BEFORE THE CANNABIS COMPLIANCE BOARD STATE OF NEVADA

STATE OF NEVADA, CANNABIS COMPLIANCE BOARD,

Case No. 2022-78

Petitioner,

VS.

SILVER SAGE WELLNESS, LLC (D049, RD049),

Respondent.

STIPULATION AND ORDER FOR SETTLEMENT OF DISCIPLINARY ACTION

The Cannabis Compliance Board (the "CCB"), by and through its counsel, Aaron D. Ford, Attorney General for the State of Nevada, and Ashley A. Balducci, Senior Deputy Attorney General, and Michael D. Detmer, Senior Deputy Attorney General hereby enters into this Stipulation and Order for Settlement of Disciplinary Action ("Stipulation and Order") with Respondent SILVER SAGE WELLNESS (hereinafter "SSWD" or "Respondent"), by and through its counsels of record, Mark E. Ferrario and Whitney Welch-Kirmse, attorneys for the law firm of Greenberg Traurig, LLP. Pursuant to this Stipulation and Order, SSWD and the CCB (collectively, the "Parties") hereby stipulate and agree that CCB Case No. 2022-78 (the "Administrative Action") shall be fully and finally settled and resolved upon the terms and conditions set out herein.

PERTINENT FACTS

1. On or about March 29, 2022, the CCB initiated this disciplinary action via the service and filing of a Complaint for Disciplinary Action (the "Complaint"). The Complaint alleged, *inter alia*, that, contrary to Nevada law, SSWD's medical cannabis dispensary (D049) and adult-use cannabis retail store (RD049): failed to keep required records, including seed-to-sale tracking requirements; violated seed-to-sale tracking requirements; stored cannabis products outside the seed-to-sale tracking requirements; failed to maintain

required surveillance systems; and failed to meet requirements for disposal of cannabis waste.

- 2. SSWD has not filed an Answer and/or a Request for a Hearing as of the date of this Stipulation and Order. Rather, SSWD requested and was granted an extension to file its Answer and Request for a Hearing of 15 days to initiate and proceed with settlement negotiations. The due date for SSWD's Answer and Request for a Hearing was May 4, 2022, but the Parties stipulated to vacate this deadline and stay the Administrative Action for sixty (60) days to give the Parties time to finalize a mutually acceptable agreement to present to the Board at its June 28, 2022, meeting for approval. Should the Board approve this Stipulation and Order at its June 28, 2022, meeting, there would be no need for SSWD to file an Answer or Request for a Hearing.
- 3. As to the factual allegations in the Complaint in CCB Case No. 2022-78, for the purpose of settling this matter, SSWD specifically admits to the allegations contained in Paragraphs 5 through 11.
- 4. The Parties have engaged in good faith settlement negotiations to reach a mutually acceptable agreement to Respondent, CCB staff, and counsel for the CCB, for resolution of the Administrative Action, with the understanding that this Stipulation and Order must be approved by majority vote of the members of the CCB to become effective.

ACKNOWLEDGEMENTS AND APPLICABLE LAW

This Stipulation and Order is made and based upon the following acknowledgements by the Parties:

5. SSWD has entered into this Stipulation and Order on its own behalf and with full authority to resolve the claims against it and is aware of SSWD's rights to contest the violations pending against it. These rights include representation by an attorney at SSWD's own expense, the right to a hearing on any violations or allegations formally filed, the right to confront and cross-examine witnesses called to testify against SSWD, the right to present evidence on SSWD's own behalf, the right to have witnesses testify on SSWD's behalf, the right to obtain any other type of formal judicial review of this matter, and any other rights

which may be accorded to SSWD pursuant to provisions of NRS Chapters 678A through 678D, the Nevada Cannabis Compliance Regulations ("NCCR"), and any other provisions of Nevada law. SSWD is waiving all these rights by entering into this Stipulation and Order. If the CCB rejects this Stipulation and Order, or any portion thereof, all such waivers shall be withdrawn by SSWD.

- 6. Should this Stipulation and Order be rejected by the CCB or not timely performed by SSWD, it is agreed that presentation to and consideration by the CCB of such proposed stipulation or other documents or matters pertaining to the consideration of this Stipulation and Order shall not unfairly or illegally prejudice the CCB or any of its members from further participation, consideration, adjudication, and/or resolution of these proceedings and that no CCB member shall be disqualified or challenged for bias.
- 7. SSWD acknowledges that this Stipulation and Order shall only become effective after the CCB has approved it.
- 8. SSWD enters this Stipulation and Order after being fully advised of SSWD's rights and as to the consequences of this Stipulation and Order. This Stipulation and Order embodies the entire agreement reached between the CCB and SSWD. It may not be altered, amended, or modified without the express written consent of the Parties, and all alterations, amendments and/or modifications must be in writing. The Parties stipulate and agree that this Stipulation and Order, if approved by the Board, resolves only the allegations set forth in the Administrative Action via the Complaint in Case No. 2022-78.
- 9. In an effort to avoid the cost and uncertainty of a disciplinary hearing, SSWD has agreed to settle this matter. For purposes of settling this matter, SSWD acknowledges that the facts contained in the paragraphs in the above "Pertinent Facts" portion of this Stipulation and Order are true and correct. Without waiving any constitutional rights against self-incrimination, SSWD further acknowledges that certain facts contained in the CCB Complaint in Case No. 2022-78 could be found to constitute violations of Title 56 of NRS Chapters 678A through 678D, and the NCCR, with penalties up to and including revocation, suspension, and/or civil penalties of up to \$245,000 for D049 and RD049, if this

matter went to an administrative hearing.

- 10. In settling this matter, the CCB's Executive Director and counsel for CCB have considered the factors set forth in NCCR 4.030(2), including: the gravity of the violations; the economic benefit or savings, if any, resulting from the violations; the size of the business of the violator; the history of compliance with the NCCR and Title 56 of NRS by the violator; actions taken to remedy and/or correct the violations; and the effect of the penalty on the ability of the violator to continue in business.
- 11. To resolve the Administrative Action, and only for those purposes and no other, SSWD specifically admits to the following violations with respect to the Complaint in CCB Case No. 2022-78 for licenses D049 and RD049:
 - a. One violation of NCCR 4.050(1)(a)(13), for storing or delivering an unapproved cannabis product or cannabis product outside the seed-tosale tracking system, which constitutes one Category III violation.
 - b. One violation of NCCR 4.050(1)(a)(14), for failing to meet requirements for the disposal of cannabis waste, which constitutes a second Category III violation.
- 12. With respect to D049 and RD049, SSWD further agrees to pay a civil penalty in the amount of \$50,000¹ in consideration for its admitted violations in Paragraph 11, above, and in consideration for the CCB's agreement to resolve the Administrative Action on the terms set forth herein, within the time set forth in Paragraph 17, below.
- 13. If the CCB approves this Stipulation and Order, it shall be disciplinary action by the CCB against SSWD.
- 14. Both parties acknowledge that the CCB has jurisdiction to consider and order this Stipulation and Order because SSWD holds privileged licenses regulated by the CCB as of July 1, 2020. SSWD expressly, knowingly, and intentionally waives the 21-day and/or 5-day notice requirements contained in the Nevada Open Meeting Law and acknowledges that this Stipulation and Order may be presented to the CCB for its consideration and

¹ To be apportioned \$25,000 to D049 and \$25,000 to RD049.

potential ratification at the CCB's meeting on June 28, 2022.

STIPULATED ADJUDICATION

Based upon the above acknowledgments of the Parties and their mutual agreement, the Parties stipulate and agree that the following terms of discipline shall be imposed by the CCB in this matter:

- 15. <u>Violations</u>. As to licenses D049 and RD049, SSWD is found to have committed two Category III violations, as set forth in Paragraphs 11(a) through 11(b), above.
- 16. <u>Imposition of Civil Penalties</u>. SSWD shall pay a total civil penalty in the amount of fifty thousand dollars (\$50,000) within the time set forth in Paragraph 17 below, to be apportioned as set forth in Paragraph 12, above.
- 17. Payment of Civil Penalties. SSWD must pay the total civil penalty set forth in this agreement within 30 days of the date the CCB approves this Stipulation and Order.² SSWD acknowledges that it is critical to comply with the strict requirements of the deadline for payment. SSWD agrees that, should it fail to make timely payment of the civil penalty, the foregoing penalties and procedures will be in effect:
 - a. The CCB will allow a five-business day grace period for late payment.3
 - b. If payment is not physically received by the CCB at its Carson City office by 5:00 p.m., Pacific Time, on the last day of the grace period, SSWD shall be in default and deemed to have admitted all allegations in the CCB's Complaint in Case No. 2022-78 and shall pay all penalties and receive all discipline set forth under the "Relief Requested" section of the Complaint, inclusive of the revocation of licenses D049 and RD049 (effective on the date of the order of default) and civil penalties of \$245,000, plus a \$50,000 late payment penalty, for a total of \$295,000. The CCB will enter an order of default to this effect after default and all amounts due under this subsection shall be immediately

² Should the CCB approve this Stipulation and Order at its June 28, 2022, meeting, payment would be due on and must be physically received by Thursday, July 28, 2022.

³ If a check or other form of payment is returned for insufficient funds, or otherwise rejected, the failed payment will <u>not</u> be considered a payment and no additional time beyond the five-business day grace period will be granted for payment.

due and payable to the CCB. SSWD agrees it cannot and will not file any petition for judicial review and/or any action in any forum for relief from this order of default and that the CCB may file any judicial action necessary to recover the amounts owed under this subsection, along with its attorneys' fees and costs for recovery of amounts owed. In the event of default under this Paragraph, SSWD would not be eligible to apply for reinstatement of its revoked licenses for nine (9) years after the date of revocation of its licenses and any such application would not be granted without prior payment of the full amount of \$295,000.

- c. SSWD may petition the CCB for an extension of 30-days to pay the civil penalty. However, for the CCB to consider any such petition, the CCB must receive said petition no later than 5 business days prior to the payment deadline (which does not include any grace period). The CCB is not required to grant such a petition. In such a petition, SSWD must demonstrate to the satisfaction of the CCB that there are extraordinary and unusual circumstances necessitating the extension requested. The CCB may delegate the decision as to whether to grant such a petition to the CCB Chair.
- d. If an extension is granted under Paragraph 17(c), there shall be no grace period on the new payment date. If SSWD does not pay and/or the CCB does not physically receive payment, by the new payment date, the provisions and penalties of Paragraph 17(b) apply.
- 18. Plan of Correction. Respondent represents and warrants that it has submitted and put in place a plan of correction, which CCB staff has approved, that will remedy and prevent the recurrence of the violations set forth in this Stipulation and Order. In summary, the plan of correction includes the following: (1) Respondent has terminated the inventory manager identified in Paragraphs 8-11 of the Complaint who without SSWD management's knowledge or approval, provided expiring cannabis for "free" to employees after reporting the cannabis as waste and disposed of in the State's seed-to-sale tracking

system; (2) Respondent has re-trained the employees identified in Paragraph 11; (3) Respondent updated its standard operating procedures on proper storing, tracking, and disposal of cannabis; and (4) Respondent has trained and instructed its employees on how to properly store, track in the State's seed-to-sale tracking system, and dispose of cannabis. Respondent further represents and warrants that it is now, as of the date it has executed this Stipulation and Order, operating in full compliance with NRS Title 56 and NCCR.

- 19. Contingency if Approval Denied. If approval of this Stipulation and Order is denied by the CCB, SSWD and counsel for the CCB agree to resume settlement negotiations in good faith and attempt to reach an agreement to amend this Stipulation and Order and resubmit an amended Stipulation and Order to the CCB to review for approval at a subsequent regularly scheduled CCB meeting. If such an agreement cannot be reached, the Parties agree to proceed with the Administrative Action, with SSWD to timely file its Answer and Request for Hearing, and the matter to proceed to a disciplinary hearing before the CCB's assigned hearing officer in the ordinary course. Should the Administrative Action proceed for the reasons set forth in this Paragraph, CCB preserves all its claims and arguments in the Administrative Action as set forth in its Complaint and SSWD preserves all its defenses and arguments it may set forth in its Answer, and withdraws all waivers set forth herein. An unapproved Stipulation and Order shall not be admissible as evidence or referenced in argument at any disciplinary hearing in CCB Case No. 2022-78 or any other matter involving the CCB.
- 20. Contingency if Approval Conditioned. If the CCB approves this Stipulation and Order, but said approval is contingent on certain conditions, the Parties will undertake further good faith negotiations to include said conditions in an amended stipulation and order for execution by the CCB Chair. If SSWD does not agree to the certain conditions imposed by the CCB, the Parties will undertake additional negotiations and attempt to reach an agreement to amend this Stipulation and Order and resubmit an amended stipulation and order to the CCB to review for approval at its next regularly scheduled meeting. If such an agreement cannot be reached, the Parties agree to proceed with the

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Administrative Action, with SSWD to timely file its Answer and Request for Hearing, and the matter to proceed to a disciplinary hearing before the CCB's assigned hearing officer in the ordinary course. Should the Administrative Action proceed for the reasons set forth in this Paragraph, CCB preserves all its claims and arguments in the Administrative Action as set forth in its Complaint and SSWD preserves all its defenses and arguments it may set forth in its Answer, and withdraws all waivers set forth herein. An unapproved Stipulation and Order shall not be admissible as evidence or referenced in argument at any disciplinary hearing in CCB Case No. 2022-78 or any other matter involving the CCB.

- 21. <u>Closure of Disciplinary Action</u>. Once this Stipulation and Order is fully performed by SSWD, the Administrative Action will be closed.
- 22. Discipline Against Individual Cannabis Establishment Agents' Cards. Nothing in this Stipulation and Order shall preclude the CCB from pursuing any separate disciplinary actions against the individual cannabis establishment agent registration cards of the employees and/or agents of Respondent who participated in and/or perpetrated the acts and omissions set forth in Paragraphs 8 through 11 of the Complaint, and the CCB specifically reserves its rights to do so. Should the CCB proceed with disciplinary action against any such cannabis establishment agent, Respondent agrees that it will cooperate with the CCB staff and the CCB's counsel's investigation of the actions of such cannabis establishment agents and provide any related documents or information requested in such investigations that is within its custody and/or control.4 Respondent also agrees to make available, upon reasonable notice, any of its employees, owners, officers, and/or directors, to the extent such individuals remain under Respondent's control, to testify at any disciplinary hearings involving the subject cannabis establishment agents. The Parties agree that, should the CCB approve this Stipulation and Order, this Stipulation and Order, and the Complaint in CCB Case No. 2022-78, may be used as evidence at any subsequent disciplinary proceedings and hearings regarding the cannabis establishment agents identified in Paragraphs 8 through 11 of the Complaint in this case.

⁴ Respondent further agrees that it will preserve for at least five years any documents and/or other evidence relevant to such a disciplinary action against the subject cannabis establishment agents.

23. Communications with CCB Members. SSWD understands that this Stipulation and Order will be presented to the CCB in open session at a duly noticed and scheduled CCB meeting. SSWD understands that the CCB has the right to decide in its own discretion whether or not to approve this Stipulation and Order. The CCB's counsel, which is the Nevada Attorney General and its staff attorneys, will recommend approval of this Stipulation and Order. In the course of seeking CCB acceptance of this Stipulation and Order, counsel for CCB may communicate directly with individual CCB members. SSWD acknowledges that such communications may be made or conducted exparte, without notice or opportunity for SSWD to be heard on its part until the public CCB meeting where this Stipulation and Order is discussed, and that such contacts and communications may include, but may not be limited to, matters concerning this Stipulation and Order, the Administrative Action and any and all information of every nature whatsoever related to these matters. SSWD agrees that it has no objections to such exparte communications. The CCB agrees that SSWD and/or its counsel may appear at the CCB meeting where this Stipulation and Order is discussed and, if requested, respond to any questions that may be addressed to SSWD and/or the Nevada Attorney General's staff attorneys. SSWD agrees that, should the CCB decline to approve this Stipulation and Order, SSWD will not contest or otherwise object to any CCB member, and/or CCB appointed hearing officer, hearing and adjudicating the Administrative Action based on the aforementioned ex parte communications with anyone from the Nevada Attorney General's Office.

24. Release. Respondent agrees that the State of Nevada, the CCB, the Office of the Attorney General, and each of their members, staff, attorneys, investigators, experts, hearing officers, consultants and agents are immune from any liability for any decision or action taken in good faith in response to information and data acquired by the CCB. Respondent agrees to release the State of Nevada, the CCB, the Nevada Attorney General's Office, and each of their members, staff, attorneys, investigators, experts, hearing officers, consultants and agents from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known or unknown, in law or

equity, that Respondent ever had, now has, may have or claim to have against any and/or all of the persons, government agencies or entities named in this Paragraph, arising out of, or by reason of, the CCB's investigation of the matters set forth in the Complaint, the matters set forth in this Stipulation and Order, and/or the administration of CCB Case No. 2022-78.

25. No Precedence. Except as otherwise set forth in Paragraph 22, above, the Parties agree: (1) That this Stipulation and Order shall not constitute a precedent for any other issues or proceedings before the CCB and/or in any other forum, other than those set forth in this Stipulation and Order; (2) That this Stipulation and Order shall not be admissible in any other proceeding or action with respect to proof of fact or any other matter and/or any other licensee and/or cannabis establishment agent, except proceedings brought to enforce this Stipulation and Order under its terms and/or for the CCB's consideration of future disciplinary action against this Respondent and except with respect to any disciplinary proceedings against the cannabis establishment agents who participated in and/or perpetrated the acts and/or omissions referenced in the Complaint.

Furthermore, the CCB may consider the discipline imposed herein in any future disciplinary action against Respondent, as required under NCCR 4.030(2), along with the other factors set forth in NCCR 4.030(2), and possible progressive discipline pursuant to NCCR 4.035 through 4.060. As every case concerns different facts and details, this Stipulation and Order does not act as precedence, or persuasive authority, to bind the CCB to impose any particular penalty, to charge or allege any particular violation, and/or to impose any particular disciplinary action in the future for this Respondent, or any other respondent (except as set forth in Paragraph 22, above), for violations of the same statutes and/or regulations addressed in this Stipulation and Order. Likewise, CCB is not bound by any previous settlement agreements it has approved in entering into this Stipulation and Order.

26. Attorneys' Fees and Costs. The Parties each agree to bear their own attorneys' fees and costs.

- 27. <u>Further Assurances</u>. The Parties shall cooperate in executing such additional documents and performing such further acts as may be reasonably necessary to give effect to the purposes and provisions of this Stipulation and Order.
- 28. Voluntary and Informed Agreement. Respondent represents that its owners, officers, and/or its directors, who are responsible for and able to legally bind SSWD have read completely and understand fully the terms of this Stipulation and Order, that such terms are fully understood and voluntarily accepted by Respondent in advance of and as memorialized by the signing of this Stipulation and Order, and that Respondent's signature to this Stipulation and Order indicates same. Respondent further represents that it has voluntarily entered into this Stipulation and Order to make a full, final, and complete compromise upon the terms and conditions set forth herein. Respondent further represents that any releases, waivers, discharges, covenants, and agreements provided for in this Stipulation and Order have been knowingly and voluntarily granted and without any duress or undue influence of any nature from any person or entity. The Parties, and each of them, hereby expressly acknowledge that they are each represented by counsel of their own choice in this matter and have been advised by counsel accordingly.
- 29. Warranties of Authority. The Parties to this Stipulation and Order, and each of them, expressly warrant and represent to all other Parties that each has the full right, title, and authority to enter into and to carry out its obligations hereunder, with the sole exception of the required approval of this Stipulation and Order by the CCB. The Parties also expressly acknowledge the foregoing authority.
- 30. <u>Binding Effect</u>. This Stipulation and Order shall be binding upon and inure to the benefit of the Parties hereto and the Parties' respective successors, predecessors, parents, affiliates, shareholders, employees, heirs, executors, assigns, and administrators.
- 31. <u>Construction</u>. The headings of all Sections and Paragraphs of this Stipulation and Order are inserted solely for the convenience of reference and are not a part of the Stipulation and Order and are not intended to govern, limit, or aid in the construction or interpretation of any term or provision of this Stipulation and Order. In the event of a

conflict between such caption and the paragraph at the head of which it appears, the paragraph and not such caption shall govern in the construction of this Stipulation and Order.

- 32. <u>Governing Law</u>. This Stipulation and Order shall be governed by and construed in accordance with the laws of the State of Nevada, without reference to conflict of law principles.
- 33. <u>Jurisdiction and Forum Selection</u>. The Parties consent to the jurisdiction of the Eighth Judicial District Court of the State of Nevada, in and for Clark County, to resolve any disputes related to the terms or enforcement of this Stipulation and Order. The successful or prevailing Party or Parties in such action shall be entitled to recover reasonable attorney fees, costs, and expenses actually incurred in initiating or responding to such proceeding, in addition to any other relief to which it may be entitled.
- 34. <u>Interpretation</u>. This Stipulation and Order is the result of negotiations among the Parties who have each negotiated and reviewed its terms. In the event a Court ever construes this Agreement, the Parties expressly agree, consent, and assent that such Court shall not construe this Agreement or any provision hereof against any Party as its drafter for purposes of interpreting any ambiguity or uncertainty in this Stipulation and Order.
- 35. <u>Time is of the Essence</u>. Time is of the essence in the performance of all terms of this Stipulation and Order.
- 36. Severability. If any portion of this Stipulation and Order, or its application thereof to any person or circumstance, shall be deemed to any extent to be invalid, illegal, or unenforceable as a matter of law, all remaining clauses of this Stipulation and Order and its application thereof shall be not affected and shall remain enforceable to the fullest extent permitted by law.
- 37. <u>Counterparts and Copies</u>. This Stipulation and Order may be executed in counterparts, each of which when so executed and upon delivery to counsel of record for the Parties shall be deemed an original ("<u>Counterparts</u>"). This Stipulation and Order shall be deemed executed when Counterparts of this Stipulation and Order have been executed by

Ashley A. Baldurd (Nev. Bar No. 12678) Senior Deputy Atorney General Michael D. Detmer (Nev. Bar No. 10873)

Counsel for Cannabis Compliance Board

ORDER

WHEREAS, on the 28th day of June, 2022, the Nevada Cannabis Compliance Board approved and adopted all the terms and conditions set forth in the Stipulation and Order for Settlement of disciplinary Action with SSWD.

IT IS SO ORDERED.

SIGNED AND EFFECTIVE this 28 day of

aday of ____

STATE OF NEVADA,

CANNABIS COMPLIANCE BOARD

Bv:/

HON. MICHAEL L. DOUGLAS, CHAIF