

**HOST COMMUNITY AGREEMENT FOR THE SITING OF
A MARIJUANA ESTABLISHMENT IN THE TOWN OF BOLTON**

THIS HOST COMMUNITY AGREEMENT (this “Agreement”) is entered into this ___ day of _____ 2020 (the “Effective Date”) by and between the **TOWN OF BOLTON**, a Massachusetts municipal corporation acting by and through its Board of Selectmen, with a principal address of 663 Main Street, Bolton, MA 01740 (the “Town”), and **LOVECRAFT OF MASSACHUSETTS, INC.**, a Massachusetts corporation with a principal address of 15 East Line Road, Edgartown, MA 02539 (the “Company”) (the Town and the Company are together the “Parties” and individually a “Party”).

Recitals

WHEREAS, the Company wishes to locate a licensed Marijuana Establishment, specifically a Marijuana Retailer, a Marijuana Product Manufacturer, and a Tier 4 Marijuana Cultivator, as those terms are defined and used in M.G.L. c. 94G and 935 CMR 500.00 et seq., and the Zoning Bylaw of the Town of Bolton (the “Facility”), said Facility to be located at 58 Main Street, Bolton, MA, including all land, structures, and other items located at said address (the “Site”) in accordance with the laws of the Commonwealth of Massachusetts and those of the Town;

WHEREAS, in accordance with M.G.L. c. 94G, § 3(d), a marijuana establishment or registered marijuana dispensary seeking to operate in a municipality must execute an agreement with the host municipality setting forth the conditions to have the marijuana establishment located within the municipality and including the stipulations of responsibilities between the municipality and the marijuana establishment; and

WHEREAS, the Company desires to provide community impact fee payments to the Town pursuant to M.G.L. c. 94G, § 3(d) in order to address any reasonable costs imposed upon the Town by the Company’s operations.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the mutual promises set forth below, the Parties agree as follows:

Agreement

- 1. Payments:** The Parties anticipate that the Facility will impact the Town’s resources in ways unique to such businesses and will uniquely draw upon the Town’s resources such as the Town’s road system, law enforcement, fire protection services, inspectional and permitting services, and public health services in a manner not shared by the general population and may cause additional unforeseen impacts upon the Town. Accordingly, in order to mitigate any such impacts upon the Town and the use of Town resources, The

Company shall make certain payments to the Town in the amounts and under the terms provided as follows:

- a. Processing Payment. The Company shall make a one-time payment to the Town of Five Thousand Dollars (\$5,000.00) to cover the Town's expenses relating to the negotiation and approval of this Agreement. The Processing Payment shall be paid to the Town within seven (7) days of the mutual execution of this Agreement.
- b. Community Impact Fee.
 - (1) During the term of this Agreement the Company shall pay to the Town a "Community Impact Fee" in an amount equal to three percent (3%) of the gross sales of the Facility (the "Community Impact Fee Payments"). The Community Impact Fee Payments shall be made as follows:
 - i. The initial Community Impact Fee Payment ("Initial Payment") shall be due on the first day of the seventh (7th) month following the date on which Company commences the operation of the Facility, having received a "commence operations" status from the Massachusetts Cannabis Control Commission for one or more portions of the Facility ("Opening Date");
 - ii. Subsequent Community Impact Fee Payments shall be due six (6) months following the most recent Community Impact Fee Payment.
 - (2) Calculation of Gross Sales:
 - i. Gross sales of the Facility shall include all retail sales, including retail sales delivered from the Facility (if applicable), all wholesale sales to third parties, and all transfers to facilities owned or controlled by the Company or an affiliated entity.
 - ii. The value of wholesale sales shall be determined by arms-length sales and shall include all marijuana, marijuana infused products, paraphernalia, and any other products produced at the Facility.
 - iii. In the event that marijuana or marijuana products produced at the Facility are sold by the Company at marijuana retail establishments located outside of the Town that are owned or controlled by the Company or an affiliated entity such that the product is not subject to an arms-length sale, the value of such product for purposes of calculating the Community Impact Fee shall be based on the wholesale value of the marijuana and marijuana products produced at the Facility during the preceding three months, or, if no such sales have taken place, the wholesale value of said product based on available market data.
 - (3) During the Term of this Agreement, if the Commonwealth of Massachusetts increases the three percent (3%) maximum community impact fee amount that a

marijuana establishment or registered marijuana dispensary may pay to a municipality pursuant to M.G.L. c. 94G, § 3(d) (or a successor statute), the Community Impact Fee under this Agreement shall be equivalent to such higher community impact fee amount.

2. **Taxes:** At all times during the Term of this Agreement, property, both real and personal, owned or leased by the Company shall be treated as taxable, and all applicable real estate and personal property taxes for that property shall be paid either directly by the Company or by its landlord, and neither the Company nor its landlord shall object or otherwise challenge the taxability of such property.
3. **Community Impact Fee Relative to Town Costs:** Pursuant to M.G.L. c. 94G, §3(d), a “community impact fee shall be reasonably related to the costs imposed upon the Town by the operation of the marijuana establishment...” (“Town Costs”). Notwithstanding the foregoing, the Parties acknowledge the difficulty of computing actual Town Costs and have agreed to the Community Impact Fees in lieu of attempting to determine actual Town Costs incurred. The Company acknowledges that the impacts of the Facility may be impracticable to ascertain and assess as impacts may result in budgetary increases though not separately identified, and consequently, the Company acknowledges that the payments due under this Agreement are reasonably related to Town Costs.
4. **Community Impact Fee as Other Municipal Charges:** The Community Impact Fee is expressly included as “other municipal charges” pursuant to M.G.L. c. 40, § 57. A Town licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers, of the Company or agent thereof if the Company’s name appears on a list furnished to the licensing authority from the Bolton Tax Collector of individuals delinquent on their taxes and/or water bills. Written notice must be given to the Company by the Bolton Tax Collector, as required by applicable provision of law, and the Company must be given the opportunity for a hearing not earlier than fourteen (14) days after said notice.
5. **Use of Community Impact Fee:** The Town may expend the Community Impact Fee at the Town’s sole and absolute discretion.
6. **Payments and Compliance with Agreement as Condition of Operation; Default and Remedy:**
 - a. All payments required of the Company under this Agreement, including but not limited to the Community Impact Fee Payments and taxes, are necessary for the Company’s continued operation of the Facility. Failure to make any required payments shall constitute a default of this Agreement and may serve as cause for the Town’s immediate review, upon ten (10) business days’ notice to the Company by the Town, of the remedies available to the Town in this section and other sections of this Agreement.
 - b. The Company shall be in default of this Agreement if any of the following occur:

- i. The Company fails to make any payments required pursuant to this Agreement and such failure is not cured within ten (10) business days of written notification from Town; or
 - ii. The Company breaches any other provision of this Agreement and such breach is not cured within thirty (30) days of written notification from the Town.
- c. As a remedy for any default by the Company, the Town may, among other remedies, revoke or limit the permission of the Company to operate in the Town and issue an order to cease and desist with all operations associated with the Facility upon written notice from the Town. The Town's costs of enforcing against any such default, including the Town's attorneys' fees, shall be paid by the Company.

7. Scope of Facility:

- a. This Agreement authorizes and governs the operation of the Facility as specifically defined in this Agreement. The Company shall not expand the Facility in any way without notifying the Town and entering good faith negotiations to amend this Agreement, provided that any such amendment shall not result in a decrease in the Community Impact Fee Payments due to the Town under this Agreement.
- b. The Company shall not seek licensure for or seek to operate any type of marijuana establishment at any other location within the geographic boundaries of the Town without first entering into a separate host community agreement with the Town.
- c. Full build-out of the Facility and all of its component uses (retail, product manufacturing, and cultivation) shall be completed within three (3) years of the Effective Date and the Facility shall be limited to those components in place and operating within three (3) years of the Effective Date, unless this deadline is extended in writing by the Board of Selectmen.

8. Site and Facility Operations:

- a. Traffic Mitigation. The Company shall comply with any Town bylaw, regulation, policy, or local approval with respect to providing sufficient mitigation of traffic impacts associated with the Facility. At any time during the Term, the Company shall upon request submit a traffic mitigation plan for review and approval by the Board of Selectmen. Failure by the Company to mitigate traffic impacts associated with the Facility to the satisfaction of the Board of Selectmen shall be a default of this Agreement and grounds for the Town to pursue the remedies specified in Section 6 of this Agreement, to pursue other remedies available under this agreement or at law, or to seek termination of this Agreement.
- b. Site Access. The Company shall modify the Site so that access and egress is limited to Main Street (Route 117), and the Site's access to Bolton Woods Way shall be

permanently closed and gated, with access and egress only available to emergency vehicles, unless this restriction is modified or waived in writing by the Board of Selectmen.

- c. Other Uses, Tenants, and Subtenants. The Site shall not contain any uses other than the Facility and no tenants or subtenants shall be allowed to operate at the Site, unless this restriction is modified or waived in writing by the Board of Selectmen.
- d. Security.
 - (1) The Company shall maintain security at the Facility at least in accordance the security plan presented to the Town and approved by the Cannabis Control Commission. In addition, the Company shall at all times comply with all applicable laws and regulations regarding the operations of the Facility and the security thereof. Such compliance shall include but will not be limited to: providing hours of operation, after-hours contact information, and access to surveillance operations to the Bolton Police Department, and requiring agents and employees of the Facility to produce identification to law enforcement upon request.
 - (2) The Company shall promptly report the discovery of the following to Bolton Police Department within twenty-four (24) hours: 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 that occur during transport; any suspicious act involving the sale, distribution, and delivery of marijuana by any person; unauthorized destruction of marijuana; any loss or unauthorized alteration of records related to marijuana, registered qualifying patients, personal caregivers, 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 hours; and any other breach of security.
 - (3) The Company shall coordinate with the Bolton Police Department in the development and implementation of required security measures, including the determination of the placement of security cameras, and the sharing of security information. The Company will maintain a cooperative relationship with the Bolton Police Department, including but not limited to, periodic meetings to review operational concerns and communication with the Bolton Police Department of any suspicious activities at the Facility.
- e. Odor Control. The Company shall contain all marijuana-related odors onsite through use of odor control technologies, including but not limited to appropriate ventilation and air handling equipment and odor resistant packaging. Complaints received by the Town and provided to the Company concerning odors that are detectable off of the Facility site shall be addressed thoroughly and expediently by the Company. The

Company shall provide the Town with an odor control plan, subject to review and approval by an expert selected by the Town at its sole discretion, with the cost of said review borne by the Company but not to exceed \$10,000. Failure by the Company to contain all marijuana-related odors onsite shall be a default of this Agreement and grounds for the Town to pursue the remedies specified in Section 6 of this Agreement, to pursue other remedies available under this agreement or at law, or to seek termination of this Agreement.

f. Operating Hours.

(1) The Board of Selectmen shall have authority to restrict the hours of operation of each portion of the Facility, beyond the maximum hours set forth in the Bolton Zoning Bylaws and any Special Permit issued by the Bolton Planning Board for the Facility.

(2) The retail portion of the Facility shall be closed on Sundays, unless Sunday operating hours are authorized in writing by the Board of Selectmen.

(3) So long as there is a school bus stop located within 500 feet of the Site, the retail portion of the Facility shall be closed 30 minutes before and 30 minutes after the pick-up and drop-off times at the bus stop, unless this restriction is modified or waived in writing by the Board of Selectmen.

g. Approval of Manager. If requested by the Town, the Company shall provide to the Town, for review and approval, the name and relevant information, of the person proposed to act as on-site manager of the Facility. The submittal shall include authorization to perform a criminal history (CORI) check. The Town shall consider such request for approval within thirty (30) days following submittal to determine, in consultation with the Chief of Police, 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 that the Town does not provide confirmation or rejection of the proposed on-site manager within thirty (30) days, that manager shall be deemed approved by the Town. This approval process shall also apply to any change of on-site manager.

h. Diversion Program. To the extent requested by the Bolton Police Department, and consistent with the regulations of the Cannabis Control Commission, the Company shall work with the Bolton Police Department to implement a comprehensive diversion prevention plan to prevent diversion, such plan to be in place prior to the date that the Company commences operations at the Facility. Such plan will include but is not limited to: (i) training the Company's employees to be aware of, observe, and report any unusual behavior in authorized visitors or other employees that may indicate the potential for diversion; and, (ii) utilizing seed-to-sale tracking software to closely track all inventory at the Facility.

9. **Compliance with Local Law:** The Company shall work cooperatively with all necessary

Town boards, commissions, committees, officers, or officials to ensure that the Company's operations are compliant with the bylaws, regulations, and policies of the Town. This Agreement does not waive, limit, control, or in any way affect the legal authority of any Town board, commission, committee, officer, or official to regulate, authorize, restrict, inspect, investigate, enforce against, or issue, deny, suspend, or revoke any permit, license or other approval with respect to, the Company or the Facility, nor does it waive, limit, control, or in any way affect the legal authority of the Bolton Police Department to investigate, prevent, or take action against any criminal activity with respect to the Company or the Facility. Nothing in this Agreement presumes, implies, suggests, or otherwise creates any promise either that the Company shall obtain or retain any or all local permits, licenses, and other approvals that are required in order to operate at the Facility.

10. Control of Facility, License Caps: The Company shall at all times comply with the regulations and policies of the Cannabis Control Commission with respect to control of the Facility by entities licensed to operate other marijuana establishments and the cap on marijuana establishment licenses that may be controlled by a single entity or operator.

11. Additional Company Obligations and Community Support:

- a. Annual Reports. The Company shall, at least annually, provide the Town with copies of all reports submitted to the Cannabis Control Commission regarding operations at the Facility.
- b. Financial Records.
 - (1) At the time the Company submits each Community Impact Fee Payment to the Town, the Company shall submit financial records to the Town with a certification of gross sales with respect to such Payment. The Town may submit copies of any of the forgoing documents to the Cannabis Control Commission at any time. The Company shall also submit to the Town copies of any additional financial records the Company must submit to the Cannabis Control Commission. The Company shall maintain its books financial records, and other compilations of data pertaining to the requirements of this Agreement in accordance with standard accounting practices and any applicable regulations or guidelines of the Cannabis Control Commission. All such records shall be kept for a period of at least seven (7) years. The provisions of this section shall survive the termination or expiration of this Agreement.
 - (2) During the term of this Agreement and for three (3) years following termination of this Agreement, the Town shall have the right to examine, audit and copy (at its sole cost and expense) those parts of the Company's books and financial records which relate to the determination of each Payment. Such examinations may be made upon not less than thirty (30) days prior written notice from the Town and shall occur only during normal business hours at such place where said books, financial records and accounts are maintained. The Town's examination, copying

or audit of such records shall be conducted in such manner as not to interfere with the Company's normal business activities. The provisions of this section shall survive the termination or expiration of this Agreement.

- c. Local Vendors. To the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company shall use good faith efforts in a legal and non-discriminatory manner to give priority to qualified local businesses and vendors in the provision of goods and services called for in the construction, maintenance and continued operation of the Facility. Notwithstanding the foregoing, residency within the Town will be one of several factors in hiring decisions at the Facility but shall not be determinative and shall not prevent the Company from engaging services from the most qualified vendors.
- d. Employment/Salaries. Except for senior management, and to the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company shall use good faith efforts in a legal and non-discriminatory manner to give priority to hire qualified residents of the Town as employees at the Facility. Notwithstanding the foregoing, residency within the Town will be one of several factors in hiring decisions at the Facility but shall not be determinative and shall not prevent the Company from hiring the most qualified candidates.
- e. Reports on Vendors and Employment. The Company shall provide the Town with annual reports indicating the percentages of vendors and employees in accordance with paragraphs (a) and (b) above.

12. Indemnification: Upon the Effective Date, the Company shall defend, indemnify, and hold harmless the Town, its officers, employees, and agents ("Indemnified Parties") against any claims, actions, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits against or involving the Indemnified Parties, including reasonable attorneys' fees, reasonable experts' fees, and associated court costs ("Liabilities") that arise from or relate in any way to (i) this Agreement, or (ii) the Facility. The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the Town which would exist at common law or under other provisions of this Agreement. This indemnification shall survive the termination or expiration of this Agreement for a period equal to the applicable statute of limitations period. If any action or proceeding is brought against the Town arising out of any occurrence described in this section, upon notice from the Town, the Company shall, at its expense, defend such action or proceeding using legal counsel approved by the Town, provided that no such action or proceeding shall be settled without the approval of the Town.

13. Town Support: The Town agrees to submit to the Cannabis Control Commission all documentation and other information required from the Town for the Company to obtain approval to operate the Facility. The Town agrees to support the Company's applications with the Cannabis Control Commission but makes no representation or promise that it

will act on any other license or permit request in any particular way other than by the Town's normal and regular course of conduct and in accordance with their rules and regulations and any statutory guidelines governing them. The Town agrees to use best efforts to work with the Company, if approved, to help advise the Company on their community support and employee outreach programs.

14. Term and Termination:

- a. This Agreement shall take effect on the Effective Date.
- b. Unless terminated, this Agreement shall continue in effect until a final Community Impact Fee Payment is accepted by the Town covering gross sales for the final six months of the Company's fifth (5th) year of operation of the Facility following the Opening Date, such that the Company's obligation to make the Community Impact Fee Payments shall not be effective for more than five (5) years (the "Term").
- c. Upon the fourth (4th) anniversary of the Opening Date, the Parties shall negotiate in good faith a new host community agreement to succeed this Agreement, unless such a successor agreement is prohibited by law.
- d. Notwithstanding the default remedies of the Town set forth in Section 6 of this Agreement, in the event the Company (i) permanently ceases operation of the Facility, (ii) in any way loses or has its license(s) permanently revoked by the Cannabis Control Commission, or (iii) fails to comply with the terms of this Agreement and such failure is not cured within thirty (30) days of the Company receiving written notice from the Town of the Company's failure to comply, the Town may terminate this Agreement upon (10) days written notice to the Company.
- e. This Agreement shall terminate, with notification of such status submitted by the Town to the Cannabis Control Commission, should any of the following occur:
 - (1) The Company is not granted a Special Permit authorizing the operation of the Facility by the Bolton Planning Board in accordance the Town of Bolton's Zoning Bylaw within six (6) months of the Effective Date of this Agreement.
 - (2) The Company fails to commence the operation of the Facility within twelve (12) months of the Effective Date of this Agreement.

The Bolton Board of Selectmen may, in its sole and absolute discretion, grant an extension of any of these deadlines such that this Agreement shall remain in full force and effect, provided that the Company has continued to act in good faith to commence operation of the Facility. Such extension shall be set forth in a letter from the Bolton Board of Selectmen.

- f. This Agreement may be terminated by the Company, with notice to the Town, if the Company (i) determines that it will not commence the operation of the Facility, or (ii)

permanently ceases operation of the Facility, provided that any payments due to the Town shall be pro-rated and payable by the Company at the time of such termination. This subparagraph shall survive the termination of this Agreement.

- 15. Successors/Assignment:** The qualifications and identity of the Company is of particular concern to the Town and it is because of the Company's qualifications and identity that the Town has entered into this Agreement with the Company. The Company shall not assign or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the Town, said consent not to be unreasonably withheld. If the Company wishes to assign this Agreement to another entity, then it shall provide written notice to the Town, in which it shall also provide information on the prospective assignee. The Town shall have fifteen (15) days to identify any concerns with the prospective assignee, but the Town shall not unreasonably condition, postpone, or withhold its consent. No voluntary or involuntary successor in interest of the Company shall acquire any rights or powers under this Agreement without the prior written consent of the Town. Any change in control of the Company resulting from a merger, consolidation, stock transfer, or asset sale, or a change in the name of the Company, shall be deemed an assignment or transfer for purposes of this Agreement that requires the Town's prior written consent.
- 16. No Joint Venture:** The Parties agree that nothing contained in this Agreement or any other documents executed in connection herewith is intended or shall be construed to establish the Town, or the Town and any other successor, affiliate or corporate entity as joint ventures or partners.
- 17. No Rights in Third Parties:** This Agreement is not intended to, nor shall it be construed to create any rights in any third parties.
- 18. Governing Law:** This Agreement shall be governed and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, without regard to the principles of conflicts of law, and the Company submits to the jurisdiction of a court of competent jurisdiction in Hamden County for the adjudication of disputes arising out of this Agreement. The Parties expressly waive any defense to enforcement based upon nonconformance with federal law regarding the illegality of marijuana.
- 19. Headings:** The article, section, and/or paragraph headings in this Agreement are for convenience of reference only, and shall in no way affect, modify, define or be used in interpreting the text of this Agreement.
- 20. Amendments / Waivers:** 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 of the Parties. Forbearance or indulgence by a Party shall not be construed as a waiver, nor limit the remedies that would otherwise be available to that party under this Agreement or applicable law. No waiver of any breach or default shall constitute or be deemed evidence of a waiver of any subsequent breach or default. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict

compliance with every provision of this Agreement.

21. 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, 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.

22. Right to Reopen:

- a. If under applicable Massachusetts law the terms of this Agreement are determined to any extent to be illegal, otherwise invalid, or incapable of being enforced, which unenforceability would materially and adversely affect the economic substance of the transactions contemplated by this Agreement, the Town and the Company shall negotiate in good faith amendments to this Agreement so as to result in neutral economic impact to either the Town or the Company.
- b. In the event that the Company enters into a host community agreement or other similar agreement with another municipality in the Commonwealth of Massachusetts that contains financial terms more beneficial to such municipality than this Agreement provides to the Town, taking into consideration the marketplace, number of other operating recreational or medical marijuana facilities in the municipality as compared to the Town, the Company agrees to reopen this Agreement and negotiate an amendment resulting in financial benefits to the Town equivalent or superior to those provided to the other municipality.

23. Entire Agreement: This Agreement constitutes the entire integrated agreement between the Parties with respect to the matters described, and 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.

24. Notices: Except as otherwise provided in this Agreement, any notices given under this Agreement shall be addressed as follows:

The Town: Town Administrator
 Bolton Town Hall
 663 Main Street
 Bolton, MA 01740

with a copy to: Town Planner
 Bolton Town Hall
 663 Main Street
 Bolton, MA 01740

Company:

Notice shall be deemed given (a) two (2) business days after the date when it is deposited with the U.S. Post Office, if sent by first class or certified mail, (b) one (1) business day after the date when it is deposited with an overnight courier, if next business day delivery is required, (c) upon the date personal delivery is made, or (d) upon the date when it is sent by email, if the sender receives reply email confirming such delivery has been successful and the sender mails a copy of such notice to the other Party by U.S. first-class mail on such date.

25. Counterparts: This Agreement may be signed in any number of counterparts all of which taken together, shall constitute one and the same instrument, and any Party may execute this Agreement by signing one or more counterparts.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above.

TOWN OF BOLTON

LOVECRAFT OF MASSACHUSETTS.
INC.

Donald Lowe,
Town Administrator

Nicholas Martin Catt,
President and Treasurer

Duly Authorized by Vote of the
Bolton Board of Selectmen on _____,
2020

DRAFT