

RESOLUTION NO. 2019-70
Introduced by Mayor Trey Hardy

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SETTLEMENT AGREEMENT AND MUTUAL RELEASE IN THE CASE OF *STATE OF OHIO EX REL. OPC RETAIL, LLC, ET AL. V. CITY OF HURON, ET AL.*

WHEREAS, OPC Retail, LLC (“OPC”) and Huron Retail, LLC (“Huron Retail”) brought a lawsuit against the City of Huron (“City”) and the State of Ohio Board of Pharmacy (“Board”) with respect to OPC’s plans to operate a medical marijuana retail dispensary in the City in the case of *State of Ohio ex rel. OPC Retail, LLC, et al. v. City of Huron, Ohio, et al.*, Erie County Court of Common Pleas Case No. 2018 CV 0589; and

WHEREAS, the City, OPC, Huron Retail and the Board have reached an agreement to settle and resolve the pending lawsuit; and

WHEREAS, this Council believes that it is in the best interest of the City and its residents to enter into a Settlement Agreement and Mutual Release to fully settle and resolve the pending lawsuit.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HURON, OHIO, THAT:

SECTION 1. The City Manager is hereby authorized to enter into a Settlement Agreement and Mutual Release in the case of *State of Ohio ex rel. OPC Retail, LLC, et al. v. City of Huron, et al.*, Case No. 2018 CV 0589 before the Erie County Court of Common Pleas, in substantially the form attached hereto as Exhibit A.

SECTION 2: This Council hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of the Council and that all deliberations of this Council and of its committees, if any, which resulted in formal action, were taken in meetings open to the public in full compliance with applicable legal requirements, including O.R.C. §121.22 of the Revised Code.

SECTION 3: This Resolution shall be in full force and effect from and immediately after its adoption.



Trey Hardy, Mayor

ATTEST: 
Clerk of Council

ADOPTED: 12 NOV 2019

SETTLEMENT AGREEMENT
AND
MUTUAL RELEASES

This Settlement Agreement with Mutual Releases (hereinafter the “Agreement”) is entered into this ___ day of _____, 2019 by and between the following Parties to the Erie County Common Pleas Case No. 2018 CV 0589, docketed with the Honorable Tygh M. Tone, captioned State of Ohio ex rel. OPC Retail, LLC, et al. v. City of Huron, Ohio, et al. (hereinafter the “Litigation”): Plaintiffs-Relators OPC Retail, LLC (“OPC) and Huron Retail, LLC (“Huron Retail”, OPC and Huron Retail collectively “Plaintiffs”); Defendant City of Huron and Public Entities Pool of Ohio (PEP) and American Risk Pooling Consultants, Inc. (ARPCO) and York Risk Pooling and the Public Entity Risk Services of Ohio (collectively “City”); and Defendant State of Ohio Board of Pharmacy (“Board”; City and Board collectively “Defendants”).

RECITALS

1. WHEREAS, on or about November 17, 2017, OPC submitted an application to the Board to obtain a provisional dispensary license to operate a medical marijuana dispensary at 2018 Cleveland Road in Huron, Ohio (the “Provisional Site”);
2. WHEREAS, on or about December 20, 2017, OPC submitted an updated application to the Board to obtain a provisional dispensary license (the “Application”).
3. WHEREAS, attached to the Application were the following documents:
 - a) Notice of Proper Zoning Form, signed by the City’s assistant to the City Manager on or about October 25, 2017, stating that the City “HAS NOT enacted a local moratorium or taken other action that would prohibit the applicant from operating as a medical marijuana Dispensary” and that the City “HAS zoning in place at this time and applicant’s proposed facility appears to be planned in accordance with complying with all local zoning laws and regulations in place at the time of completion of this application”;

b) Notice of Proper Zoning Form, signed by the City's assistant to the City Manager on or about November 15, 2017, that included the two statements in subparagraph (a) and also stated, "The Applicant has received local zoning approval and was issued a permit";

c) A letter dated November 15, 2017, from the Law Director for the City stating that the parcel containing Provisional Site "is currently zoned commercial. Existing zoning regulations do not require a change of use permit when an existing commercial establishment transitions into a new commercial establishment. Prior to construction, you will be required to appear before the Huron Planning Commission Design Review Board for approval of any exterior modifications. The only zoning permit which will be required is for the installation of signage."

4. WHEREAS, on or about June 4, 2018, the Board awarded a provisional dispensary license to OPC to operate a medical marijuana dispensary (the "Dispensary") at the Provisional Site in accordance with and subject to the State of Ohio's Medical Marijuana Control Program ("MMCP") as governed *in pari materia* with Ohio Revised Code Chapter 3796 and Ohio Administrative Code Chapter 3796 and, more particularly in accordance with the rules promulgated in OAC 3796:6 to regulate licensure of such dispensaries;

5. WHEREAS, subsequent to the Board's awarding of the provisional license referenced above, the City, through legislative action of its City Council, adopted on June 26, 2018 a series of ordinances collectively enacted to regulate OPC's Dispensary through municipal zoning regulations, most notably the adoption of Zoning Ordinance Chapter 751 *Medical Marijuana Dispensary* incorporated into the City's *Business Regulation Code*. OPC has, *inter alia*, disputed such zoning amendments in the Litigation.

6. WHEREAS, the City has prohibited OPC from proceeding with construction and operation of the Dispensary at the Board-authorized Provisional Site *inter alia* because Ordinance 1126.16, adopted June 26, 2018, prohibits OPC's Dispensary from being located less than 1,000 feet from a nearby public school.

7. WHEREAS, Defendant City has, however, formally authorized through action of its Council the location of OPC's Dispensary at an alternate site, commonly identified as street address 2300 University Drive East, Huron, Ohio ("Alternate Site").

8. WHEREAS, the Provisional Site is more than 500 feet away from prohibited facilities (as required by Ohio Revised Code 3796.09(B)(2)(4)) but is less than 1,000 feet from a prohibited facility in violation of the disputed Huron City Ordinance 1126.16;

9. WHEREAS, Huron Corporate Park, LLC, is wholly owned by the same individuals who own OPC. Huron Corporate Park, LLC owns three parcels of land (parcels 42-01972.005, 42-01972.500 and 42-01972.011) in Erie County totaling approximately 22 acres at the Alternative Site. OPC's owners currently operate a Level I cultivation facility at the Alternative Site and have received a provisional processing license. Relocating the Dispensary to the Alternative Site will complement the medical marijuana campus;

10. WHEREAS, Huron Corporate Park, LLC, has agreed to permit OPC to relocate its proposed dispensary to the Alternate Site.

11. WHEREAS, the Board has not authorized the relocation of OPC's Dispensary from the Provisional Site to the Alternate Site because OAC 3796:6-2-04(K) provides that a provisional license is "exclusive to the entity and location identified in the application and is non-transferable."

12. WHEREAS, OAC 3796:6-4-10 allows the Board to grant a variance from the prohibition contained in OAC 3796:6-2-04(K) upon application. OPC formally applied to the Board in writing for a variance and subsequently presented to the Board, with assistance and support provided to OPC by the City during this presentation, the facts and circumstances that necessitate the granting of the variance in order to obtain a provisional license to relocate to the Alternative Site;

13. WHEREAS, OPC initiated the Litigation in an effort to safeguard its provisional license while further obtaining requisite approvals from the respective Defendants in order to relocate, construct, occupy and maintain the Dispensary in the City of Huron.

14. WHEREAS, over the course of the past year, OPC states that it has expended nearly One Million Dollars (\$1,000,000.00) in legal fees, application fees and additional costs while working with the Defendants in order to comply with their respective procedural requirements and reach a resolution that is satisfactory to all Parties.

15. WHEREAS, the City previously approved the site plans, and has issued, subject to execution of this Agreement, the zoning and building permits for OPC's construction of a new Dispensary at the Alternate Site.

16. WHEREAS, OPC has obtained from the City all other zoning, building, and other governmental approvals needed for Plaintiff's relocation, construction, occupancy, operation and maintenance of the Dispensary at the Alternate Site as an expressly permitted zoning use, requiring no municipal licensure regulation as otherwise required by those zoning ordinances enacted June 26, 2018;

17. WHEREAS, OPC has submitted to the Board an application to relocate its provisional medical marijuana dispensary on or about [insert date] and included in that application:

- a) A surveyor's report or architect's building plans that show precisely where the building will be located on the parcels of land at the Alternate Site.
- b) The blue prints that were submitted to the Huron Township Building Department seeking building permits.
- c) A proposed floorplan of the proposed medical marijuana dispensary to be located at Alternate Site that is substantially identical to the floorplan proposed in the Application.
- d) A realistic timeline for construction.

- e) Proof that OPC has property rights to build and operate a medical marijuana dispensary at 2300 University Road East.
- f) Evidence that the 500-foot requirements under state law and the 1,000-foot requirements for the City of Huron's disputed ordinances are satisfied as to the location of the dispensary at the Alternate Site.
- g) Evidence that the City has determined the Alternate Site is in compliance with relevant local zoning ordinances.
- h) A fee of \$5,000 pursuant to Ohio Adm.Code 3796:6-5-01(B)(2).

WHEREAS, for good and valuable consideration, the Parties agree to terminate the Litigation and release one another mutually from all claims arising or that may arise herein, subject to the terms and conditions hereinafter set forth in this Agreement.

WITNESSETH

1. **RELOCATION.**

(A) ***City of Huron.*** Subject to formal ratification by Defendant Huron's City Council, Defendant City shall issue and facilitate where applicable all zoning, building, and other governmental approvals needed for Plaintiff's relocation, construction, occupancy, operation and maintenance of the Dispensary at the Alternate Site as an expressly permitted zoning use, requiring no municipal licensure regulation as otherwise required by those zoning ordinances enacted June 26, 2018; provided, however, that in all other respects Plaintiffs' Dispensary licensure shall be fully subject to all relevant municipal regulations regarding Plaintiffs' construction, occupancy, operation and maintenance of the Dispensary as a permitted commercial retail use; and, further subject, however, to Defendant City's inherent powers to protect the health, safety and welfare of its residents in concert with those regulations as are comprehensively provided by the State of Ohio MMCP, and as further set forth herein and as permitted under Ohio law.

(B) ***Board of Pharmacy.*** Within fourteen days of the execution of this Agreement and Plaintiffs' dismissal of the Litigation, Defendant Board shall authorize Plaintiffs' relocation of the

Dispensary to the Alternate Site, further subject, however, to all relevant rules and regulations of the State of Ohio MMCP, as well as the provisions of this Agreement.

2. REGULATION.

(A) *City of Huron.* Nothing herein shall impair the City's lawful home rule authority to enforce its local ordinances. Subject to federal and state law regulating OPC's licensure, and without compromising OPC's license:

- (i) City, police, fire, and/or building officials may inspect the Dispensary biannually, or in the event of an emergency, solely for assessing OPC's compliance with City ordinances pertaining to police, fire, and/or building safety; and,
- (ii) upon its conclusion of such inspections, the City may report its findings and/or concerns to the Board.

(B) *OPC Retail, LLC.* Nothing herein shall impair OPC's licensure, nor require the disclosure of information to the City in contravention of state or federal laws, including without limitation protected patient information. Nothing herein shall impair or serve to waive OPC's right and/or obligation to assert privilege, trade secret, infrastructure record, or other exemption either from disclosure to the City, or from disclosure by the City to the public of information that has been provided to the City by OPC. Subject to the above requirements, OPC agrees:

- (i) that within seven (7) days of its submission to the Board of any security plans, OPC will provide the City Manager with copies thereof; and,
- (ii) that within seven (7) days of its obtaining knowledge of any investigation conducted by the Board for alleged violations of State of Ohio Code provisions, OPC shall so notify the City Manager.

3. LICENSURE.

Except as otherwise provided herein, Plaintiffs shall comply with all state and local statutes, ordinances, rules and regulations regarding Plaintiffs' construction, occupancy, operation and maintenance of their dispensary.

4. DAMAGES.

The parties herein acknowledge that *inter alia* Plaintiffs initiated the Litigation in part as a result of their having sustained substantial economic injury. Consequently, Plaintiffs' consent herein to terminate the Litigation constitutes good and valuable consideration toward consummating the terms and conditions of this Agreement. Plaintiffs herein withdraw any and all claims for damages and release Defendants and any of their employees, officials, agents, contractors, or those working in concert or cooperation with them, from any and all claims Plaintiffs may have for compensation, expenses, costs, or any other form of damages. Notwithstanding, any municipal engineering or building department or other municipal administrative entity's fees for application, permits, review, inspection, or any other charges that are currently and ordinarily would be imposed on Plaintiffs' location, construction, occupancy, operation and maintenance of the Dispensary are hereby waived by Defendant City.

5. COURT JURISDICTION.

Because certain conditions of this Agreement will require additional time in which to be satisfied, including, but not limited to, the respective ratification of this Agreement and issuance of the requisite governmental approvals by City and Defendant Board, the Parties agree that jurisdiction for purposes of effectuating this Agreement shall be retained by the Erie County Common Pleas Court, subject however to the Court's consent, until such time as a final order may be journalized.

6. AMENDMENT.

This Agreement may be amended by mutual consent of the Parties in writing without further intervention by the Court, provided however, that should any Party seek the aid of the Court to enforce the Agreement and/or provisions of any such amendment, each Party recognizes that the Court's inherent power to review such issues for reasonableness shall not be limited. When the Parties have mutually determined to their satisfaction that all amendments to which they agree have been satisfied, if any, they shall in turn submit the final amended Agreement to the Court for its approval for final Judgment Entry of this matter. In this fashion, the Parties recognize their continuing obligation to work in good faith cooperation with one another to effectuate this Agreement, which is ultimately subject to the Court's determination and acceptance.

7. 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, 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, 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 claim related to matters described herein, with Plaintiffs further agreeing

to dismiss any and all claims asserted in the Litigation. This general release does not affect the Parties' rights to enforce the terms of this Agreement.

8. PUBLIC RECORD.

All Parties to this Agreement agree that this Agreement is a public record under R.C. 149.43, and its terms will therefore become part of the minutes of a meeting of the Board.

9. COSTS AND EXPENSES OF ADMINISTRATIVE AND COURT PROCEEDINGS.

Each Party shall be responsible for the costs and expenses it incurred in connection with the Litigation. It is expressly understood and agreed that the Board will not reimburse OPC its application fees or other expenses incurred in connection with its Applications or the Litigation.

10. ENTIRE AGREEMENT.

This Agreement supersedes any and all agreements by, between and among the Parties, and represents the 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.

11. BINDING EFFECT.

This Agreement is binding upon and shall inure to the benefit of the Parties hereto and their agents, employees, successors and assigns.

12. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

13. INTERPRETATION.

This Agreement shall be interpreted as though mutually drafted by the Parties hereto and their respective counsel.

14. HEADINGS.

The headings preceding the paragraphs herein are intended to be for convenience only and shall have no operative force or effect.

15. 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.

16. 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 email signatures which shall have the same force and effect as original signatures.

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties have hereunto set their hands of the day and year first above written, this Agreement being binding upon the parties and their successors and assigns.

OPC RETAIL, LLC

HURON RETAIL, LLC

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

STATE OF OHIO BOARD OF PHARMACY

CITY OF HURON, OHIO

By: _____

By: Andrew D. White

Printed Name: _____

Printed Name: ANDREW D. WHITE

Its: _____

Its: CITY MANAGER

Date: _____

Date: November 12, 2019

11/8/19

EXHIBIT "1"

Agreed Judgment Entry