COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
SUPERIOR COURT DEPARTMENT

ESSEX, ss

HVV MASSACHUSETTS, INC., *Plaintiff*, v. SEFATIA ROMEO THEKEN, MAYOR and CITY OF GLOUCESTER, *Defendant*.	Civil Action No. _____

RECEIVED

11/24/2021

COMPLAINT AND JURY DEMAND

Introduction

1. Massachusetts law requires that, before applying for a state retail cannabis license, every marijuana establishment must first execute a host community agreement ("HCA") with its local municipality. The law also allows municipalities to impose a limited "community impact fee" on marijuana establishments under the HCA to offset any potential costs the municipality incurs from hosting a cannabis business. However, this fee must be "reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment," and cannot amount to more than three percent of a marijuana establishment's gross sales.

2. When HVV Massachusetts, Inc. ("HVV") sought to execute an HCA with the City of Gloucester ("the City" or "Gloucester"), Gloucester insisted on community impact fees well above the statutory ceiling. Despite HVV's warnings that Gloucester's demands were illegal, Gloucester maintained that it would not sign any HCA that did not include, at minimum, a flat annual fee of three percent of HVV's gross sales regardless of actual impact costs. Gloucester also insisted on three separate HCAs for HVV's retail, cultivation, and manufacturing

processes, even though all three lines of business are conducted at a single location. In addition, Gloucester imposed the requirement of a late payment penalty, neither authorized by statute nor proportional to any City cost, in the amount of five percent of the payment due.

3. In the end, in order to protect millions of dollars in development expenses it had already incurred, HVV was forced to agree to three HCAs, each requiring separate annual impact fees unconnected to any actual costs, and two requiring additional mandatory charitable gifts. To date, HVV has been forced to pay $491,283.66 in illegal impact fees to the City of Gloucester.

4. HVV accordingly seeks:

> (1) a declaratory judgment that (a) Gloucester's community impact fee does not comply with G.L. c.94 G, §3 and is not a proper regulatory fee; and (b) the law prohibits Gloucester from assessing against HVV any community impact fee that is not reasonably related to actual costs imposed on Gloucester as a result of HVV's operations; or any such fee that is, in the aggregate, greater than three percent of its annual gross sales; or is a five percent penalty for late payment.
>
> (2) an injunction prohibiting Gloucester from assessing its community impact fee against HVV as currently calculated in the HVV HCA's.
>
> (3) refund of the illegal fees HVV has already paid to Gloucester to date; and
>
> (4) any other relief the Court deems just and proper.

Parties

5. Plaintiff HVV Massachusetts, Inc. ("HVV") is a Massachusetts corporation with a principal place of business at 38 Great Republic Drive, Gloucester, MA 01930.

6. Defendant Sefatia Romeo Theken ("Mayor Theken") is, and at all times relevant to this Complaint was, the Mayor of the City of Gloucester, and has offices at 9 Dale Avenue, Gloucester, MA 01930. She is sued in her official capacity.

7. Defendant City of Gloucester ("Gloucester" or "the City") is a municipality within the Commonwealth of Massachusetts and has offices at 9 Dale Avenue, Gloucester, MA 01930.

Jurisdiction and Venue

8. This Court has jurisdiction pursuant to M.G.L. c. 212, § 4.

9. Venue is proper in under M.G.L. c. 223, § 1.

Statement of Facts

The Statutory and Regulatory Framework Under G.L. ch. 94G

10. In November 2016, Massachusetts voters approved Question 4, the Massachusetts Legalization, Regulation and Taxation of Marijuana Initiative, authorizing cannabis use for adults 21 and older. The new law, codified at G. L. ch. 94G, §§ 1 et seq. and amended the following year by St. 2017, ch. 55 ("Chapter 94G"), provides for the licensing of the sale and production of marijuana to adults for recreational use.

11. Among other licensing provisions, Chapter 94G requires that every marijuana establishment execute a host community agreement ("HCA") with its local municipality. Chapter 94G § 3, titled Local Control, sets forth the requirements for an HCA:

> (d) A marijuana establishment or a medical marijuana treatment center seeking to operate or continue to operate in a municipality which permits such operation shall execute an agreement with the host community setting forth the conditions to have a marijuana establishment or medical marijuana treatment center located within the host community which shall include, but not be limited to, all stipulations of responsibilities between the host community and the marijuana establishment or a medical marijuana treatment center. An agreement between a marijuana establishment or a medical marijuana treatment center and a host community may include a community impact fee for the host community; **provided, however, that the community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment or medical marijuana treatment center and shall not amount to more than 3 per cent of the gross sales of**

> **the marijuana establishment or medical marijuana treatment center or be effective for longer than 5 years. Any cost to a city or town imposed by the operation of a marijuana establishment or medical marijuana treatment center shall be documented and considered a public record as defined by clause Twenty-sixth of section 7 of chapter 4**.

(Emphasis added).

12. Thus, Chapter 94G § 3(d) imposes express limitations on any community impact fee included as part of an HCA:

- The fee must not amount to more than three percent of the gross annual sales of the marijuana establishment;
- The fee must be "reasonably related to the costs imposed upon the municipality by the operation of the [marijuana establishment]," which costs must be documented in a public record;"
- The fee must be limited to a term of five years.

13. The statute contains no authorization for a late payment penalty.

14. According to the Cannabis Control Commission ("the Commission"), the regulatory body tasked with issuing marijuana licenses, "any fee that is more than 3% of gross annual sales is not a valid community impact fee." See CCC Guidance on Host Community Agreements, Revised by the Commission: January 16, 2020, at 4.

15. The Commission also cautions municipalities against imposing a community impact fee without justification. Id. The fee must bear some relation to actual municipal services costs a city incurs while hosting the marijuana establishment, such public safety personnel overtime, traffic inspection design studies, or substance abuse prevention and programming. Id. at 6. Additionally, the fee must be proportional to the claimed impact cost.

16. Finally, community impact fees must separately comply with other legal limitations on municipalities' regulatory power. Id. at 7. Municipalities do not have

independent power of taxation under the Massachusetts Constitution; instead, they may only impose regulatory fees on businesses or activities within their borders. Silva v. City of Fall River, 59 Mass. App. Ct. 798, 800 (2003).

17. In order to constitute a permissible regulatory fee rather than an illegal tax, a fee must (1) be charged in exchange for a governmental service that benefits the party paying the fee in a manner not shared by other members of society; (2) be paid by choice, in that the fee payer has the option of not utilizing the governmental service and thereby avoiding the charge; and (3) be collected not to raise revenues but to compensate the governmental entity providing the service. Silva, 5 Mass. App. Ct. at 800.

HVV's Gloucester Location

18. Medical marijuana has been legal in Massachusetts since 2012, when sixty-three percent of Massachusetts voters approved Question 3, the Massachusetts Medical Marijuana Initiative, which allowed patients with certain qualifying medical conditions to use medical cannabis. The initiative also provided for a licensing regime for registered cultivators, manufacturers, laboratories, and distributors to supply patients with medical cannabis.

19. In September 2015, HVV[1] was incorporated with the goal of operating medical marijuana treatment centers across Massachusetts.

20. HVV planned to open a vertically integrated medical marijuana treatment center at 38 Great Republic Drive, Gloucester, MA 01930, with cultivation, manufacturing, and dispensing all in one location.

[1] HVV was originally incorporated as Happy Valley Ventures MA, Inc., a non-profit corporation. It was then converted into HVV Massachusetts, Inc., a for-profit corporation, in March 2018 in order to operate as an adult-use retailer.

21. However, by the time HVV obtained all the necessary licensing and permitting for its treatment center, G.L. c.94G had been enacted, authorizing the licensing of adult use marijuana enterprises.

22. G.L. c.94G's enactment also meant that HVV now needed an HCA with Gloucester in order to move forward. Chapter 94G § 3 requires that all marijuana enterprises—adult-use marijuana establishments and medical marijuana treatment centers alike—execute a host community agreement "to operate or continue to operate."

23. Accordingly, in early 2018, HVV reached out to Gloucester: (a) informing Gloucester that it planned to expand its operations at 38 Great Republic drive to include retail sales of adult-use cannabis[2] and (b) asking to negotiate an HCA as required by G.L. c.94G.

HVV and Gloucester's Lengthy Negotiation Process

24. Negotiations for an HCA to cover the proposed consolidated enterprise at 38 Great Republic Drive began in January 2018.

25. Originally, HVV's real estate counsel handled these negotiations. A number of proposals were made, but the negotiations did not lead to an agreement.

26. In the meantime, HVV began construction at 38 Great Republic Drive. Construction started in fall 2018 and continued through April 2019. The design, development, and construction of all necessary infrastructure, utilities, building structure, equipment, and furnishings ultimately totaled $21.6 million.

27. In February 2019, having been unable to reach agreement on an HCA with Gloucester, HVV brought in new counsel specializing in cannabis law. Cannabis counsel

[2] In particular, HVV planned to operate 38 Great Republic Drive as a "colocated" recreational and medical treatment enterprise as contemplated by both the statute and regulations. G.L.c.94G, §3(1)(1); 935 CMR 501.002

informed Gloucester that c.94G, § 3 contained new limitations upon municipal exaction of fees. Specifically, cannabis counsel advised Gloucester that any community impact fee must:

- Not amount to more than three percent of the gross annual sales of the marijuana establishment;
- Be "reasonably related to the costs imposed upon the municipality by the operation of the [marijuana establishment];"
- Be limited to a term of five years.

28. Despite this, Gloucester continued to insist that it would not sign any HCA that did not include, at minimum, a flat annual fee of three percent of HVV's gross sales regardless of actual impact costs.

29. Gloucester also insisted on separate HCAs for HVV's retail, cultivation, and manufacturing processes, each with its own community impact fee, even though HVV's retail, cultivation, and manufacturing processes are all conducted at the same location at 38 Great Republic Drive.

30. To understand what, if any, actual municipal impact costs were underpinning Gloucester's proposed community impact fees, HVV submitted two public records requests seeking documentation of any cost to Gloucester imposed by HVV's operation.

31. Under Chapter 94G § 3, Gloucester is required by law to document these costs as a public record. G. L. ch. 94G, § 3(d).

32. HVV's first public records request, submitted February 5, 2019, sought (among other documents):

1. All studies done to support any actual or proposed community impact fee to be charged to a marijuana establishment by the City of Gloucester.
2. All studies done to support the reasonable relationship between any actual or proposed community impact fee to be charged to

a marijuana establishment by the City of Gloucester and the costs imposed upon the City of Gloucester by the operation of any marijuana establishment.

3. All documents related to any effort by the City of Gloucester to ensure that any actual or proposed community impact fee charged or to be charged to a marijuana establishment reflects the particular impact on the City of Gloucester.

4. All studies showing the basis for any actual or proposed community impact fee charged or proposed to be charged to HVV Massachusetts, Inc.'s ("HVV") in connection with HVV's proposed marijuana establishment in the City of Gloucester.

5. All studies related to any impact on the City of Gloucester's roads, other infrastructure, law enforcement services, fire protection services, inspectional services, public health and addiction services, permitting and consulting services and/or any other unforeseen financial impacts related to HVV's proposed marijuana establishment in the City of Gloucester.

See Exhibit A.

33. Gloucester did not produce any documents in response.

34. HVV's second public records request, submitted August 2, 2021, sought the same categories of documents as well as all documents related to the parties' HCA negotiations. See Exhibit B.

35. This time, although Gloucester produced documents related to the parties' HCA negotiations, it did not produce any documents or studies related to impact costs caused by HVV's operation.

36. On information and belief, Gloucester has no documents or studies related to impact costs caused by HVV's operation.

37. At no point during the parties' negotiations did Gloucester describe any actual municipal services costs it would incur while hosting HVV.

38. Finally, on March 28, 2019, at risk of losing the significant investment and development costs it had incurred at 38 Great Republic Drive, HVV agreed to sign three HCAs with Gloucester, one for retail, one for cultivation, and one for manufacturing.

39. The HCA for HVV's retail business ("Retail HCA") includes an annual community impact fee amounting to three percent of HVV's gross sales, with an additional $25,000 annual charitable contribution. See Exhibit C.

40. The HCA for HVV's cultivation business ("Cultivation HCA") includes an annual community impact fee of $100,000, with an additional $25,000 annual charitable contribution. See Exhibit D.

41. The HCA for HVV's manufacturing business ("Manufacturing HCA") includes an annual community impact fee of $50,000. See Exhibit E.

42. The Retail HCA, Cultivation HCA, and Manufacturing HCA each provide for a "late penalty equal to five percent (5%) of [the impact fee] per annum" if HVV fails to pay the impact fee on time. Each further provides that "[HVV] shall be deemed to have committed an event of default if … [HVV] fails to make payments to [Gloucester] as required under this Agreement, and such failure remains uncured with reasonable written notice from [Gloucester] for thirty (30) days." All three HCAs further provide that "[Gloucester] may terminate this Agreement upon the occurrence of any event of default." See Exhibits C, D, and E.

43. Neither the Retail HCA, the Cultivation HCA, or the Manufacturing HCA contains any mention of actual impact costs incurred by Gloucester.

44. All three HCAs—the Retail HCA, Cultivation HCA, and Manufacturing HCA—include community impact costs that are illegal and unenforceable under Chapter 94G § 3 and constitute illegal taxation.

45. None of the community impact fees are "reasonably related to the costs imposed upon [Gloucester] by the operation of [HVV]." G. L. ch. 94G, § 3(d). Gloucester has provided no documentation of any such costs, nor do any of the HCAs recite any relationship between the community impact fees any actual costs.

46. The late penalties included in each of the HCAs are not authorized by statute, nor are they "reasonably related to the costs imposed upon [Gloucester] by the operation of [HVV]." G. L. ch. 94G, § 3(d). They are designed to penalize HVV for non-compliance, not to recoup Gloucester's impact costs.

47. Together, the community impact fees in the Retail HCA, Cultivation HCA, and Manufacturing HCA amount to more than three percent of HVV's gross annual sales. This violates Chapter 94G § 3's cap, and they are accordingly "not a valid community impact fee." See CCC Guidance on Host Community Agreements, Revised by the Commission: January 16, 2020, at 4.

48. Finally, the community impact fees do not meet the legal requirements of a regulatory fee. In order to constitute a permissible regulatory fee rather than an illegal tax, a fee must (1) be charged in exchange for a governmental service that benefits the party paying the fee in a manner not shared by other members of society; (2) be paid by choice, in that the fee payer has the option of not utilizing the governmental service and thereby avoiding the charge; and (3) be collected not to raise revenues but to compensate the governmental entity providing the service. Silva, 5 Mass. App. Ct. at 800. Here, because of the lack of any reasonable relationship between the community impacts fees and actual costs incurred by Gloucester, the community impact fees do not comply with (3). As such, they are an illegal tax.

49. The Retail HCA, Cultivation HCA, and Manufacturing HCA each contain a severability provision which states, "If any term or condition of this 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."

50. Although HVV was forced to agree to the Retail HCA, Cultivation HCA, and Manufacturing HCA to protect its investment in 38 Great Republic Drive, Massachusetts courts do not allow parties to contract out of statutory provisions that "rest on grounds of public policy." Beacon Hill Civic Ass'n v. Ristorante Toscano, Inc., 422 Mass. 318 (1996).

51. Gloucester's attempt to assess a community impact fee in violation of Chapter 94G § 3 and in violation of Massachusetts law on regulatory fees has caused and will cause HVV harm.

52. To date, HVV has been forced to pay $491,283.66 in illegal impact fees to Gloucester.

COUNT I
Declaratory Judgment

53. The allegations set forth above are re-alleged and incorporated herein by reference.

54. HVV seeks declaratory relief pursuant to G. L. ch. 231A.

55. For the reasons set forth above, the community impact fees assessed and to be assessed by the City of Gloucester against HVV are contrary to Massachusetts law because they are in violation of the requirements of G.L. c.94G, they are not proper regulatory fees, and are otherwise not authorized by any statute.

56. There is now an actual, justiciable controversy with respect to which HVV is entitled to a declaration of its rights against Gloucester.

57. The Court should grant a declaratory judgment declaring as follows:

a. That the community impact fee assessed and to be assessed by the City of Gloucester against HVV Massachusetts, Inc. does not comply with Massachusetts' G.L. c.94G, §3 and is not a proper regulatory fee; and

b. That G.L. c.94G, §3 prohibits the City of Gloucester from assessing against HVV any community impact fee that is not reasonably related to actual costs imposed on Gloucester as a result of HVV's operations; or any such fee that is, in the aggregate, greater than three percent of its annual gross sales; or is a five percent penalty for late payment.

COUNT II
Injunction

58. The allegations set forth above are re-alleged and incorporated herein by reference.

59. HVV has suffered and will continue to suffer irreparable injury as a result of Gloucester's insistence upon assessing the unauthorized and improper fees described above if HVV is not able to obtain injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff HVV respectfully requests that the Court the following relief:

1. Enter judgment in favor of plaintiff and against defendants on each of the Counts asserted herein, and award them all damages allowed by law;

2. Issue a declaratory judgment declaring:

a) That Gloucester's community impact fee does not comply with G.L. c.94G, §3 and is not a proper regulatory fee; and

b) That the law prohibits Gloucester from assessing against HVV any community impact fee that is not reasonably related to anticipated or actual costs incurred by Gloucester as a result of HVV's operations; or

any such fee that is, in the aggregate, greater than three percent of its annual gross sales; or is a five percent penalty for late payment.

3. Preliminarily enjoin the defendants, during the pendency of this lawsuit, from collecting impact fees from the plaintiff and from taking any action which penalizes the plaintiff for failing to make an impact fee payment, including issuing a notice of default, terminating plaintiff's HCA, or revoking any license or permit.

4. Permanently enjoin the defendants from collecting community impact fees from the plaintiff as currently calculated in the HCAs; from collecting more than three percent of gross sales in the aggregate for the three establishments; from collecting any fee that is not reasonably related to anticipated or actual costs caused by plaintiff's operations, as documented in public records; and from collecting a five percent late fee.

5. Award Plaintiff damages recouping the illegal fees plaintiff has paid to defendants to date; and

6. Grant Plaintiffs such other and further relief as is just and warranted.

JURY DEMAND

HVV Massachusetts, Inc. demands a jury on all issues so triable.

Respectfully submitted,

HVV Massachusetts, Inc,

By its attorneys:

/s/ Howard Cooper

Howard Cooper (BBO # 543842)
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Max D. Stern (BBO # 479560)
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Todd & Weld LLP
One Federal Street, 27th Floor
Boston, MA 02110
(617) 720-2626

DATED: November 24, 2021

EXHIBIT A

Todd&Weld LLP

Howard M. Cooper
E-mail: hcooper@toddweld.com

February 5, 2019

Via Public Records Portal and Email

Chip Payson
General Counsel
Legal Department
City Hall, 9 Dale Avenue
Gloucester, MA 01930
cpayson@gloucester-ma.gov

City Clerk's Office
Public Records Request
City Hall, 9 Dale Avenue
Gloucester MA 01930
(by regular mail)

Re: Massachusetts Public Records Request, G.L. c. 66, § 10

To The City of Gloucester:

This is a request for public records under the Massachusetts Public Records Law, G.L. c. 66, § 10. For the period covering January 1, 2017 to the present, I am requesting that I be provided with copies of the following documents in your possession, custody, or control pertaining to the requirements of Massachusetts General Laws Chapter 94G, Section 3(d) which governs host community impact fees with a marijuana establishment, all as defined by Massachusetts law:

1. All studies done to support any actual or proposed community impact fee to be charged to a marijuana establishment by the City of Gloucester.

2. All studies done to support the reasonable relationship between any actual or proposed community impact fee to be charged to a marijuana establishment by the City of Gloucester and the costs imposed upon the City of Gloucester by the operation of any marijuana establishment.

3. All documents related to any effort by the City of Gloucester to ensure that any actual or proposed community impact fee charged or to be charged to a marijuana establishment reflects the particular impact on the City of Gloucester.

4. All studies showing the basis for any actual or proposed community impact fee charged or proposed to be charged to HVV Massachusetts, Inc.'s ("HVV") in connection with HVV's proposed marijuana establishment in the City of Gloucester.

5. All studies related to any impact on the City of Gloucester's roads, other infrastructure, law enforcement services, fire protection services, inspectional services, public health and addiction services, permitting and consulting services and/or any other unforeseen financial impacts related to HVV's proposed marijuana establishment in the City of Gloucester.

6. Copies of any Development Agreement executed by the City of Gloucester and any land or business owner.

7. Copies of any agreement executed by the City of Gloucester under which the City is entitled an annual development fee.

8. Copies of any agreement executed by the City of Gloucester under which the City is entitled to a fee from a land or business owner based upon the square footage of a property or business.

9. Copies of any agreement executed by the City of Gloucester under which the City receives a fee which escalates on an annual basis at a rate of 2.5% per year.

10. Copies of any agreement executed by the City of Gloucester under which a land or business owner has "waive[d] all right to challenge, contest or appeal … all local charges and fees generally applicable and uniformly assessed to other commercial developments in the City."

11. Copies of any agreement executed by the City of Gloucester which obligated a land or business to "give priority to City businesses, suppliers, contractors, builders and vendors located in the City in the provision of goods and services called for in the construction, maintenance and continued operation" of the property or business.

12. Copies of any agreement executed by the City of Gloucester which obligated a land or business to "hire City residents for jobs in and related to" the property or business.

I recognize that you may charge reasonable costs for copies, as well as personnel time needed to comply with this request. It is my understanding that applicable law requires you to provide me with a substantive response to this request within ten (10) business days. *See* G.L. c. 66, § 10(a).

I would prefer to receive the requested records by e-mail if possible at my e-mail address (hcooper@toddweld.com). In the alternative, they can be mailed to me at my office address, noted below.

If you have any questions regarding this request, please do not hesitate to contact me by phone or e-mail. Thank you for your anticipated cooperation.

Very truly yours,

Howard M. Cooper

HMC/ckb
cc: Michael Reardon
David Rich, Esquire
jdestino@gloucester-ma.gov

EXHIBIT B

Todd&WeldLLP

Howard M. Cooper
E-mail: hcooper@toddweld.com

August 2, 2021

Via Public Records Portal and Email

Chip Payson
General Counsel
Legal Department
City Hall, 9 Dale Avenue
Gloucester, MA 01930
cpayson@gloucester-ma.gov

City Clerk's Office
Public Records Request
City Hall, 9 Dale Avenue
Gloucester MA 01930
(by regular mail)

Re: Massachusetts Public Records Request, G.L. c. 66, § 10

To The City of Gloucester:

This is a request for public records under the Massachusetts Public Records Law, G.L. c. 66, § 10. For the period covering January 1, 2017 to the present, I am requesting that I be provided with copies of the following documents in your possession, custody, or control pertaining to the requirements of Massachusetts General Laws Chapter 94G, Section 3(d) which governs host community impact fees with a marijuana establishment, all as defined by Massachusetts law:

1. All studies done to support any actual or proposed community impact fee to be charged to a marijuana establishment by the City of Gloucester.

2. All studies done to support the reasonable relationship between any actual or proposed community impact fee to be charged to a marijuana establishment by the City of Gloucester and the costs imposed upon the City of Gloucester by the operation of any marijuana establishment.

3. All documents related to any effort by the City of Gloucester to ensure that any actual or proposed community impact fee charged or to be charged to a marijuana establishment reflects the particular impact on the City of Gloucester.

4. All studies showing the basis for any actual or proposed community impact fee charged or proposed to be charged to HVV Massachusetts, Inc.'s ("HVV") in connection with HVV's proposed marijuana establishment in the City of Gloucester.

5. All studies related to any impact on the City of Gloucester's roads, other infrastructure, law enforcement services, fire protection services, inspectional services, public health and addiction services, permitting and consulting services and/or any other unforeseen financial impacts related to HVV's proposed marijuana establishment in the City of Gloucester.

6. All documents related to the negotiation and execution of an HCA between the City of Gloucester and Happy Valley Ventures

I recognize that you may charge reasonable costs for copies, as well as personnel time needed to comply with this request. It is my understanding that applicable law requires you to provide me with a substantive response to this request within ten (10) business days. *See* G.L. c. 66, § 10(a).

I would prefer to receive the requested records by e-mail if possible at my e-mail address (hcooper@toddweld.com). In the alternative, they can be mailed to me at my office address, noted below.

If you have any questions regarding this request, please do not hesitate to contact me by phone or e-mail. Thank you for your anticipated cooperation.

Very truly yours,

Howard M. Cooper

HMC/mg

cc: Michael Reardon (*via email*)
Max D. Stern, Esq. (*via email*)

EXHIBIT C

HOST COMMUNITY AGREEMENT

THIS HOST COMMUNITY AGREEMENT ("AGREEMENT") is entered into this 28th day of, March 2019, by and between **HVV Massachusetts, Inc.**, a Massachusetts corporation with a principal place of business at 39 Country Club Way, Ipswich, MA 01938 ("the Company"), and the **City of Gloucester**, a Massachusetts municipal corporation with a principal address of Nine Dale Avenue, Gloucester, MA 01930 ("the City"), acting by and through its Mayor (collectively referred to as "the Parties").

RECITALS

WHEREAS, the Company wishes to locate and operate a Marijuana Establishment ("ME") as defined by the regulations of the Cannabis Control Commission, ("CCC"), the specific operation of which shall be as a **marijuana retailer** as those terms are defined by M.G.L. c. 94G § 1, and to deliver products as permitted by 935 CMR 500, at 38 Great Republic Drive, Gloucester, Massachusetts (the "Premises"); and

WHEREAS, the Company intends to provide certain benefits to the City of Gloucester in the event that it receives the requisite licenses from the CCC or such other state licensing or monitoring authority, as the case may be, to operate the ME and receives all required local permits and approvals from the City;

WHEREAS, the Company has received a Special Permit from the City of Gloucester City Council and Site Plan Approval from the City of Gloucester Planning Board to construct and operate a Medical Marijuana Cultivation Facility and Registered Marijuana Dispensary at the Premises, and is currently in the process of constructing such facility; and

WHEREAS, per the City of Gloucester Zoning Ordinance, the Company may by-right convert the Company's existing facility for use as the ME contemplated herein, subject only to a second Site Plan Approval issued by the City of Gloucester Planning Board; and

WHEREAS, the Company intends to submit an application to the City of Gloucester Planning Board for Site Plan Review to seek such Site Plan Approval; and

WHEREAS, the Company intends to submit an application to the CCC for a license to operate the ME contemplated herein; and

WHEREAS, the Parties intend by this Agreement to satisfy the provisions of M.G.L. c. 94G § 3(d), applicable to the operation of the ME, such activities to be done in accordance with the applicable state and local laws and regulations in the City; and

WHEREAS, the Parties agree that the above Recitals are true and accurate and that they are incorporated herein and made a part of this Agreement.

WSR

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the City agree as follows:

1. **Definitions**

As used in this Agreement, terms shall have the following meaning:

a. Annual Fees shall mean any and all fees paid by the Company to the City under this Agreement and as required by law.

b. Calendar Year shall mean a period of days running from January 1st until and through December 31st of the same year.

c. Commencement Date (or Commencement of Operations) shall mean the date the Company makes its first retail sale.

d. Gross Sales shall mean the total of actual sales of all inventory sold at the ME during the period of measurement which shall be the calendar year, without subtracting any costs or expenses, whether sold on a retail basis, wholesale basis, or discounted basis. As used herein, "Gross Sales" shall not include any transfers of any inventory from the Premises to any of the Company's other licensed ME facilities throughout the Commonwealth.

e. Inventory shall mean all marijuana products derived from or containing marijuana and/or marijuana derivatives, all parts of the marijuana plant offered for sale in any form, all marijuana based concentrates, oils, edibles and marijuana infused products, as well as all paraphernalia and any other products sold at the ME. Inventory shall not include, and the Company shall not be required to pay the Community Impact Fee on any inventory donated by the Company for medical research or other research purposes.

f. Marijuana Establishment ("ME") shall mean a Medical Marijuana Treatment Center, Registered Marijuana Dispensary, or Marijuana Retailer as those terms are defined by M.G.L. c. 94G, § 1.

2. **Annual Fees**

In the event that the Company obtains the requisite licenses and approvals as may be required for the operation of the ME, and receives any and all necessary and required permits and licenses of the City, and at the expiration of any final appeal period related thereto, said matter not being appealed further, which permits and licenses allow the Company to locate, occupy and operate the ME on the Premises, then the Company agrees to provide the following Annual Fees:

wbf

A. Community Impact Fee

The Company anticipates that the City may incur additional expenses and impacts on the City's roads and other infrastructure systems, law enforcement services, fire protection services, inspectional services, public health and addiction services, and permitting and consulting services, as well as unforeseen financial impacts on the City related to the ME. Accordingly, in order to mitigate the financial impact on the City and use of City resources, the Company agrees to pay fees to the City in the amount and under the terms provided herein.

1. Company shall annually pay an Annual Community Impact Fee in an amount equal to three percent (3%) of gross sales ("Gross Sales"). Gross Sales shall mean the total of actual sales of all inventory sold at the Facility during the period of measurement which shall be the calendar year, without subtracting any costs or expenses, whether sold on a retail basis, wholesale basis, or discounted basis. As used herein, "inventory" shall mean all marijuana products derived from or containing marijuana and/or marijuana derivatives inclusive of, but not limited to, all parts of the marijuana plant offered for sale in any form, all marijuana based concentrates, oils, edibles and marijuana infused products, as well as all paraphernalia and any other products sold at the Facility. Inventory shall not include, and the Company shall not be required to pay the Annual Community Impact Fee on any inventory donated by Company for medical research or other research purposes. As used herein, "Gross Sales" shall not include any transfers of any inventory from the Premises to any of the Company's other licensed ME facilities throughout the Commonwealth.

2. The Company acknowledges that *time is of the essence* with respect to its timely payment of all fees required under Section 3(A)(2) of this Agreement. All Annual Fees shall be made within sixty (60) days following the end of each calendar year of operation. The City may, however, with prior written consent grant an extension of no more than an additional thirty (30) days for good cause shown.

3. In the event that any such payments are not fully made by the date they are due then the Company shall be required to pay the City a late payment penalty equal to five percent (5%) of such required payments per annum.

4. Payment of the Annual Fees shall continue for a period of five (5) years and shall expire at the end of said five (5) year period beginning on the Commencement Date.

5. The City shall use the above referenced payments in its sole discretion.

B. Annual Charitable/Non-Profit Contributions

The Company, in addition to any other fees specified herein, shall annually contribute to local charities/non-profit organizations located in the City an amount not less than twenty-five thousand dollars ($25,000.00). Said contributions shall be made at the beginning of each calendar year

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following the Commencement Date and shall continue for the term of this Agreement. Documentation evidencing each contribution shall be provided to the Mayor's office no more than sixty (60) days after said contribution is made by the Company.

C. Annual Reporting for Host Community Impact Fees

The Company shall submit a certification of its annual Gross Sales to the City with the Company's payment of its Annual Fees. The Company shall maintain 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 CCC. All records shall be kept for a period of at least seven (7) years. Upon request by the City, the Company shall provide the City with the same access to its financial records (to be treated as confidential, to the extent allowed by law) as is required by the CCC and Department of Revenue for purposes of obtaining and maintaining a license for an ME.

During the term of this Agreement and for three (3) years following the termination of this Agreement, the Company shall agree, upon request of the City, to have its financial records examined, copied and audited by an Independent Financial Auditor, the expense of which shall be borne by the City. The Independent Financial Auditor shall review the Company's financial records for purposes of determining that the annual payments contained herein are in compliance with the terms of this Agreement. Such examination shall be made not less than thirty (30) days following written notice from the City and shall occur only during normal business hours and at such place where said books, financial records and accounts are maintained. The Independent Financial Audit shall include those parts of the Company's books and financial records which relate to the payment and shall include a certification of itemized gross sales for the previous calendar year, and all other information required to ascertain compliance with the terms of this Agreement. The independent audit of such records shall be conducted in such a manner as not to interfere with the Company's normal business activities.

3. Term

Except as expressly provided herein, this Agreement shall take effect on the Commencement Date as defined above, and shall be applicable for as long as the Company operates the ME at the Premises with the exception of any and all community impact fees, which shall be subject to the five (5) year statutory limitations of M.G.L. c. 94G § 3(d).

Given the parties disagreement as to whether the City may legally require a marijuana establishment to pay an impact fee after the initial statutory five (5) year period, the parties agree that if an impact still exists after the said five (5) year period then the parties agree to negotiate the continued payment of fees in good faith for an additional term should the same be allowed by law.

4. Local Vendors and Employment

To the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company shall make every effort in a legal and non-discriminatory manner to give priority to local businesses, suppliers, contractors, builders and vendors in the

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provision of goods and services called for in the construction, maintenance and continued operation of the ME when such contractors and suppliers are properly qualified and price competitive and shall use best and good faith efforts to hire City residents. The Company also agrees to make best efforts to utilize women-owned and minority-owned vendors within the City.

5. **Security**

The Company agrees to cooperate with the City of Gloucester Police Department, including but not limited to periodic meetings to review operational concerns, security, delivery schedule and procedures, cooperation in investigations, and communications with the Police Department of any suspicious activities at or in the immediate vicinity of the Premises, and with regard to any anti-diversion procedures.

In order to minimize and mitigate potential impacts associated with the commencement of operations at the ME, the Company shall work with the Police Department on an "Opening Day Plan". Said plan shall include, without limitation, details regarding the opening processes and procedures for the ME, and shall require review and sign-off by the City's public safety departments *prior to* the ME's opening day. Said plan shall consider whether it is feasible to serve patrons on an appointment basis as opposed to first-come, first-served.

6. **Community Concerns**

The Company agrees to employ its best and good faith efforts to work collaboratively and cooperatively with its neighboring businesses and residents to address mitigation of any concerns or issues that may arise through its operation of the ME. The Company further agrees to designate a named person within the Company to serve as a point of contact for all community questions and/or concerns related to the ME and/or its operation.

7. **Additional Obligations**

The obligations of the Company and the City recited herein are specifically contingent upon the Company's receipt of any and all necessary local permits and approvals to locate, occupy, and operate the ME in the City.

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 Ordinances of the City, and 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 other approvals as may be necessary for the ME to operate at the Premises in the City, or to refrain from enforcement action against the Company and its ME for violation of the terms of said permits and other approvals or said statutes, Ordinances, and regulations.

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8. Support

The City of Gloucester agrees to provide the Commission Certification to the CCC within the amount of time legally required or, if there is no such legally required amount of time, within a reasonable amount of time of a request from the CCC and make best efforts in a timely manner to provide the Company such other information as may be requested by the CCC in connection with applications for licenses at the Premises/ME in a manner that shall not adversely affect the CCC's determination on such applications and to participate and cooperate in good faith in the CCC licensing process. The City agrees to submit to the CCC, or such other state licensing or monitoring authority, as the case may be, the required certifications relating to the Company's application for a license to operate the ME in accordance with applicable law and regulations where such compliance has been properly met, but makes no representation or promise that it will act on any other license or permit request, including, but not limited to any zoning application submitted for the ME, in any particular way other than by the City's normal and regular course of conduct and in accordance with its rules and regulations and any statutory guidelines governing them.

9. Successors/Assigns

The Company 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, and shall not assign any of the monies payable under this Agreement, except by and with the prior written consent of the City and shall not assign or obligate any of the monies payable under this Agreement, except by and with the prior written consent of the City. This Agreement is binding upon the Parties hereto, their successors, assigns and legal representatives. Neither the City nor the Company shall assign, sublet, or otherwise transfer any interest in the Agreement without the prior written consent of the other.

Events deemed an assignment include, without limitation: (i) Company's final and adjudicated bankruptcy whether voluntary or involuntary; (ii) the Company's takeover or merger by or with any other entity; (iii) the Company's outright sale of assets and equity, majority stock sale to another organization or entity for which the Company does not maintain a controlling equity interest; (iv) or any other change in ownership or status of the Company; (v) any assignment for the benefit of creditors; and/or (vi) any other assignment not approved in advance in writing by the City.

10. Local Taxes

Nothing contained herein shall affect the taxable nature of the real and personal property owned by the Company. The Company agrees that in no event will it petition the City to classify any of its owned or leased real property as "forest land" under M.G.L. c. 61 or land for "agricultural use" or "horticultural use" under M.G.L. c. 61A.

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11. Property Taxes

The Company and the City acknowledge that this Agreement does not alter the application of M.G.L. c. 59 to the buildings that house the ME. Without changing the foregoing, however, the Company agrees that in no event will it apply for an exemption from taxes based on a non-profit status.

12. Events of Default

The Company shall be deemed to have committed an event of default if any of the following occur:

a. The Company fails to obtain, and maintain in good standing, all necessary local licenses and permits for the ME, provided that the Company is able to exercise all available rights and due-process for maintaining in good standing said licenses and permits;

b. The Company ceases to operate an ME at its proposed location or seeks to include other marijuana establishments as defined by M.G.L. c. 94G, § 1, as part of its operations without notifying the City; and

c. The Company fails to make payments to the City as required under this Agreement, and such failure remains uncured with reasonable written notice from the City for thirty (30) days.

In the event that the Commonwealth and/or its agencies or representatives revoke the Company's ME license, the City may also declare an event of default and terminate this Agreement. The Company shall be required to pay any amounts due upon the termination date where such amounts may be determined by the period of operation of the ME within the City.

The City may terminate this Agreement upon the occurrence of any event of default.

13. Notice

Any and all notices, consents, demands, requests, 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 shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service, or, if sent by private overnight or other delivery service, when deposited with such delivery service.

To City:

City of Gloucester
ATTN: Legal Department
City Hall
9 Dale Avenue

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Gloucester, MA 01930

To Company:

HVV Massachusetts, Inc.
39 Country Club Way
Ipswich, MA 01938

14. Severability

If any term or condition of this 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.

15. Governing Law

This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, the Parties agree that Gloucester District Court or Salem Superior Court in Essex County shall each serve as a proper forum for any litigation for the adjudication of disputes arising out of this Agreement.

16. 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.

17. 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.

18. Counterparts

This Agreement may be signed in any number of counterparts all of which taken together, each of which is an original, and all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing one or more counterparts.

19. Signatures

Facsimile signatures or scanned-and-emailed signatures affixed to this Agreement shall have the same weight and authority as an original signature.

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20. No Joint Venture

The Parties hereto agree that nothing contained in this Agreement or any other documents executed in connection herewith is intended or shall be construed to establish the City, or the City and any other successor, affiliate or corporate entity as joint ventures or partners.

21. Nullity

This Agreement shall be null and void in the event that the Company does not locate the ME at the Premises or relocates the ME out of the City. Further, in the case of any relocation out of the City, the Company agrees that an adjustment of Annual Fees due to the City hereunder shall be calculated based upon the period of occupation of the ME within the City, but in no event shall the City be responsible for the return of any funds provided to it by the Company.

22. 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 the Company.

23. Entire Agreement

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the Company and the City with respect to the matters described herein. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral between the Parties or their predecessors in interest, and it shall not be modified or amended except by a written document executed by the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused their respective authorized signatories to execute this Agreement on the day and year first written above in their names and on their behalves.

CITY OF GLOUCESTER, by:

Sefatia Romeo Theken, Mayor

HVV MASSACHUSETTS, INC., by:

Michael Reardon, President

EXHIBIT D

HOST COMMUNITY AGREEMENT

THIS HOST COMMUNITY AGREEMENT ("AGREEMENT") is entered into this 28TH day of, MARCH 2019, by and between **HVV Massachusetts, Inc.**, a Massachusetts corporation with a principal place of business at 39 Country Club Way, Ipswich, MA 01938 ("the Company"), and the **City of Gloucester**, a Massachusetts municipal corporation with a principal address of Nine Dale Avenue, Gloucester, MA 01930 ("the City"), acting by and through its Mayor (collectively referred to as "the Parties").

RECITALS

WHEREAS, the Company wishes to locate and operate a Marijuana Establishment ("ME") as defined by the regulations of the Cannabis Control Commission, ("CCC"), the specific operation of which shall be as a **marijuana cultivator** as those terms are defined by M.G.L. c. 94G § 1, and to deliver products as permitted by 935 CMR 500, at 38 Great Republic Drive, Gloucester, Massachusetts (the "Premises"); and

WHEREAS, the Company intends to provide certain benefits to the City of Gloucester in the event that it receives the requisite licenses from the CCC or such other state licensing or monitoring authority, as the case may be, to operate the ME and receives all required local permits and approvals from the City;

WHEREAS, the Company has received a Special Permit from the City of Gloucester City Council and Site Plan Approval from the City of Gloucester Planning Board to construct and operate a Medical Marijuana Cultivation Facility and Registered Marijuana Dispensary at the Premises, and is currently in the process of constructing such facility; and

WHEREAS, the Company intends to submit an application to the City of Gloucester Planning Board for Site Plan Review to seek such Site Plan Approval; and

WHEREAS, the Company intends to submit an application to the CCC for a license to operate the ME contemplated herein; and

WHEREAS, the Parties intend by this Agreement to satisfy the provisions of M.G.L. c. 94G § 3(d), applicable to the operation of the ME, such activities to be done in accordance with the applicable state and local laws and regulations in the City; and

WHEREAS, the Parties agree that the above Recitals are true and accurate and that they are incorporated herein and made a part of this Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the City agree as follows:

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1. Definitions

As used in this Agreement, terms shall have the following meaning:

a. Annual Fees shall mean any and all fees paid by the Company to the City under this Agreement and as required by law.

b. Calendar Year shall mean a period of days running from January 1st until and through December 31st of the same year.

c. Commencement Date (or Commencement of Operations) shall mean the date in which the Final Certificate of Registration for the ME at the Premises is issued by the CCC or other regulatory authority (the "Commencement Date"),

d. Gross Sales shall mean the total of actual sales of all inventory sold at the ME during the period of measurement which shall be the calendar year, without subtracting any costs or expenses, whether sold on a retail basis, wholesale basis, or discounted basis. As used herein, "Gross Sales" shall not include any transfers of any inventory from the Premises to any of the Company's other licensed ME facilities throughout the Commonwealth.

e. Inventory shall mean all marijuana products derived from or containing marijuana and/or marijuana derivatives, all parts of the marijuana plant offered for sale in any form, all marijuana based concentrates, oils, edibles and marijuana infused products, as well as all paraphernalia and any other products sold at the ME. Inventory shall not include, and the Company shall not be required to pay the Community Impact Fee on any inventory donated by the Company for medical research or other research purposes.

f. Marijuana Establishment ("ME") shall mean Marijuana Cultivator as defined by M.G.L. c. 94G, § 1.

2. Annual Fees

In the event that the Company obtains the requisite licenses and approvals as may be required for the operation of the ME, and receives any and all necessary and required permits and licenses of the City, and at the expiration of any final appeal period related thereto, said matter not being appealed further, which permits and licenses allow the Company to locate, occupy and operate the ME on the Premises, then the Company agrees to provide the following Annual Fees:

A. Community Impact Fee

The Company anticipates that the City may incur additional expenses and impacts on the City's roads and other infrastructure systems, law enforcement services, fire protection services, inspectional services, public health and addiction services, and permitting and consulting services, as well as unforeseen financial impacts on the City related to the ME. Accordingly, in order to

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mitigate the financial impact on the City and use of City resources, the Company agrees to pay fees to the City in the amount and under the terms provided herein.

1. The Company agrees to pay a flat Annual Community Impact Fee of one hundred thousand dollars ($100,000.00).

2. The Company acknowledges that *time is of the essence* with respect to its timely payment of all fees as required in this Agreement. Each payment shall be made on or before January 31st of each year following the Commencement Date for five (5) years. The City may, however, with prior written consent grant an extension of no more than an additional thirty (30) days for good cause shown.

3. In the event that any such payments are not fully made by the date they are due then the Company shall be required to pay the City a late payment penalty equal to five percent (5%) of such required payments per annum.

4. Payment of the Annual Fees shall continue for a period of five (5) years and shall expire at the end of said five (5) year period beginning on the Commencement Date.

5. The City shall use the above referenced payments in its sole discretion.

B. Annual Charitable/Non-Profit Contributions

The Company, in addition to any other fees specified herein, shall annually contribute to local charities/non-profit organizations located in the City an amount not less than twenty-five thousand dollars ($25,000.00). Said contributions shall be made at the beginning of each calendar year following the Commencement Date and shall continue for the term of this Agreement. Documentation evidencing each contribution shall be provided to the Mayor's office no more than sixty (60) days after said contribution is made by the Company.

C. Annual Reporting for Host Community Impact Fees

The Company shall submit a certification of its annual Gross Sales to the City with the Company's payment of its Annual Fees. The Company shall maintain 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 CCC. All records shall be kept for a period of at least seven (7) years. Upon request by the City, the Company shall provide the City with the same access to its financial records (to be treated as confidential, to the extent allowed by law) as is required by the CCC and Department of Revenue for purposes of obtaining and maintaining a license for an ME.

During the term of this Agreement and for three (3) years following the termination of this Agreement, the Company shall agree, upon request of the City, to have its financial records examined, copied and audited by an Independent Financial Auditor, the expense of which shall be borne by the City. The Independent Financial Auditor shall review the Company's financial records for purposes of determining that the annual payments contained herein are in compliance

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with the terms of this Agreement. Such examination shall be made not less than thirty (30) days following written notice from the City and shall occur only during normal business hours and at such place where said books, financial records and accounts are maintained. The Independent Financial Audit shall include those parts of the Company's books and financial records which relate to the payment and shall include a certification of itemized gross sales for the previous calendar year, and all other information required to ascertain compliance with the terms of this Agreement. The independent audit of such records shall be conducted in such a manner as not to interfere with the Company's normal business activities.

3. **Term**

Except as expressly provided herein, this Agreement shall take effect on the Commencement Date as defined above, and shall be applicable for as long as the Company operates the ME at the Premises with the exception of any and all community impact fees, which shall be subject to the five (5) year statutory limitations of M.G.L. c. 94G § 3(d).

Given the parties disagreement as to whether the City may legally require a marijuana establishment to pay an impact fee after the initial statutory five (5) year period, the parties agree that if an impact still exists after the said five (5) year period then the parties agree to negotiate the continued payment of fees in good faith for an additional term should the same be allowed by law.

4. **Local Vendors and Employment**

To the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company shall make every effort in a legal and non-discriminatory manner to give priority to local businesses, suppliers, contractors, builders and vendors in the provision of goods and services called for in the construction, maintenance and continued operation of the ME at the Premises when such contractors and suppliers are properly qualified and price competitive and shall use best and good faith efforts to hire City residents. The Company also agrees to make best efforts to utilize women-owned and minority-owned vendors within the City.

5. **Security**

The Company agrees to cooperate with the City of Gloucester Police Department, including but not limited to periodic meetings to review operational concerns, security, delivery schedule and procedures, cooperation in investigations, and communications with the Police Department of any suspicious activities at or in the immediate vicinity of the Premises, and with regard to any anti-diversion procedures.

6. **Community Concerns**

The Company agrees to employ its best and good faith efforts to work collaboratively and cooperatively with its neighboring businesses and residents to address mitigation of any concerns or issues that may arise through its operation of the ME. The Company further agrees to designate

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a named person within the Company to serve as a point of contact for all community questions and/or concerns related to the ME and/or its operation.

7. **Additional Obligations**

The obligations of the Company and the City recited herein are specifically contingent upon the Company's receipt of any and all necessary local permits and approvals to locate, occupy, and operate the ME in the City.

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 Ordinances of the City, and 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 other approvals as may be necessary for the ME to operate at the Premises in the City, or to refrain from enforcement action against the Company and its ME for violation of the terms of said permits and other approvals or said statutes, Ordinances, and regulations.

8. **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.

9. **Support**

The City agrees to provide the Commission Certification to the CCC within the amount of time legally required or, if there is no such legally required amount of time, within a reasonable amount of time of a request from the CCC and make best efforts in a timely manner to provide the Company such other information as may be requested by the CCC in connection with applications for licenses at the Premises/ME in a manner that shall not adversely affect the CCC's determination on such applications and to participate and cooperate in good faith in the CCC licensing process. The City agrees to submit to the CCC, or such other state licensing or monitoring authority, as the case may be, the required certifications relating to the Company's application for a license to operate the ME in accordance with applicable law and regulations where such compliance has been properly met, but makes no representation or promise that it will act on any other license or permit request, including, but not limited to any zoning application submitted for the ME, in any particular way other than by the City's normal and regular course of conduct and in accordance with its rules and regulations and any statutory guidelines governing them.

10. **Successors/Assigns**

The Company 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, and shall not assign any of the monies payable under this Agreement, except by and with the prior

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written consent of the City and shall not assign or obligate any of the monies payable under this Agreement, except by and with the prior written consent of the City. This Agreement is binding upon the Parties hereto, their successors, assigns and legal representatives. Neither the City nor the Company shall assign, sublet, or otherwise transfer any interest in the Agreement without the prior written consent of the other.

Events deemed an assignment include, without limitation: (i) Company's final and adjudicated bankruptcy whether voluntary or involuntary; (ii) the Company's takeover or merger by or with any other entity; (iii) the Company's outright sale of assets and equity, majority stock sale to another organization or entity for which the Company does not maintain a controlling equity interest; (iv) or any other change in ownership or status of the Company; (v) any assignment for the benefit of creditors; and/or (vi) any other assignment not approved in advance in writing by the City.

11. Local Taxes

Nothing contained herein shall affect the taxable nature of the real and personal property owned by the Company. The Company agrees that in no event will it petition the City to classify any of its owned or leased real property as "forest land" under M.G.L. c. 61 or land for "agricultural use" or "horticultural use" under M.G.L. c. 61A.

12. Property Taxes

The Company and the City acknowledge that this Agreement does not alter the application of M.G.L. c. 59 to the buildings that house the ME. Without changing the foregoing, however, the Company agrees that in no event will it apply for an exemption from taxes based on a non-profit status.

13. Events of Default

The Company shall be deemed to have committed an event of default if any of the following occur:

a. The Company fails to obtain, and maintain in good standing, all necessary local licenses and permits for the ME, provided that the Company is able to exercise all available rights and due-process for maintaining in good standing said licenses and permits;

b. The Company ceases to operate an ME at its proposed location or seeks to include other marijuana establishments as defined by M.G.L. c. 94G, § 1, as part of its operations without notifying the City; and

c. The Company fails to make payments to the City as required under this Agreement, and such failure remains uncured with reasonable written notice from the City for thirty (30) days.

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In the event that the Commonwealth and/or its agencies or representatives revoke the Company's ME license, the City may also declare an event of default and terminate this Agreement. The Company shall be required to pay any amounts due upon the termination date where such amounts may be determined by the period of operation of the ME within the City.

The City may terminate this Agreement upon the occurrence of any event of default.

14. Notice

Any and all notices, consents, demands, requests, 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 shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service, or, if sent by private overnight or other delivery service, when deposited with such delivery service.

To City:

City of Gloucester
ATTN: Legal Department
City Hall
9 Dale Avenue
Gloucester, MA 01930

To Company:

HVV Massachusetts, Inc.
39 Country Club Way
Ipswich, MA 01938

15. Severability

If any term or condition of this 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.

16. Governing Law

This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, the Parties agree that Gloucester District Court or Salem Superior Court in Essex County shall each serve as a proper forum for any litigation for the adjudication of disputes arising out of this Agreement.

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17. 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.

18. Counterparts

This Agreement may be signed in any number of counterparts all of which taken together, each of which is an original, and all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing one or more counterparts.

19. Signatures

Facsimile signatures or scanned-and-emailed signatures affixed to this Agreement shall have the same weight and authority as an original signature.

20. No Joint Venture

The Parties hereto agree that nothing contained in this Agreement or any other documents executed in connection herewith is intended or shall be construed to establish the City, or the City and any other successor, affiliate or corporate entity as joint ventures or partners.

21. Nullity

This Agreement shall be null and void in the event that the Company does not locate the ME at the Premises or relocates the ME out of the City. Further, in the case of any relocation out of the City, the Company agrees that an adjustment of Annual Fees due to the City hereunder shall be calculated based upon the period of occupation of the ME within the City, but in no event shall the City be responsible for the return of any funds provided to it by the Company.

22. 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 the Company.

23. Entire Agreement

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the Company and the City with respect to the matters described herein. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral between the Parties or their predecessors in interest, and it shall not be modified or amended except by a written document executed by the Parties hereto.

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IN WITNESS WHEREOF, the Parties hereto have caused their respective authorized signatories to execute this Agreement on the day and year first written above in their names and on their behalves.

CITY OF GLOUCESTER, by:

Sefatia Romeo Theken, Mayor

HVV MASSACHUSETTS, INC., by:

Michael Reardon, President

EXHIBIT E

HOST COMMUNITY AGREEMENT

THIS HOST COMMUNITY AGREEMENT ("AGREEMENT") is entered into this 28TH day of, MARCH 2019, by and between **HVV Massachusetts, Inc.**, a Massachusetts corporation with a principal place of business at 39 Country Club Way, Ipswich, MA 01938 ("the Company"), and the **City of Gloucester**, a Massachusetts municipal corporation with a principal address of Nine Dale Avenue, Gloucester, MA 01930 ("the City"), acting by and through its Mayor (collectively referred to as "the Parties").

RECITALS

WHEREAS, the Company wishes to locate and operate a Marijuana Establishment ("ME") as defined by the regulations of the Cannabis Control Commission, ("CCC"), the specific operation of which shall be as a **marijuana manufacturer** as those terms are defined by M.G.L. c. 94G § 1, and to deliver products as permitted by 935 CMR 500, at 38 Great Republic Drive, Gloucester, Massachusetts (the "Premises"); and

WHEREAS, the Company intends to provide certain benefits to the City of Gloucester in the event that it receives the requisite licenses from the CCC or such other state licensing or monitoring authority, as the case may be, to operate the ME and receives all required local permits and approvals from the City;

WHEREAS, the Company has received a Special Permit from the City of Gloucester City Council and Site Plan Approval from the City of Gloucester Planning Board to construct and operate a Medical Marijuana Cultivation Facility and Registered Marijuana Dispensary at the Premises, and is currently in the process of constructing such facility; and

WHEREAS, the Company intends to submit an application to the City of Gloucester Planning Board for Site Plan Review to seek such Site Plan Approval; and

WHEREAS, the Company intends to submit an application to the CCC for a license to operate the ME contemplated herein; and

WHEREAS, the Parties intend by this Agreement to satisfy the provisions of M.G.L. c. 94G § 3(d), applicable to the operation of the ME, such activities to be done in accordance with the applicable state and local laws and regulations in the City; and

WHEREAS, the Parties agree that the above Recitals are true and accurate and that they are incorporated herein and made a part of this Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the City agree as follows:

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1. Definitions

As used in this Agreement, terms shall have the following meaning:

a. Annual Fees shall mean any and all fees paid by the Company to the City under this Agreement and as required by law.

b. Calendar Year shall mean a period of days running from January 1st until and through December 31st of the same year.

c. Commencement Date (or Commencement of Operations) shall mean the date in which the Final Certificate of Registration for the ME at the Premises is issued by the CCC or other regulatory authority (the "Commencement Date"),

d. Gross Sales shall mean the total of actual sales of all inventory sold at the ME during the period of measurement which shall be the calendar year, without subtracting any costs or expenses, whether sold on a retail basis, wholesale basis, or discounted basis. As used herein, "Gross Sales" shall not include any transfers of any inventory from the Premises to any of the Company's other licensed ME facilities throughout the Commonwealth.

e. Inventory shall mean all marijuana products derived from or containing marijuana and/or marijuana derivatives, all parts of the marijuana plant offered for sale in any form, all marijuana based concentrates, oils, edibles and marijuana infused products, as well as all paraphernalia and any other products sold at the ME. Inventory shall not include, and the Company shall not be required to pay the Community Impact Fee on any inventory donated by the Company for medical research or other research purposes.

f. Marijuana Establishment ("ME") shall mean a Marijuana Product Manufacturer as defined by M.G.L. c. 94G, § 1.

2. Annual Fees

In the event that the Company obtains the requisite licenses and approvals as may be required for the operation of the ME, and receives any and all necessary and required permits and licenses of the City, and at the expiration of any final appeal period related thereto, said matter not being appealed further, which permits and licenses allow the Company to locate, occupy and operate the ME on the Premises, then the Company agrees to provide the following Annual Fees:

A. Community Impact Fee

The Company anticipates that the City may incur additional expenses and impacts on the City's roads and other infrastructure systems, law enforcement services, fire protection services, inspectional services, public health and addiction services, and permitting and consulting services, as well as unforeseen financial impacts on the City related to the ME. Accordingly, in order to

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mitigate the financial impact on the City and use of City resources, the Company agrees to pay fees to the City in the amount and under the terms provided herein.

1. The Company agrees to pay a flat Annual Community Impact Fee of fifty thousand dollars ($50,000.00).

2. The Company acknowledges that *time is of the essence* with respect to its timely payment of all fees required under Section 3(A)(2) of this Agreement. Each payment shall be made on or before January 31st of each year following the Commencement Date for five (5) years. The City may, however, with prior written consent grant an extension of no more than an additional thirty (30) days for good cause shown.

3. In the event that any such payments are not fully made by the date they are due then the Company shall be required to pay the City a late payment penalty equal to five percent (5%) of such required payments per annum.

4. Payment of the Annual Fees shall continue for a period of five (5) years and shall expire at the end of said five (5) year period beginning on the Commencement Date.

5. The City shall use the above referenced payments in its sole discretion.

1. <u>Annual Reporting for Host Community Impact Fees</u>

The Company shall submit a certification of its annual Gross Sales to the City with the Company's payment of its Annual Fees. The Company shall maintain 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 CCC. All records shall be kept for a period of at least seven (7) years. Upon request by the City, the Company shall provide the City with the same access to its financial records (to be treated as confidential, to the extent allowed by law) as is required by the CCC and Department of Revenue for purposes of obtaining and maintaining a license for an ME.

During the term of this Agreement and for three (3) years following the termination of this Agreement, the Company shall agree, upon request of the City, to have its financial records examined, copied and audited by an Independent Financial Auditor, the expense of which shall be borne by the City. The Independent Financial Auditor shall review the Company's financial records for purposes of determining that the annual payments contained herein are in compliance with the terms of this Agreement. Such examination shall be made not less than thirty (30) days following written notice from the City and shall occur only during normal business hours and at such place where said books, financial records and accounts are maintained. The Independent Financial Audit shall include those parts of the Company's books and financial records which relate to the payment and shall include a certification of itemized gross sales for the previous calendar year, and all other information required to ascertain compliance with the terms of this Agreement. The independent audit of such records shall be conducted in such a manner as not to interfere with the Company's normal business activities.

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3. Term

Except as expressly provided herein, this Agreement shall take effect on the Commencement Date as defined above, and shall be applicable for as long as the Company operates the ME at the Premises with the exception of any and all community impact fees, which shall be subject to the five (5) year statutory limitations of M.G.L. c. 94G § 3(d).

Given the parties disagreement as to whether the City may legally require a marijuana establishment to pay an impact fee after the initial statutory five (5) year period, the parties agree that if an impact still exists after the said five (5) year period then the parties agree to negotiate the continued payment of fees in good faith for an additional term should the same be allowed by law.

4. Local Vendors and Employment

To the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company shall make every effort in a legal and non-discriminatory manner to give priority to local businesses, suppliers, contractors, builders and vendors in the provision of goods and services called for in the construction, maintenance and continued operation of the ME at the Premises when such contractors and suppliers are properly qualified and price competitive and shall use best and good faith efforts to hire City residents. The Company also agrees to make best efforts to utilize women-owned and minority-owned vendors within the City.

5. Security

The Company agrees to cooperate with the City of Gloucester Police Department, including but not limited to periodic meetings to review operational concerns, security, delivery schedule and procedures, cooperation in investigations, and communications with the Police Department of any suspicious activities at or in the immediate vicinity of the Premises, and with regard to any anti-diversion procedures.

6. Community Concerns

The Company agrees to employ its best and good faith efforts to work collaboratively and cooperatively with its neighboring businesses and residents to address mitigation of any concerns or issues that may arise through its operation of the ME. The Company further agrees to designate a named person within the Company to serve as a point of contact for all community questions and/or concerns related to the ME and/or its operation.

7. Additional Obligations

The obligations of the Company and the City recited herein are specifically contingent upon the Company's receipt of any and all necessary local permits and approvals to locate, occupy, and operate the ME in the City.

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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 Ordinances of the City, and 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 other approvals as may be necessary for the ME to operate at the Premises in the City, or to refrain from enforcement action against the Company and its ME for violation of the terms of said permits and other approvals or said statutes, Ordinances, and regulations.

8. Support

The City of Gloucester agrees to provide the Commission Certification to the CCC within the amount of time legally required or, if there is no such legally required amount of time, within a reasonable amount of time of a request from the CCC and make best efforts in a timely manner to provide the Company such other information as may be requested by the CCC in connection with applications for licenses at the Premises/ME in a manner that shall not adversely affect the CCC's determination on such applications and to participate and cooperate in good faith in the CCC licensing process. The City agrees to submit to the CCC, or such other state licensing or monitoring authority, as the case may be, the required certifications relating to the Company's application for a license to operate the ME in accordance with applicable law and regulations where such compliance has been properly met, but makes no representation or promise that it will act on any other license or permit request, including, but not limited to any zoning application submitted for the ME, in any particular way other than by the City's normal and regular course of conduct and in accordance with its rules and regulations and any statutory guidelines governing them.

9. Successors/Assigns

The Company 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, and shall not assign any of the monies payable under this Agreement, except by and with the prior written consent of the City and shall not assign or obligate any of the monies payable under this Agreement, except by and with the prior written consent of the City. This Agreement is binding upon the Parties hereto, their successors, assigns and legal representatives. Neither the City nor the Company shall assign, sublet, or otherwise transfer any interest in the Agreement without the prior written consent of the other.

Events deemed an assignment include, without limitation: (i) Company's final and adjudicated bankruptcy whether voluntary or involuntary; (ii) the Company's takeover or merger by or with any other entity; (iii) the Company's outright sale of assets and equity, majority stock sale to another organization or entity for which the Company does not maintain a controlling equity interest; (iv) or any other change in ownership or status of the Company; (v) any assignment for the benefit of creditors; and/or (vi) any other assignment not approved in advance in writing by the City.

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10. Local Taxes

Nothing contained herein shall affect the taxable nature of the real and personal property owned by the Company. The Company agrees that in no event will it petition the City to classify any of its owned or leased real property as "forest land" under M.G.L. c. 61 or land for "agricultural use" or "horticultural use" under M.G.L. c. 61A.

11. Property Taxes

The Company and the City acknowledge that this Agreement does not alter the application of M.G.L. c. 59 to the buildings that house the ME. Without changing the foregoing, however, the Company agrees that in no event will it apply for an exemption from taxes based on a non-profit status.

12. Events of Default

The Company shall be deemed to have committed an event of default if any of the following occur:

a. The Company fails to obtain, and maintain in good standing, all necessary local licenses and permits for the ME, provided that the Company is able to exercise all available rights and due-process for maintaining in good standing said licenses and permits;

b. The Company ceases to operate an ME at its proposed location or seeks to include other marijuana establishments as defined by M.G.L. c. 94G, § 1, as part of its operations without notifying the City; and

c. The Company fails to make payments to the City as required under this Agreement, and such failure remains uncured with reasonable written notice from the City for thirty (30) days.

In the event that the Commonwealth and/or its agencies or representatives revoke the Company's ME license, the City may also declare an event of default and terminate this Agreement. The Company shall be required to pay any amounts due upon the termination date where such amounts may be determined by the period of operation of the ME within the City.

The City may terminate this Agreement upon the occurrence of any event of default.

13. Notice

Any and all notices, consents, demands, requests, 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 shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service, or, if sent by private overnight or other delivery service, when deposited with such delivery service.

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To City:

City of Gloucester
ATTN: Legal Department
City Hall
9 Dale Avenue
Gloucester, MA 01930

To Company:

HVV Massachusetts, Inc.
39 Country Club Way
Ipswich, MA 01938

14. Severability

If any term or condition of this 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.

15. Governing Law

This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, the Parties agree that Gloucester District Court or Salem Superior Court in Essex County shall each serve as a proper forum for any litigation for the adjudication of disputes arising out of this Agreement.

16. 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.

17. 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.

18. Counterparts

This Agreement may be signed in any number of counterparts all of which taken together, each of which is an original, and all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing one or more counterparts.

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19. Signatures

Facsimile signatures or scanned-and-emailed signatures affixed to this Agreement shall have the same weight and authority as an original signature.

20. No Joint Venture

The Parties hereto agree that nothing contained in this Agreement or any other documents executed in connection herewith is intended or shall be construed to establish the City, or the City and any other successor, affiliate or corporate entity as joint ventures or partners.

21. Nullity

This Agreement shall be null and void in the event that the Company does not locate the ME at the Premises or relocates the ME out of the City. Further, in the case of any relocation out of the City, the Company agrees that an adjustment of Annual Fees due to the City hereunder shall be calculated based upon the period of occupation of the ME within the City, but in no event shall the City be responsible for the return of any funds provided to it by the Company.

22. 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 the Company.

23. Entire Agreement

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the Company and the City with respect to the matters described herein. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral between the Parties or their predecessors in interest, and it shall not be modified or amended except by a written document executed by the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused their respective authorized signatories to execute this Agreement on the day and year first written above in their names and on their behalves.

CITY OF GLOUCESTER, by:

Sefatia Romeo Theken, Mayor

HVV MASSACHUSETTS, INC., by:

Michael Reardon, President