

<p>RECORDING REQUESTED BY and WHEN RECORDED MAIL TO:</p>  <p>City Clerk City of Grass Valley 125 E. Main Street Grass Valley, CA 95945</p>	<p>SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY</p>
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APN: 009-720-14, 015, 016, 017

### **AGREEMENT FOR TEMPORARY FEE DEFERRAL & SEWER REIMBURSEMENT**

This agreement ("Agreement") is made on March 8, 2022 (the "Effective Date") by and between the CITY OF GRASS VALLEY, a charter City ("City"), and BREWBILT ("Owner"), each of which may be individually referred to below as a "Party" and collectively as "Parties."

WHEREAS, Owner owns and desires to develop certain real property, known by Nevada County Assessor's Parcel Numbers 009-720-14, 015, 016, 017 (the "Property") for a proposed microbrewery, eventually including eight fermentation tanks that will provide a maximum production capacity of 3,000 barrels per year ("Project"); and

WHEREAS, Owner submitted an application to develop the Property for the uses described above, which, given the construction of large capacity fermentation tanks, requires payment of various sewer impact fees, a development review permit, and a conditional use permit (collectively referred to as the "Project Entitlements"); and

WHEREAS, as a condition of approval of the Project Entitlements and as required by the Grass Valley Municipal Code and other law, Owner will be required to pay sewer impact fees for the Project; and

WHEREAS, City has estimated the sewer impact fees owed for the eight fermentation tanks as \$30,796.32, or \$3,849.54 per tank; and

WHEREAS, City is willing to allow Owner to defer payment of the sewer impact fees and instead pay the per-tank sewer impact fee as each tank is developed pursuant to this Agreement.

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

1. **RECITALS.** All the foregoing recitals are true and correct and incorporated herein by reference.
2. **PLUMBING PERMIT.** Owner will obtain a building permit before installing each tank
3. **SEWER IMPACT FEE DEFERRAL.**
  - a. Upon Owner's completion of two fermentation tanks and commencement of brewing, even if test batches not for sale, Owner shall pay City \$7,699.08 in sewer impact fees.
  - b. Before installing each subsequent fermentation tank, Owner will obtain a building permit and pay City \$3,849.54 in sewer connect fees. After construction of all eight fermentation tanks, Owner will have paid City a total of \$30,796.32.
  - c. No later than December 31, 2025, Owner shall have paid City the total \$30,796.32 regardless of whether all eight fermentation tanks have then been completed.
  - d. If Owner engages or otherwise authorizes any construction on or development of the Property not in compliance with the Project Entitlements or City's ordinances, rules and regulations, or otherwise fails to comply with any term or provision of this Agreement, City may require Owner to pay all deferred sewer impact fees not yet paid, within 15 days of notice of City's action. Should Owner fail to pay the sewer impact fees at that time, all work on the Project shall cease until the sewer impact fees are paid in full, plus reimbursement for any City costs associated with enforcement of this provision.
  - e. Owner agrees that City will not issue a building permit for the Project until all required or outstanding City permit fees pertaining to the project, other than the sewer impact fees listed above, are paid according to City's fee schedule.
4. **TERMINATION.** This Agreement shall terminate when Owner has paid \$30,796.32 in sewer connection fees or when the Parties otherwise agree in writing.
5. **NO PARTNERSHIP/NO EMPLOYMENT RELATIONSHIP.** Nothing in this Agreement shall be deemed or construed as creating a partnership, joint venture, or of any association between Owner and City. Owner, its agents, servants, and employees are not agents or employees of City, but are independent contractors, solely responsible for their own acts and omissions, and this Agreement shall not be construed as an employment agreement between City and Owner or between City and any contractor to Owner.
6. **GENERAL TERMS AND CONDITIONS.**

- a. Notwithstanding anything contained in this Agreement to the contrary, any and all approvals necessary to affect this Agreement shall be subject to all applicable local, State and Federal laws and regulations.
- b. All data, documents, discussion, or other information developed or received by Owner for performance of this Agreement are deemed confidential and Owner shall not disclose it without prior written consent by City. City shall grant such consent if disclosure is legally required. All City data shall be returned to City upon the termination or expiration of this Agreement.
- c. Owner maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Owner, to solicit or secure this Agreement. Further, Owner warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Owner, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- d. Time is of the essence for each and every provision of this Agreement.
- e. The venue for any litigation shall be Nevada County, California and Owner hereby consents to jurisdiction there for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- f. This agreement is binding upon City and Owner and their respective successors and permitted assigns. Except as otherwise provided herein, neither City nor Owner shall assign, sublet or transfer its interest in this agreement or any part thereof without the prior written consent of the other.
- g. Except as expressly stated herein, the parties intend to benefit no third party by any right or obligation assumed by the parties under this Agreement.
- h. Owner shall not be liable for any failure to perform if Owner presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Owner.
- i. In any action, suit or proceeding arising from or out of this Agreement and/or to enforce or interpret it, the prevailing party shall be entitled to recover all attorneys' fees reasonably and actually incurred in such proceeding and all court costs and collection costs, whether incurred out of court, at trial or on appeal.
- j. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby

and shall be given effect to the fullest extent possible and, to that end, the Parties hereby declare the provisions of this Agreement to be severable.

- k. This Agreement contains the entire agreement between the Parties with respect to the matters provided for herein and may be amended only by subsequent written agreement signed on behalf of both Parties.
- l. The usual construction of an agreement against the drafting party shall not apply since each Party has had a full opportunity to review this agreement and discuss it with their respective legal counsel.
- m. Each person signing this Agreement warrants for the benefit of the Party for which he or she does not sign that he or she has actual authority to bind his or her principal to this Agreement.
- n. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument. The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed or emailed versions of an original signature, electronically scanned and transmitted versions (e.g., via pdf) of an original signature, or a digital signature.

**BOTH THE OWNER AND CITY AGREE TO THE TERMS AND PROVISIONS OF THIS AGREEMENT BY AFFIXING THEIR SIGNATURES BELOW,**

**IN WITNESS WHEREOF, THE CITY OF GRASS VALLEY, a public entity, has authorized this Agreement to be executed on the 8th day of March 2022:**

**CITY**

City of Grass Valley

**OWNER**

BrewBilt Brewing Company

\_\_\_\_\_  
Tim Kiser, City Manager

\_\_\_\_\_  
Jeffrey Lewis, CEO

\_\_\_\_\_  
Bennett Buchanan, Director of Brewing  
(Attach Notary Acknowledgement)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Michael G. Colantuono, City Attorney

**ATTEST:**

\_\_\_\_\_  
Taylor Day, Deputy City Clerk