



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

April 20, 2022

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

Dear Council President Abreu and Honorable Members of the Council:

I write to inform the City Council that my Administration has negotiated a Host Community Agreement with Ember Gardens NBR, LLC and Ember Gardens, NBP, LLC of 1 Nauset Street, New Bedford, Massachusetts. Ember Gardens NBR, LLC and Ember Gardens, NBP, LLC are seeking approval for a state license for the sale of recreational adult use marijuana at its proposed facility on 1 Nauset Street in New Bedford.

In return for that attached letter of support, Ember Gardens NBR, LLC and Ember Gardens, NBP, LLC have agreed to provide substantial benefits to the City of New Bedford and its residents. Those benefits include but are not limited to the following:

- Ember Gardens NBR, LLC and Ember Gardens NBP, LLC shall pay to the City Host Community payments consisting of 3% of the gross retail sales of NBR of all marijuana and marijuana infused products plus 3% of the gross sales of NBP of all marijuana and marijuana infused products. Furthermore, in the event that marijuana or marijuana infused products cultivated or produced at the facility are transferred by the Licensees to a related entity owned or controlled in whole or in part by the Licensees or their affiliates, the value of such products for purposes of calculating the Host Community fee shall be based on the higher of 50% of the retail price at which such marijuana or marijuana infused products are sold by NBR or the highest wholesale price charged by NBP in any arms length transaction during the preceding twelve months.
- Ember Gardens NBR, LLC and Ember Gardens NBP, LLC shall also make annual contributions of \$150,000.00 or 1.5% of the facilities gross sales, whichever is greater, to New Bedford based non-profits or City run organizations that provide substance abuse prevention and educational programs in the City Public School District.

- To the extent allowed by Federal, State and Municipal Law and regulations, a “local labor hiring preference” shall exist for all residents of the City applying for employment at the facility. Within the confines of the law and other factors being equal, Ember Gardens NBR, LLC and Ember Gardens NBP, LLC shall reasonably seek to employ City residents before considering other candidates and to the extent consistent with Federal, State and Municipal Law and regulations Ember Gardens NBR, LLC and Ember Gardens NBP, LLC shall utilize best faith efforts to ensure that at least 20% of the employees at the facility are City residents.
- To the fullest extent allowed by law, Ember Gardens NBR, LLC and Ember Gardens NBP, LLC shall use best faith efforts in a legal and non-discriminatory manner to give priority to local businesses and vendors in the provision of goods and services required for the construction, maintenance and operation of its facility and shall use best faith efforts to ensure that at least 20% of their total annual expenditures on vendors and/or contractors will be spent on vendors and/or contractors based in New Bedford.
- Ember Gardens NBR, LLC shall pay an excise tax rate determined by the Commonwealth of Massachusetts for the sale of adult use marijuana and adult use marijuana infused products, currently at 3% of gross annual sales (said excise tax shall at least quarterly be distributed to the City by the State Treasurer).
- Ember Gardens NBR, LLC and Ember Gardens NBP, LLC agrees that they shall cause any motor vehicles owned, leased, or operated by it in its operations at the facility to be registered and principally garaged in New Bedford to ensure that New Bedford receives any motor vehicle excise tax due and payable.
- Ember Gardens NBR, LLC and Ember Gardens NBP, LLC shall maintain security at the facility in accordance with a security plan approved by the Cannabis Control Commission and the City of New Bedford.

I ask for your approval of the Host Community Agreement so that we can secure these benefits for New Bedford residents and businesses.

Thank you for your consideration of this important matter.

Sincerely,



Jon Mitchell
Mayor

/EJ/bar

Attachments:

Letter of Support with Cover letter
Host Community Agreement



CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

April 20, 2022

Shane Hyde, President
Fuego Farms, Inc.
Manager, Ember Gardens NBP, LLC
254 Newhill Avenue
Somerset, MA 02726

Stephen Soscia, SOC Signatory
Ember Gardens NBR, LLC
1 Nauset Street
New Bedford, MA 02746

Dear Gentlemen:

I do hereby confirm the City of New Bedford's support for Ember Gardens NBR, LLC and Ember Gardens, NBP, LLC to operate an adult only recreational marijuana retail facility in New Bedford on 1 Nauset Street, New Bedford, Massachusetts.

I have verified with appropriate local officials that the proposed facility on 1 Nauset Street is located in a zoning district that allows such use either by right or pursuant to local permitting.

Sincerely,

UNSIGNED

Jon Mitchell
Mayor

EJ/bar

HOST COMMUNITY AGREEMENT

Between City of New Bedford, Massachusetts and Ember Gardens NBR, LLC and Ember Gardens, NBP, LLC

This Host Community Agreement ("HCA") is entered into this ____ day of _____, 2022, by and between the City of New Bedford, a Massachusetts municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, acting through its Mayor (the "MAYOR") with an address of 133 Williams Street, New Bedford, Massachusetts (the "CITY"), and Ember Gardens NBR, LLC ("NBR") and Ember Gardens, NBP, LLC ("NBP"), both Massachusetts limited liability companies with a principal place of business of 1 Nauset Street, New Bedford, MA I (collectively, "LICENSEES" and, together with the CITY, herein referred to as the "PARTIES," and each of them being individually referred to as a "PARTY").

This HCA represents the understanding between the CITY and LICENSEES with respect to development of a tract of land with improvements located at 1 Nauset Street, New Bedford (the "PROPERTY") for use as an adult use marijuana retailer and cultivator/manufacturer (the "FACILITY").

RECITALS

WHEREAS, G.L. Chapter 94G, Section 3, and the regulations issued thereunder, require that CITY and LICENSEES execute an agreement setting forth the conditions for operation of the FACILITY that must include, but not be limited to, all stipulations of responsibilities between the host community and the marijuana establishment; and

WHEREAS, the LICENSEES intend and agree to pay all local taxes attributable to their operations, including real and personal property taxes, notwithstanding any exempt status to which they might otherwise be entitled; and

WHEREAS, the LICENSEES desire to be responsible corporate citizens and contributing members of the business community of the CITY, consistent with the CITY's "New Bedford Works" policy, and in the event the contingencies noted below are met, intends to provide certain benefits to the CITY over and above the increased employment base and other typical economic development benefits attributable to similar new businesses locating in the CITY; and

WHEREAS, the PARTIES agree and acknowledge that the CITY has identified certain concerns with respect to the impact of the FACILITY, which the Parties hereby stipulate are likely to cause the CITY to incur particular additional expenses and impacts on the CITY arising from the FACILITY that may include, but are not limited to additional responses to activity from the CITY's Police Department; added traffic control and/or parking measures and expenses and impacts on the CITY's roads; and expenditure of resources for additional fire protection services, inspectional and permitting services, public health services and abuse prevention efforts, as well as additional unforeseen impacts; and

WHEREAS, LICENSEES and the CITY have a mutual interest in the long-term sustainable development of both the LICENSEES' FACILITY and the economic growth of the CITY; and

WHEREAS, the PARTIES stipulate that the Community Payments set forth in this Agreement address direct or secondary impacts of the LICENSEES'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.

WHEREAS, the PARTIES intend to enter into this HCA as a means of memorializing their obligations with respect to the redevelopment of the PROPERTY, mitigation of the impacts of the FACILITY, as well as their intention to collaborate to the fullest extent possible to ensure the proposed improvements and operations occur efficiently and in a manner that will benefit the CITY:

NOW, THEREFORE, in consideration of the mutual promises of the PARTIES contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the PARTIES hereby agree as set forth herein.

1. REPRESENTATIONS. The PARTIES respectively represent and warrant that:
 - a. Each is duly organized and existing and in good standing, has the full power, authority, and legal right to enter into and perform this HCA, and the execution, delivery and performance hereof and thereof (i) will not violate any judgment, order, state law, bylaw, or regulation, and (ii) do not conflict with, or constitute a default under, any agreement or instrument to which either is a party or by which either party may be bound or affected; and
 - b. This HCA has been duly authorized, executed and delivered and constitutes legal, valid and binding obligations of each party, enforceable in accordance with its terms, and there is no action, suit, or proceeding pending, or, to the knowledge of either party, threatened against or affecting wither wherein an unfavorable decision, ruling or finding would materially adversely affect the performance of any obligations hereunder, except as otherwise specifically noted in this HCA.
2. LOCAL PERMITS. LICENSEES agree and recognize that they are required to obtain all local permits required pursuant to Massachusetts Law and the CITY's Ordinances and regulations. LICENSEES shall be required to pay the reasonable costs of the employment by CITY boards and/or officials of outside consultants, including without limitation, engineers, architects, scientists and attorneys required to review the application for such local permits required to operate the FACILITY.
3. LOCAL HIRING AND VENDORS. LICENSEES are committed to creating a non-discriminatory workplace and a welcoming work environment. LICENSEES are also committed to being a good neighbor to the CITY.
 - a. Employment. Therefore, where allowed by Federal, State and Municipal laws and regulations, a "Local Labor Hiring Preference" shall exist for all residents of the CITY applying for employment by LICENSEES at the FACILITY. Within the confines of the law, and all other factors being equal, LICENSEES shall reasonably seek to employ CITY residents before considering other candidates for open positions. In addition, to the extent such practice and its implementation are consistent with federal, state and municipal laws and regulations, LICENSEES shall use best faith efforts to ensure that at least twenty percent (20%) of the employees of the FACILITY are CITY residents. Prior to hiring any new

employees for the FACILITY, LICENSEES shall advertise and hold at least one hiring event for CITY residents, at which it will review its hiring needs and explain to attendees the process by which they may seek to be hired in connection with the FACILITY. Said hiring event shall take place at the PROPERTY or such other location in the CITY as may be approved by the MAYOR, such approval not to be unreasonably withheld or delayed.

Thirty days after opening to the public, and annually thereafter, LICENSEES shall provide to the MAYOR a hiring report. Said report shall include the full and part-time employment levels for the FACILITY as of the beginning of each month during the reporting period and the proportion of CITY residents in each category of employment. The LICENSEES shall furnish the CITY with such further information and documentation as the CITY may reasonably request to support and document compliance with this HCA.

- b. Vendors. To the fullest extent allowed by law, LICENSEES will use best efforts in a legal and non-discriminatory manner to give priority to local businesses and vendors in the provision of goods and services required for the construction, maintenance and continued operation of the FACILITY, including vendors and/or contractors used by the Establishment. At a minimum, LICENSEES shall use best faith efforts to ensure that at least twenty percent (20%) of their total annual expenditures on vendors and/or contractors will be spent on vendors and contractors based in the CITY.

Thirty days after opening to the public, and annually thereafter, LICENSEES shall provide to the MAYOR a spending report. Said report shall include the total expenditures of the FACILITY as of the beginning of each month during the reporting period and the proportion of CITY based businesses receiving such expenditures. The LICENSEES shall furnish the CITY with such further information and documentation as the CITY may reasonably request to support and document compliance with this HCA.

- c. Non-discrimination. LICENSEES will comply with the City's non-discrimination ordinance in hiring, transacting business and entering into contracts. To the extent permitted by law, LICENSEES will seek to hire employees and engage in contracts with a preference for diversity and supporting minority and women-owned businesses.
 - d. The percentage numbers set forth in paragraphs 3.a and 3.b, above are based upon the representations of the LICENSEES, and the LICENSEES understand and acknowledge that these percentages constitute a portion of the consideration for the CITY entering into this HCA.
4. APPROVAL OF MANAGER. If requested by the CITY, LICENSEES shall provide to the CITY, for review and approval, the name and relevant information, including but not limited to the information set forth in 935 CMR 500 or any successor regulation, of the

person proposed to act as on-site manager of the FACILITY. The submittal shall include authorization to perform a Criminal Offender Record Information (CORI) check. The CITY shall consider such request for approval within thirty days following submittal to determine if the person proposed is of suitable character to act as on-site manager. Such approval shall not be unreasonably denied, conditioned or delayed. In the event the CITY does not confirm or reject the proposed on-site manager within thirty (30) days, the manager shall be deemed approved by the CITY for purposes of this HCA. This approval process shall also apply to any change of on-site manager.

5. HOST COMMUNITY PAYMENTS. In the event LICENSEES receive all state and local licenses and permits necessary to operate the FACILITY, they shall remit to the CITY host community payments comprised of:
 - a. Three percent (3%) of the gross retail sales of NBR of all marijuana and marijuana-infused products, as those terms are defined by G. L. c. 94G; plus
 - b. Three percent (3%) of the gross sales of NBP of all marijuana and marijuana-infused products, as those terms are defined by G.L. c. 94G. In the event the marijuana or marijuana products cultivated or produced at the FACILITY are transferred by the LICENSEES to a related entity owned or controlled in whole or in part by the LICENSEES, or their affiliate(s), the value of such product for purposes of calculating the host community fee shall be based on the higher of: (i) 50% of the retail price at which such marijuana or marijuana products are sold by NBR; or (ii) the highest wholesale price charged by the NBP in any arms-length transaction during the preceding twelve months.

Such payments shall be delivered to the CITY on a quarterly basis. The first such payment shall be due 20 days after the 90th day following commencement of operations, and each subsequent payment shall be due on the same day of each quarter thereafter. As used herein, Commencement of operations shall mean the date on which a certificate of occupancy is issued for the FACILITY.

6. ANNUAL CHARITABLE/NON-PROFIT CONTRIBUTIONS. The LICENSEES, in addition to any funds otherwise specified herein, agree to make annual contributions of \$150,000 or one and one-half percent (1.5%) of the FACILITY's gross sales, whichever is greater, to New Bedford based non-profit or CITY-run organizations that provide substance abuse prevention and educational programs in the City public school district.
7. LOCAL OPTION EXCISE TAX. The PARTIES acknowledge that the CITY has adopted the local option sales tax upon the sale or transfer of marijuana or marijuana products by a marijuana retailer operating within the CITY, pursuant to the provisions of G.L. c.64N. Accordingly, NBR, as required by applicable law, shall remit to the Massachusetts Department of Revenue the excise tax rate determined by the Commonwealth of Massachusetts for the sale of adult-use marijuana and adult-use marijuana-infused products, currently at 3.0% of gross annual sales. Pursuant to G.L. c.64N, §3, the excise taxes received by the Department of Revenue "shall at least quarterly be distributed,

credited and paid [to the CITY] by the state treasurer.” Nothing herein shall limit the ability of the CITY to adjust the local sales tax in the future, should the law be amended to allow for an increase in such allowable sales tax.

8. PROPERTY TAXES. At all times during the Term of this Agreement, all property, both real and personal, owned, leased, used, or operated by Company shall be treated as taxable, and all applicable real estate and personal property taxes for that property shall be paid either directly by LICENSEES or by their landlord, and LICENSEES shall not object or otherwise challenge the taxability of such property and shall not seek a non-profit, agricultural or any other exemption from paying such taxes. Notwithstanding the foregoing, (i) if real or personal property owned, leased, used, or operated by LICENSEES is determined to be non-taxable or partially non-taxable, or (ii) 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 fair cash value as defined in G.L. c. 59, §38, or (iii) if LICENSEES are determined to be entitled or subject to exemption with the effect of reducing or eliminating the tax which would otherwise be due if not so exempted, then LICENSEES shall pay to the CITY a payment in lieu of taxes equal to an amount which, when added to the taxes, if any, actually paid on such property, shall be equal to the taxes which would have been payable on such property at fair cash value and at the otherwise applicable tax rate, if there had been no abatement or exemption; this payment shall be in addition to any other payments made by LICENSEES under this Agreement. In the event the owner of any real estate upon which any of the LICENSEES's operations in the CITY are situated, or any person acting on behalf of any such owner, shall fail or refuse to pay any such tax, or shall take any action that results in such real estate no longer becoming taxable by the CITY in whole or in part, then the LICENSEES, in addition to any other obligation contained in this Agreement, shall pay to the CITY a payment in lieu of taxes equal to an amount which, when added to the taxes, if any, actually paid on such property, shall be equal to the taxes which would have been payable on such property at fair cash value and at the otherwise applicable tax rate, if there had been no abatement, exemption, or failure to pay.
9. MOTOR VEHICLES. LICENSEES agree that they shall cause any motor vehicles owned, leased, operated, or used in its operations at the FACILITY to be registered and principally garaged in the CITY, provided however that vehicles primarily used by LICENSEES in connection with its other facilities shall not be subject to this requirement if they access the FACILITY on an incidental and occasional basis. The purpose of this provision is to ensure that the CITY receives any motor vehicle excise tax otherwise due and payable that is attributable to the motor vehicles that LICENSEES regularly use in connection with its operations at the FACILITY.
10. ACCOUNTING AND REVIEW. LICENSEES shall keep and maintain financial records in accordance with generally accepted accounting principles. Such records shall be available for inspection by the CITY upon request and shall include, but not be limited to, all financial records required in any section of 935 CMR 500.000 and business records, in accordance with 935 CMR 500.105(e), which shall include manual or computerized records of: (1) assets and liabilities; (2) monetary transactions; (3) books of accounts,

which shall include journals, ledgers and supporting documents, agreements, checks, invoices, and vouchers; (4) sales records including the quantity, form and cost of marijuana and marijuana products; and (5) salary and wages paid to each employee, stipend paid to each board member and any executive compensation, bonus, benefit or item of value paid to any individual affiliated with LICENSEES ("FINANCIAL RECORDS").

Following closure of the FACILITY, the LICENSEES shall keep all FINANCIAL RECORDS of the FACILITY for at least two (2) years.

The CITY shall have the right to examine and audit the FINANCIAL RECORDS. Examinations may be made upon not less than thirty (30) days prior written notice and shall occur during normal business hours at such place where said FINANCIAL RECORDS are maintained. The CITY's examination or audit shall be conducted in such manner as not to interfere with LICENSEES' normal business activities.

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

11. FACILITY DESIGN. LICENSEES agree that the FACILITY shall be designed, constructed and improved to reflect high quality construction standards and seek to improve the general design aesthetic of the neighborhood. The FACILITY shall be constructed in substantial accordance with the renderings entitled, "Ember Gardens – New Bedford Concept Renderings," prepared by Afterhours Design Collaborative, dated October 11, 2021.
12. SIGNAGE. Ground mounted, pylon, internally lit and flashing signs shall not be permitted. Wall signs shall be limited in size to be read at a pedestrian scale, it being expressly agreed that the wall sign depicted in the renderings referenced in Paragraph 11 hereof shall be deemed to comply with this requirement. The existing pylon sign on the property shall be removed. The size and color of all signs shall be in scale and compatible with the surrounding buildings and streets. When more than one sign is used, the graphics shall be coordinated to present a unified image. All signage shall, at a minimum, be subject to the requirements of New Bedford Code of Ordinances, §3200 and the requirements of the Cannabis Control Commission. In the event of any conflict between said requirements and this HCA, the more restrictive requirement shall prevail. Signage shall not refer to or depict marijuana or cannabis. All proposed signage shall be subject to administrative approval by the CITY's planning department. Neither LICENSEES nor their agents will erect, place or otherwise establish any off-premises sign advertising the FACILITY; this prohibition shall not prevent LICENSEES from erecting, placing or otherwise establishing signs advertising their other facilities, provided no such signs shall be located within the CITY.

13. LIGHTING. Site lighting and window displays shall be dark sky compliant. No up lights, flashing or colored LED lights shall be allowed on the premises. A photometric lighting plan is required in connection with site plan review and shall not be waived.
14. PARKING AND TRAFFIC. There shall be ample parking provided pursuant to an engineered plan submitted during site plan review. A transportation impact analysis and transportation management plan shall also be required during site plan review and shall separately address anticipated grand opening transportation demands.
15. RENEWABLE ENERGY. To the fullest extent practicable, the FACILITY's power supply shall use renewable power sources.
16. COMMUNITY HEALTH NEEDS ASSESSMENT. Prior to the commencement of operations, LICENSEES shall conduct a Health Impact Assessment ("HIA") for the neighborhood of the FACILITY. The HIA must be conducted by a firm approved by the CITY's Health Department and undertaken in cooperation with the Board of Health. If necessitated by public health concerns, the HIA may be conducted virtually, provided that every reasonable effort shall be made to maximize public participation. The HIA may utilize the most recent Community Health Needs Assessment prepared by Southcoast Hospitals Group as a baseline, but every effort shall be made to make the assessment as site specific as possible with no greater a radius than one mile of the site. The HIA must include at least two community meetings regarding the proposed operation with notice to the neighborhood and conducted in a City location as close as possible to the proposed site. LICENSEES must make every effort to incorporate the recommendations of the Board of Health in the operations plan for the FACILITY.
17. LOCAL AUTHORITY. This HCA does not waive, limit, control, govern or in any way proscribe the legal authority of any CITY board, commission, officer or official to regulate, authorize, restrict, inspect, investigate, enforce or issue, deny, suspend or revoke any permit, license or other approval with respect to the LICENSEES or the FACILITY.
18. ON-SITE CONSUMPTION. LICENSEES agree that, even if permitted by statute or regulation, it will prohibit on-site consumption of marijuana and marijuana infused products at the FACILITY.
19. SECURITY. LICENSEES shall maintain security at the FACILITY in accordance with a security plan approved by the CCC and the CITY. In addition, LICENSEES shall comply with all state and local laws and regulations regarding security at the FACILITY. At a minimum, LICENSEES shall:
 - a. Provide a security plan to be reviewed and approved by the CITY's Chief of Police. Any proposed substantive change to said security plan shall also require review and approval by the Chief of Police.
 - b. Engage in periodic meetings with the Police Department to review operational concerns and security at the FACILITY.

- c. Promptly report the discovery of any of the following to the Police Department as soon as possible and, in any event, within twenty-four hours: diversion of marijuana or marijuana infused products; unusual discrepancies identified during inventory; theft or loss of marijuana or marijuana infused products; unusual discrepancy in weight or inventory during transportation; any vehicle accidents, diversions, losses or other reportable incidents that occur during transport; any criminal activity or suspicious act involving the sale, distribution and delivery of marijuana and marijuana infused products; unauthorized destruction of marijuana; any loss or unauthorized alteration of records related to marijuana; any alarm activation or other event that requires response by public safety personnel; failure of any security alarm system due to loss of electrical power or mechanical malfunction that is expected to last longer than eight hours; and any other breach of security.
- d. Install interior and exterior security cameras in coordination with the Police Department, subject to final approval by the CCC, and provide access to all security camera feeds to the Police Department.
- e. Comply with the CCC's requirements regarding Criminal Offender Record Information ("CORI") review for any new manager hired and the Police chief shall review, within thirty days of receiving said CORI report, and provide recommendations as to whether the individual is suitable to hold the position.
- f. Refuse to complete a transaction to any customer, who LICENSEES reasonably believe to be under the influence of drugs or alcohol.
- g. Verify the legal age of all customers using a government-issued identification prior to the customer being admitted into the FACILITY and again prior to the completion of a transaction. LICENSEES must utilize electronic identification verification measures when possible.

20. TERM. The term of this HCA shall commence on the Execution Date and shall, subject to the provisions set forth below, run through the fifth anniversaries, respectively, following the commencement of retail sales by NBR and wholesale sales by NBP at the FACILITY, unless sooner terminated or extended pursuant to the provisions contained herein.

- a. This HCA shall terminate immediately if the CCC revokes or fails to renew for any reason LICENSEES approval(s) to operate the FACILITY, subject to any applicable cure periods or appeal by LICENSEES of such revocation or non-renewal.
- b. The CITY may terminate this HCA for cause by providing written notice to LICENSEES in the event that: (i) LICENSEES with willful or gross negligence violate any laws of the CITY or the Commonwealth with respect to the operation

of the FACILITY, and such violation remains uncured for thirty (30) days following the CITY's issuance to LICENSEES of written notice of such violation; (ii) LICENSEES fail to make payments to the CITY or any of the annual donations as required under this HCA, and such failure remains uncured for ten (10) days following the CITY's issuance to LICENSEES of written notice of such violation; or (iii) there is any other material breach of the HCA by LICENSEES, which material breach remains uncured for thirty (30) days following the CITY's issuance to LICENSEES of written notice of such violation.

- c. This Agreement shall terminate immediately if LICENSEES cease to operate the FACILITY for a period of three (3) months or more, except for good cause, including but not limited to any *force majeure* event, as hereinafter defined.
- d. Notwithstanding the above, all payments required hereunder shall remain in effect for the full duration of LICENSEES' operation of the Facility. In the event such term is deemed to be contrary to law, the payments shall remain in effect for the longer of five years or the maximum period allowed by law, and this agreement together with such payments shall automatically renew for successive terms of the longer of five years or the maximum period allowed by law. LICENSEES hereby express their commitment to make all payments provided for herein, notwithstanding any statutory change or court ruling that would otherwise relieve LICENSEES of their legal obligation to do so.
- e. At the conclusion of the five-year term set forth above, the PARTIES may agree upon an extension of this HCA or may negotiate the terms of a new HCA. If the PARTIES are unable to reach agreement on such an extension or a new HCA, this HCA shall remain in full force and effect. Under no circumstances shall the FACILITY be in operation without an operative HCA voluntarily entered into by the CITY.

21. **DILIGENT PURSUIT OF FACILITY.** LICENSEES agree to diligently pursue all licenses, permits and approvals required to open and operate the FACILITY. Within one hundred and fifty (150) days after execution of this HCA (unless extended by the CITY for cause), LICENSEE shall file with the CITY's Planning Board all application forms and required supporting documents to request a special permit to allow the construction and operation of the FACILITY. Also within said one hundred and fifty (150) days (unless extended by the CITY for cause), LICENSEES shall file with the CCC an application and all required supporting documents requesting provisional licensure for the FACILITY, and they shall diligently and expeditiously pursue such applications. LICENSEES shall provide the CITY written status updates at least every ninety (90) days regarding all efforts undertaken by LICENSEES to secure any necessary licenses, permits and approvals for the construction and operation of the FACILITY. LICENSEES shall commence construction of the FACILITY within one hundred and fifty (150) days after both receipt of all such licenses, permits and approvals for the construction of the FACILITY, and they shall diligently continue construction through completion of the FACILITY. No later than forty-five (45) days after completion of construction, LICENSEES shall request a certificate of

occupancy from the CITY's Inspectional Services Department and final licensure from the CCC. If the FACILITY has not commenced operations within two years after execution of this HCA, LICENSEES shall provide the MAYOR with a written explanation for such delay. If the MAYOR determines that LICENSEES have failed to diligently pursue all necessary licenses, permits and approvals for the FACILITY, or has otherwise failed to take all reasonable actions necessary to commence operations within two years as required hereunder and that said delays have not resulted primarily due to causes beyond LICENSEES' control, he may terminate this HCA after first affording LICENSEES written notice and a thirty (30) day opportunity to cure.

22. AMENDMENTS AND NOTICES. This HCA may only be modified by the express written consent of both PARTIES. Any and all notices, consents, demands, requests, approvals or other communications required or permitted under this HCA, 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:

To CITY:

Mayor
New Bedford City Hall
133 Williams Street
New Bedford, MA 02740

Copy to:

City Solicitor
City Hall
133 Williams Street
New Bedford, MA 02740

To LICENSEES:

Ember Gardens NBR
1 James P. Murphy Highway, Suite 200
West Warwick, RI 02893

Ember Gardens NBP
254 Newhill Avenue
Somerset, MA 02726

Copy to:

Lesley Hawkins
Prince Lobel Tye
1 International Place, Suite 3700
Boston, MA 02110

Each of the PARTIES shall have the right by notice to the other to designate additional persons to whom copies of notices must be sent, and to designate changes in address.

23. SUCCESSORS AND ASSIGNS. This HCA is binding upon the PARTIES hereto, their successors, assigns and legal representatives. LICENSEES shall not assign or transfer any interest or obligation in this HCA without the prior written consent of the CITY, which shall not be unreasonably delayed, conditioned or withheld; provided, however, that such consent shall not be required in the event such transfer or assignment is between LICENSEES and another entity authorized by the CCC to operate the FACILITY, or if such assignment or transfer is to: (a) an affiliate entity of LICENSEES; or (b) an entity which controls, is controlled by, or is under the common control of LICENSEES; or (c) an entity into or with which LICENSEES merge or consolidate or by which they are acquired.
24. FORCE MAJEURE. If and to the extent that either PARTY is prevented from performing its obligations hereunder by an event of *force majeure*, such party shall be excused from performing hereunder and shall not be liable in damages or otherwise, and the parties shall instead negotiate in good faith with respect to appropriate modifications of the terms hereof. For purposes of this HCA, the term *force majeure* shall mean the supervening causes described here, each of which is beyond the reasonable control of the affected party: acts of God, fire, earthquakes, floods, explosion, actions of the elements, war, terrorism, riots, mob violence, a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, laws or orders of any governmental or military authorities, or any other cause similar to the foregoing, not within the control of such party obligated to perform such obligation.
25. CHOICE OF LAW. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
26. LEGAL FEES. LICENSEES shall reimburse the CITY for reasonable attorney fees incurred by the CITY in conjunction with the FACILITY, except as a result of the willful or intentional misconduct of the CITY, including in connection with the negotiation of this HCA and any related agreements. Such reimbursement shall be made within fourteen days after written request by the CITY.
27. INDEMNIFICATION. LICENSEES shall indemnify, defend, and hold the CITY harmless from and against any and all claims, demands, subpoenas, liabilities, actions, causes of actions, defenses, and/or proceedings, including resultant costs and attorney's fees, except as a result of the willful or intentional misconduct of the CITY (collectively, the "Claims"), brought against the CITY, its agents, departments, officials, employees, and/or successors, by any third party arising from or relating to the FACILITY or the HCA. Such indemnification shall include, but shall not be limited to, all reasonable fees and reasonable costs of attorneys and consultants of the CITY's choosing incurred in defending or responding to such claims, demands, subpoenas, liabilities, actions, causes of actions, defenses, and/or proceedings. The LICENSEES agree, within thirty (30) days of written

notice by the CITY, to reimburse the CITY for any and all costs and fees incurred in responding or defending itself with respect to any such claims, demands, subpoenas, liabilities, actions, causes of actions, defenses, and/or proceedings.

28. NO CHALLENGE OF AGREEMENT. The LICENSEES agrees they will not challenge, in any jurisdiction, the enforceability of any provision included in this HCA; and to the extent the validity of this HCA is challenged, the LICENSEES shall pay for all reasonable fees and costs incurred by the CITY in defending such challenge. Furthermore, the LICENSEES shall pay for all reasonable fees and costs incurred by the CITY in enforcing this HCA if the CITY prevails.
29. LATE PAYMENTS. LICENSEES acknowledge that time is of the essence with respect to performance of its obligations hereunder and that payments made more than ten (10) business days late shall be subject to the higher of (a) a penalty of five percent (5%) of the overdue payment(s); or (b) interest at the rate prescribed by G.L. c. 59, §57. LICENSEES further acknowledge that all payments required hereunder are “other municipal charges,” pursuant to G.L. c.40, §57 and “local charges,” pursuant to G.L. c.40, §58.
30. LIMITED SEVERABILITY. If any term or condition of the HCA 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 HCA shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced. The PARTIES agree that should any payments detailed herein later be deemed not enforceable or not required, the CITY would be substantially and materially prejudiced.
31. CITY SUPPORT. The CITY shall support the LICENSEES’s application(s) with the Cannabis Control Commission and work with the LICENSEES to secure its marijuana establishment licenses at the FACILITY. However, the CITY makes no representation or promise that it or any CITY board or official will act on any other license or permit request in any way other than by the CITY’s normal and regular course of conduct and in accordance with their codes, rules and regulations and any statutory guidelines governing the same.
32. COUNTERPARTS. This HCA may be executed in counterparts.

Executed under seal, this ____ day of _____, 2022.

CITY OF NEW BEDFORD

By its MAYOR

Jonathan Mitchell

EMBER GARDENS NBR, LLC

By:

Stephen Soscia, SOC Signatory

EMBER GARDENS NBP, LLC

By:

Shane Hyde, President
Fuego Farms, Inc., Manager