

# City of Fitchburg

FITCHBURG CITY CLERK

2019 APR -8 PM 2:06

In City Council, \_\_\_\_\_

ORDERED:-- That

**WHEREAS**, the Commonwealth of Massachusetts has permitted the legal cultivation, processing, transportation and sale and use of marijuana for 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**, Eastern Heirlooms LLC, (the "Company") proposes to locate and operate a Marijuana testing laboratory facility at 431 Westminster Street, Fitchburg, Massachusetts (the "Facility") in accordance with the Regulations issued by the CCC; the Parties agree that the site at 431 Westminster Street, Fitchburg, Massachusetts shall be considered the "area" in which the Facility is located and shall extend no further than the property boundaries of the premises leased or owned by the Company; and

**WHEREAS**, when permitted to do so by law, the Company wishes to operate and use the Facility for marijuana cultivation, as authorized by M.G.L. c. 94G if such operation is authorized and permitted by the City, and the City does not oppose such operation if lawful, authorized and permitted; 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 opens and operates a lawful, authorized and permitted marijuana cultivation facility in the City; 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 negotiation of this Agreement but excluding any zoning or permitting relief; 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; and

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

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

**WHEREAS**, in consideration of the foregoing, the Company offers the following and the City would accept this Agreement in accordance with G.L. c. 94G §3(d) upon approval of this City Council.

**NOW THEREFORE, IT IS ORDERED** that the Honorable Mayor Stephen L. DiNatale be hereby authorized for and on 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 as attached or in form substantially similar thereto, and to site the facility as set forth above.

**CITY OF FITCHBURG AND EASTERN HEIRLOOMS LLC**  
**COMMUNITY HOST BENEFIT AGREEMENT FOR NON-MEDICAL MARIJUANA**  
**CULTIVATION FACILITY**

This Community Host Benefit Agreement (the “**Agreement**”) is entered into this \_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Fitchburg, a Massachusetts municipal corporation, located at 166 Boulder Drive, Fitchburg, MA 01420 (the “**City**”) and Eastern Heirlooms LLC (the “**Company**”), a Massachusetts for-profit corporation with an address of record of 110 Helena Street, Leominster, Massachusetts 01453.

**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**, the Company proposes to locate and operate as a Non-Medical Marijuana cultivation facility at 431 Westminster Street, Fitchburg, Massachusetts (the “**Facility**”) in accordance with the Regulations issued by the CCC; the Parties agree that the site at 431 Westminster Street, Fitchburg, Massachusetts shall be considered the “**area**” in which the Facility is located and shall extend no further than the property boundaries of the premises leased or owned by the Company; and

**WHEREAS**, when permitted to do so by law, the Company wishes to operate and use the Facility for non-medical marijuana cultivation as authorized by M.G.L. c. 94G if such operation is authorized and permitted by the City, and the City does not oppose such operation if lawful, authorized and permitted; 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 for such non-medical marijuana use 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 negotiation of this Agreement but excluding any zoning or permitting relief; 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; and

**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 and the impact cost as a result of the City's acts and omissions in reliance on the promises contemplated by the parties; and

**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 herein ("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 siting this and similar facilities can have costs and impacts including, but not limited to, a) the need to promote a positive perception of the City to other residents, visitors and businesses, b) an increased impact on the health and security of its Citizens, c) an increased impact on the roads and public services of the City, d) increased administrative and compliance costs, e) increased regulatory, police and inspectional services. Therefore, the parties agree that it is appropriate to use any Impact Fee or other funds paid hereunder to combat blight and other economic issues facing the City;

to support substance abuse education, prevention, treatment, and housing; to repair or improve the City's infrastructure and utility services; to increase public health, police and safety services; administrative, regulatory, inspectional and compliance services; legal fees and costs incurred in connection with the Company (except as otherwise provided for herein); and all other costs incurred in connection with the recited impacts. This Impact Fee has been calculated without reference to legal fees associated with the negotiation, drafting and execution of this Agreement. 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 shall cooperate in supplying any documentation reasonably requested by the City as to itemization of any impact of siting the Facility within the City, upon the City's request.
2. Term: The term of this Agreement shall begin on the date the Final License for cultivation of non-medical marijuana at the Facility is issued by the CCC or other regulatory authority (the "**Commencement Date**"), and shall terminate on:
- a. Any date in which any 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 Paragraph 15 hereof provided all payments due hereunder have been made.
  - d. Regardless of the reason for termination, upon termination the next Impact 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 Impact Payment"). The Company shall pay the Final Impact Payment to the City within thirty (30) days after the date of termination.
  - e. The Agreement shall continue until termination even if payment of the Impact Payment ceases pursuant to requirement of law. The parties acknowledge that the terms of G.L. c. 94G §3(d) apply to this Agreement.

3. The term "Gross Sales" shall mean the grand total of all sales transactions without any deductions included in the figure. This definition shall include but not be limited to sales, including both retail and wholesale sales, to any other person or entity of 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 the CCC Regulations, and any other merchandise or product sold by the Company cultivated, processed or sold from or through the Facility ("Goods"). Gross Sales of Goods occurring at the Company's retail locations other than the Facility, if any, shall be valued at the price paid when such Goods are sold to any patient, retail customer, consumer or entity not owned by the Company. The definition of "retail customer" shall be the equivalent of the term "Consumer" as defined by the CCC Regulations.
  - a. If the Company uses the Facility for the purpose of cultivation, processing or manufacturing of Hemp at the Facility, as the term is defined by G.L. c. 94G, §1, and if any such Hemp is cultivated, processed or manufactured for the purpose of human ingestion or absorption, or otherwise sold, used or incorporated into medical or non-medical marijuana, then the sales of such Hemp shall be treated as Gross Sales of Goods as defined above, and shall be subject to an Impact Payment as set forth herein.
  
4. The Company shall forward to the City the following amounts as the Impact Payment:
  - a. Five Thousand (\$5,000.00) Dollars due upon the Commencement Date (the "Commencement Payment"). The Commencement Payment shall be credited against the Annual Payment, defined below.
  - b. The amount equal to One and One-quarter (1.25%) Percent of Gross Sales, calculated for the twelve (12) month period following the Commencement Date and each anniversary thereof (the "Impact Payment").
  - c. The first Impact Payment shall be due within 30 days after the one year anniversary of the Commencement Date. Thereafter, the Company shall make the Impact Payment in equal quarterly installments every three months, with each payment due on the 30<sup>th</sup> 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.

- d. 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 (provided that any reasonable cost related solely to obtaining said independent verification shall be credited to the Impact Payments required hereunder), and the City shall credit the Impact 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.
  - e. To the extent that the Impact Payment is limited by the law of the Commonwealth of Massachusetts at the time the Impact Payment is due to an amount less than that specified in this Agreement, the Impact Payment shall be decreased to the maximum amount permissible. In the event of an overpayment to the City, such overpayment shall be credited towards the Company's future Annual Payments owed, if any.
  - f. The company shall be required to make the Impact Payment for a five-year period commencing on the Commencement Date. At the conclusion of this five-year period, the parties shall enter into a new agreement as to the amount of the Impact Payment unless prohibited by statute or regulation.
5. The Company, in addition to any Services or Funds specified herein, shall verify the establishment of a single 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 CCC from having final approval over the Community Relations Board's oversight.
- a. The Community Relations Board shall identify local charities or charitable purposes as recipients of a gift or grant of funds, goods and/or services by the Company, to benefit local charities or to contribute to addressing the City's needs. The Company shall fund gifts or grants as local needs are identified to it by its Community Relations Board in an amount equal to Seven Tenths (0.7%) Percent of Gross Sales annually, in excess of its

obligation under any other agreement, to make a meaningful contribution to local charities or the City's needs. The Community Relations Board shall identify local charities or charitable purposes to the Company on the first anniversary of the Commencement Date with subsequent gifts or grants occur on each anniversary thereof.

The local charities or charitable purposes shall be identified by the Community Relations Board, but may include programs that promote health, economically sustainable living habits, community open spaces, and employment opportunities for local veterans and other impacted minorities.

- b. The City's needs and local charities shall be identified by the Community Relations Board.
  - c. Unless otherwise agreed by the parties, the Community Relations Board shall be comprised of a board of at least three (3) individuals who are residents of the City and any number of other individuals who may be residents or nonresidents of the City. The Mayor may recommend City residents to serve on the board. The Company shall then establish the Community Relations board. The Community Relations Board shall meet to identify City needs and local charities and to make gifts or grants as aforesaid not less than twice per calendar year.
  - d. Pursuant to the CCC 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 CCC.
6. This Agreement and promises are contingent on the Company obtaining a Final License from the CCC to operate a non-medical marijuana establishment within the City, and the Company's receipt of any and all local approvals to locate, occupy and operate.
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 G.L. c. 44 § 53A, or at the option of the City pursuant to any other law or assignment.
8. If it at any time operates as a non-profit organization, 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. If at any time it operates as a non-profit organization, 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 Payments, 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. CCC revokes the Company's license or denies the Company's application for renewal of its license (as provided in the CCC Regulations), provided that the Company is able to exercise all available remedies to re-establish good standing with the 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 Impact Payment (as defined within this Agreement) shall be paid to the City by the Company. The Company shall pay the Final Impact Payment to the City within thirty (30) days following the date of termination.

15. **Termination by the Company:** The Company may terminate this Agreement Ninety (90

bgtr) 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 Impact Payment (as defined within this Agreement) shall be paid to the City by the Company. The Company shall pay the Final Impact Payment to the City within thirty (30) days following the date of termination.

16. If this agreement is terminated 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 Paragraphs 4 and 5 of this Agreement except for the Final Impact 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, or any environmental impact caused by the operation of the Facility;
- 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;

provide the City with adequate security for amounts due and reasonably anticipated to be due under this agreement, including but not limited to security for any reasonable damages sustained by the City due to personal injury, property damage or environmental impact caused by the operation of the Facility; and

- e. 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.
- f. 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) to the City's Legal Department for the meetings, the negotiation and execution of this Agreement as required in Paragraph 27 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 sale of marijuana for both medical and non-medical purposes. In the event the Company engages in any medical marijuana cultivation and manufacturing at the Facility, then the parties agree that the Company shall seek a permit or special permit therefor if required, and that the terms of this Agreement may be applied to the use of the Facility as a medical marijuana cultivator or processor, and shall be interpreted in accordance with the CCC Regulations therefor, as the same may apply. The parties may execute a subsequent memo clarifying the application of the terminology of this agreement to medical or non-medical marijuana activities should changes in the regulations of the CCC or DPH require interpretation of this agreement. This agreement is entered into in recognition that recent changes in the DPH or CCC regulations as to medical marijuana may require the execution of this subsequent memo.
20. The Company, its successors, and assigns hereby agrees that it shall not engage in cultivating, selling or processing marijuana and marijuana products within the City as a Marijuana Establishment as defined in M.G.L. c. 94G §1 ("Non-Medical Use"), unless and until the Company is permitted therefore by law and by the City through any reasonable and typical procedure the City may require, said approval not to be withheld in an arbitrary and capricious manner. In order for the Company to operate the Facility as a Medical Marijuana Treatment Center, Marijuana Retailer with Gross Sales to consumers occurring at or by delivery from the Facility (should the same be permitted by future law and by local ordinance), or under any medical or non-medical marijuana license issued by the CCC other than the non-medical cultivation license contemplated in this Agreement, in recognition that the impacts may be greater, the Company must enter into a new Community Host Agreement with the City as required by M.G.L. c. 94G §3(d) and comply with all local ordinances.
21. 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.

22. 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: Benjamin M. Nero, Manager  
Eastern Heirlooms LLC  
110 Helena Street  
Leominster, MA 01453

23. Subject to the final sentence of this Paragraph, 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.

24. This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives.
25. 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, the CCC, the Department of Revenue and the Attorney General. The Company shall provide audited financial statements by a CPA firm qualified to do business in the Commonwealth of Massachusetts 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. Within thirty (30) days following 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.
26. 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.
27. 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 and approval by City Council. The Parties agree that this fee is for legal services 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 Payment referred to above. Said fee is due and payable upon execution of the Agreement.
28. If a suit, action, arbitration or other proceeding of any nature whatsoever is instituted in connection with any controversy arising out of this Agreement, or to interpret or enforce any rights under this Agreement or the Laws of the Commonwealth of Massachusetts, the City shall be entitled to an award of attorney's fees in the event it prevails.
29. Neither party shall bring no claim contesting the amount or validity of any payment made under

the terms of this Agreement later than one (1) year after the date each payment is due under the terms hereunder, and shall bring no claim contesting the validity of this Agreement later than one (1) year after the Commencement Date; provided, however, that either party may later bring such claims under a claim that this limitation has been equitably tolled as provided by the law of the Commonwealth of Massachusetts..

30. 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.
31. 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 offending provision shall be amended only so much as necessary to comply with the law and 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.
32. 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 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, unless otherwise ordered by a court of competent jurisdiction
33. The Company agrees to institute policies and procedures in support of the intended goals of the Social Equity Program provided for in Massachusetts law, which are to promote and encourage full participation in the regulated marijuana industry by people from communities which have been disproportionately harmed by marijuana prohibition. Implementation of these procedures and policies is vital as the City has been identified as an area of disproportionate impact. To minimize delay in achieving of these goals, the Company agrees to institute procedures and policies to benefit said communities, including outreach for employment, procurement, and other support through the formation and operation of the Company's Community Relations Board. The parties are committed to implementing a variety of programs actively engaging persons from communities of disproportionate impact to ensure their inclusion in the legal cannabis industry.

34. 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.
35. This Agreement supersedes all prior Agreements, negotiations, and representations, either written or oral regarding a non-medical marijuana cultivation facility between the parties, and it shall not be modified or amended except by a written document executed by the parties hereto.
36. 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.
37. 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

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Mayor

Stephen L. DiNatale For  
the City of Fitchburg

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Vincent P. Pusateri, II Esq.

Approved as to legal form:  
City Solicitor

COMPANY:

Eastern Heirlooms LLC

  
By: Benjamin M. Nero

Title: Manager

State of

MA

County of

Worcester

On this 2<sup>nd</sup> day of April, 2019, before me, the undersigned notary public personally appeared Benjamin M. Nero of Eastern Heirlooms, LLC 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 signed the foregoing document voluntarily for its stated purpose.

Notary Public:



My Commission Expires:

2-25-2022