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Submitted Electronically

City of Las Vegas
Department of Planning
495 S. Main St.
Las Vegas, NV 89101

Re: Amendment to Site Development Plan and Parking Variance to Reintegrate Drive-Through Facilities with Retail Cannabis Retail Store

The City Council approved a special use permit (SUP-78301) for a retail cannabis store at 5991 W. Cheyenne operated by Deep Roots Harvest Inc. (“Deep Roots”) on September 2, 2020. At that time, the City’s zoning regulations prohibited drive-through facilities in conjunction with cannabis dispensaries. The City subsequently adopted Ordinance 6671 to repeal the prohibition on drive-through facilities for cannabis dispensaries.

The subject property was originally developed for a drive-through pharmacy on the west side of the building. Deep Roots is requesting an amendment to the approved site plan to reintegrate drive-through facilities with its retail cannabis store use. The proposed drive-through will have a single stacking lane that accommodates more than six vehicles and will be screened from view with additional parking lot landscaping as required by LVMC 19.08.040(F).

Reestablishing the drive-through will require a reconfiguration of the existing parking areas onsite, which currently provide a total of 78 parking stalls. The reconfigured parking areas will provide a total of 69 parking stalls (49 standard, 16 compact, and 4 accessible parking stalls), where 78 are required. Accordingly, Deep Roots is requesting a variance from the applicable parking standard. Since the drive-through stacking lane will accommodate at least 6 vehicles, the loss of 9 parking stalls should not have any negative impacts on the site or the surrounding areas.

LVMC 19.16.140 provides that a variance may be granted if “the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property.” A variance is generally appropriate where:

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(1) extraordinary circumstances exist other than self-created hardships, and (2) relief can be granted without substantial detriment to the public good or impairing the intent and purpose of the applicable regulation.

Extraordinary Circumstances Warrant a Variance

The circumstances that justify a variance from the applicable parking standards resulted from the City's prior zoning decisions, and not from any self-imposed hardships. In 1994, the subject property was rezoned to C-1 (Z-0041-94) as part of a proposed 85,000 square-foot retail shopping center. In 1997 the City approved Rite Aid Corporation's request for entitlements for a 16,708 square-foot drugstore on the subject property (Z-0086-97) as the first phase of the shopping center development. A condition of approval for developing the Rite Aid required "intrasite access to the abutting future commercial padsites within this legal parcel to allow perpetual common access to all driveways connecting this site to abutting streets." To comply with this condition, the prior owners recorded a reciprocal easement agreement ("REA") and subdivided the subject property from remainder of the shopping center using the driveway centerline as the common boundary line. A copy of the REA is enclosed for reference.

In 2006, the City approved a request to rezone the remainder of the shopping center site to R-PD25 for a multifamily residential project, leaving the subject property without the additional access or adjacent parking areas contemplated for the shopping center site. The foregoing events resulted in the subject property having an irregular shape and a portion of the driveway being located on the apartment complex's property. Although the REA allows the owner of the subject property to regulate the use of the driveway (including, for example, designation of one-way traffic flow), the portion of the driveway on the apartment complex's property cannot be modified or used for additional parking.

Granting a Variance Will Have No Detrimental Impacts

The City's parking requirements for dispensaries (1 stall / 175 sf) are significantly higher than the general parking requirements for other retail establishments (1 stall / 300 sf). They are presumably based on the Institute of Transportation Engineers' (ITE) trip generation estimates, which were derived from studying only 4 dispensaries in Colorado and Oregon when very few states had legalized adult-use of recreational cannabis. For this very reason, the ITE cautions the use of its dispensary parking demand data.

When Deep Roots originally applied for a special use permit, it was required to limit the application to a portion of the building due to the City's parking requirements. As a result, only 8,391 square-feet of the building is entitled for a retail cannabis store use. Only 48 parking spaces are required for an 8,391 square-foot dispensary, but the City's parking standards assume the rest of the building is being used for other retail establishments for purposes of determining parking

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requirements. As Deep Roots currently has no plans to use the rest of the building, it would be willing to accept a condition of approval restricting use of the building in proportion to the parking provided. The reconfigured site plan actually provides 23 more parking stalls than is required for the dispensary.

Since the drive-through will only be available to customers who have placed orders online, Deep Roots does not anticipate extended queuing of vehicles in the drive-through aisle. Moreover, the traffic impact analysis (TIA) that was approved by the City for the Deep Roots store was prepared based on the expectation that the drive-through facilities could potentially be reintegrated with the site in the future. In approving the TIA, the City did not require any mitigation measures or dedication of additional right-of-way.

Granting a Variance Will Not Impair the Purpose of the City's Parking Requirements

The purpose of the City's parking standards for commercial development are: (1) to require off-street parking facilities in proportion to the parking demand for each use; (2) to provide accessible, attractive, secure, properly lighted and well-maintained off-street parking facilities; (3) to reduce traffic congestion and hazards; and (4) to assure that maneuverability for emergency vehicles exists. The first goal of the City's parking standards will not be impaired because 8,812 square-feet of the building remains unused and Deep Roots is willing accept a condition of approval restricting the use of the building in proportion to the amount of parking actually provided. The second goal is also met because the parking spaces that are being eliminated are on the opposite side of the building furthest from the entrance, which are the least convenient for customers. The third goal will not be impaired because, as already noted, the TIA was approved with the expectation that the drive-through would be opened in the future and no mitigation measures were required. Finally, the drive-through will not interfere with emergency vehicle access and will actually divert any intra-site traffic away from the existing fire-hydrant facilities.

Based on the foregoing, Deep Roots respectfully requests that this application be approved. If you have any questions, please do not hesitate to contact me at cmolina@mcdonaldcarano.com or 702-873-4100 or mwarren@mcdonaldcarano.com or 702-338-5485.

Very truly yours,



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