

HOST COMMUNITY AGREEMENT/RETAIL MARIJUANA ESTABLISHMENT

THIS AGREEMENT is entered into this 30th day of December, 2018 by and between Atlantic Medicinal Partners, Inc., a Massachusetts corporation with a principal office address of 329 Washington Street, Woburn, MA 01801 ("AMP") and the City of Salem, a Massachusetts municipal corporation with a principal address of 93 Washington Street, Salem, MA 01970 ("the City"). The City and AMP are referred to herein as the Parties.

WHEREAS, AMP is applying for a license to operate a Marijuana Retail Establishment as a licensed Marijuana Retailer at 297 Highland Avenue in Salem, pursuant to M.G.L. Chapter 94G and the regulations issued thereunder, 935 CMR 500.000 ("Regulations");

WHEREAS, AMP has filed a petition for a special permit, pursuant to Section 6.10 of the City's Zoning Ordinance, to operate a Marijuana Retail Establishment at 297 Highland Avenue and the Board of Appeals has granted said special permit pursuant to a decision issued on June 20, 2018;

WHEREAS, M.G.L. Chapter 94G, Section 3, and the regulations issued thereunder, require that the City and AMP execute an agreement setting forth the conditions to have a Retail Marijuana Facility (Retail Facility) within it that must include, but not be limited to, all stipulations of responsibilities between the host community and the marijuana establishment;

WHEREAS, AMP intends to provide certain benefits to the City in the event that it obtains a Final License, as defined in the Regulations, to operate the Retail Facility in the City and receives all required local approvals, such as programming of sustainability and substance abuse prevention initiatives in the City, funding of transportation enhancement programs, offering products in a safe, licensed and secure setting, employing City residents, compensating employees for participation in City-sponsored volunteer activities; activating the Highland Avenue corridor with positive redevelopment, and others;

WHEREAS, notwithstanding the anticipated benefits to certain members of the community, the operation of the Retail Facility by AMP may impact City resources in ways unique to the business of both, drawing upon City resources in a manner not shared by the general population;

NOW THEREFORE, in consideration of the provisions of this Agreement, AMP and the City agree as follows:

1. **Community Impact.** The parties anticipate that the City may incur additional expenses and impacts on the City's roads, law enforcement, fire protection services, inspectional and permitting services, public health services and abuse prevention efforts, as well as additional

unforeseen impacts upon the City. Accordingly, in order to mitigate the financial impact upon the City and the past and future use of City resources, AMP will pay to the City a community impact fee of 3%, as defined in M.G.L. c. 94G, §3 under the terms provided herein ("Annual Payment"). Any changes to the statute enacted subsequent to the date this Agreement is executed shall not result in any reduction in the amount of the community impact fee or any other payment agreed to herein during the term of the Agreement. The parties agree that the community impact fee is reasonably related to the costs, both direct and indirect, imposed upon the City by the operation of the retail marijuana establishment. The parties stipulate that the particular additional expenses and impacts on the City arising from the Retail Facility may include, but are not limited to: (i) additional responses to activity from the City's Police Department, including public safety personnel overtime costs; (ii) added traffic control and/or parking measures; (iii) use of City resources, in partnership with AMP, to promote substance abuse education and assistance resources; (iv) expenditure of additional resources for communications with AMP's security and alarm personnel; (v) expenditure of City resources required to vet the application for licensure of AMP and monitor compliance with all local ordinances, bylaws, and regulations through municipal inspection; and (vi) additional expenses and impacts, both direct and indirect. The parties stipulate that the Community Impact Payments set forth in this Agreement address direct or secondary impacts of the AMP's operations within the City pursuant to applicable Massachusetts law and regulations, including but not limited to 935 CMR 500 and G.L. c.94G, § 3(d), and are reasonably related to said direct and secondary impacts.

2. **Annual Payment.** In the event AMP obtains a final license for the operation of the Retail Facility in the City and receives all necessary and required permits and licenses required by the City, then AMP agrees to make an Annual Payment in an amount equal to three percent (3%) of gross revenue from marijuana and marijuana infused product sales at the Retail Facility, as those terms are defined by G. L. c. 94G, § 1. The first payment shall be in the amount of \$25,000 upon the commencement of sales at the Retail Facility (Opening Date). The balance of the 3% gross sales less the initial \$25,000 payment shall be paid for the first twelve (12) months following the Opening Date and shall be transferred electronically to the City on a quarterly basis within ten (10) days following the end of each quarter on March 31, June 30, September 30, and December 31, beginning on the first of such dates after the Opening. For each subsequent year of the Agreement, the 3% annual fee shall be remitted electronically on a quarterly basis within ten (10) days following the end of each quarter on March 31, June 30, September 30, and December 31.
3. **Annual Filing.** AMP shall notify the City when AMP commences retail sales at the Retail Facility and shall submit annual financial statements to the City on or before May 1, which shall include certification of itemized gross sales for the previous calendar year, and all other information required to ascertain compliance with the terms of this Agreement. Upon request, AMP shall provide the City with the same access to its financial records (to be treated as confidential, to the extent allowed by law) as it is required by the Commonwealth to obtain and maintain its licenses. AMP shall maintain its books, financial records and any other data related to its finances and operations in accordance with standard accounting practices and any applicable regulations and guidelines promulgated by the Commonwealth of Massachusetts. All records shall be retained for a period of at least seven (7) years.
4. **Taxes and Other Payments for Municipal Services.** AMP will pay all local, state, and federal taxes as required by applicable law, as now existing or is hereafter may from time to time be

enacted, repealed, or modified. Nothing herein shall be construed to exempt the Retail Facility from payment of local, state, and federal taxes. Taxes, or other payments made by AMP, for water, sewer, or other municipal services shall not reduce the amount of the Annual Payment. In the event of an increase in the current sales and/or excise tax or enactment of a new marijuana tax, this Agreement shall be subject to renegotiation.

5. **Transit Alternatives Support.** AMP, in addition to any payments specified herein, agrees to make a voluntary contribution to a Transit Enhancement Fund (TEF), once such fund has been established. The TEF shall be designed to support the creation of alternative transportation options within the City and the region, including a transit shuttle, that will stop within reasonable proximity to the site. Such contribution shall be proportional each year to the volume of retail sales conducted at the facility in the preceding six-month period, due semi-annually via electronic transfer of funds, no later than ten (10) days following June 30 and December 31 of each calendar year of operation, in an amount equal to 1% of each retail transaction during the previous six-month period. Each consumer transaction is limited in quantity of marijuana or marijuana concentrate as set forth in G.L. c. 94G and the Regulations issued thereunder. AMP will also facilitate the provision of legal advice at no cost to the City by its attorneys at Foley Hoag LLP if the City requires assistance with the administration of the TEF. AMP also agrees to purchase or otherwise obtain a bicycle rack, capable of holding at least six (6) bicycles at the site and that it will make best efforts to cooperate with the owner of the property to install the rack at the property. Once installed, this bicycle rack will be made available to the public as part of the City's official bike share program. The parties agree that the payments or other in-kind support of transit alternatives under this section are AMP not related to any community impacts covered by the Annual Payment detailed in Sections 1 and 2, above. Said payments described in this Section 5 shall be paid for a period of five (5) years and are offered by and accepted by the City pursuant to G. L. c. 44, § 53A.
6. **Additional Donations.** In addition to the payments detailed above, AMP shall make an annual \$60,000 donation to the City's General Fund, with the intention, subject to City Council appropriation, that at least \$15,000 be used in projects that directly benefit Ward 3 and/or Ward 4. Should the City execute Host Community Agreements with more than five (5) marijuana retailers in the City, this Section 6 shall be reopened, and the parties will renegotiate the terms of any Additional Donations in good faith. The parties agree that the payments described in this Section 6 are not related to any community impacts covered by the Annual Payment detailed in Sections 1 and 2, above. Said payments described in this Section 6 shall be paid for a period of five years and are offered by AMP and accepted by the City pursuant to G. L. c. 44, § 53A.
7. **Charitable Contributions.** AMP, in addition to any payments specified herein, agrees to support the community by annually donating: (1) \$15,000 to the City's Affordable Housing Trust; (2) \$10,000 to Lifebridge Salem; (3) \$5,000 donation to the North Shore Alliance of Gay & Lesbian Youth; (4) \$5,000 to Salem's Children's Charity. AMP will also create and administer an annual \$5,000 grant to Salem artists (Painting, Sculpture, Photography and Music) with a focus on Public Art for display within Salem. To qualify for grants, artist(s) must have resided in the City for greater than three (3) Years.

AMP also will sponsor an annual employee charity drive to benefit Lifebridge Salem in which AMP will match employee donations deducted from payroll during the drive period dollar-for-

dollar. AMP will also offer employees the option to donate to Lifebridge on a regular basis via payroll deduction. AMP will also sponsor an annual employee charity drive to benefit the North Shore Alliance of Gay & Lesbian Youth in which AMP will match employee donations deducted from payroll during the drive period dollar-for-dollar. AMP will also offer employees the option to donate to the Alliance on a regular basis via payroll deduction.

AMP will also sponsor an annual employee charity drive to benefit the Salem Children's Charity in which AMP will match employee donations deducted from payroll during the drive period dollar-for-dollar. AMP will also offer employees the option to donate to the Children's Charity on a regular basis via payroll deduction.

The parties agree that the contributions described in this Section 7 are not related to any community impacts covered by the Annual Payment detailed in Sections 1 and 2, above. Said contributions described in this Section 7 shall be paid for a period of five years and are offered voluntarily by AMP.

8. **Community Service and Educational Programming.** AMP's Salem employees will be fully compensated to participate in six (6) community service projects per year advertised by Salem Volunteers or the Ward 3 Councilor. AMP shall provide one or more representatives to participate in a reasonable number, not to exceed two (2) per year, of City-sponsored educational programs on public health and drug abuse prevention, and to work cooperatively with other City public health and safety departments not mentioned in the agreement. The parties acknowledge that AMP's participation in any programming does not presume or require that AMP have substance abuse counselors on its staff or any other qualified experts to contribute to such programs.
9. **Employment.** To the extent permissible by law, AMP will make jobs available to local, qualified residents of the City; and such residency will be a positive factor in hiring decisions provided that this does not prevent AMP from hiring the most qualified candidates and complying with all employment laws and other legal requirements, including Section 2-2056 of the City's Ordinance. AMP will also work in a good faith, legal and non-discriminatory manner to similarly consider local status of vendors, suppliers, contractors and builders from the City, and the surrounding area, to be a positive factor in retaining such vendors.
10. **Wholesale Cannabis Availability.** To contribute to the success of geographically diverse marijuana retail locations within the City, AMP will guarantee a right of first refusal for its available wholesale cannabis and marijuana infused products to any retail marijuana establishment in downtown Salem or the Vinnin Square area of the City to insure against supply shortages in the first three (3) years of the Agreement.
11. **Improvements to the Retail Facility Site.** If AMP makes any capital improvements to the site at which the Retail Facility is located, such improvements shall be such that the property will match the look and feel of the City and be of construction standards at least at the quality of other nearby businesses. AMP agrees to comply with all laws, rules, regulations and orders applicable to the Retail 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. AMP shall request that any capital improvements made to the Retail

Facility by AMP by the landlord shall reflect the standards established in the City's climate change adaptation plan and that power supply shall be through the Salem PowerChoice electrical aggregation program's greenest available product or a supplier with a minimum of equivalent renewable power sources provided that such programs can offer power supply at a reasonably comparable price to market rate services, and provided further that AMP shall not be required to self-generate power on-site or within a limited distribution network.

12. **On-site Consumption and Delivery.** AMP agrees that, even if permitted by statute or regulation, it will prohibit on-site consumption of marijuana and marijuana-infused products at the Retail Facility and will not offer home delivery of marijuana, except as may be permitted pursuant to its Certificates of Registration to operate Registered medical Marijuana Dispensaries, however in the event that home delivery of marijuana from the Retail Facility is permitted by later statute or regulation, the Parties shall re-open this Section 12 and negotiate in good faith.
13. **Security.** AMP shall maintain security at least in accordance with the security plans for the Retail Facility as presented to the City and approved by the Cannabis Control Commission or such other state licensing or monitoring authority, as the case may be. AMP will maintain a cooperative relationship with the Police Department, including but not limited to periodic meetings to review operational concerns, cooperation in investigations, and communication to Police Department of any suspicious activities on the site. AMP shall promptly report the discovery of the following to the City's Police within twenty-four (24) hours of AMP becoming aware of such event: diversion of marijuana; unusual discrepancies identified during inventory; theft; loss and any criminal action; unusual discrepancy in weight or inventory during transportation; any vehicle accidents, diversions, losses, or other reportable incidents in the City that occur during transport; any suspicious act involving the sale, cultivation, distribution, processing, or production of marijuana by any person in the City; unauthorized destruction of marijuana; any loss or unauthorized alteration of records related to marijuana, or dispensary agents; an alarm activation or other event that requires response by public safety personnel; failure of any security alarm system due to a loss of electrical power or mechanical malfunction that is expected to last longer than eight (8) hours; and any other breach of security.

AMP shall also advise the Police Department if any employee is terminated under circumstances which may result in additional risk to the secure operation of the Retail Facility. AMP shall also provide the Police and Fire Departments with a written emergency plan and proof of training for all employees, including, but not limited to, how to safely exit and secure the Retail Facility and account for all employees.

- a. **Cameras.** To the extent requested by the City's Police Department, and consistent with the Regulations, AMP shall cooperate the City's Police Department in determining the placement of interior and exterior security cameras, so that at least two (2) cameras are located to provide an unobstructed view in each direction of the public way(s) on which the Retail Facility is located. Such camera requirements or locations may be altered by the Cannabis Control Commission during their security and architectural review process.
- b. **Diversion Prevention.** To the extent requested by the City's Police Department, and consistent with the Regulations, AMP shall cooperate with the City's Police Department to

implement a comprehensive diversion prevention plan to prevent diversion, such plan to be in place prior to the Sales Commencement Date. Such plan will include, but is not limited to, (i) training Retail Facility employees to be aware of, observe, and report any unusual behavior in customers or employees that may indicate the potential for diversion to persons under 21; (ii) utilizing seed-to-sale tracking software to closely track all inventory at the Retail Facility; (iii) require two-step verification of government issued identification prior to any sale; and (iv) refusing to complete a transaction if the customer appears to be under the influence of drugs or alcohol.

14. **Support.** The City agrees to submit to the Cannabis Control Commission, or such other state licensing or monitoring authority, as the case may be, certification of compliance with applicable local bylaws relating to AMP's application for a Certificate to operate the Retail Facility, where such compliance has been properly met, and to submit such certification within seven (7) days of any such request by AMP and/or the Cannabis Control Commission. The City agrees to use reasonable efforts to cooperate with AMP, if approved, to help assist AMP on their community support and employee outreach programs.
15. **City's Regulatory Authority.** This agreement does not affect, limit, or control the authority of City boards, commissions, and departments to carry out their respective powers and duties to decide upon and to issue, or deny, applicable permits and other approvals under the statutes and regulations of the Commonwealth, the General and Zoning Bylaws of the City, or applicable regulations of those boards, commissions, and departments, or to enforce said statutes, ordinances, and regulations. The City, by entering into this Agreement, is not thereby required or obligated to issue such permits and approvals as may be necessary for AMP to operate the Retail Facility in the City, or to refrain from enforcement action against AMP for violation of the terms of said permits and approvals or said statutes, ordinances, and regulations with respect to the Retail Facility.
16. **Term and Termination.** This Agreement shall take effect on the Opening Date, subject to the contingencies noted herein. This agreement shall continue in effect for so long as AMP operates the Retail Facility or any similar Retail Marijuana Facility within the City, or five (5) years from the Opening Date, whichever is earlier. At the conclusion of the term of this Agreement, the parties shall renegotiate a new Host Community Agreement in accordance with the current prevailing regulations and laws as such regulations and laws may be amended or replaced. In the event AMP no longer does business in the City or in any way loses or has its license revoked by the Commonwealth, this Agreement shall become null and void; however, AMP will be responsible for the pro-rated portion of the Annual Payment due as under section 2, above and the pro-rated portion of the TEF, due under section 5, above.
17. **Failure to Locate and/or Relocation.** This Agreement shall be null and void with respect to the terms concerning in the event that AMP relocates the Retail Facility out of the City. In the case of relocation out of City, an adjustment of funds due to the City hereunder shall be calculated based upon the period of operation within the City, but in no event shall the City be responsible for the return of any funds already provided to it by AMP.

18. **Notices.** Except as otherwise provided herein, any notices, consents, demands, request, approvals 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, and will be effective upon receipt for hand or said delivery and three days after mailing, to the other Party at the following addresses:
- a. To City: Mayor Kimberley Driscoll, City Hall, 93 Washington Street, Salem, MA, 09170, with copy to City Solicitor at the same address.
 - b. To AMP: AMP 329 Washington Street, Woburn, MA 01801 with a copy to Jesse Alderman, Esq. Foley Hoag LLP 155 Seaport Blvd Boston, MA 02110.
19. **Third-Parties.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or AMP.
20. **Governing Law.** This Agreement shall be governed in accordance with the laws of the Commonwealth of Massachusetts and venue for any dispute hereunder shall be in the courts of Essex County.
21. **Amendments/Waiver.** Amendments, or waivers of any term, condition, covenant, duty or obligation contained in this Agreement may be made only by written amendment executed by all signatories to the original Agreement, prior to the effective date of the amendment.
22. **Severability.** If any term or condition of the Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction or regulatory authority, 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. The parties agree that should any payments or voluntary contributions detailed herein later be deemed not enforceable or not required, AMP agrees to donate or gift the equivalent amount to the City on the same schedule as stated herein and for the duration of the Agreement's term. Further, AMP agrees it will not challenge, in any jurisdiction, the enforceability of any provision included in this Agreement; and to the extent the validity of this Agreement is challenged by AMP in a court of competent jurisdiction, AMP shall pay for all reasonable fees and costs incurred by the City in enforcing this Agreement.
23. **Successors/Assigns.** This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. AMP shall not assign, sublet, or otherwise transfer its rights nor delegate its obligations under this Agreement, in whole or in part, without the prior written consent from the City, such consent not to be unreasonably withheld, and shall not assign any of the monies payable under this Agreement, except by and with the written consent of the City and shall not assign or obligate any of the monies payable under this Agreement, except by and with the written consent of the City.
24. **Entire Agreement.** This Agreement constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

[Signature Page to Follow]

CITY OF SALEM

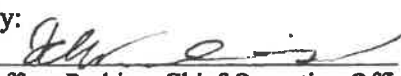
By:



Kimberley Driscoll, Mayor

ATLANTIC MEDICINAL PARTNERS, INC.

By:



Jeffrey Perkins, Chief Operating Officer