



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

September 5, 2019

City Council President Morad and
Honorable Members of the City Council
City of New Bedford
133 William Street
New Bedford, MA 02740

Dear Council President Morad and Honorable Members of the Council:

I write to inform the City Council that my Administration has negotiated a Host Community Agreement with Southcoast Apothecary, LLC.

The company is currently seeking a license from the Massachusetts Cannabis Control Commission to operate a recreational marijuana dispensary at 115 Coggeshall Street. Under the Agreement substantial benefits will be provided to the City and to the residents of New Bedford. These are summarized below:

Payments

An initial payment of \$25,000 upon opening of the facility and a total payment of 3% of gross retail sales revenue per year of operation.

Annual charitable contributions of \$50,000 or 1½% of gross retail sales, whichever is greater, to New Bedford-based organizations that deliver substance abuse prevention and education programs in the City's public-school district.

In any year in which gross sales reach \$2,500,000, an additional charitable contribution of \$50,000 is made. Should gross sales reach \$5,000,000, the additional charitable contribution is \$100,000.

Safety

The company must coordinate with the New Bedford Police Department on security planning, security camera installation, and other safety measures. The company must meet with police on a regular basis for a review of operations.

Employment

The company must, to the extent legally permissible, give priority to qualified residents of the City for employment at the facility. Applicants must do their best to comply with the *New Bedford Works* policy.

Taxes

The company will pay all real estate and personal property taxes on the facility.

Signage

Ground mounted, pylon, internally lit and/or flashing and off-premises signs are not allowed. Wall signs are limited in size to be smaller. The size and color of all signs shall be in scale and compatible with the surrounding buildings and street.

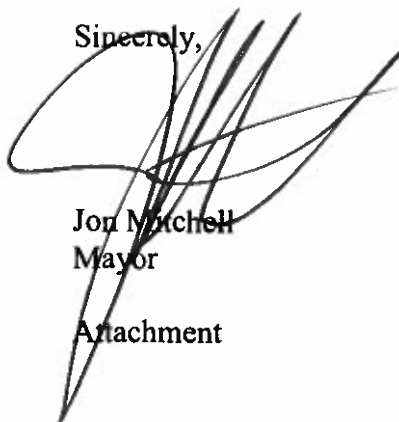
While a Host Community Agreement is an important milestone towards the operation of a recreational marijuana dispensary in the City, it is important to also note that many steps remain before such a facility opens.

Applicants must complete the Cannabis Control Commission application process and receive a provisional license. Once in possession of a provisional license, applicants must all obtain the required City approvals for their facilities. In this instance, approvals will include a Special Permit from the Planning Board, compliance with Board of Health regulations, and a license from the City Licensing Board.

In sum, for the proposed facility to become a reality in New Bedford several outstanding issues remain in need of attention. That said, I have undertaken all the actions available to me as Mayor under Massachusetts law to advance the proposal while ensuring that the City's interests are served.

I ask for the City Council's support for the attached Agreement so that together we can secure these benefits for New Bedford residents and businesses. Thank you for your consideration on this important matter.

Sincerely,



Jon Mitchell
Mayor

Attachment

CITY OF NEW BEDFORD

SOUTHCOAST APOTHECARY, LLC HOST COMMUNITY AGREEMENT FOR THE SITING OF A RECREATIONAL MARIJUANA RETAILER IN THE CITY OF NEW BEDFORD

This Host Community Agreement (the "**Agreement**") is entered into this 4th day of September, 2019 (the "**Effective Date**") by and between the City of New Bedford, a Massachusetts municipal corporation acting by and through its Mayor, with a business address of 133 William Street, New Bedford, MA 02740 (the "**City**") and Southcoast Apothecary, LLC, a Massachusetts limited liability company with a business address of 170 Hadley Street, New Bedford, MA 02745 (the "**Company**") (City and Company each a "**Party**" and collectively the "**Parties**").

RECITALS

WHEREAS, the Company desires to locate a Recreational Marijuana Retailer ("**RMR**") at 115 Coggeshall Street, New Bedford, MA 02746 (the "**Property**" and together with the proposed RMR the "**Facility**"), for the retail sale of recreational marijuana in accordance with the laws of the Commonwealth of Massachusetts ("**MA Law**") and those of the City ("**Local Law**");

WHEREAS, the Company desires to provide community impact fee payments to the City pursuant to M.G.L. c. 94G, § 3(d), that shall be reasonably related to the costs imposed upon the City by Company's operations in the City;

WHEREAS, the Company desires to provide additional payments directly to the community at large to aid in education and treatment programs; and

WHEREAS, the City supports the Company's intention to operate an RMR at the Facility for the retail sale of recreational marijuana.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the mutual promises set forth below, the parties agree as follows:

AGREEMENT

1. Host Community Payments. If the Company obtains a final license, or its equivalent, for the operation of the Facility from the Cannabis Control Commission ("**CCC**"), and receives all necessary approvals from the City to operate the Facility, then the Company agrees to the following:

- a) Pursuant to M.G.L. ch. 94G, § 3(d), and as the same may be amended from time to time, the Company shall pay a fee to the City equal to, but not greater than, Three Percent (3%) of its annual Gross Sales (as defined herein) (the "**RMR Payment**"). The RMR Payment shall be made in two installments as follows: (a) Annually seven (7) months after the anniversary of the Sales Commencement Date (as defined herein) in an amount equal to

Three Percent (3%) of the Company's Gross Sales through the prior six (6) months of operations, and (b) annually within thirty (30) days of the anniversary of the Sales Commencement Date in an amount equal to Three Percent (3%) of the Company's Gross Sales through the prior six (6) months of operations.

b) Notwithstanding anything herein to the contrary, the Company shall make a one-time payment to the City in the sum of Twenty-five Thousand and 00/100 Dollars (\$25,000.00) upon the Sales Commencement Date (the "**Initial Payment**"), which amount shall be deducted from the first annual RMR Payment described above. If and to the extent that the first RMR Payment due to the City is for an amount less than Twenty-five Thousand and 00/100 Dollars (\$25,000.00), the second RMR Payment due to the City shall be reduced by an amount equal to the difference of Twenty-five Thousand Dollars and 00/100 (\$25,000.00) less the amount due under the first RMR Payment.

c) For the purposes of this Agreement, the term "**Sales Commencement Date**" shall mean the date in which the Company sells Marijuana or Marijuana-infused Product (each as defined in 935 CMR 500.002) to a natural person who is twenty-one (21) years of age or older (a "**Consumer**").

d) For purposes of this Agreement, the term "**Gross Sales**" shall mean the total of all sales of Marijuana or Marijuana-infused Products. Gross Sales shall not include: (a) the amounts of all refunds, credits, allowance and adjustments made to customers; and (b) the amounts of state or local sales tax or similar tax imposed by any governmental authority.

e) The Company shall provide written notice to the City at least thirty (30) days in advance of the anticipated opening date of the Facility, and thereafter shall, within seven (7) days of the Sales Commencement Date, provide written notice to the City setting forth the official Sales Commencement Date.

f) In the event that the Company enters into an HCA with another City in the Commonwealth of Massachusetts that contains financial terms more favorable than the financial term contained in this Agreement, then the Parties agree that this Agreement shall be amended so as to result in its financial terms being equally favorable to the City as those contained in the other City's HCA. The Company represents and warrants to the City that it is not presently under an HCA with another Massachusetts City providing more favorable financial terms.

2. **Term and Termination.** The Term of this Agreement shall be five (5) years from the Effective Date (the "**Term**"). In the event the Company loses or has its license(s), approvals, and/or permits to operate in the City revoked by the CCC or the City, this Agreement shall become null and void and any outstanding RMR Payments shall become due and payable within thirty (30) days of the termination of this Agreement. Prior to the end of the Term, the Parties shall negotiate, in good faith, a successor agreement, including an extension of the Payments called for herein.

3. **Payments.** The Company shall make the payments to the City as set forth in Section 1 of this Agreement.

4. **Failure to Remit Payments.** The Parties acknowledge the Payments are expressly included as "other municipal charges" pursuant to G.L. c. 40, § 57. A City of New Bedford licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers, of the Company or agent thereof if the Company's fails to timely pay any RMR Payments.

5. **Acknowledgements.** The City understands and acknowledges that payments due pursuant to this Agreement are contingent upon the Company's receipt of all state and local approvals required to operate the Facility.

6. **Review.** If under applicable Massachusetts law the terms relating to payment under this Agreement are determined to any extent to be illegal, otherwise invalid, or incapable of being enforced, which unenforceability would materially and adversely affect the economic substance of the transactions contemplated by this Agreement, the City and the Company shall negotiate, in good faith, amendments to this Agreement so as to result in neutral economic impact to the City to the extent permissible by law.

7. **Local Taxes.** At all times during the Term of this Agreement, real estate and personal property taxes owed by the Company shall be due and payable.

8. **Other Payments.** The Company shall pay any and all fees associated with its annual purchases of utility services from all local government agencies.

The Company shall reimburse the City for any and all reasonable and customary consulting costs and fees related to any land use applications concerning the Facility, negotiation of this Agreement, and review concerning the Facility, including planning, engineering, and any related reasonable disbursements at standard rates charged by the above-referenced consultants in relation to the Facility. In no event shall the Company be responsible for reimbursing the City for costs associated with the operating of the City's offices in their regular and customary course, including, but not limited to wages for City employees.

The Company shall reimburse the City for the actual costs incurred by the City in connection with holding public meetings not held in public buildings and forums not within the City's regularly scheduled public hearings and meetings, which are solely devoted to discussing the Facility. Such costs shall be limited to advertising costs and consultant attendance at the aforementioned meetings.

The Company acknowledges that time is of the essence with respect to their timely payments of all funds required by this Agreement. If any such payments are not fully made within ten (10) business days of the date written demand has been actually received by the Company, the Company shall be required to pay the City a late payment penalty equal to five percent (5%) of that payment in addition to the required payment.

9. **Annual Charitable/Non-Profit Contributions.** The Company, in addition to any funds otherwise specified herein, agrees to make an annual contribution of \$50,000.00 or 1½ % of the establishment's gross sales, whichever is greater, in charitable donations per year to New Bedford based organizations that deliver substance abuse prevention and education programs in the City's public-school district. The first \$25,000.00 portion of the payment for the first year of operation shall be paid on the facility's opening date and the remaining balance must be made within 12 months of opening. Company shall submit annual reports to the City indicating payments made under this provision. In any year where the Company reaches gross sales of \$2,500,000.00, the Company shall make an additional charitable contribution of \$50,000.00 and in a year where the Company reaches \$5,000,000.00 in gross sales, the Company shall make an additional charitable contribution of \$100,000.00. Any charitable payment will not reduce the Community Impact Fee amount nor is it considered a payment in response to a community impact.

10. **Accounting and Review.** The Company shall keep and maintain financial records in accordance with generally accepted accounting principles. Such records shall be available for inspection by the City, upon request, and shall include, but not be limited to, all financial records required in any section of 935 CMR 500.000, and business records, in accordance with 935 CMR 500.105(e), which shall include manual or computerized records of: (1) Assets and liabilities; (2) Monetary transactions; (3) Books of accounts, which shall include journals, ledgers, and supporting documents, agreements, checks, invoices, and vouchers; (4) Sales records including the quantity, form, and cost of marijuana products; and (5) Salary and wages paid to each employee, stipend paid to each board member, and any executive compensation, bonus, benefit, or item of value paid to any individual affiliated with a Marijuana Establishment, including members of the nonprofit corporation, if any (together these shall be referred to as the "**Financial Records**").

Following the closure of the Facility, the Company shall keep all records for at least two (2) years at the Company's expense and in a form and location acceptable to the CCC.

So long as this Agreement is in effect and for a period of two (2) years thereafter, the City shall have the right to examine and audit the Company's Financial Records. Examinations may be made upon not less than thirty (30) days prior written notice from the City and shall occur only during normal business hours at such place where said books and financial records are maintained. The City's examination or audit, as aforesaid, shall be conducted in such manner as to not interfere with Company's normal business activities.

In the event that the Parties disagree as to the accuracy of the certification of the Company's annual sales, the City may conduct an audit of such sales at the expense of the Company. If, after such audit and re-computation, an additional fee or payment is owed to the City, a penalty of ten percent (10%) or five thousand dollars (\$5,000), whichever is greater, not to exceed \$10,000, will be added to the amount due.

11. Community Support and Additional Obligations.

a. Local Vendors – to the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company shall use good faith efforts in a legal and non-discriminatory manner to give priority to qualified local businesses and vendors in the provision of goods and services called for in the construction, maintenance and continued operation of the Facility.

b. Employment: except for senior management, and to the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company shall use good faith efforts in a legal and non-discriminatory manner to give priority to hire qualified residents of the City as employees of the Facility. Company shall use its best efforts to comply with the New Bedford Works policy, the terms of which are incorporated herein.

c. The Company shall, at least annually, provide the City with copies of all reports submitted to the CCC regarding the Company's operations in the City.

d. The Company will work cooperatively with all necessary municipal departments, boards, commissions, and agencies to ensure that the Company's operations are compliant with the City's codes, rules, and regulations.

e. The Company will comply with the City's non-discrimination ordinance in hiring, transacting business and entering into contracts and to the extent allowed by law, the Company will seek to hire employees and engage in contracts with a preference for diversity and supporting minority and women-owned businesses.

f. The Facility shall be designed, constructed, renovated, or improved to reflect high quality construction standards and seek to improve the general design aesthetic of the neighborhood. The facility shall, at a minimum, reflect the following:

i. **Facade Variation**: For all development and redevelopment involving new construction, the massing, façades, and roof configuration of a building shall be varied via constructed or two-dimensional means. If a building façade is more than 50 feet in length, it shall include a minimum of 10 feet of variation in the building footprint (set-back or projection in the building wall) for every 50 feet of façade length, and related changes in the roofline in order to reduce the apparent mass of the building.

ii. **Building Materials**: Use high quality, traditional materials that weather naturally on the exterior of the building to reflect regional building traditions. Alternatively, incorporate low-reflective, neutral, and earth tones to retain the subtle character of the region's traditional materials. In areas not visible from regional roadways or distinctive community districts, use of nontraditional materials, forms, and site designs may be appropriate. In such areas, maintenance of adequate landscape buffers on the subject

property shall be required to ensure that the proposed development is screened from view. Metal and vinyl siding are prohibited.

iii. Historic Buildings: For all projects located in historic buildings, design guidelines of the Bedford Landing 40C district shall apply.

iv. Temporary Signage: The only temporary signage allowed shall be banner signage bearing the company logo, no greater than 25 SF, at a designated adults-only City permitted special event and may only remain up for no longer than two days.

v. On-Site Signage: Ground mounted, pylon, internally lit and/or flashing signs shall not be permitted. Wall signs shall be limited in size to be read at a pedestrian scale. The size and color of all signs shall be in scale and compatible with the surrounding buildings and street. When more than one sign is used, the graphics shall be coordinated to present a unified image. All signage shall, at a minimum, be subject to requirements of New Bedford Code of Ordinances S. 3200 and Cannabis Control Commission. In the event of any conflict between said requirements and this Agreement, the more restrictive requirement shall prevail. Logos shall be tasteful and ambiguous in nature. All proposed signage (Wall, ground, blade, or otherwise) is subject to administrative approval by the Planning department.

vi. Off-Premises Signage: The Company agrees that neither it nor its agents will erect, place or otherwise establish any off-premises sign, other than the temporary signage permitted herein.

vii. Lighting: Site lighting and window displays shall be tasteful and conform with dark sky guidelines. No up lights, flashing or colored LED lights allowed on the premises. A photometric lighting plan is required under site plan review and shall not be waived.

viii. Site Landscaping: Use substantial landscape buffers to screen new development. Loading areas should be sited outside primary visual corridors or shielded from view by separate structures, projecting building wings, or distinctive landscaping and fencing. Outdoor storage of any kind is prohibited.

ix. Parking: Ample parking shall be provided via an engineered site plan filed under Site Plan Review. Parking plan must be peer reviewed for traffic implications via an engineered traffic study at the Special Permit approval stage. A transportation management plan will also be required for all Companies which addresses anticipated peak traffic during grand opening and holidays.

x. To the fullest extent practicable, the facility's power supply shall use renewable power sources.

12. Community Health Impact Assessment. Prior to the Sales Commencement Date, the Company must conduct a Health Impact Assessment (HIA) for the neighborhood of their

proposed location. The HIA must be conducted by a firm approved by the City Health Department and undertaken in cooperation with the Board of Health. The HIA may utilize the most recent Community Health Needs Assessment (CHNA) prepared by Southcoast Hospitals Group as a baseline but every effort shall be made to make the assessment as site specific as possible with no greater a radius than one mile of the site. The HIA must include at least two community meetings regarding the proposed operation with notice to the neighborhood and conducted in a City location as close as possible to the proposed site. The Company must make every effort to incorporate the recommendations of the Board of Health in the operations plan for the Facility.

13. Support. The City agrees to submit to the CCC all documentation and information required by the CCC from the City for the Company to obtain approval to operate. The City agrees to support Company's application(s) with the CCC but makes no representation or promise that it will act on any other license or permit request in any way other than by the City's normal and regular course of conduct and in accordance with their codes, rules, and regulations and any statutory guidelines governing them.

14. Local Authority. This Agreement does not waive, limit, control, govern or in any way describe the legal authority of any municipal board, commission, committee, officer or official to regulate, authorize, restrict, inspect, investigate, enforce against, or issue, deny, suspend or revoke any permit, license or other approval with respect to the Company or the premises on which the Company will operate; nor does it waive, limit, control, govern or in any way describe the legal authority of the New Bedford Police Department to investigate, prevent or take action against any criminal activity with respect to the Company or, the premises on which the Company will operate.

15. On-site Consumption. The Company agrees that, even if permitted by statute or regulation, it will prohibit on-site consumption of marijuana and marijuana-infused products at the Facility.

16. Security. The Company shall maintain security at the Facility in accordance with a security plan approved by the CCC and the City. In addition, the Company shall comply with MA Law and Local Law regarding security of the Facility. At a minimum, the Company shall:

- i. Provide a security plan to be reviewed and approved by the Chief of Police initially and anytime there is a substantive change thereto.
- ii. Engage in periodic meetings with the Police Department to review operational concerns or other issues.
- iii. Promptly report the discovery of the following to City police within twenty-four (24) hours: diversion of marijuana; unusual discrepancies identified during inventory, theft, loss and any criminal action; unusual discrepancy in weight or inventory during transportation; any vehicle accidents, diversions, losses, or other reportable incidents that occur during transport; any suspicious act involving the sale, distribution, and delivery of

marijuana by any person; unauthorized destruction of marijuana; any loss or unauthorized alteration of records related to marijuana, registered qualifying patients, personal caregivers, or dispensary agents; an alarm activation or other event that requires response by public safety personnel; failure of any security alarm system due to a loss of electrical power or mechanical malfunction that is expected to last longer than eight hours; and any other breach of security

iv. Site interior and exterior security cameras in coordination with the Police Department, subject to final approval by the CCC, and provide access to all security camera feeds to the Police Department.

iv. Comply with all the CCC's requirements regarding Criminal Offender Record Information (CORI) review for any new manager hired and the Police Chief shall review, within thirty days of receiving said CORI report, and provide recommendations as to whether the individual is suitable to hold the position.

v. Refuse to complete a transaction to any customer if the customer reasonably believes to be under the influence of drugs or alcohol.

vi. Verify the legal age of all customer using a government-issued identification prior to the customer being admitted into the facility and again prior to the completion of a transaction. Company must utilize electronic identification verification measures when possible.

17. Governing Law. This Agreement shall be governed and construed and enforced in accordance with the currently applicable laws of the Commonwealth of Massachusetts, without regard to the principals of conflicts of law thereof. The Parties expressly waive any defense to enforcement of this Agreement based upon nonconformance with federal law regarding the illegality of marijuana.

18. Amendments/Waiver. Amendments or waivers of any term, condition, covenant, duty or obligation contained in this Agreement may be made only by written amendment executed by all Parties prior to the effective date of the amendment.

19. Severability. The Company agrees not to contest any term or condition of this Agreement, however, if any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby with the exception of any term or condition regarding payment; provided that in the event any term or condition regarding payment of fees or annual charitable contributions shall be held invalid, illegal or unenforceable by a court of competent jurisdiction or the Cannabis Control Commission, said payment, fees or charitable contribution shall be made a part of the Company's Positive Impact Plan undertaken and submitted in connection with its license from the Cannabis Control Commission. To the extent the validity of this Agreement is challenged by the Company in a court of competent jurisdiction, and the

validity of this Agreement is upheld, the Company shall be required to pay for any fees and costs incurred by the City in enforcing this Agreement.

20. Successors/Assigns. This Agreement is binding upon the Parties hereto, their successors, assigns and legal representatives. The City shall not assign or transfer any interest or obligations in this Agreement without the prior written consent of the Company, which shall not be unreasonably delayed, conditioned, or withheld. The Company shall not assign or transfer any interest or obligation in this Agreement without the prior written consent of the City, which shall not be unreasonably delayed, conditioned, or withheld; provided however, such consent shall not be required in the event such transfer or assignment is between the Operator and another entity which is authorized by the CCC or other authorizing entity to operate the Facility, or if such assignment or transfer is the result of: (i) an affiliate entity of the Company; or (ii) an entity which controls, is controlled by, or is under the common control of the Company; or (iii) to an entity into or with which Company may be merged or consolidated or by which it is acquired.

21. Entire Agreement. This Agreement constitutes the entire integrated agreement between the Parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the Parties hereto. This Agreement may be signed in multiple counterparts.

22. Notices. Except as otherwise provided herein, any notices given under this Agreement shall be addressed as follows:

To the City:

City of New Bedford
Office of City Solicitor
133 William Street
New Bedford, MA 02740

To the Company:

Southcoast Apothecary, LLC
Attn: Troy DeMelo
170 Hadley Street
New Bedford, MA 02745

Notice shall be deemed given (a) two (2) business days after the date when it is deposited with the U.S. Post Office, if sent by first class or certified mail, (b) one (1) business day after the date when it is deposited with an overnight courier, if sent by overnight delivery, or (c) upon the date personal delivery is made and accepted.

23. No Joint Venture. The Parties hereto agree that nothing contained in this Agreement or any other documents executed in connection herewith is intended or shall be construed to

establish the City, or the City and any other successor, affiliate or corporate entity, as joint ventures or partners with the Company.

24. Indemnification. Upon the Effective Date, the Company shall defend, indemnify, and hold harmless the City, its officers, employees, and agents (“**Indemnified Parties**”) against any claims, actions, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits against or involving the Indemnified Parties, including reasonable attorneys’ fees, reasonable experts’ fees, and associated court costs (“**Liabilities**”) that arise from or relate in any way to the Company’s violation of this Agreement and/or any Massachusetts law or regulation governing medical marijuana and/or non-medical marijuana. This indemnification shall survive the termination or expiration of this Agreement for a period equal to the applicable statute of limitations period. If any action or proceeding is brought against the City arising out of any occurrence described in this section, upon notice from the City, the Company shall, at its expense, defend such action or proceeding using legal counsel approved by the City, provided that no such action or proceeding shall be settled without the approval of the City.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Host Community Agreement on the date set forth above.

FOR CITY OF NEW BEDFORD:

SOUTHCOAST APOTHECARY, LLC:

Signature



Signature

Jonathan Mitchell, Mayor

TROY DEMEO

Print Name

Date

9/4/19

Date



Signature

Michael Damaso

Print Name

9/4/19

Date