

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

City of Sonora
94 North Washington
Street
Sonora, CA 95370
Attention: City Clerk

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

APN: 056-090-32-00

**FIRST AMENDMENT TO THE
DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF SONORA
AND THE BRACT HOUSE, LLC.**

(Amendment to Recorded Document No. 2021003200)

Ordinance No. 858 Adopted on August 5, 2019

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT (“Amendment”) is made and entered into this _____ (____) day of _____, 2021, by and between the **CITY OF SONORA**, a municipal corporation of the State of California (“City”), and **THE BRACK HOUSE, LLC**, a California limited liability company (“Developer”). City or 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. 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.
- B. On January 16, 2018, the City Council adopted Ordinance No. 2017-848, establishing a Cannabis Business Pilot Program regulating the operation of cannabis businesses within the City.
- C. On July 8, 2019, the Sonora Planning Commission (“Planning Commission”) in a duly noticed and conducted public hearing, considered Developer’s application for a Development Agreement.
- D. On July 8, 2019, the Planning Commission adopted Resolution No. 7-08-2019-A recommending the Sonora City Council (“City Council”) adopt Ordinance No. 858, to allow Developer to operate a medicinal Cannabis Dispensary at the Site.
- E. On August 5, 2019, the City Council approved Ordinance No. 858, which authorized the Parties enter into a development agreement that allowed Developer to operate a Medicinal Cannabis Retail Business within the City (the “Original Agreement”) attached hereto as **Exhibit A**.
- F. On November 2, 2020, the City Council adopted Ordinance No. 873 to amend the Cannabis Business Pilot Program setting forth local regulations for commercial cannabis operations within the City, as permitted and regulated under state law, to allow the sale of recreational adult-use cannabis in the City.

- G. Pursuant to Section 2.4 of the Original Agreement, Developer may request City to authorize additional cannabis licenses as a Major Amendment to the Original Agreement.
- H. Developer proposes to add the commercial cannabis retailer license to its Authorized License in order to sell adult-use cannabis products pursuant to MAUCRSA.
- I. On April 12, 2021, the Planning Commission, in a duly noticed and conducted public hearing, considered this Amendment and recommended the City Council adopt Ordinance No. 879, which would allow Developer to operate a commercial Cannabis Dispensary at the Site.
- J. On [Date], 2021, the City Council adopted Ordinance No. _____, which would allow Developer to operate a commercial Cannabis Dispensary at the Site.
- K. Pursuant to Government Code sections 65867 and 65868, the City Council held a duly noticed and properly conducted public hearing on _____, 2021 regarding this Amendment. Pursuant to Government Code section 65867.5, the City Council found the provisions of this Amendment to be consistent with the City's General Plan, and authorized execution of this Amendment.

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

1. Recitals and Exhibits. The above recitals and exhibits attached to this Amendment are incorporated by this reference and hereby made a part of this Amendment and the Original Agreement.

2. Effect of Agreement. Except as provided herein, the defined terms used in this Amendment shall have the same meaning as the terms have in the Original Agreement. Unless expressly amended by this Amendment, all other terms and provisions of the Original Agreement shall remain in full force and effect. If any terms or provisions of this Amendment conflict with terms and provisions of the Original Agreement, the terms and provisions of this Amendment shall control.

3. Effective Date. This Amendment shall be effective (the "Effective Date") only after (a) thirty (30) days have passed from the City Council's adoption of the ordinance approving this Amendment; and (b) all parties have executed this Amendment.

This Amendment shall be recorded by the City in the County of Tuolumne within ten (10) days following the Effective Date.

4. Amendments to the Original Agreement.

(a) Section 1.4 “Definitions” of the Original Agreement is hereby deleted and replaced with a new Section 1.4, as follows:

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

(a) “A-Type 10 License” means an adult-use commercial cannabis retail license pursuant to Business and Professions Code section 26050(b).

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

(c) “Additional License” means a state license to operate a cannabis business pursuant to the California Cannabis Laws that is not an Authorized License.

(d) “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.

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

(f) “Application” means the application for a development agreement required by Sonora Municipal Code Chapter 8.36 submitted by Developer to the City Department of Planning and Community Development.

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

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

(i) “Authorized License” has the meaning set forth in Section 2.3.

(j) “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.

(k) “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 Sonora Municipal Code.

(l) “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 state laws that may be enacted or approved.

(m) “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.

(n) “Cannabis Business Pilot Program” means the cannabis business program established and authorized by Sonora Municipal Code chapter 8.36.

(o) “Cannabis Dispensary Business” means a business that engages in Commercial Cannabis Activity, as defined below, related to the retail sale and delivery of cannabis or cannabis products pursuant to a Type 10 license.

(p) “Cannabis product” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

(q) “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.

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

(s) “City Administrator” means the City Administrator of the City of Sonora, or his or her designee, as described in Sonora Municipal Code Chapter 2.48, Administrative Officer.

(t) “City Council” means the City of Sonora City Council, as described in Sonora Municipal Code Chapter 1.04.

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

(v) "Charging Party" has the meaning set forth in Section 8.1.

(w) "Commercial Cannabis Activity" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product provided for by Division 10 (commencing with Section 26000) of the Business and Professions Code.

(x) "Conditional Use Permit" means a conditional use permit issued by City pursuant to Sonora Municipal Code Chapter 17.62.

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

(z) "Developer" means The Bract House, Inc. 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, 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) “M-Type10 License” means a medicinal cannabis retail license pursuant to Business and Professions Code section 26050, subdivision (b).

(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) “MAUCRSA” means the Medicinal and Adult-Use Cannabis Regulation and Safety Act, codified as Business and Professions Code section 26000 et seq.

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

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

(ii) “Minor Amendment” means a clerical amendment to the Agreement that shall not materially affect the terms of the Agreement (i.e., change of notice address) and any amendment described as minor herein.

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

(kk) “Non-Performance Penalty” has the meaning set forth in Section 4.3.

(ll) “Notice of Non-Performance Penalty” has the meaning set forth in Section 4.3.

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

(nn) “Planning Commission” means the City of Sonora Planning Commission as established by Sonora Municipal Code Section 2.03.010.

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

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

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

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

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

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

(uu) “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.

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

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

(xx) “Term” has the meaning described in Section 1.7.

(yy) “Type 10 license” or “Retail” means a state license issued by the Bureau pursuant to the California Cannabis Laws for the retail sale of Cannabis and Cannabis products.

(b) Section 2.3 “Permitted Uses and Development Standards” of the Original Agreement is hereby deleted and replaced with a new Section 2.3, as follows:

Section 2.3. Permitted Uses and Development Standards. Developer shall be authorized to develop, construct, and use the Site for Commercial Cannabis Activity consistent with the following license types (collectively, the “Authorized License”):

Type 10	Retail (M-Type 10 License)
Type 10	Retail (A-Type 10 License)

(a) M-Type 10 License Required. Developer shall be permitted to use the Site consistent with the M-Type 10 License for the Term of this Agreement and during the time Developer is applying for the Authorized License with the applicable State Licensing Authority. Developer shall begin operations of the Project under the Authorized License within six (6) months of the issuance of a Conditional Use Permit or adoption of the operative ordinance approving this Agreement, whichever is later, unless Developer is prevented from doing so due to any event or circumstance set forth in Section 8.6 of this Agreement. Notwithstanding the foregoing, Developer is required to apply for the A-Type 10 License from the State Licensing Authority. If the State Licensing Authority does not grant the A-Type 10 License to Developer, Developer may continue to operate pursuant to their M-Type 10 License. Developer shall also, within thirty (30) calendar days of receiving notice from the State Licensing Authority, notify City of the State Licensing Authority’s denial, revocation, suspension or rejection of either Authorized License.

(b) A-Type 10 Commercial License Not Required. So long as Developer maintains the M-Type 10 License, Developer shall also be permitted to use the Site consistent with the A-Type 10 License for the Term of this Agreement. If Developer’s M-Type 10 License is revoked, denied, suspended, or otherwise ineffective, Developer shall immediately cease operations pursuant to the A-Type 10 License as well. In this situation, the provisions of subdivision (a) shall apply. If

Developer’s A-Type 10 License is not granted, or is revoked, denied, suspended, or otherwise ineffective, Developer may use the Site consistent with its M-Type 10 License.

(c) 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.

(b) Section 2.6(a) “Contemplated City Rules and Guidelines” of the Original Agreement is hereby deleted and replaced with a new Section 2.6(a), as follows:

(a) 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. Nothing in this Agreement shall be construed as limiting the City to amend the Sonora Municipal Code or issue rules or guidelines following the Effective Date of this Agreement that Developer will be required to adhere to.

(c) Section 4.2 “Public Benefit” of the Original Agreement is hereby deleted and replaced with a new Section 4.2, as follows:

Section 4.2. Public Benefit.

(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”). In consideration of the foregoing, Developer shall remit to City as follows:

Effective Date	No Public Benefit Due.
May 1, 2021 and continuing the first (1st) of each month in which Developer has not commenced Commercial Cannabis Activity, through the end of the Term.	\$10,000 each month.

First (1 st) Business Day following 1 st Month in which Developer commences Commercial Cannabis Activity, through the end of the Term.	\$12,500 each month, or 7.5% of total Gross Cannabis Receipts (medicinal and recreational cannabis sales) from operations, whichever is higher.
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(b) This amount shall be known as the “Public Benefit Amount”.

(c) Developer shall remit the Public Benefit as applicable, to City on a monthly basis, as described in subdivision (a). Payments shall be due on the first (1st) business day of each month and will be considered delinquent on the tenth (10th) business day. Failure to remit the Public Benefit, as applicable, is a material breach of this Agreement.

(d) 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 in accordance with the State Taxing Authority’s rules and regulations. Developer shall provide a copy of any such statement to City within three (3) business days of filing with the State Taxing Authority.

(d) Section 8.7 is hereby added to the Agreement, as follows:

Section 8.7. Appeals. Developer may appeal any adverse decision or action of City pursuant to the Sonora Municipal Code, as may be amended from time to time.

5. Third Party Legal Challenge. In the event that legal action or special proceedings are commenced by any person or entity challenging this Amendment, 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 to this Amendment, with legal counsel satisfactory to 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. Unless prevented by law or court order, City shall continue to process any applications related to this Amendment and the Original Agreement, and any delay or failure to process such approvals or to take such other actions shall be considered a default by City of this Amendment and the Original Agreement.

6. Counterparts. This Amendment may be executed in several counterparts, each which shall be deemed an original, but which together shall constitute one and the same instrument.

7. Exhibits. The following exhibits are expressly incorporated as a part of this Amendment:

Exhibit A: The Original Agreement

8. Authority. The Parties and their signatories below warrant and represent that they have the power and authority to enter into this Amendment and the names, titles and capacities herein stated on behalf of any entities, persons, states or firms represented or purposed 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 Amendment have been fully complied with. Further, by entering into this Amendment, each Party represents that this Amendment has not caused any breach of the terms or conditions of any other contract or agreement to which such Party is obligated.

[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”

“Developer”

Date: _____, 2021

Date: _____, 2021

CITY OF SONORA, CA
a California Municipal Corporation

THE BRACK HOUSE, LLC, a California
limited liability company

By: _____
Mary Rose
Rutikanga
City Administrator

By: _____

Attest:

By: _____
Rachelle Kellogg
Community
Development
Director

Approved to as Form

By: _____
Douglas L. White
City Attorney

California All-Purpose Acknowledgment

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)

(Seal)

California All-Purpose Acknowledgment

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)

(Seal)