

## HOST COMMUNITY AGREEMENT ADULT USE MARIJUANA ESTABLISHMENT

Upon execution by all parties, this HOST COMMUNITY AGREEMENT (the "Agreement") shall be effective as of the date signed by all parties, by and between the **CITY OF HOLYOKE** (the "CITY"), a municipal corporation with principal offices at 536 Dwight Street, Holyoke, Massachusetts 01040, acting by and through the Mayor, and **4BROS INC, d/b/a East Coast Pharms, a Massachusetts business corporation** whose principal office is located at 630 Beaulieu Street, Holyoke, MA 01040 (the "OPERATOR").

**WHEREAS**, the OPERATOR proposes to locate an Adult Use Marijuana Establishment (the "Establishment") in the CITY in accordance with regulations issued by the Massachusetts Cannabis Control Commission (the "CCC");

**WHEREAS**, the obligations of the OPERATOR set forth herein are specifically contingent on the OPERATOR being granted one or more Final Licenses from the CCC to operate the Establishment in the CITY (the "License") and on acquiring all required local permits and approvals; and

**WHEREAS**, the parties intend hereby to stipulate conditions and responsibilities between the CITY and the OPERATOR not covered by local zoning approval processes or CCC licensing requirements;

**NOW, THEREFORE**, in consideration of the above and in accordance with G.L. c. 94G, § 3(d), the Operator offers and the CITY accepts the Agreement as follows:

1. **Impact.** The purpose of this Agreement is to assist the CITY in addressing Community Impacts directly proportional and reasonably related to the OPERATOR. "Community Impacts" means, collectively, the following potential and actual impacts to the CITY directly related to or resulting from the construction and operation of the Establishment such as: (i) increased use of CITY services; (ii) increased use of CITY infrastructure; (iii) the need for additional CITY infrastructure, employees and equipment; (iv) increased traffic and traffic congestion; (v) increased air, noise, light and water pollution; (vi) issues related to public safety and addictive behavior; (vii) loss of CITY revenue from displacement of current businesses; (viii) issues related to education and housing; (ix) quality of life; and (x) costs related to mitigating other impacts to the CITY and its residents.
2. **Impact Fee.** In the event that the OPERATOR obtains one or more Final Licenses from the CCC and receives any and all necessary and required permits and licenses issuable by the CITY, which said permits and/or licenses allow the OPERATOR to locate, occupy, and operate one or more Adult Use Marijuana Establishments in the CITY, then the OPERATOR agrees to pay the CITY a Host Community Fee according to the following terms:

- The OPERATOR shall pay the CITY a percentage of gross revenue from all of the OPERATOR's operations in the CITY in accordance with the following schedule:
    - Three percent (3%) of gross revenue from all of the OPERATOR's operations in the CITY during each full Calendar Year of operations for the term of this Agreement;
  - Gross Revenue shall include the revenue from production, sales, operations, or services in the CITY pursuant to the License, to the maximum extent permitted under G.L. c. 94G, § 3(d), regardless of whether those products contain, or facilitate the use, inhalation, or ingestion of marijuana.
  - The calculation of Gross Revenue shall not include: (i) revenue from operations covered under any other Host Community Agreement between the OPERATOR and the City of Holyoke, and (ii) transactions and transfers, within the City of Holyoke, between the Establishment and any other Adult Use Marijuana Establishment operated by the OPERATOR.
  - The OPERATOR shall, within sixty (60) days from the close of the calendar year, submit a report to the CITY certifying the gross revenue for the preceding calendar year, in addition to any seed-to-sale tracking records required to be reported to the CCC under 935 CMR 500.105(8)(e) & .105(9)(c). The report shall specify the Host Community Fee as calculated under this section and shall be prepared by Certified Public Accountant in accordance with generally accepted accounting principles ("GAAP").
  - Annual payments shall be due and payable no later than ninety (90) days from the close of the calendar year.
  - In addition to the above referenced report to the CITY certifying gross revenue, the OPERATOR shall provide the CITY with an annual report detailing the following information for the preceding Calendar Year: (i) the total number of the OPERATOR's transactions in the CITY (provided same is not a privacy violation); (ii) descriptions of any incidents on-site at the Establishment operated within the CITY that required a public safety response; and (iii) other such information reasonably requested by the CITY.
3. **Impact Fund.** The CITY shall use the above-referenced payments in its sole discretion consistent with the purpose of this Agreement and in accordance with G.L. c. 94G, § 3.
4. **Taxation.** At all times during the term of this Agreement, real property owned or operated by the OPERATOR shall be treated as taxable, and all applicable real estate and property taxes for that property shall be paid either directly by the OPERATOR or

by its landlord. The OPERATOR shall not challenge the taxability of such property and shall not submit any applications for any statutory exemption from such taxes.

5. **Abatement.** Notwithstanding Paragraph 2 above: (a) if real property owned or operated by the OPERATOR is determined to be exempt for taxation or partially exempt, or (b) if the value of such property is abated with the effect of reducing or eliminating the tax which would otherwise be paid if assessed at full, fair market value, then the OPERATOR shall pay to the CITY an amount which, when added to the taxes, if any, paid on such property, shall be equal to the taxes which would have been payable on such property at full assessed, fair market value and at the otherwise applicable tax rate, if there had been no abatement or exemption. The payment described in this Paragraph 3 shall be in addition to the payments made by the OPERATOR under Paragraph 1 of this Agreement.
6. **Payment in Lieu of Taxation.** In the event that the OPERATOR becomes eligible for status as a charitable organization and a related decrease or elimination of real property taxes, and tax revenue from the OPERATOR's location in the CITY is reduced or eliminated, the OPERATOR will make the assessed, fair market value tax payment directly to the CITY as an additional payment under this Agreement.
7. **Hiring Commitment.** The OPERATOR commits to make good faith efforts to hire qualified Holyoke residents whenever feasible for any employment opportunities that become available. Implementation of the Commitment shall include collaborating with CareerPoint, Holyoke Works, Holyoke Community College, and other available resources within the City of Holyoke to train and/or recruit residents of Holyoke for all employment opportunities. Methods to recruit employees may include collaboration with local labor unions and other recruitment efforts, such as a neighborhood job fair, and posting of notices of opening at strategic locations, including notifying local community organizations about job opportunities. Upon commencing operations and within thirty (30) days of the start of the calendar year for each year this Agreement remains in effect, the OPERATOR will provide the CITY with an annual report for each previous year containing the following information: (1) the OPERATOR's employment level; (2) the number of Holyoke residents employed, and; (3) a description of the measures taken to fulfill this workforce hiring commitment.
8. **Public Safety Cooperation.** The OPERATOR shall comply with the conditions of any special permit issued by the City, including coordinating with the Holyoke Police Department (the "HPD") in the development and implementation of security measures, as required by the Commonwealth of Massachusetts, the CCC, and otherwise, including in determining the placement of exterior security cameras. The OPERATOR will maintain a cooperative relationship with the HPD, including but not limited to periodic meetings to review operational concerns and communication to the HPD of any suspicious activities on the site.
9. **Termination.** This Agreement shall terminate immediately at the time that any of the following occurs: the CITY notifies the OPERATOR of the CITY's termination of this Agreement for CAUSE as defined in this section; the OPERATOR or its assigns ceases

to operate the Establishment in the CITY; or if the OPERATOR fails to make payments to the CITY as required under this Agreement and such failure remains uncured for ninety (90) days following written notice to the OPERATOR. CAUSE shall be defined as any instance in which the OPERATOR willfully or negligently violates any laws of the Commonwealth with respect to the operation of the Establishment, and such violation remains uncured for ninety (90) days following written notice to the OPERATOR.

10. **Binding Effect.** This Agreement is binding upon the parties hereto, their successors, assigns, and legal representatives. The Parties shall be prohibited from assigning, in whole or in part, any portion of this Agreement without the written consent of the other party which shall not be unreasonably withheld conditioned or delayed. However, in no event shall this Agreement be modified to provide for a minimum annual payment from the OPERATOR and/or the successors, assigns, and legal representatives of the OPERATOR of less than three percent (3%) of gross revenue from all of the OPERATOR's operations, unless otherwise required under the laws of the Commonwealth.
11. **Compliance.** The OPERATOR shall comply with all laws, rules, regulations and orders applicable to siting pursuant to this Agreement, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the operation of the OPERATOR's facility. The terms of this Agreement do not supersede ordinances, regulations, and site plan approvals nor do they constitute compliance with any particular regulatory requirement other than the requirement that the OPERATOR enter into a Host Community Agreement with the City pursuant to G.L. c. 94G, § 3.
12. **Re-opener.** Should the CITY enter into a Host Community Agreement with any other Adult Use Marijuana Establishment within the same license class as the OPERATOR, as defined under 935 CMR 500.050(1)(d), for siting in the City of Holyoke at material terms more favorable to the operator of that establishment than the terms of this Agreement are to the OPERATOR of this Establishment, then this Agreement shall be modified to reflect those terms. However, in no event shall this Agreement be modified to provide for a minimum annual payment from the OPERATOR of less than three percent (3%) of gross revenue from all of the OPERATOR's operations. Upon the mutual-agreement of the CITY and the OPERATOR, this Agreement may be terminated at any time.
13. **Notices.** Any and all notices, or other communications required or permitted under this Agreement shall be in writing and delivered postage prepaid mail, return receipt requested; by hand; by overnight delivery service; or by other reputable delivery services, to the Parties at the addresses set forth on the first page of this Agreement or furnished from time to time in writing hereafter by one party to the other party. Any such notices or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the USPS or, if sent by private overnight or other delivery service, when deposited with such delivery service.

14. **Severability.** If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal, or unenforceable, then the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both of the Parties would be substantially or materially prejudiced.
15. **Choice of Law.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Massachusetts.
16. **Accounting.** The OPERATOR shall maintain its books, financial records, and other compilations of data pertaining to the requirements of this Agreement in accordance with standard GAAP and all applicable guidelines of the CCC. All records shall be kept for a period of at least seven (7) years.
17. **Integration.** This Agreement, including all documents incorporated therein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiation and representations, either written or oral and it shall not be modified or amended except by a written document executed by the Parties hereto.
18. **Term.** Except as may otherwise be provided herein, this Agreement shall be in effect for a period of FIVE (5) YEARS from the Effective Date (the "Expiration Date"), except as may otherwise be provided herein. In the event the OPERATOR does not commence operations of the Establishment within the CITY, then this Agreement shall automatically terminate, become void and be of no further force or affect as to either party. For such time as the OPERATOR continues operations within the city, the Parties agree to negotiate a successor Host Community Agreement upon expiration of this agreement. In the event the OPERATOR ceases operations in the CITY prior to Expiration Date, this Agreement shall terminate on such date the OPERATOR ceases operations. Payments due for that Calendar Year shall be apportioned based on the number of days of operation during that quarter. The OPERATOR shall not be required to cease operations upon the Expiration Date of this Agreement unless for CAUSE as defined in Paragraph 10.
19. **Responding to the CCC.** If contacted by the CCC, the City shall promptly provide any information requested concerning the OPERATOR, including confirmation that the site of the Establishment is in a zoning district for which the operation is a permissible use, although a special permit shall be required before operations may commence.
20. **License Renewal.** Upon the request of the OPERATOR in connection with the renewal of its License, the City shall cooperate with and support the OPERATOR's obligation to provide an accounting of the financial benefits accruing to the CITY under this Agreement, as required by 935 CMR 500.103(4)(d).

## **XII. OPERATOR INFORMATION**

1. The Provider or vendor's Name: 4BROS INC

- 2. Contact Person: Jorge Tirse
- 3. Telephone: 518-224-4772
- 4. E-mail: 4brosmass@gmail.com

IN WITNESS WHEREOF, the CITY OF HOLYOKE and 4BROS INC, have executed this Agreement as a sealed instrument as of the day and year the same is signed by all parties hereto, on the latest date noted below.

**4BROS INC**

Printed Name: Jorge Tirse

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date signed: \_\_\_\_\_

*Jorge Tirse*  
*COO-owner*

*5-9-18*

**CITY OF HOLYOKE:**

*Alex Morse*

Alex B. Morse, Mayor

Date signed: *5-9-18*

**APPROVED AS TO FORM:**

*Paul Payer*

Paul Payer, City Solicitor

Date signed: *5-9-18*

See attached Memorandum of Understanding

Memorandum of Understanding, May 2, 2018

From: Michael D. Cutler, attorney for applicants seeking state cannabis commerce licenses, who are required as a precondition to a license application to have an executed host community agreement (HCA) with the municipality where the applicant intends to site its Marijuana Establishment

To: Holyoke City Solicitor Paul Payer, and City assistant planner Sarah Zimble

Re: Template City HCA, and its provisions regarding the term of the HCA and the revenues subject to an impact fee, both provisions as regulated by G.L. c. 94G, sec. 3(d)

1. Term. Applicants are concerned that sec. 3(d) seems to require (“seeking to operate or continue to operate”) ongoing HCAs after the initial five year term, and that the obligation to pay an impact fee be limited to five years. The City finds the five-year limit to be ambiguous – as to both the need for HCAs and the ability to obtain impact fees, beyond the five year term – and desires clarification, but does not want to delay the adoption of a template HCA and applicants' ability to execute them and apply for state licensing.

Both Applicants and the City desire to negotiate any necessary extensions or renewals of the host community agreement for such time as the Licensee maintains operations in the City. Thus, the template HCA will not include text to extend the initial five-year term, but the HCA and Applicants will seek clarification during the five year term from the state licensing agency, the Cannabis Control Commission (CCC), or the legislature as to whether non-impact fee terms within a host community agreement may extend beyond five years.

2. Gross revenues subject to an impact fee. Applicants believe that the revenues subject to an impact fee cannot include non-marijuana products or services, as those sales do not require a CCC license; Applicants also believe that the anticipated cost imposed on the municipality – on which the impact fee is based under sec. 3(d) – may not support a full 3% of a licensee's sales in any given year once documented by the municipality. The City believes that the limiting language in the cannabis excise tax, which is limited to marijuana-containing products, justifies the impact fee's imposition on non-marijuana licensee sales, because sec. 3(d) contains no such limitation. Also, the practice with medical marijuana impact fees, which the City believes the legislature considered in drafting sec. 3(d), also included non-marijuana sales in the revenues subject to impact fee taxation. The City believes its template HCA protects both the City and Applicants, by limiting the impact fee's imposition “to production, sales, operations, or services in the CITY pursuant to the License, to the maximum extent permitted under G.L. c. 94G, § 3(d).”

During the five year template HCA term the City and Applicants will seek clarification of revenue streams subject to impact fee determination from the CCC or the legislature. The City and Applicants intend to abide by whatever clarification is provided by those governing authorities, as to the revenue streams on which the impact fee may be imposed, as provided by the City's template HCA.