

DEVELOPMENT AGREEMENT

For Grass Valley Provisions, LLC

This DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into this [redacted] day of [redacted], 202[redacted] by and between the City of Grass Valley, a California municipal corporation (“**City**”), and [insert], Grass Valley Provisions, LLC and its landlords Mark and Teri Heuser (collectively “**Owner**”) (City and Owner are individually referred to as “**Party**” and collectively as “**Parties.**”)

RECITALS

1. Owners are the owners and tenants of a parcel located at 403 Idaho Maryland Road, Grass Valley, CA 95945 (the “**Property**”). The Property, APN 009-220-001-000, is currently being used by Owner as a cannabis dispensary, Grass Valley Provisions, LLC.
2. Owner operates Grass Valley Provisions, LLC in accordance with the laws of the State of California pursuant to business license #03605403 granted in accordance with Grass Valley Municipal Code Chapter 5.04 on January 1, 2024, dispensary permit # 22PLN-06 granted in accordance with Grass Valley Municipal Code Chapter 5.60 on June 29, 2022, and a Type 10 license # C10-0001265-LIC issued by the State Department of Cannabis Control on April 20, 2023.
3. City and Owner wish to enter into this Development Agreement to vest certain land use rights as described in **Exhibit A**, attached hereto and incorporated herein by reference, and to achieve the public benefits described in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Owner agree as follows:

1. Consistent with Applicable Law.
 - a. This Development Agreement is authorized by Section 65865 of the Government Code of the State of California and Chapter 17.76 of the Grass Valley Municipal Code.
 - b. Pursuant to this Agreement, City and Owner have taken all actions mandated by and fulfilled all requirements set forth in the Development Agreement Ordinance of the City of Grass Valley, Title 17, Chapter 17.76 of the Grass Valley Municipal Code.
 - c. Pursuant to Section 17.76.040 of the Grass Valley Municipal Code, having duly examined and considered this Agreement and having held a properly noticed public hearing regarding this Agreement before the Planning Commission on April 3rd, 2024, the Planning Commission recommended the City Council approve this Agreement after finding the Agreement (1) is consistent with the objectives, policies, general land uses, and programs specified in the general plan, any

applicable specific plan, and the Development Code; (2) is compatible with the uses authorized in, and the regulations prescribed for, the land use and zone in which the real property is located; (3) is in conformity with public convenience, general welfare, and good land use practice; will not be detrimental to the health, safety, and general welfare; and (4) will not adversely affect the orderly development of property or the preservation of property values.

- d. Pursuant to Section 17.76.040(E) of the Grass Valley Municipal Code, having duly examined and considered this Agreement and having held a properly noticed public hearing regarding this Agreement before the City Council on April 9th, 2024, the City Council adopted Ordinance No. 827, approving this Agreement and finding it (1) is consistent with the objectives, policies, general land uses, and programs specified in the general plan, any applicable specific plan, and the Development Code; (2) is compatible with the uses authorized in, and the regulations prescribed for, the land use and zone in which the real property is located; (3) is in conformity with public convenience, general welfare, and good land use practice; will not be detrimental to the health, safety, and general welfare; and (4) will not adversely affect the orderly development of property or the preservation of property values.
- e. The “**Effective Date**” of this Agreement shall be the later of (i) the effective date of Ordinance No. 827 approving this Agreement or (ii) the date this Agreement is recorded in the office of the Nevada County Recorder.

2. Parties’ Obligations.

a. City agrees:

- i. The permitted uses of the Property, the density and intensity of use, development standards, and other terms and conditions of development applicable to the Property shall be those set forth in **Exhibit A**, attached hereto and incorporated herein by reference, for the term of this Agreement. Except as otherwise provided in this Agreement, the land use rights described in **Exhibit A** are hereby fully vested for the term of this Agreement. Any development of the Property shall be conducted in accordance with the terms and conditions of this Agreement.
- ii. In the event the Development Code is amended by the City to provide more favorable site-development standards than those in effect as of the Effective Date, Owner shall have the right to notify the City in writing of its desire to be subject to the new standards for the remaining term of this Agreement. If the City agrees by resolution of the City Council, such new standards shall become applicable to the Property. Should the City thereafter amend such new standards, upon the effective date of such amendment, the original new standards shall have no further application to the Property, but Developer may notify the City and the City may agree by resolution to apply such amended new standards to the Property.

iii. To maintain the sums provided by Owner pursuant to section 2.b.i below in a designated account, separate from City general funds, to be used exclusively to provide grant funding for programs discouraging youth access to cannabis. City agrees to consult with Owner at least annually about appropriate programs for use of the funds provided under this subparagraph.

b. Owner agrees:

i. To provide certain contributions set forth herein, which the City acknowledges will have an overall benefit to the public and surrounding area, including but not limited to:

1. Payment of a sum of **\$10,000.00** to be used exclusively for City programs to discourage youth access to cannabis.

ii. To consent to, and waive any rights it may have now or in the future, to challenge the legal validity of, the conditions, requirements, policies or programs required by existing provisions of the Grass Valley Municipal Code, including, without limitation, any claim that they constitute an abuse of the police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

c. The Parties agree:

i. Nothing in this Agreement shall preclude the application of changes in the City's laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in state or federal laws or regulations as provided in Government Code section 65869.5.

ii. This Agreement shall not be construed to limit the authority of the City to charge processing fees for land use approvals, building permits or other similar permits or entitlements that are in force and effect at the time application is made for such permits or entitlements. Development of the Property shall be required to pay existing and future City development fees, processing fees, and building permit fees.

3. Term.

a. The Term of this Agreement shall commence on the Effective Date and shall extend for a period of two years after the Effective Date, unless said Term is otherwise terminated or extended as set forth in this Agreement or by mutual consent of the Parties. Following the expiration of the Term, this Agreement shall terminate and be of no further force and effect except to the extent that any payment due under this Agreement has not yet been paid or any indemnity obligation has not be satisfied.

4. Termination Provisions.

a. Default by Owner.

- i. Termination. If City determines, on the basis of substantial evidence, that Owner has not complied in good faith with the terms and conditions of the Agreement, City may terminate the Agreement after a public hearing on the matter.
- ii. Notice of Proposed Termination. City shall give Owner a written notice identifying with specificity those obligations of Owner which have not been performed. The written notice shall include the time and place of the hearing and any other information that City considers necessary to inform the property owner of the nature of the proceeding.
- iii. Public Hearing on Proposed Termination. City shall give notice of the public hearing in accordance with Government Code sections 65090 and 65091 and Grass Valley Municipal Code section 17.76.080. On conclusion of the public hearing, the City Council may, in lieu of termination, impose conditions on Owner as it considers necessary to protect City's interests.
- iv. Modification of Agreement. City may, instead of termination, modify this Agreement if it determines that Owner has not complied in good faith with this Agreement. If City chooses to modify this Agreement under this subdivision, it must follow the procedures set forth in sections 4.a.ii and 4.a.iii of this Agreement.

b. Default by City.

- i. Default and Notice of Default. If City defaults under this Agreement, Owner shall have only those rights and remedies provided herein which shall include only specific performance of City's obligations under this Agreement and shall not include damages of any kind. With respect to a default pursuant to this Agreement, Owner shall first submit to City a written notice of default stating with specificity those obligations which have not been performed. Upon receipt of the notice of default, City shall cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure in any event not later than 120 days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that City shall continuously and diligently pursue such remedy at all times until such default(s) is cured.

5. No Damages; Specific Performance.

- a. Specific Performance. Both Parties agree and recognize that Owner has invested a considerable amount of time and financial resources in planning the use of and improvements for the Property. For these reasons, it may not be possible to determine an amount of monetary damages which would adequately compensate Owner for this work nor calculate the consideration City would require to enter into this Agreement to justify such exposure. The Parties acknowledge that City would not enter into this Agreement if it might expose its assets and the public to the risk of damages arising from failed expectations in the use or development of the

Property. Therefore, the Parties agree that monetary damages shall not be an adequate remedy for Owner if City should be determined to be in default under this Agreement. The Parties further agree that specific performance (or writ of mandate for performance of a required act) shall be the sole available and appropriate remedy for Owner under this Agreement, and Owner shall not seek monetary damages for a default by City under this Agreement or under any otherwise applicable legal basis for monetary damages. In no event will City or its officers, agents, or employees be liable for damages for any default under this Agreement, it being expressly understood and agreed that the sole legal remedy available to Owner for a default under this Agreement by City shall be an action in mandate, specific performance, or other injunctive or declaratory relief to enforce the provisions of this Agreement.

6. Amendment or Cancellation of Agreement.

- a. This Agreement may be amended or canceled, in whole or in part, by mutual consent of Parties in writing, in accordance with the provisions of Grass Valley Municipal Code section 17.76.050 and Government Code section 65868.

7. Periodic Review.

- a. The City shall conduct annual reviews of this Agreement during its term in accordance with the procedures set forth in Grass Valley Municipal Code section 17.76.070.
- b. The costs incurred by the City in connection with an annual review shall be borne by Owner, who shall reimburse the City upon its written invoice for those costs.

8. California Environmental Quality Act (CEQA) Compliance.

- a. Owner and City agree that this Agreement is not a project for purposes of the California Environmental Quality Act (California Public Resources Code § 21000, et seq.) (CEQA) pursuant to section 15061(b)(3) of the CEQA Guidelines, (California Code of Regulations, title 14, section 15000, et seq.), as it can be seen with certainty that this Agreement has no potential to cause physical change to the environment because it provides for the maintenance, with negligible expansion, of an existing use. To the extent this Agreement is a project within the meaning of CEQA, it is categorically exempt pursuant to CEQA Guideline section 15301 as a minor alteration of an existing private facility.

9. Indemnity.

- a. Owner agrees to protect, defend (with legal counsel acceptable to City), indemnify and hold harmless City, its councilmembers, officers, agents, independent contractors and employees from and against any and all claims, damages, penalties, losses, costs, expenses (including reasonable attorneys' fees and court costs), injuries and liabilities of every kind arising out of or caused by any of Owner's alleged negligence, gross negligence or intentional wrongdoing under this Agreement, whether such alleged activities or performance thereof be by Owner or anyone directly or indirectly employed or contracted by Owner, and all claims challenging the legality, validity, adequacy, or enforceability of this Agreement.

- b. City's rights of indemnity, as expressly set forth in this Agreement, shall not depend upon its payment of any claim, damage, penalty, loss, cost, expense (including reasonable attorneys' fees and court costs), injury or liability sustained by Owner or its contractors, subcontractors, agents or employees. Owner shall not be entitled to a refund if it is adjudicated or determined to have been non-negligent.
- c. If City tenders the defense and indemnification of a claim within this Agreement to Owner and its contractors, subcontractors, agents or employees, City shall be entitled to actively supervise the claim and its defense, shall be authorized to select and retain its own independent counsel, at Owner's or its contractors, subcontractors, agents or employees' expense, as necessary, which decision shall be made solely and exclusively by City, and City must consent to the disposition of any such claim, including but not limited to, settlement.

10. Recordings.

- a. Pursuant to Grass Valley Municipal Code section 17.76.060 and Government Code section 65868.5, the City Clerk will record this Agreement with the Office of the Nevada County Recorder no later than 10 days after its execution.

11. Notices.

- a. Unless otherwise agreed to by City and Owner, all notices required or permitted to be given hereunder shall be in writing. Such notices shall be effective (i) 2 days following deposit into the United States mail, registered or certified, return receipt requested, postage prepaid, or (ii) upon hand delivery by nationally recognized overnight courier providing evidence of delivery or (iii) when sent by email, telecopy, or similar electronic transmission (if followed by a hard copy sent by one of the forgoing methods), addressed as follows:

If to City:

City of Grass Valley
City Manager
125 East Main St.
Grass Valley, CA 95945

If to Owner:

Grass Valley Provisions, LLC
[insert]

With a Courtesy Copy sent to:

Michael G. Colantuono, City Attorney
City of Grass Valley
City Attorney
420 Sierra College Dr., Suite 140
Grass Valley, CA 95945

12. Conflicts of Interest.

- a. No member, official, or employee of City shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested.

13. Nonliability of City Officials and Employees.

- a. No member, official, employee, attorney or consultant of City shall be personally liable to Owner, or any successor in interest of Owner, for any default or breach by City or on any obligations under this Agreement.

14. Owner Understanding.

- a. Owner understands that this Agreement may result in the reduction of the total value of the Property and willingly enters into this Agreement with that knowledge. Owner agrees that it will, under no circumstances, challenge the validity of this Agreement on the basis that it has caused such reduction in value.

15. Assurances to Act in Good Faith.

- a. City and Owner agree to execute all documents and instruments, take all action, and use their best efforts to accomplish the purposes of this Agreement. City and Owner shall each diligently and in good faith pursue the satisfaction of any conditions or contingencies subject to its approval. City and Owner shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

16. Constructive Notice.

- a. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Subject Property 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 Project or the Subject Property.

17. Severability.

- a. Wherever possible, each provision of this Agreement shall be interpreted so as to be effective under applicable law. If, however, any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remainder of this Agreement.

18. Construction.

- a. Owner acknowledges that Owner has been advised to have this Agreement reviewed by counsel, and agrees that Owner and its counsel (and/or such other business and financial advisers as Owner desires) have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be

resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.

19. Time of the Essence.

- a. Time is of the essence of this Agreement and all Parties' obligations hereunder.

20. Attorneys' Fees.

- a. If any action at law or in equity, including an action for declaratory relief or specific performance, is brought by either Party to enforce or interpret provisions of this Agreement against the other Party, then the prevailing Party shall be entitled to be reimbursed by the non-prevailing Party for its reasonable and actual attorneys' fees (including reasonable in-house counsel fees of City at private rates prevailing in Nevada County) and costs, which may be set by the court in the same action or in a separate action brought for that purpose.

21. Successors and Assigns.

- a. The provisions hereof shall be binding upon, and inure to the benefit of, City and Owner and their successors and assigns, as the case or context may require. This Agreement shall likewise be binding upon and obligate the Property and any successors in interest to the Property. City will not unreasonably withhold its consent to an assignment if the assignment results in merely a change in the form of ownership of the Property or the assets of Owner. Notwithstanding the foregoing, Owner shall have the right, without the consent of City, to assign its rights and obligations under this Agreement to a person that is an affiliate of Owner or to a purchaser of all or substantially all of Owner's assets.

22. No Third Party Beneficiaries.

- a. The only parties to this Agreement are Owner and City. Except as to successors and assigns as specified in section 21, there are no third party beneficiaries, and this Agreement is not intended, and shall not be construed, to benefit, or be enforceable by any other person whatsoever.

23. No Joint Venture.

- a. Nothing contained herein shall be construed to make City in any way or for any purpose a partner, joint venturer, or associated in any relationship with Owner, nor shall this Agreement be construed to authorize either Party to act as agent for the other. City hereby acknowledges, agrees and confirms that it has and will have no proprietary or other beneficial interest in the Property.

24. Waiver.

- a. Failure by a Party to insist on the strict performance of any provision of this Agreement by the other Party shall not constitute a waiver of such Party's right to insist and demand thereafter strict compliance by the other Party with that or other provisions of this Agreement.

25. Entire Agreement, Waivers and Amendments.

- a. This Agreement, together with its Exhibit A, contains the entire understanding and agreement of the Parties with respect to its subject matter. There are no oral or written representations, understandings, undertakings, or agreements that are not contained or expressly referred to in this Agreement, and any such representations, understandings, or agreements not contained or expressly referred to herein are superseded by this Agreement.

26. Enforcement.

- a. This Agreement shall in all respects be interpreted, enforced, and governed under the laws of the State of California. Parties agree that any action to enforce this Agreement shall be filed and maintained in the Nevada County Superior Court and Owner hereby concedes the existence of personal jurisdiction and consents to the jurisdiction of that Court for this purpose.

IN WITNESS WHEREOF City and Owner have executed this Agreement as of the date first written above.

“City”

“Owner”

City of Grass Valley

[insert]

By: _____
Signature

By: _____
Signature

Printed: _____

Printed: _____

Title: _____

Title: _____

Date: _____

Date: _____

By: _____
Taylor Day, City Clerk

Date: _____

Approved as to form:

By: _____
Michael G. Colantuono, City Attorney

Date: _____

EXHIBIT A

DRAFT