

City of Fitchburg

FITCHBURG CITY CLERK

In City Council, 2018 MAY 29 AM 8:48

ORDERED:-- That

WHEREAS, Massachusetts voters approved the legal cultivation, processing, distribution, sale and use of marijuana for medical purposes through Chapter 369 of the Acts of 2012, An Act for Humanitarian Medical Use of Marijuana (the "Act") and its implementing regulations at 105 CMR 725.000 et seq. (the "Regulations"); and

WHEREAS, the City has already signed a prior Community Host Benefit Agreement with the Company dated December 21, 2016 and approved by City Council on May 2, 2017 regarding the establishment of a lawful Medical Marijuana cultivation and processing facility within the City of Fitchburg at 20 Authority Drive (the "Prior Agreement"); and

WHEREAS, the Company has identified a site and wishes to locate a Medical Marijuana dispensary at 20 Authority Drive, Fitchburg, Massachusetts (the "Facility") in accordance with the Regulations issued by the Commonwealth of Massachusetts Department of Public Health (the "DPH"); and

WHEREAS, the Commonwealth of Massachusetts has permitted the legal cultivation, processing, sale and use of marijuana for non-medical purposes through M.G.L. c. 94G and implementing regulations of the Cannabis Control Commission (the "CCC") at 935 CMR 500.000 et seq. (the "CCC Regulations"); and

WHEREAS, when permitted to do so by law, the Company wishes to operate and use the Facility as a non-medical marijuana retailer as authorized by M.G.L. c. 94G if such operation is authorized and permitted by the City; and

WHEREAS, the proposed Facility is located in a zoning district that allows such use by right or by local permitting; and

WHEREAS, the Company promises to provide certain benefits to the City as provided for herein in the event that it is licensed to operate a Facility and receives all required local approvals; and

WHEREAS, the Company's representations are intended to induce reliance on the part of the City to whom the representation is made and in fact the Company has made a promise which the Company should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the City, including but not limited to the letter of non-opposition which has been executed in reliance on the promises made herein; and

WHEREAS, the acts or omissions by the City are in reasonable reliance on the representations and said promises and said representations and promises have induced such action or forbearance on the part of the City; and

WHEREAS, the detriment to the City as a consequence of the act or omission is fairly and adequately remediated by the enclosed provisions and only compliance or enforcement of the same can avoid an injustice and therefore enforcement would be necessary.

WHEREAS, the promises laid out in this document are indeed a true measure of the remedy needed to compensate the City for the detriment incurred as a result of the City's acts and omissions in reliance on the promises contemplated by the parties;

WHEREAS, the Company and the City understand that the promises contained herein are intended to commit the Company and the City to the same; and

NOW THEREFORE, IT IS ORDERED that in order to address the impacts sustained by the city in connection with the siting the facility, the company offers the attached Community Host Benefit Agreement for Marijuana Cultivation, Processing and Dispensary Facility and the City accepts this Agreement in accordance with G.L. c. 94G §3(d);

NOW THEREFORE, IT IS FURTHER ORDERED AND VOTED that the Honorable Mayor Stephen L. DiNatale be hereby authorized for and behalf of said City to execute and deliver any and all documents and take any and all acts necessary, convenient, and helpful to facilitate and execute the agreement and site the facility.

CITY OF FITCHBURG AND NS AJO HOLDINGS LLC
COMMUNITY HOST BENEFIT AGREEMENT FOR MEDICAL MARIJUANA DISPENSARY AND
NON-MEDICAL MARIJUANA RETAIL FACILITY

This Community Host Benefit Agreement (the “**Agreement**”) is entered into this ___ day of _____, 2018, by and between the City of Fitchburg, a Massachusetts municipal corporation, located at 166 Boulder Dr., Fitchburg, MA 01420 (the “**City**”) and NS AJO Holdings LLC (the “**Company**”), a Massachusetts limited liability company with an address of 67 Dana Street, #1, Cambridge, Massachusetts 02138.

WHEREAS, Massachusetts voters approved the legal cultivation, processing, distribution, sale and use of marijuana for medical purposes through Chapter 369 of the Acts of 2012, An Act for Humanitarian Medical Use of Marijuana (the “**Act**”) and its implementing regulations at 105 CMR 725.000 et seq. (the “**Regulations**”); and

WHEREAS, the City has already signed a prior Community Host Benefit Agreement with the Company dated December 21, 2016 and approved by City Council on May 2, 2017 regarding the establishment of a lawful Medical Marijuana cultivation and processing facility within the City of Fitchburg at 20 Authority Drive (the “**Prior Agreement**”); and

WHEREAS, the Company has identified a site and wishes to locate a Medical Marijuana dispensary at 20 Authority Drive, Fitchburg, Massachusetts (the “**Facility**”) in accordance with the Regulations issued by the Commonwealth of Massachusetts Department of Public Health (the “**DPH**”); and

WHEREAS, the Commonwealth of Massachusetts has permitted the legal cultivation, processing, sale and use of marijuana for non-medical purposes through M.G.L. c. 94G and implementing regulations of the Cannabis Control Commission (the “**CCC**”) at 935 CMR 500.000 et seq. (the “**CCC Regulations**”); and

WHEREAS, when permitted to do so by law, the Company wishes to operate and use the Facility as a non-medical marijuana retailer as authorized by M.G.L. c. 94G if such operation is authorized and permitted by the City; and

WHEREAS, the proposed Facility is located in a zoning district that allows such use by right or by local permitting; and

WHEREAS, the Company promises to provide certain benefits to the City as provided for herein in the event that it is licensed to operate a Facility and receives all required local approvals; and

WHEREAS, the Company's representations are intended to induce reliance on the part of the City to whom the representation is made and in fact the Company has made a promise which the Company should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the City, including but not limited to the letter of non-opposition which has been executed in reliance on the promises made herein; and

WHEREAS, the acts or omissions by the City are in reasonable reliance on the representations and said promises and said representations and promises have induced such action or forbearance on the part of the City; and

WHEREAS, the detriment to the City as a consequence of the act or omission is fairly and adequately remediated by the enclosed provisions and only compliance or enforcement of the same can avoid an injustice and therefore enforcement would be necessary.

WHEREAS, the promises laid out in this document are indeed a true measure of the remedy needed to compensate the City for the detriment incurred as a result of the City's acts and omissions in reliance on the promises contemplated by the parties;

WHEREAS, the Company and the City understand that the promises contained herein are intended to commit the Company and the City to the same.

NOW THEREFORE, in consideration of the foregoing, the Company offers the following and the City accepts this Agreement in accordance with G.L. c. 94G §3(d):

- a. The Company agrees to pay an impact fee to the City, in the amounts and under the terms provided in Section 4(b),(c) herein (the "**Impact Fee**"). The Treasurer of the City shall hold the Impact Fee, pursuant to and consistent with G.L. c. 94G §3(d). The purpose of the Impact Fee is to alleviate the impacts from the siting of the Facility within the City. The Parties have reviewed the various costs and impacts to the City of the siting and operation of the Facility. After review, the Parties agree that the Impact Fee listed herein is directly proportional and reasonably related to the costs and other impacts imposed upon the City by the siting and operation of the Facility; and the Company agrees to waive any claim that the Impact Fee specified in this Agreement is not a true measure of the costs and other impacts experienced by the City. The parties agree that citing this and similar facilities can have costs and impacts including, but not limited to, a) the perpetuation of a negative perception of the City, b) an increased impact

on the health and security of its Citizens, and c) an increased impact on the roads and public services of the City. Therefore, the parties agree that it is appropriate to use any Impact Fee or other funds paid hereunder to combat blight and other economic effects; to support substance abuse education, prevention, treatment, and housing; to repair or improve the City's infrastructure and utility services; to increase public health and safety services; and to alleviate other related costs. Notwithstanding the foregoing, the City may in its sole discretion expend the Impact Fee as it deems appropriate for alleviating the impacts of siting the Facility within the City, as it deems the impacts to be in its sole discretion.

- b. The Company and City shall cooperate with one another in supplying any documentation requested by the other as to the itemization of the cost imposed upon the City by the operation of the Facility. Such requests shall be responded to within a reasonable amount of time, not to exceed thirty (30) days. Such requests and responses shall be provided in writing pursuant to Section 24.
2. Term: The term of this Agreement shall begin the date in which the Final Certificate of Registration is issued by the DPH or Final License is issued by the CCC, whichever should occur first (the "**Commencement Date**") and shall terminate on the earliest of:
 - a. Any date in which any DPH, CCC or local license or permit is revoked, rescinded or expires without having been renewed; or
 - b. Upon an Event of Default including any period set forth herein to cure, as hereinafter defined in this Agreement, and termination by the City; or
 - c. Upon termination by the Company pursuant to Section 15 hereof provided all payments due hereunder have been made.
 - d. Regardless of the reason for termination, upon termination the next Annual Payment (as defined within this Agreement), abated pro rata to the date of termination, shall be paid to the City by the Company (the "Final Annual Payment"). The Company shall pay the Final Annual Payment to the City on or before the date of termination.
 - e. The Agreement shall continue until termination even if payment of the Annual Fee ceases pursuant to requirement of law.
3. The term "**Gross Sales**" shall mean the grand total of all sales transactions at the Facility without any deductions included in the figure. This definition shall include

any retail sales occurring at the Company's Facility in Fitchburg of medical and non-medical marijuana, marijuana infused products, marijuana accessories and any other products that facilitate the use of marijuana, such as vaporizers, and as further defined in G.L. c. 94G §1 or 105 CMR 725.004, and any other products sold at the Facility, including retail merchandise, such as clothing, but shall exclude any Gross Sales related to medical marijuana and covered under the terms of the Prior Agreement.

4. Subject to subsection (h) and (i) of this Section, the Company shall forward to the City the following amounts as the Impact Fee:
 - a. Fifty-Thousand (\$50,000) Dollars on commencement of demolition or construction work, whichever is earlier, on the Facility as a one-time commencement payment (the "Commencement Payment").
 - b. Seventy-Five Thousand (\$75,000.00) Dollars each year (the "Minimum Annual Payment"); plus
 - c. In the event that Three (3%) Percent of Gross Sales exceeds Seventy-five Thousand (\$75,000.00) Dollars each year on the anniversary of the Commencement Date, the Company shall additionally pay the City the difference between Three (3%) Percent of Gross Sales and the Minimum Annual Payment.
 - d. The sum of the payments required under Paragraphs 4(b) and 4(c) above shall be called the "Annual Payment."
 - e. The first Annual Payment shall be due one year after the Commencement Date. Thereafter, the Company shall make the Annual Payment in equal quarterly installments every three months, with each payment due on the 20th day following the end of the three month period. At the option of the Company, the due date may be amended once, by written request, to align with its fiscal or tax quarterly filing obligations for ease of administration, but such amendment shall not change the total amount due.
 - f. In the City's sole discretion, it may direct the Company to provide some services or materials on account of the amounts specified herein (the "Services"). In this event the Company shall provide independent verification of the value of said service or materials to the City upon request and in form satisfactory to the City, and the City shall credit the Annual Payment in said amounts. Notwithstanding the foregoing, the Company

shall not be required to provide any Services in conflict with the Regulations. In any case, the Services shall not include the distribution of any assets protected by the Act or the Regulations (e.g. marijuana and marijuana infused products) to an individual that is not duly authorized to possess the same.

- g. The first Annual Payment, specifically excluding the Commencement Payment, may be delayed provided that the Company has used diligent efforts to effectuate a retail sale at the Facility, but has not made a minimum of one sale. In the event the Company fails to make the first Annual Payment on the one year anniversary date due to the failure to sell, the first Annual Payment shall be made upon the date of the first retail sale of medical or non-medical marijuana at the Facility; and the next quarterly installment of the Annual Payment shall be due on the next anniversary of the Commencement Date or ninety (90) days after the first Annual Payment is due, whichever is later, with payments thereafter to proceed every three months as scheduled above.
 - h. Anything herein to the contrary notwithstanding, to the extent that the Annual Payment is limited by the law of the Commonwealth of Massachusetts at the time the Annual Payment is due to an amount less than that specified in this Agreement, the Annual Payment shall be decreased to the maximum amount permissible (it being understood, that pursuant to M.G.L. c. 94G, Section 3(d) the Annual Payment shall not exceed the limits imposed by M.G.L. c. 94G, Section 3(d)).
 - i. The Company shall be required to make the Annual Payment for the maximum period of time provided for by M.G.L. c. 94G, Section 3(d). At the conclusion of this period the parties may enter into a new agreement for an Impact Fee. Nothing in this provision will prevent the parties from making any retroactive adjustment should the Impact Fee be increased or decreased in any future agreement.
5. The Company, in addition to any Services or Funds specified herein, shall establish a board within the Company (the “**Community Relations Board**”) with oversight authority over, to the extent the same is controlled by the Company, the site plan, the signage and appearance of the Facility; provided, however, nothing herein shall prevent the DPH or CCC from having final approval over the Community Relations Board’s oversight.

- a. The parties acknowledge that this provision will require all members to submit to a background check as necessary for DPH or CCC approval.
 - b. The Community Relations Board shall be funded by the Company and have the authority to make a gift or grant on behalf of the Company to local charities or to contribute to addressing the City's needs. The Company shall make a gift or grant to the Community Relations Board as follows: Each year, by the anniversary of the Commencement Date, the Company shall contribute not less than Seventy-Five Thousand (\$75,000.00) Dollars. The first gift or grant from the Community Relations Board may be delayed provided that the Company has used diligent efforts to open all dispensaries but has not made a minimum of one sale at a minimum of one dispensary. In the event the Company delays its first gift or grant pursuant to the terms of this paragraph, the gift or grant shall be made Thirty (30) Days after the first sale from the Company's first dispensary to sell marijuana; and the next gift or grant shall be due on the later of i) the next anniversary of the Commencement Date, or ii) Ninety (90) Days after the due date of the first gift or grant, regardless of the results of any future review by DPH or CCC of the Company's dispensaries.
 - c. The City's needs and local charities shall be identified by the Community Relations Board. Unless otherwise agreed by the parties, the Community Relations Board shall be comprised of a board of individuals numbering six (6) including three individuals appointed by the Mayor who shall serve as members with all of the rights including voting rights and none of the duties and three others who are officers or directors of the Company. In the event of a tie or deadlock of the Community Relations Board the Mayor's most recent appointee's vote shall control.
 - d. Pursuant to the Regulations, any and all individuals associated with the Facility shall be subject to the requisite background checks. As such, all members of the Community Relations Board shall agree to submit to background checks with the DPH or CCC.
6. This Agreement and promises are contingent on the Company obtaining a Certificate of Registration from the DPH or CCC to operate the Facility within the City, and the Company's receipt of any and all local approvals to locate, occupy and operate the Facility.
 7. This Agreement and promises are contingent on the City Council's acceptance of the Agreement pursuant to G.L. c. 94G §3(d) and of any gift or grant being received

pursuant to M.G.L. c. 44 § 53A, or at the option of the City pursuant to any other law or assignment.

8. The Company agrees that it will pay all personal property taxes that would otherwise be assessed if the Company was a for-profit non-manufacturing business organization for the property owned or used by the Company (hereinafter known as the "Full Personal Property Tax") unless the Company supplies sufficient identifying information on the owners of all personal property used by the Company and the City collects the Full Personal Property Taxes from that entity. In no event shall the Company apply for a reduction or elimination of property taxes due to the Company's not-for-profit or other status.
9. The Company agrees that it will pay all real property taxes for the property owned or used by the Company to site the Facility that would otherwise be assessed if the Company was a for-profit, nonagricultural business organization owning the real-estate in which the Facility is sited (hereinafter known as the "Full Real Estate Tax"). However, the Company will not be responsible if the Company supplies sufficient identifying information on the owners of all real property used by the Company and the City collects the Full Real Estate Tax from that entity or is otherwise capable of placing a lien in an amount equal to the Full Real-Estate Tax plus interest and penalties on the real estate for the nonpayment of the real estate taxes. In no event shall the Company apply for a reduction or elimination of property taxes due to the Company's not-for-profit or other status.
10. The Company agrees that jobs created at the Facility will be made available to City of Fitchburg residents. City residency will be a positive factor in hiring decisions at the Facility, but this does not prevent the Company from hiring the most qualified candidates and complying with all employment laws and other legal requirements.
11. This Agreement does not affect, limit, or control the authority of any City department, including boards and commissions, to carry out their respective duties in deciding whether to issue or deny any necessary local permits or licenses, required under the laws of the Commonwealth, the Fitchburg Zoning Ordinance, the Board of Health or any other applicable laws and regulations. By entering into this Agreement the City is not required to issue such permits or licenses. The Company acknowledges that it is subject to a special permit or site plan review including façade improvements and screening of the facility.
12. The terms of this Agreement will not constitute a waiver of the City's regulatory authority or of the Company's applicant responsibilities not otherwise addressed by this

Agreement. This Agreement does not affect, limit, or control the authority of any City departments, including boards and commissions, to issue fees, fines and penalties. This Agreement does not affect, limit, or control the authority of the City to levy taxes, whether authorized by any current or future regulation, act or statute or any amendment which may be enacted thereto, and any amounts specified above as Impact Fees, gifts or grants, including but not limited to Paragraphs 4 and 5, shall not constitute taxes or be creditable thereto.

13. Events of Default: The Company shall be deemed to have committed an event of default if any of the following occur:

- a. the Company relocates the Facility outside of the City, without prior approval from the City or Ninety (90) day notice;
- b. the Company fails to obtain, and maintain in good standing, all necessary local licenses and permits, and such failure remains uncured for thirty (30) days following written notice from the City;
- c. the Company ceases to operate a Facility in the City;
- d. the Company fails to make payments to the City as required under this Agreement, and such failure remains uncured for Thirty (30) days following written notice from the City;
- e. the Company fails to participate in the Community Relations Board, unless otherwise limited or prevented from doing so; and,
- f. DPH or CCC deems the Company has committed an event of default (as defined in the Regulations), provided that the Company is able to exercise all available remedies to re-establish good standing with the DPH or CCC.

14. Termination for Cause: The City may terminate this Agreement Thirty (30) days after the occurrence of any Event of Default. In addition, the City may terminate this Agreement for cause at any time by giving at least Ninety (90) days' notice, in writing, to the Company. Cause is defined as the Company's purposeful or negligent violation of any applicable laws of the Commonwealth, or local ordinances and regulations, with respect to the operation of a Facility. If the City terminates this Agreement the Final Annual Payment (as defined within this Agreement) shall be paid to the City by the Company. The Company shall pay the Final Annual Payment to the City on or before the date of termination.

15. Termination by the Company: The Company may terminate this Agreement Ninety (90) days after cessation of operations of any Facility within the City. The Company shall provide notice to the City that it is ceasing to operate a Facility in the City and/or it is relocating to another facility outside of the City at least ninety (90) days prior to the cessation or relocation of operations. If the Company terminates this Agreement the Final Annual Payment (as defined within this Agreement) shall be paid to the City by the Company. The Company shall pay the Final Annual Payment to the City on or before the date of termination.

16. If the City terminates this agreement the Company shall:

- a. not be relieved of liability due under this contract until the Company discontinues operation of the Facility in Fitchburg; provided that, once the Company does discontinue operation of the Facility in any event, it shall have no further obligations under Section 5 and 6 of this Agreement except for the Final Annual Payment as set forth above;
- b. not be relieved of liability to the City for damages sustained by the City for personal injury or property damage;
- c. secure the real estate and personal property owned or used at the time of Default or Termination whichever is earlier, at its sole expense in such a manner so as not to permit waste to occur to the property;
- d. pay all amounts due and reasonably anticipated to be due under this agreement through and until Company discontinues operation of the Facility in Fitchburg;
- e. provide the City with adequate security for amounts due and reasonably anticipated to be due under this agreement; and
- f. cease and desist operations immediately after the expiration of the Ninety (90) Day notice for cause provided for in paragraph 14, unless otherwise ordered by the Mayor.
- g. Unless the Company ceases all operations within the City, enter into a new Community Host Agreement which is consistent with the then existing law.

17. Anything contained herein to the contrary notwithstanding, in the event the Company fails to locate a Facility in the City of Fitchburg this agreement shall become null and void without further recourse of either party after the Company contributes Three Thousand (\$3,000.00) Dollars to the City's Legal Department for the meetings, the negotiation and execution of this Agreement as required below.
18. In the event that the Company desires to relocate the Facility within the City of Fitchburg it must obtain approval of the new location by the City.
19. This agreement is entered into with the understanding that the Commonwealth has permitted cultivation, processing and distribution of marijuana for non-medical purposes. In the event the Company engages in this activity, then the terms of this Agreement including but not limited to the calculation of Gross Sales, the Commencement Date, Impact Fee and/or maximum gifts or grants due hereunder, preferential treatment due to the Company's status and all non-monetary provisions of the Agreement shall also include and govern all such activity and relate to both medical and all other marijuana. The Parties shall execute a subsequent memo clarifying the application of the terms of this Agreement to non-medical marijuana activities.
20. In the event that under future law the City or the Company (as the case may be) is required or permitted (as the case may be) to seek more favorable payments and/or obligations from the other party in connection with the siting of the Facility within the City, such party, at such parties' sole option, may choose to renegotiate some or all of the terms of this Agreement.
21. The Parties have entered into this Agreement with the presumption, as set forth in Paragraph 19 above, that this Agreement shall serve as an acceptable host agreement for Non-Medical Use of the same type.
22. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Massachusetts, and the Company submits to the jurisdiction of the Worcester Superior Court for the adjudication of disputes arising out of this Agreement. Furthermore, in the event of litigation between the City and the Company, neither party shall contest the validity of this agreement, and will stipulate that this agreement shall be enforced as a valid legally binding contract requiring the Company to pay an Impact Fee and/or to make the gift or grant and that this obligation is supported by valuable consideration, or, at the City's option, that the City is also

entitled to enforcement under a theory known as detrimental reliance which is also identified commonly as promissory estoppel.

23. Any and all notices, or other communications required or permitted under this Agreement shall be in writing and delivered by hand or mailed, postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the parties at the following addresses:

The City: Vincent Pusateri
City Solicitor
Fitchburg City Hall
166 Boulder Dr.
Fitchburg, MA 01420

with a copy to: A.J. Tourigny
Mayor's Chief of Staff
166 Boulder Dr.
Fitchburg, MA 01420

Company: NS AJO Holdings INC.
67 Dana Street, #1
Cambridge, MA 02138
Attn: Aidan O'Donovan

24. Subject to the final sentence of this Section, the Company shall not assign, sublet, or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the City, and shall not assign any of the moneys payable under this Agreement, except by and with the written consent of the City. In the event that the Company sells all or substantially all of its assets then the Company will also assign the obligations under this Agreement to the purchasing entity. The City shall not unreasonably delay, condition or withhold assent to such an assignment, and in the case of a merger or acquisition of the Company or a sale of all or substantially all of the Company's assets, the City shall limit its objections to such merger, sale or acquisition to financial stability or moral character of the resulting entity or purchaser, based on independent or objectively verifiable evidence.

25. This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives.

26. The Company shall file with the City copies of the financial disclosures provided to the Commonwealth of Massachusetts including but not limited to the DPH, CCC and the Attorney General. The Company shall provide audited financial statements by a CPA firm approved by the City in the event that in the City's discretion the same is required as a result of a legitimate material question or controversy relative to the Company's financial disclosure. In the event that the Company's financial disclosures are consistent with the results of the audit then the City will pay all of the reasonable and necessary expenses incurred in connection with conducting the audit. One year after the Commencement Date and on an annual basis thereafter, the Company agrees to provide the City with complete and accurate State Tax Form 2, "Form of List" and such other documentation as is reasonably requested by the Assessors.
27. In the event that the Company defaults on its obligations under this Agreement, the financial condition of the Company is in question, or there exists the likelihood that the Company is intending to leave the City, the Company shall convey a security interest in the assets of the Company, to the extent allowed by law, in an amount sufficient to secure the outstanding balance and amounts which are reasonably anticipated to become due.
28. The Company shall contribute Three Thousand (\$3,000.00) Dollars to the City's Legal Department for the meetings, the negotiation and execution of this Agreement upon complete execution of the Agreement by all parties. The Parties agree that this fee for legal services is associated with the drafting of this Agreement and is not part of the impacts experienced by the City due to the siting of the Facility, and does not compromise any portion of the Impact Fee referred to above. Said fee is due and payable upon execution of the Agreement.
29. The Company shall comply with all laws, rules, regulations, and orders applicable to the Facility; such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits and approvals required for the performance of such work.
30. 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 unless one or both parties would be substantially or materially prejudiced.
31. In the event that any Court of competent jurisdiction, department or agency of the Commonwealth of Massachusetts or other Regulatory Authority determines that the Impact Fee, gifts, grants or Services received under this Agreement cannot be received

pursuant to G.L. c. 94G §3(d), or pursuant to M.G.L. c. 44 §53A, or any other provision of law, this agreement shall not become null and void, but shall remain in full force and effect and the monies tendered to the City shall be received pursuant to the then nominee of the City including but not limited to the Fitchburg Redevelopment Authority, or other charitable organization.

32. This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated Agreement between the Company and the City with respect to the matters described.

33. This Agreement supersedes all prior Agreements, negotiations, and representations, either written or oral regarding a medical marijuana dispensary between the parties, and it shall not be modified or amended except by a written document executed by the parties hereto. Except as provided for in writing, this Agreement has no effect on any other agreements which the parties may have entered into regarding any matter other than medical marijuana, particularly including the Prior Agreement, any matter other than this non-medical marijuana cultivation and processing Facility. It is the intention of the parties that the terms of the Prior Agreement remain unmodified and undisturbed by this Agreement.

34. Each of the parties acknowledges that it has been advised by counsel, or had the opportunity to be advised by counsel, in the drafting, negotiation, execution, and delivery of this Agreement, and has actively participated in the drafting, negotiation, execution and delivery of this Agreement. In no event will any provision of this Agreement be construed for or against either party as a result of such party having drafted all or any portion hereof.

35. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one in the same Agreement.

[The remainder of this page is intentionally left blank, signature pages to follow]

In WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

CITY OF FITCHBURG

Mayor Steven L. DiNatale
For the City of Fitchburg

Vincent P. Pusateri, II Esq.
Approved as to legal form:
City Solicitor

COMPANY:

NS AJO Holdings LLC

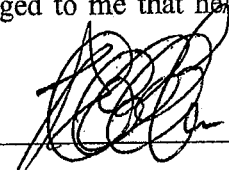


By: Aidan O'Donovan

Title: Chief Operating Officer

State of Massachusetts
County of Suffolk

On this 23rd day of May, 2018, before me, the undersigned notary public personally appeared Aidan O'Donovan, COO of NS AJO Holdings INC. and proved to me through satisfactory evidence of identification being [] Driver's license or other state or federal government document bearing a photographic image; [] Oath of affirmation of credible witness known to me who knows the above signatory, or [] My own personal knowledge of the identity of the signatory, to be the person whose name is signed above; and acknowledged to me that he/she signed the foregoing document voluntarily for its stated purpose.

Notary Public: 

My Commission Expires: _____

