



**STATE OF
OHIO**
BOARD OF PHARMACY

IN THE MATTER OF:

CASE NO. M-2019-0004

**Harvest of Ohio LLC
c/o Ariane Kirkpatrick, President
627 South 48th Street
Tempe, Arizona 85281**

Account No./Application Nos. 350-890, 350-923, 350-934

SETTLEMENT AGREEMENT WITH THE STATE OF OHIO BOARD OF PHARMACY

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and executed by and among, Harvest of Ohio LLC ("Harvest of Ohio"), and the State of Ohio Board of Pharmacy ("Board") (individually each a "Party," and collectively the "Parties").

WITNESSETH:

WHEREAS, Harvest of Ohio submitted Application ID 890 to obtain a provisional dispensary license at 711 West Union Street, Athens, OH 45701; Application ID 923 to obtain a provisional dispensary license at 2950 North High Street, Columbus, OH 43202; and Application ID 934 to obtain a provisional dispensary license at 4370 Tonawanda Trail, Beavercreek, OH 45430 ("the Applications").

WHEREAS, The Applications listed Ariane Kirkpatrick as a member of an "economically disadvantaged group," as defined in R.C. 3796.10(C), with 51% ownership; Steven White as a "Non-Minority," with 44% ownership, and Thomas Chinn as a "Non-Minority," with 5% ownership of Harvest of Ohio LLC. Ariane Kirkpatrick is a member of an "economically disadvantaged group" and a resident of Ohio as required by R.C. 3796.10(C).

WHEREAS, on or about June 4, 2018, the Board awarded Harvest provisional dispensary licenses at the following addresses: 4370 Tonawanda Trail, Beavercreek, OH 45430 ("Beavercreek location"), 711 West Union Street, Athens, OH 45701 ("Athens location"), and 2950 North High Street, Columbus, OH 43202 ("Columbus location") as an "economically disadvantaged group" as required by R.C. 3796.10(C).

77 South High Street, 17th Floor, Columbus, Ohio 43215



WHEREAS, on November 20, 2017, Ariane Kirkpatrick and Steve White entered into an *Operating Agreement of Harvest of Ohio LLC* (“Operating Agreement”) setting forth the terms and conditions governing the operation and management of Harvest of Ohio LLC.

WHEREAS, on June 7, 2019, the Board issued to Harvest of Ohio Notices of Opportunity for Hearing for the Beavercreek location, Athens location, and Columbus location, Case Number M-2019-0004 (the “Notices”).

WHEREAS, on or about July 10, 2019, Harvest of Ohio filed an action in the Franklin County Court of Common Pleas, Case Number 19-CV-5550 against the Board (“Franklin County case”), and obtained a temporary restraining order and preliminary injunction prohibiting the Board from public dissemination of paragraphs (5) through (14) of the “Allegations” section and the entire “Potential Violations of Law” section contained within the Notices.

WHEREAS, at all times referenced herein, Harvest of Ohio had not received a certificate of operation for the Beavercreek location, Athens location, and Columbus location.

WHEREAS, the Board has determined that the Operating Agreement, other information received by the Board, and the Board’s observations of the day-to-day operations of Harvest of Ohio after being awarded provisional dispensary licenses for the Beavercreek location, Athens location, and Columbus location, violate R.C. 3796.10(C) and Ohio Adm.Code 3796:6-2-04(J)(1), as interpreted by the Board.

WHEREAS, Harvest of Ohio has submitted to the Board the following agreements governing the operation and management of Harvest of Ohio with all three agreements to become effective as of the effective date of this Agreement: *Amended and Restated Operating Agreement of Harvest of Ohio LLC*; *Secured Promissory Note*; and *License Agreement*.

WHEREAS, Harvest of Ohio neither admits nor denies that it has violated any statutes or regulations governing medical marijuana dispensaries, including R.C. 3796.10(C).

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein set forth, and intending to be legally bound hereby, the Parties hereto agree as follows:

1. **Preambles.** The foregoing preambles are incorporated herein by reference.
2. **Specific Actions.**
 - a. The Board hereby issues a reprimand to Harvest of Ohio.
 - b. Harvest of Ohio voluntarily agrees to make a monetary donation in the amount of \$500,000.00 to the Ohio Automated Rx Reporting System ("OARRS") established pursuant R.C. 4729.75 and specifically for the drug database fund of R.C. 4729.83(B), (the "Drug Database Donation"). The first payment of the Drug Database Donation shall be made six (6) months after all Certificates of Operation are obtained for the Athens location, Beavercreek location and Columbus location. The Drug Database Donation shall be paid-in-full eighteen (18) months after the first payment is made.
 - c. Ariane Kirkpatrick shall remain at all times the "Majority Member" and "Managing Member" of Harvest of Ohio as described in the *Amended and Restated Operating Agreement of Harvest of Ohio LLC* and Harvest of Ohio will not be eligible to apply for a change of ownership until it satisfies all of the following conditions:
 - i. Harvest of Ohio's Beavercreek location, Athens location, and Columbus location, have each held a certificate of operation for a period of eighteen (18) months; and
 - ii. The Drug Database Donation has been paid-in-full.
 - d. Upon execution of this Agreement, Harvest of Ohio shall:
 - i. Dismiss with prejudice the Franklin County Case; and
 - ii. Withdraw all requests for hearing *In the Matter of Licensee: Harvest of Ohio LLC*, the State of Ohio Board of Pharmacy, Case Number M-2019-0004.
 - iii. Harvest of Ohio will submit any necessary variances for Board review.
 - e. Upon execution of this Agreement, the Board shall:

- i. After Board approval of all variances described in Section (2)(d)(iii) for single location, schedule final inspections within fourteen (14) days in accordance with Ohio Adm.Code 3796:6-2-06 for that location; and
- ii. Award a certificate of operation to Harvest of Ohio for the Beavercreek location, Athens location, and Columbus location within two (2) business days after each respective location passes a final inspection and, excepting all matters settled herein, meets all other licensure requirements such as payment of the appropriate fees.

3. Specific Releases.

- a. Harvest of Ohio. In consideration for the covenants, releases, and agreements made by the Board pursuant to this Agreement, Harvest of Ohio agrees not to institute or reinstitute any actions against the Board, in any jurisdictions, in any forum, tribunal, court, or administrative proceeding, for any form of relief against the Board relating to, arising from, or concerning the matters described herein. This release does not affect Harvest of Ohio's rights to enforce the terms of this Agreement.
- b. The Board.
 - i. After the terms of this Agreement are fulfilled, the Board agrees that neither this Agreement, nor the underlying facts thereof, will adversely impact Harvest of Ohio, Steve White, and/or Ariane Kirkpatrick regarding (a) any eventual request by Harvest of Ohio to transfer its dispensary licenses to a third party; (b) any request by Ariane Kirkpatrick and/or Steve White to transfer all or some of their membership interest, including but not limited to transferring a controlling interest, in Harvest of Ohio, between themselves and/or to a third-party; (c) any future applications by Harvest of Ohio for additional medical marijuana dispensary licenses in the State of Ohio; and, (d) any future

applications by any entity for new or additional medical marijuana licenses in which Ariane Kirkpatrick or Steve White are owners, officers or employees.

- ii. The Board agrees it will not amend the Notices to assert that Harvest of Ohio is ineligible to receive a provisional dispensary license and/or certificate of operation due to R.C. 3796.10(C) having been held unconstitutional by a court of competent jurisdiction in the State of Ohio.

4. **General Release.** In consideration of the covenants and agreements contained herein, the Parties, for themselves and each of their respective administrators, trustees, accountants, parents, subsidiaries, divisions, affiliates, predecessors, successors, present or former officers, directors, employees, shareholders, owners, members, attorneys and assigns, hereby fully and forever release, withdraw, remise, quit-claim and fully and forever discharge the other party, and each of their respective heirs, executors, administrators, trustees, accountants, parents, subsidiaries, divisions, affiliates, predecessors, successors, present or former officers, directors, employees, shareholders, owners, members, attorneys, and assigns, from any and all claims, demands, damages, accounts, debts, liens, suits, actions, and rights or causes of action of every kind and description, whether known or unknown, suspected or unsuspected, which it now has, or has had, or hereafter can, shall, or may have arising out of or related to the subject matter of this Agreement. The Parties agree not to pursue litigation in this matter or for any released claim related to matters described herein. This release does not affect the Parties' rights to enforce the terms of this Agreement.

5. **Public Record.** All Parties to this Agreement understand that this document is a public record under R.C. §149.43, and its terms will therefore become part of the minutes of a meeting of the Pharmacy Board.

6. **Costs and Expenses of Administrative and Court Proceedings.** Each party shall be responsible for the costs and expenses it incurred in connection with any hearings or other litigation.

7. **Entire Agreement.** This Agreement supersedes any and all agreements by, between and among the Parties, and represents their entire agreement pertaining to the subject matter hereof. There is no agreement or understanding relating to the subject matter hereof, whether express, implied, written or oral, not expressly set forth herein.
8. **Binding Effect.** This Agreement is binding upon and shall inure to the benefit of the Parties hereto and their members, officers, affiliates, agents, employees, successors and assigns.
9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.
10. **Interpretation.** This Agreement shall be interpreted as though mutually drafted by the Parties hereto and their respective counsel.
11. **Headings.** The headings preceding the paragraphs herein are intended to be for convenience only and shall have no operative force or effect.
12. **Authority.** The Parties hereto represent and warrant to each other that each Party possesses the full requisite authority to enter into this Agreement and that the person signing this Agreement on behalf of each Party is fully and duly authorized to do so.
13. **Execution in Counterparts; Facsimile Signatures.** The Parties acknowledge and agree that this Agreement may be executed (1) in one or more counterparts, which together shall constitute a single, integrated agreement, and (2) by facsimile signatures which shall have the same force and effect as original signatures.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Harvest of Ohio and the State of Ohio Board of Pharmacy intending to be legally bound hereby, have executed this Settlement Agreement, which becomes effective upon the date of the Board President's signature below:



By: Shawn C. Wilt, R.Ph., President
State of Ohio Board of Pharmacy

Shawn C Wilt 3/6/2020

Print Name Date



By: Ariane Kirkpatrick, Majority Member
Harvest of Ohio LLC

Ariane B. Kirkpatrick 2/3/20

Print Name Date