

DEVELOPMENT AGREEMENT FOR PHASE 3 EXPANSION OF MIGHTYVINE

This Development Agreement (the “Agreement”) is made and entered into as of this _____ day of _____, 2019, by and between **Pasquesi Farms, LLC**, a Delaware limited liability company, d/b/a MightyVine (“MightyVine”), and the **City of Rochelle, Ogle County, Illinois**, an Illinois municipal corporation (the “City”), and is based on the following recitals:

RECITALS

- A. The City is duly organized and existing under the laws of the State of Illinois as a non-home rule municipality.
- B. MightyVine is a Delaware limited liability company in good standing with the Illinois Secretary of State.
- C. MightyVine is the record owner of the commercial real estate commonly known as 222 Centerpoint Drive, Rochelle, Illinois 61068, Ogle County, Illinois (the “Subject Property”), which is currently improved with a greenhouse structure used to grow produce (the “Building”).
- D. MightyVine intends to develop the Subject Property by expanding the existing facilities and the Building, which includes Phases 3 and 4 of the operations, depicted in Exhibit 1 attached hereto; however, only Phase 3 will be artificially lighted for growing operations.
- E. The City operates the Rochelle Municipal Utilities (“RMU”), which provides utility services to MightyVine, including electricity to power its operations at the Building.
- F. The proposed expansion at MightyVine will require the RMU to enhance its current distribution facilities in order to accommodate the additional electrical load that will be needed for the operations of Phase 3.
- G. The Development of the Subject Property will require or involve:
 - 1. The construction of additional greenhouses, which will include approximately 653,000 (326,000 if only Phase 3) square feet of additional greenhouse space. However, MightyVine will only provide artificial lighting for Phase 3, but will not be installing artificial lighting in Phase 4. MightyVine understands and acknowledges that the electrical distribution infrastructure addressed in this Agreement will not have the capacity to provide electric for artificial lighting to Phase 4 of the expansion project.
 - 2. An upgrading of the electrical service involving a transformer. The City agrees to expand the electrical service to the Building and pay up to Eighty (80%) or \$413,150.31 of the \$516,437.89 expansion of Phase 3. MightyVine will be responsible for up to Twenty (20%) or \$103,287.58 of

the total cost of upgrading the distribution facilities of the RMU to the Subject Property. The parties acknowledge that any grants received for the distribution system enhancements will be applied to the total cost of the project and the remaining balance of the expenditures shall then be apportioned as set forth in this paragraph.

3. MightyVine will pay all additional expenses for the electrical infrastructure from the transformers. MightyVine will be responsible for all additional electrical improvement costs as set forth in Exhibit 2 to this Agreement.

- H. The total cost of the project, including the new, dedicated electrical distribution power line, based on engineer estimates, will be approximately \$516,437.89.

- I. MightyVine and the City wish to cooperate to foster the Development of Phases 3 and 4 by granting the licenses and permits specified pursuant to this Agreement or reasonably required by MightyVine.

- J. The City is entering into this Agreement pursuant to its non-home rule powers and its determination that the licenses and permits contemplated by this Agreement will enhance the city's businesses and redevelopment of its downtown area.

- K. The City has determined that it is essential to the economic and social welfare of the City that the licenses and permits contemplated by this Agreement are necessary to foster economic development.

- L. The City finds that the powers to be exercised hereunder are in furtherance of a public use and essential to the public interest.

- M. The Mayor and City Council of the City have determined that entering into this Agreement is the best interests of the City.

- N. MightyVine has full right, power and authority to enter into this Agreement and acknowledges and consents to its terms and conditions.

NOW, THEREFORE, in consideration of TEN DOLLARS (\$10.00) and the promises, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and MightyVine agree as follows:

**SECTION ONE.
RECITALS**

The foregoing Recitals are hereby incorporated herein as if fully set forth below as representations by MightyVine and the City.

**SECTION TWO.
UTILITY SERVICE**

A. Electrical Service. The City, which owns and operates its electrical service utility, agrees that it will, at its expense and on a timely basis, increase the electrical service and distribution. The City will further commit to funding Eighty (80%) Percent of the total anticipated cost of the improvements to the distribution system, up to \$413,150.31 and MightyVine will commit to funding Twenty (20%) Percent anticipated cost of the improvements to the distribution system, up to \$103,287.58, which does not include the cost of the transformers or primary metering. The City will provide a transformer to supply the appropriate electrical service to the Building for the MightyVine's operation; however, MightyVine will have to reimburse the City for the total costs of the transformers and primary metering before an occupancy permit will be issued for either Phases 3 or 4).

MightyVine acknowledges that the City is expending great sums to enhance the distribution service to its Building and the expansion of Phase 3 to its operations. As such, MightyVine agrees to purchase all of its electricity from the City and will not purchase electricity from any other party or use electricity from any other generation source, including, but not limited to solar generation, wind generation, any form of reusable generation, or any other form of generation that would reduce, augment, supplement, or replace the electrical load provided by the City for a period of two (2) years or until the City has recovered its costs associated with the expansion of the electrical distribution system for Phase 3, whichever occurs first. Should the City receive a grant sufficient to cover the entire cost of the infrastructure improvement to the electrical distribution system, then this particular obligation shall be deemed fulfilled by the City.

Should MightyVine wish to use another source for its electrical needs before the City has been fully reimbursed for the costs associated with the expansion of the electrical distribution system, MightyVine may make a lump sum payment equal to the outstanding amount of yet reimbursed costs. However, the use of third-party electrical providers any other generation source, including, but not limited to solar generation, wind generation, any form of reusable generation, or any other form of generation that would reduce, augment, supplement, or replace the electrical load shall be subject to the City's codes and City Council's approval of any other such generation source.

B. Water. The City agrees that MightyVine may, at its expense, split the water service inside the Building into components for domestic water and a sprinkler system. To enable the Building to have a sufficient water supply and pressure, MightyVine agrees that it will, at its sole expense, increase the size of the water line into the Building from a two-inch pipe to a four-inch pipe.

**SECTION THREE.
COVENANT NOT TO USE OTHER SOURCES OF ELECTRICITY**

MightyVine understands that the City is expending large sums of money to enhance electrical services to MightyVine for Phase 3 and as such, MightyVine covenants not to use any other source of electricity as identified in Section Two (a) of this Agreement for a period of time

no less than two (2) years or until the City has recovered its costs associated with the expansion of the electrical distribution system for Phase 3, whichever occurs first., unless required to do so by Federal or State law.

**SECTION FOUR.
REPAYMENT OF EXPANSION**

MightyVine understands that the City is expending large sums of money to enhance electrical services to MightyVine for Phase 3 and that it will take approximately two (2) years for City to recover said expenditures. Therefore, MightyVine must remain open, in operation, and use average electrical loads of at least Twelve (12) Megawatts for its entire facility for no less than two (2) years, unless MightyVine opts to provide the lump sum payment as identified in Section Two (A) herein. In the alternative, MightyVine may post a Letter of Credit or other surety in the full amount of the City's costs of improvement related to the Development of Phase 3. The Letter of Credit or surety can be reduced each year by one-half on the anniversary that MightyVine begins to use Phase 3. If MightyVine ceases use of Phase 3 at any time before the two-year time period, the outstanding, unpaid portion of the City's expenditures shall become due and owing, which may be collected from the Letter of Credit or surety.

**SECTION FIVE.
APPROVALS, PERMITS AND CONSENTS**

The City agrees to provide approvals, permits and consents to MightyVine as reasonably required for MightyVine's construction of Phases 3 and 4, upon appropriate petitions and requests by MightyVine.

**SECTION SIX.
MAINTENANCE**

Except to the extent caused by the City's negligence or willful and wanton conduct, MightyVine, at its sole cost and expense, shall maintain and repair the improvements to the Subject Property, including the development of Phases 3 and 4 and otherwise taking the reasonable, necessary and appropriate measures to keep the Subject Property in a clean, attractive, safe, unobstructed, good and useable condition.

**SECTION SEVEN.
INSURANCE**

MightyVine agrees to maintain public liability and property damage insurance with an insurance company qualified and licensed to do business in Illinois with limits of not less than two million dollars (\$2,000,000.00) for bodily injury or death to any one person, four million dollars (\$4,000,000.00) for bodily injury or death to more than one person, and five hundred thousand dollars (\$500,000.00) for damage to the Subject Property, during the construction of Phases 3 and 4.. The City will be named as an additional insured on MightyVine's policies and shall be provided thirty (30) days' advance notice prior to the cancellation of any such policy. Certificates of such

insurance shall be filed with the City clerk within 30 days of the approval of this Agreement by the City Council.

**SECTION EIGHT.
COMPLIANCE WITH LAW**

MightyVine will at its own expense comply with all federal, state and local laws, ordinances of the City and the State of Illinois, and rules and regulations now or later in force which may be applicable to its operations in the City. MightyVine will obtain and pay for all permits, licenses, variations, and other authorizations which may be required for the improvements and its activities contemplated by this Agreement.

**SECTION NINE.
WAIVER**

No waiver by either the City or MightyVine of any default on the part of the other party in the performance of any of the terms, covenants, or conditions of this Agreement to be performed, kept, or observed by the defaulting party shall be or be construed to be a waiver by the non-defaulting party of any other or subsequent default in the performance of any terms, covenants, or conditions of this Agreement to be performed, kept or observed by the defaulting party.

**SECTION TEN.
AMENDMENT**

This Agreement may be modified or amended in whole or in part only by a written instrument executed by the City and MightyVine.

**SECTION ELEVEN.
ATTORNEYS' FEES AND COSTS**

In the event of any litigation arising out of or with respect to this Agreement, the prevailing party will have the right to be paid all costs and expenses including, but not limited to, reasonable attorneys' fees, expert witness fees and all other costs, including all such costs with respect to any appellate proceedings.

**SECTION TWELVE.
INDEMNIFICATION**

To the fullest extent permitted by law, MightyVine shall defend, indemnify and hold the City harmless from and against any and all claims, causes of action, liability, loss, damage, costs and expenses (including reasonable attorneys' fees) for injury to person or death or property damage arising out of or resulting from (i) MightyVine's use of the Subject Property; (ii) any failure by MightyVine to perform its obligation required herein; or (iii) arising out of or resulting from of MightyVine's breach of any provision of this Agreement.

**SECTION THIRTEEN.
NOTICE**

All notices and other communications shall be in writing and shall be deemed properly served if delivered in person to the party to whom it is addressed two (2) days after deposit in the U. S. mail if sent postage prepaid by United States registered or certified mail, return receipt requested, addressed as follows:

All notices to the City of Rochelle shall be sent to:

City Manager
City of Rochelle
420 North 6th Street
Rochelle, Illinois 61068

Peterson, Johnson & Murray-Chicago LLC
Attn: Dominick Lanzito
200 West Adams – Ste. 2125
Chicago, Illinois 60606

All notices to MightyVine shall be sent to:

Pasquesi Farms, LLC d/b/a MightyVine
Attn: Gary M. Lazarski
222 Centerpoint Dr.
Rochelle, Il 61068

or to such other address as a Party may designate for itself by notice given from time to time to the other Party in the manner provided herein.

**SECTION FOURTEEN.
PERFORMANCE BOND AND MAINTENANCE**

MightyVine shall provide a performance bond equal to 125% of the cost of the improvements to the Subject Property to accommodate Phase 3, including the costs any additional transformers or electrical infrastructure necessary to accommodate the electrical load for Phase 3, prior to the issuance of building permits for the improvements to the Subject Property.

**SECTION FIFTEEN.
BINDING EFFECT**

This Agreement shall be binding upon and inure to the benefit of the City and MightyVine and their respective successors and assigns.

**SECTION SIXTEEN.
ENTIRE AGREEMENT**

This Agreement and the exhibits to this Agreement contain all the representations and the entire agreement between the parties with respect to the subject matter of this agreement. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement and the exhibits to this Agreement. No party has relied on any representations, written or verbal, of any other party other than those express written representations made within this Agreement.

**SECTION SEVENTEEN.
EXHIBITS**

All exhibits attached hereto are incorporated by reference and made a part of this Agreement.

The parties have executed this agreement as of the day and year first above written.

THE CITY OF ROCHELLE, an Illinois
municipality

By: _____

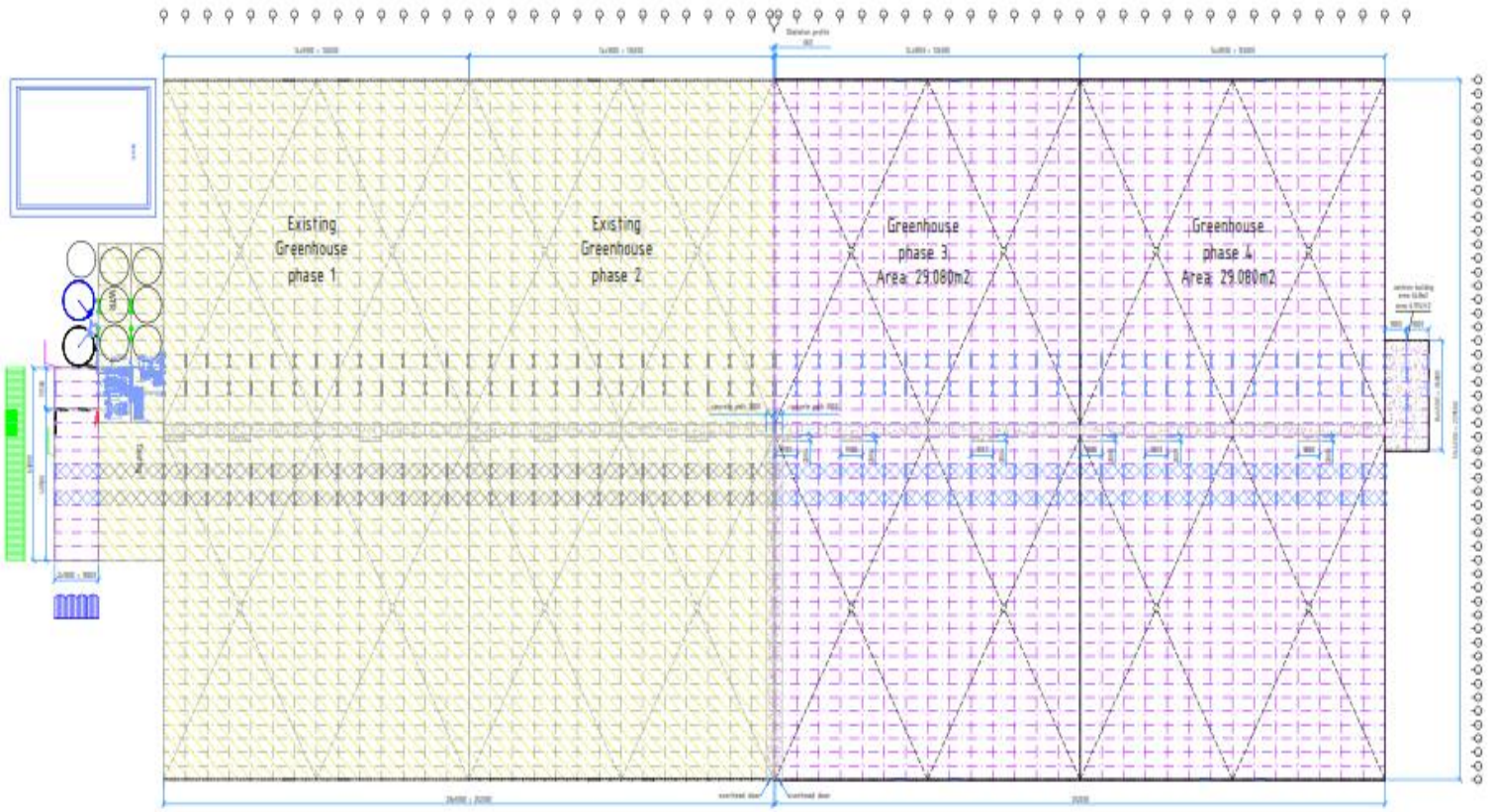
Its: _____

MIGHTYVINE FARMS DISTILLING, LLC, an
Illinois limited liability company

By: _____

Member and Authorized Agent

Exhibit 1 – Depiction of Expansion



| | | | |
|------------------------|--|--|--------------------|
| CONCEPT | | Drawing name: Lay-out Total Greenhouse | |
| Date created: 6.1.2020 | Project name: Right View phase 3 and 4 | Customer project: | Building location: |
| Created by: | | Client address: | |
| Drawn by: | | | |
| Checked by: | | | |
| Date: | | | |
| Updated by: | | | |
| Date: | | | |
| Updated by: | | | |
| Date: | | | |


| | |
|---|---|
|  VB Greenhouses Ingeneer voor de kassenbouw VBW 40 04 100 Tel: +31 (0) 40 20 20 20 Fax: +31 (0) 40 20 20 20 E-mail: info@vbgroup.nl Web: www.vbgroup.nl | Scale: 1:500 Date: 2020 Drawn: [initials] Checked: [initials] Drawing number: 180510022 |
|---|---|

Exhibit 2
Additional Costs to be paid by MightyVine

| <u>Item</u> | <u>Approx.. Cost</u> |
|--------------------|----------------------|
| - Transformers (2) | \$70,000.00 |
| - Primary Metering | \$30,000.00 |