consider the application for this First Amendment and recommended to the City Council approval of this Amendment.

N. On _____, 2020, the City Council held a duly noticed public hearing to consider this Amendment and found and determined that this First Amendment: (a) is consistent with the objectives, policies, general land uses and programs specified in the City’s General Plan and any applicable specific plan; (b) is compatible with the uses authorized in, and the regulations prescribed for the Site and the surrounding area and will not adversely affect the orderly development of the Site or the preservation of property values; (c) is in conformity with public convenience, general welfare and good land use practices; (d) will have an overall positive effect on the health, safety and welfare of the residents of and visitors to the City; and (e) constitutes a

lawful, present exercise of the City's police power and authority under the Development Agreement Statute and Development Agreement Ordinance.

O. Based on the findings set forth in Recital N herein, the City Council entered into this Amendment pursuant to and in compliance with the requirements of the Development Agreement Statute and the Development Agreement Ordinance; and did therefore, in approving this Amendment introduce for first reading Ordinance No. 2020-____ (the "Enabling Ordinance"). On _____, 2020, the City Council conducted the second reading of the Enabling Ordinance thereby approving this Amendment, to become effective thirty (30) days after the adoption thereof.

NOW, THEREFORE, in consideration of the mutual terms, obligations, promises, covenants and conditions contained herein and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, and each of them, agree as follows:

SECTION 1. EXHIBITS

The Development Agreement has attached to it four exhibits designated alphabetically as Exhibit A through Exhibit D. Exhibits A through D of the Development Agreement shall remain in full force and effect except to the extent that the provisions of this Section 1 of the First Amendment modify those Exhibits.

The following documents are referred to in this First Amendment, attached hereto and incorporated herein by this reference:

Exhibit A	Legal Descriptions
Exhibit B	Modified Site Plan
Exhibit C	Modified Floor Plan*
Exhibit D	Property Owners Consent

* The Revised Floor Plan exhibit is on file as a public record and available for review at the City of Lake Elsinore's City Clerk's Office located 130 South Main Street, Lake Elsinore, CA 92530.

SECTION 2. REVISIONS TO DEFINITIONS

The words and phrases used in this First Amendment as defined terms shall have the meaning set forth in Section 2 of the Development Agreement, except as added and/or modified below which defined terms shall be applicable to both the Development Agreement and the First Amendment.

"Amendment Commencement Date" is defined in Section 4.2.c of the Development Agreement (as set forth in Section 3 of this First Amendment below). The Amendment Commencement Date does not amend the Effective Date as defined in the

Development Agreement nor does the Amendment Commencement Date modify or change the “Term” or the “Term Commencement Date.”

“Amendment Effective Date” means the date upon which this First Amendment is approved by the City Council of the City. The Amendment Effective Date does not amend the Effective Date as defined in the Development Agreement nor does the Amendment Effective Date modify or change the “Term” or the “Term Commencement Date.”

“Cannabis Business License” or **“Cannabis Business Permit”** means the City permit established and authorized by LEMC, Section 17.156.040, authorizing permissible Cannabis Business activity which can only be issued upon City approval of a conditional use permit, development agreement, and Additional City Approvals for each proposed Cannabis Business activity project.

“Conditional Use Permit” means Conditional Use Permit No. 2018-37 issued by the City to Developer pertaining to Developer’s original development of the Project and any subsequent amendments thereto. In the event that an amendment to the Conditional Use Permit pertaining to the Suite 150 Site has not been issued to the Developer as of the Amendment Effective Date, the City hereby reserves its discretion under the police power to approve, conditionally approve, or deny the issuance of any amendment to the Conditional Use Permit.

“Original Site” is defined in Recital D.

“Property Owners” is defined in Recital H.

“Site” means the Original Site and the Suite 150 Site.

“Suite 150 Property Owner” is defined in Recital H.

“Suite 150 Site” is defined in Recital E.

SECTION 3. REVISIONS TO GENERAL PROVISIONS

In order to update certain renumbering of the Lake Elsinore Municipal Code, subparts e and f of Section 1.8 of the Development Agreement entitled *Termination* are hereby amended to read as follows

- e. abandonment of the Developer’s Conditional Use Permit pursuant to LEMC, Section 17.415.070(D) including the failure of the Developer to commence operation of the Project on the Site within the time presented following the approval of the Conditional Use Permit;
- f. suspension or revocation of Developer’s Conditional Use Permit pursuant to LEMC, Section 17.415.070(G);

SECTION 4. REVISIONS TO COMMUNITY BENEFITS FEE

Section 4.2 of the Development Agreement entitled *Community Benefits Fee* is hereby amended to add the following subpart c:

c. Increase in Floor Area. The approved Floor Area of the Project has been increased by the addition of the Suite 150 Site to the Project as provided in the First Amendment. Upon the issuance of a modified or new Cannabis Business Permit for the Suite 150 Site (the “Amendment Commencement Date”), Developer shall be obligated to pay the Community Benefits Fee based on the rate then in effect multiplied by the the square footage of the Suite 150 Site, such sum due to be adjusted pro rata for the remainder of the year until the next Adjustment Date. Upon the Adjustment Date following the Amendment Commencement Date, Developer shall make payment to the City pursuant to Section 4 utilizing the Floor Area of the Site and the then applicable “per square foot” Community Benefit Fee in effect on the Adjustment Date and all adjustments thereafter.

(For example and for illustration purposes only, if Developer’s Community Benefits Fee is \$18.72 per square foot of Floor Area as of the Amendment Commencement Date and Suite 150 adds 4,450 square feet to the Project [and the time between the Amendment Commencement Date and next Adjustment Date is 180 days], Developer would pay an additional Community Benefit Fee of \$41,652 on the Amendment Commencement Date [$\$18.72 \times 4,450 \text{ s.f.} \times 180/360$]. Assuming the Original Site has a Floor Area of 2,075 s.f., upon the next Adjustment Date following the Amendment Commencement Date, the Community Benefit Fee for that year would be \$127,022 [$\19.47 (adjusted for 4% increase) $\times 6,524 \text{ s.f.}$].)*

* The example in 4.2.a of the Developer Agreement assumes that the Floor Area of the Original Site is 6,100 s.f. for the sole purpose of illustrating the Community Benefits Fee calculation. The Parties agree that the Floor Area of the Original Site is 2,074 s.f.

Article 4 of the Development Agreement is hereby amended to add the following Section 4.5:

4.5 Tax Payment and Facility Payment Offset.

a. In the event that the voters of the City of Lake Elsinore approve a Cannabis business tax or any percentage of gross receipts based fee, Developer shall pay the amount established by any such measure or initiative (“Tax Payment”) in accordance with any procedure so established by the City, provided, however, that Developer shall be entitled to an offset,

dollar for dollar, of such Tax Payment against the Community Benefit Fee then owing or, alternatively, if the Community Benefit Fee then owing is insufficient to fully satisfy the offset as provided herein, such unsatisfied offset shall be a credit against the payment of any future Community Benefit Fee until such offset is fully satisfied.

b. In the event that the voters of the City of Lake Elsinore or the City Council approve a fee based on the square footage of premises where permitted commercial cannabis activities, Developer shall pay the amount established thereby ("Facility Payment") in accordance with any procedure so established by the City, provided, however, that Developer shall be entitled to an offset, dollar for dollar, of such Facility Payment against the Community Benefit Fee then owing or, alternatively, if the Community Benefit Fee then owing is insufficient to fully satisfy the offset as provided herein, such unsatisfied offset shall be a credit against the payment of any future Community Benefit Fee until such offset is fully satisfied.

c. Imposition of a Tax Payment and/or a Facility Payment obligation by the City or the voters of the City of Lake Elsinore shall not relieve Developer of its obligation to pay the Community Benefit Fee except for the offset as set forth in Sections 4.5.a and 4.5.b above.

SECTION 5. ADDITIONAL PROVISIONS

5.1. Counterparts. This First Amendment may be executed in counterparts, each of which so executed shall be deemed an original, and such counterparts together shall constitute but one First Amendment.

5.2. No Other Changes. Except as modified by this First Amendment, the terms and conditions of the Original Development Agreement, remain in full force and effect and shall be incorporated as a part of and interpreted as one integrated agreement covering the subjects included therein. If there are any conflicts between the provisions of this First Amendment and the original Development Agreement, the provisions of this First Amendment shall control.

5.3. Recordation by City Clerk. Pursuant to Government Code Section 65868.5, within ten (10) days of execution of this First Amendment by the Parties, the City Clerk shall record a copy with the Riverside County Recorder. Thereafter, pursuant to Government Code Section 65868.5, the burdens of the First Amendment shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the Parties to the First Amendment.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the dates set forth below.

“CITY”

CITY OF LAKE ELSINORE,
a municipal corporation

Date: _____

By: _____
Mayor

ATTEST:

By: _____
Candice Alvarez, MMC, City Clerk

APPROVED AS TO FORM:

“DEVELOPER”

MODERN LEAF CULTURE, INC.,
a California corporation

Date: _____

By: _____
Joshua Grant, President

Date: _____

By: _____
Ashley Grant, Secretary/Treasurer

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

STATE OF CALIFORNIA)
) §
County of _____)

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

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

WITNESS my hand and official seal.

Signature of Notary

(Affix seal here)

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

STATE OF CALIFORNIA)
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WITNESS my hand and official seal.

Signature of Notary

(Affix seal here)

EXHIBIT A

LEGAL DESCRIPTION

The real property referred to herein is situated in the County of Riverside, City of Lake Elsinore, State of California, and is described as follows:

Original Site

A CONDOMINIUM COMPRISING INTEREST IN UNIT #F-2 AS SHOWN ON THE CONDOMINIUM PLAN RECORDED ON JUNE 2, 2005, AS INSTRUMENT NUMBER 2005-0441925 IN THE RIVERSIDE COUNTY OFFICIAL RECORDS ("PLAN") AND AS FURTHER DESCRIBED IN THE DECLARATION OF RESTRICTIONS FOR INDUSTRIAL CONDOMINIUM OWNERSHIP RECORDED ON AUGUST 5, 2003 INSTRUMENT NUMBER 2003-592581 IN THE RIVERSIDE COUNTY OFFICIAL RECORDS AND AS AMENDED IN THE FIRST AMENDMENT OF DECLARATION OF RESTRICTIONS FOR BLUE LAKE CONDOMINIUM OWNERSHIP RECORDED ON MAY 27, 2005 AS INSTRUMENT NUMBER 2005-0423404 IN THE RIVERSIDE COUNTY OFFICIAL RECORDS (COLLECTIVELY, THE "DECLARATION"), WHICH CONDOMINIUM IS LOCATED ON THE REAL PROPERTY DESCRIBED AS PARCEL 2 AS SHOWN BY RECORD OF SURVEY ON FILE IN BOOK 73 PAGE 44 OF RECORDS OF SURVEY, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM AND RESERVING EASEMENTS AS DEFINED IN THE DECLARATION.

FURTHER EXCEPTING THEREFROM ALL NUMBERED CONDOMINIUM UNITS ON THE PLAN AND DESCRIBED IN THE DECLARATION OTHER THAN THE UNIT ABOVE AND THE ASSOCIATION COMMON AREA OR COMMON AREA AS DEFINED IN THE DECLARATION OR SHOWN ON THE PLAN.

APN: 370-051-016-7

[CONTINUED ON NEXT PAGE]

Suite 150 Site

A CONDOMINIUM COMPRISING INTEREST IN UNIT #H-5 AS SHOWN ON THE CONDOMINIUM PLAN RECORDED ON JUNE 2, 2005, AS INSTRUMENT NUMBER 2005-0441925 IN THE RIVERSIDE COUNTY OFFICIAL RECORDS ("PLAN") AND AS FURTHER DESCRIBED IN THE DECLARATION OF RESTRICTIONS FOR INDUSTRIAL CONDOMINIUM OWNERSHIP RECORDED ON AUGUST 5, 2003 AS INSTRUMENT NUMBER 2003-592581 IN THE RIVERSIDE COUNTY OFFICIAL RECORDS AND AS AMENDED IN THE FIRST AMENDMENT OF DECLARATION OF RESTRICTIONS FOR BLUE LAKE CONDOMINIUM OWNERSHIP RECORDED ON MAY 27, 2005 AS INSTRUMENT NUMBER 2005-0423404 IN THE RIVERSIDE COUNTY OFFICIAL RECORDS (COLLECTIVELY, THE "DECLARATION"), WHICH CONDOMINIUM IS LOCATED ON THE REAL PROPERTY DESCRIBED AS PARCEL 2 AS SHOWN BY RECORD OF SURVEY ON FILE IN BOOK 73 PAGE 44 OF RECORDS OF SURVEY, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

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APN: 370-051-030-9

EXHIBIT B
REVISED SITE PLAN
[TO BE INSERTED]

EXHIBIT C

REVISED FLOOR PLAN

The Revised Floor Plan is on file as a public record and available for review at the City of Lake Elsinore's City Clerk's Office located 130 South Main Street Lake Elsinore, CA 92530.

EXHIBIT D
PROPERTY OWNERS CONSENT
[ATTACHED]

PROPERTY OWNER CONSENT

Joshua Grant, being the owner of certain real property described in Exhibit A (further identified as the “Original Site” and APN 370-051-016) to this First Amendment to Development Agreement, dated for identification only as of September 1, 2020, by and between the City of Lake Elsinore and Modern Leaf Culture, Inc. (the “First Amendment”), does hereby consent to the recordation of said First Amendment in the Official Records of the County of Riverside.

Date: _____

Joshua Grant, Owner

[notary required]

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

STATE OF CALIFORNIA)
) §
County of _____)

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

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

WITNESS my hand and official seal.

Signature of Notary

(Affix seal here)

PROPERTY OWNER CONSENT

Proventure LLC, a California limited liability company, being the owner of certain real property described in Exhibit A (further identified as the “Suite 150 Site” and APN 370-051-030) to this First Amendment to Development Agreement, dated for identification only as of September 1, 2020, by and between the City of Lake Elsinore and Modern Leaf Culture, Inc. (the “First Amendment”), does hereby consent to the recordation of said First Amendment in the Official Records of the County of Riverside.

PROVENTURE LLC, a California limited liability
company

Date: _____

By: _____

Name: _____

Its: _____

[notary required]

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STATE OF CALIFORNIA)
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County of _____)

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

WITNESS my hand and official seal.

Signature of Notary

(Affix seal here)

