Watertown City Council

Administration Building
149 Main Street
Watertown, MA 02472
Phone: 617-972-6470

Report of the Committee on Economic Development & Planning
Meeting Date: July 13, 2023

The Committee convened on Thursday July 13, 2023 at 6:00 pm in the Richard E. Mastrangelo Council Chamber, with remote participation by Zoom pursuant to Chapter 2 of the Acts of 2023. Present were Lisa Feltner, chair; John Gannon, vice chair; and Vincent Piccirilli, secretary. Also present were Steven Magoon, Assistant City Manager/Director of Community Development and Planning, Council President Mark Sideris, and Councilor Anthony Palomba by zoom.

The purpose of the meeting was to consider updates to cannabis Host Community Agreement (HCA), and make a recommendation to the City Council.

The documents the Committee reviewed were:

- KP Law memo September 6, 2022 "An Act Relative To Equity In The Cannabis Industry" (Attachment A)
- Existing Host Community Agreement July 23, 2020 - Bud's Goods & Provisions (Attachment B)
- Draft amendment to the Existing Host Community Agreement - Bud's Goods & Provisions (Attachment C)

Mr. Magoon gave an overview of the recent changes to state law and its impact on the three HCA's that Watertown has with cannabis operators. There are ambiguities in the law as it relates to existing agreements negotiated in good faith, and well as in the pending regulations yet to be implemented by the Cannabis Control Commission. The essence of the HCA change in law is that the 3% impact fee must be directly related to the operation, and the actual costs must be documented. He added that the City Manager felt it was important for Watertown to be proactive in addressing this.

Key points:

1. There have been no legal challenges from the three cannabis operators in Watertown, but cannabis industry groups may file lawsuits.
2. The proposed draft amendment to the HCAs would eliminate the impact fee tied to a percent of revenue, and instead there would be a $20,000 annual fee that would fund substance abuse programs, and the city will invoice them annually.
3. Watertown will contract with a social service provider to provide substance abuse counseling, and would not be limited to just cannabis.
4. Staff has discussed this proposal with all three cannabis operators and they agreed in principle.
5. In FY23, Watertown has collected over $500K in cannabis excise tax, and about $355K in cannabis impact fees.
6. Cannabis impact fees received to date are being held in a special account and have not been expended. A discussion on how to spend these can occur with the City Council at a future date.

7. Any amendment to the HCAs must include a release of claims on any impact fees paid to date. While this is not in the draft HCA amendment, Mr. Magoon said that Mark Reich from KP Law has already proposed that he would prefer a separate release of claims to be executed in parallel with the HCA amendment.
8. The amendment to the HCAs would be signed by the City Manager, and there would be a vote of the City Council authorizing him to sign the agreement.

➔ **Action Item:** Councilor Piccirilli made a motion, seconded by Councilor Gannon, to recommend that the City Council authorize the Administration to negotiate with the three cannabis operators for amendments to the Host Community Agreements as proposed, and to include a release of liability for prior impact fee payments either as part of the HCA amendment or as a separate agreement, and to bring the final agreements back to the City Council for a vote of authorization for the Manager to sign. Voted 3-0

The meeting adjourned at 7:08 pm.

Report prepared by Vincent Piccirilli

An Act Relative To Equity In The Cannabis Industry
Marijuana Reform
September 6, 2022

The legalization of medical and recreational marijuana in Massachusetts raises many significant legal issues for municipalities as they navigate the permitting for and licensing of this fairly new industry. Many Massachusetts municipalities have engaged in extensive host community agreement negotiations to address both direct and indirect impacts within their communities. After much negotiation at the state level, the General Court recently enacted "An Act Relative to Equity in the Cannabis Industry" (the "Act"), which was signed by Governor Baker on August 11, 2022.

The Act makes numerous changes to Massachusetts' marijuana laws, including those governing host community agreements ("HCAs"), community impact fees, so-called "social consumption" establishments," also referred to as marijuana cafes, taxation, and the role of the Massachusetts Cannabis Control Commission (the "CCC"). This is the first in a two-part series exploring these extensive amendments. This memorandum provides an overview of changes made to the law concerning HCAs and community impact fees; we will address separately the issues of social consumption and social equity businesses.

HOST COMMUNITY AGREEMENTS

The Act substantially revises the regulatory oversight for and approval of HCAs, limits municipalities' ability to collect impact fees for anticipated costs, establishes penalties for municipalities that fail to, or improperly, document impact costs, prohibits an HCA from imposing other types of monetary commitments beyond community impact fees, and establishes a mechanism by which municipalities may waive the HCA requirement entirely.

Impact Fees - While the Act does not eliminate the concept of a community impact fee, it does impose new and different requirements on host communities.

The Act identifies the following requirements applicable to the calculation of impact fees:

1. Fee must be reasonably related to the <u>costs imposed</u> upon the municipality <u>in the preceding year</u> by the operation of the marijuana business, <u>as documented</u>;
2. Fee must be based on <u>actual costs</u>, rather than as a percentage of total or gross sales;
3. Fee may amount to not more than three percent (3%) of the gross sales of the marijuana business;
4. Fee can be effective for no longer than the <u>eighth (8^{th}) year of operation</u> of the marijuana business;

5. Fee commences on the date the marijuana business is granted a final license by the CCC, with payment due annually to the host community;

6. Fee must be documented and transmitted by the host community to the marijuana business not later than one (1) month after the marijuana business' license is renewed by the CCC; and

7. Fee must encompass all payments and obligations between the host community and the marijuana business.

The significance of these changes is that a community impact fee cannot, without being at risk for a challenge, be calculated with regard to what a municipality predicts to be the costs of impacts but must instead be based on actual documented expenditures in the prior year. Further, the Act prohibits an HCA from providing for any other kind of financial commitment to a municipality or a non-profit as directed by the municipality and renders unenforceable "[a]ny other contractual financial obligation that is explicitly or implicitly considered in, or is a condition of a host community agreement."

Breach of Contract Claim, Damages, Attorneys Fees – The Act also creates a breach of contract claim, to be brought in Court, to allow a licensed marijuana business to challenge a municipality's documentation of costs for purposes of calculating the community impact fee. If the marijuana business prevails on the claim that a host community's documented costs are not "reasonably related to the actual costs" imposed by its operation in the preceding year, the violation may be punishable by the award of damages attorneys' fees and other costs encompassed in the community impact fee. This is a significant remedy and likely imposes a high burden on municipalities to (1) contemporaneously document the process used to track expenditure-related matters that can be characterized as community impact fees, and (2) fund any anticipated impacts for the upcoming fiscal year, with the hope of being reimbursed through the community impact fee process after the end of that fiscal year.

Minimum Standards for Addressing Opportunity for those Disproportionately Harmed – By July 1, 2023, potential host communities must adopt procedures and policies that establish minimum standards for facilitating opportunity in the industry for those disproportionately harmed by marijuana prohibition before entering into an HCA with a marijuana business. Failure to adopt such procedures creates a significant risk for the host community, as the Act provides that such a community may be required to forfeit a monetary amount equal to the annual total of community impact fees received from all marijuana businesses operating within the host community. Further, the failure of any host community to abide by the regulations concerning such minimum acceptable standards, once promulgated by the CCC, may also result in forfeiture.

Role of the CCC – The Act provides the CCC with enhanced authority concerning HCAs. The CCC has jurisdiction to "review, regulate, enforce and approve" HCAs as part of a completed marijuana business license application and at each license renewal. The Act directs the CCC to promulgate rules and regulations applicable to the negotiation and approval of HCAs, with a focus on encouraging host communities to work with social equity businesses and economic empowerment priority applicants, as well as to prepare a model HCA.

While the Act makes significant changes to existing law regulating municipalities and marijuana businesses, the effect of the Act on the status of pre-existing HCAs is still not entirely clear and will likely require specific review on a case-by-case basis. Communities may have already begun receiving request to amend existing HCAs in light of the aforementioned legislative amendments. We will continue to work with municipalities to negotiate appropriate HCAs and HCA amendments based on, among other things, each municipality's unique physical characteristics, demographics, and guidance provided by the CCC.

We are closely monitoring developments in this changing area of the law, particularly as the CCC proposes, and then formally promulgates regulations, procedures, and policies, and will provide further updates as we know more.

Should you have further questions on this topic, please contact Attorney Nicole Costanzo at ncostanzo@k-plaw.com or 617.556.0007 with further questions on this topic.

TOWN OF WATERTOWN AND
BUD'S GOODS & PROVISIONS CORP.

HOST COMMUNITY AGREEMENT

THIS HOST COMMUNITY AGREEMENT ("AGREEMENT') is entered into this 23rd day of July, 2020 by and between BUD'S GOODS & PROVISIONS, CORP., a Massachusetts corporation, and any successor in interest, with a principal office address of 12 Pennsylvania Avenue, Newton, Massachusetts 02464 ("the Company"), and the TOWN OF WATERTOWN, a Massachusetts municipal corporation with a principal address of 149 Main Street, Watertown, MA, 02472 ("the Town"), acting by and through its Town Council in reliance upon all of the representations made herein.

WHEREAS, the Company wishes to locate a licensed Marijuana Establishment (the "Marijuana Establishment") for an adult use marijuana storefront retailer establishment within approximately 5,000 square feet of an existing building (the "Facility") at 330-350 Pleasant Street, Town of Watertown Assessor's Parcel ID 219-10A-0, in accordance with and pursuant to applicable state laws and regulations, including, but not limited to 935 CMR 500.00 and such approvals as may be issued by the Town in accordance with its Zoning Ordinance and other applicable local regulations; and

WHEREAS, the Company intends to provide certain benefits to the Town in the event that it receives the requisite licenses from THE CANNABIS CONTROL COMMISSION (THE "CCC")] or such other state licensing or monitoring authority, as the case may be, to operate the Marijuana Establishment and receives all required local permits and approvals from the Town; and

WHEREAS, the parties intend by this Agreement to satisfy the provisions of G.L. c.94G, §3(d), applicable to the operation of Marijuana Establishment, such activities to be only undertaken in accordance with the applicable state and local laws and regulations in the Town.

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 Town agree as follows:

1. **Recitals**

The Parties agree that the above Recitals are true and accurate and that they are incorporated herein and made a part hereof.

2. **Annual Payments**

In the event that the Company obtains the requisite licenses and/or approvals as may be required for the operation of a Marijuana Establishment, and receives any and all necessary and required permits and licenses of the Town, and at the expiration of any final appeal period related thereto, said matter not being appealed further, which permits and/or licenses allow the Company to locate, occupy and operate the BUD'S GOODS & PROVISIONS, CORP. in the Town, then the Company agrees to provide the following Annual Payments: An amount equal to three (3%) of the gross sales from marijuana and marijuana product sales from the Marijuana Establishment. The term "gross sales" shall have the same meaning as defined in Paragraph 2.A.1 below.

Provided, however, if the Company fails to secure any such other license and/or approval as may be required, or any of the required municipal approvals, the Company shall reimburse the Town for its legal fees associated with the negotiation of this Agreement.

A. <u>Community Impact Fee</u>

The Company anticipates that the Town will incur additional expenses and impacts on the Town's road and other infrastructure systems, law enforcement, fire protection services, inspectional services, and permitting and consulting services, as well as unforeseen impacts on the Town. Accordingly, in order to mitigate the financial impact on the Town and use of Town resources, the Company agrees to pay an Annual Community Impact Fee to the Town, 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 from marijuana and marijuana product sales at the Facility. The term "gross sales" shall mean the total of all sales transactions of the Facility without limitation, whether wholesale or retail, and shall include but not be limited to all sales occurring at the Facility, including the sale of marijuana, marijuana infused products, paraphernalia, and any other products sold by the Facility.

2. The Annual Community Impact Fee shall be made Annually within sixty (60) days following the end of each twelve (12) months of operation, and shall continue for a period of five (5) years. At the conclusion of each of the respective five year terms, the parties shall negotiate in good faith the terms of a new Annual Community Impact Fee as an Amendment to this Agreement; provided, however, that if the parties are unable to reach an agreement on a successor Community Impact Fee, the Annual Community Impact Fee specified in Paragraph 2.A.1 of this Agreement shall remain in effect and shall not be reduced below the amount set forth above until such time as the Parties negotiate a successor Community Impact Fee.

3. The Town shall use the above referenced payments in its sole discretion, but shall make a good faith effort to allocate said payments to offset costs related to road and other infrastructure systems, law enforcement, fire protection services, inspectional services, public health and addiction services and permitting and consulting services, as well as unforeseen impacts upon the Town.

B. Additional Costs, Payments and Reimbursements

1. Permit and Connection Fees: The Company hereby acknowledges and accepts, and waives all rights to challenge, contest or appeal, the Town's building permit fee and other permit application fees, sewer and water connection fees, and all other local charges and fees generally applicable to other commercial developments in the Town.

2. Facility Consulting Fees and Costs: The Company shall reimburse the Town for any and all reasonable consulting costs and fees related to any land use applications concerning the Facility, negotiation of this and any other related agreements, and any review concerning the Facility, including planning, engineering, legal and/or environmental professional consultants and any related reasonable disbursements at standard rates charged by the above-referenced consultants in relation to the Facility.

3. Other Costs: The Company shall reimburse the Town for the actual costs incurred by the Town in connection with holding public meetings and forums substantially devoted to discussing the Facility and/or reviewing the Facility and for any and all reasonable consulting costs and fees related to the monitoring and enforcement of the terms of this Agreement, including, but not limited to independent financial auditors and legal fees.

4. Late Payment Penalty: The Company acknowledges that time is of the essence with respect to their timely payment of all funds required under Section 2 of this Agreement. In the event that any such payments are not fully made with ten (10) days of the date they are due, the Town shall provide the Company with written notice of such failure to make a timely payment. The Company shall have a ten (10) day period to cure such failure to make timely payment from the date of receipt of such notice. If the Company fails to make full payment within such cure period, the Company shall be required to pay the Town a late payment penalty equal to five percent (5%) of such required payments.

C. Annual Charitable/Non-Profit Contributions

The Company, in addition to any funds specified herein, shall annually contribute to public local charities/non-profit organizations in the Town an amount no less than $10,000.00, said charities/non-profit organizations to be determined by the Company in its reasonable discretion. The Annual Charitable Non/Profit Contribution shall be made annually beginning on the first anniversary following the commencement of the operations, and shall continue for the term of this Agreement.

D. Annual Reporting for Host Community Impact Fees and Benefit Payments

The Company shall submit annual financial statements to the Town within 30 days after the payment of its Annual Community Impact Fee with a certification of its annual sales. 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 Town, the Company shall provide the Town with the same access to its financial records (to be treated as confidential, to the extent allowed by law) as it is required by the CCC and Department of Revenue for purposes of obtaining and maintaining a license for the Facility

During the term of this Agreement and for three years following the termination of this Agreement the Company shall agree, upon request of the Town to have its financial records examined, copied and audited by an Independent Financial Auditor, the expense of which shall be borne by the Company, such audits not to be conducted more than two times every five years without good cause. The Independent Financial Auditor shall review the Company's financial records for purposes of determining that the Annual Payments 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 Town 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. Local Vendors and Employment

To the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company will 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 BUD'S GOODS & PROVISIONS, CORP. when such contractors and suppliers are properly qualified and price competitive and shall use good faith efforts to hire Town residents.

4. Local Taxes

At all times during the Term of this Agreement, property, both real and personal, owned or operated by the Company shall be treated as taxable, and all applicable real estate and personal property taxes for that property shall be paid either directly by the Company or by its landlord and neither the Company nor its landlord shall object or otherwise challenge the taxability of such property and shall not seek a non-profit or agricultural exemption or reduction with respect to such taxes.

Notwithstanding the foregoing, (i) if real or personal property owned, leased or operated by the Company is determined to be non-taxable or partially non-taxable, or (ii) if the value of such property is abated with the effect of reducing or eliminating the tax which would otherwise be paid if assessed at fair cash value as defined in G.L. c. 59, §38, or (iii) if the Company is determined to be entitled or subject to exemption with the effect of reducing or eliminating the tax which would otherwise be due if not so exempted, then the Company shall pay to the Town an amount which when added to the taxes, if any, paid on such property, shall be equal to the taxes which would have been payable on such property at fair cash value and at the otherwise applicable tax rate, if there had been no abatement or exemption; this payment shall be in addition to the payment made by the Company under Section 2 of this Agreement.

5. <u>Security</u>

To the extent requested by the Town's Police Department, and subject to the security and architectural review requirements of the CCC, or such other state licensing or monitoring authority, as the case may be, the Company shall work with the Town's Police Department in determining the placement of exterior security cameras.

The Company agrees to cooperate with the 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 BUD'S GOODS & PROVISIONS, CORP., and with regard to any anti-diversion procedures.

To the extent requested by the Town's Police Department, the Company shall work with the Police Department to implement a comprehensive diversion prevention plan to prevent diversion, such plan to be in place prior to the commencement of operations at the Establishment.

6. <u>Community Impact Hearing Concerns</u>

The Company agrees to employ its best efforts to work collaboratively and cooperatively with its neighboring businesses and residents to establish written policies and procedures to address mitigation of any concerns or issues that may arise through its operation of the Facility, including, but not limited to any and all concerns or issues raised at the Company's required Community Outreach Meeting relative to the operation of the Facility; said written policies and procedures, as may be amended from time to time, shall be reviewed and approved by the Town and shall be incorporated herein by reference and made a part of this Agreement, the same as if each were fully set forth herein.

7. <u>Additional Obligations</u>

The obligations of the Company and the Town recited herein are specifically contingent upon the Company obtaining a license for operation of BUD'S GOODS & PROVISIONS, CORP. in the Town, and the Company's receipt of any and all necessary local approvals to locate, occupy, and operate BUD'S GOODS & PROVISIONS, CORP. in the Town, provided, however, that if the Company fails to secure any such other license and/or approval as may be required, or any of required municipal approvals, the Company shall reimburse the Town for its legal fees associated with the negotiation of this agreement.

This agreement does not affect, limit, or control the authority of Town 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 Town of Watertown, or applicable regulations of those boards, commissions, and departments or to enforce said statutes, Ordinances, and regulations. The Town, by entering into this Agreement, is not thereby required or obligated to issue such permits and approvals as may be necessary for a BUD'S GOODS & PROVISIONS, CORP. to operate in the Town, or to refrain from enforcement action against the Company and/or its BUD'S GOODS & PROVISIONS, CORP. for violation of the terms of said permits and approvals or said statutes, Ordinances, and regulations.

8. <u>Re-Opener/Review</u>

The Company or any "controlling person" in the Company, as defined in 935 CMR 500.02, shall be required to provide to the Town notice and a copy of any other Host Community Agreement entered into for any establishment in which the Company, or any controlling person in the Company, has any interest and which is licensed by the CCC as the same type of establishment as the entity governed by this agreement.

In the event the Company or any controlling person enters into a Host Community Agreement for Marijuana Establishment with another municipality in the Commonwealth that contains financial terms resulting in payments of a Community Impact Fee or other payments totaling a higher percentage of gross sales for the same type of establishment than the Company agrees to provide the Town pursuant to this Agreement, then the parties shall reopen this Agreement and negotiate an amendment resulting in financial benefits to the Town equivalent or superior to those provided to the other municipality.

9. <u>Support</u>

The Town 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 Facility 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 Facility, in any particular way other than by the Town normal and regular course of conduct and in accordance with its rules and regulations and any statutory guidelines governing them.

10. <u>Term</u>

Except as expressly provided herein, this Agreement shall take effect on the date set forth above, and shall be applicable for as long as the Company operates BUD'S GOODS & PROVISIONS, CORP. in the Town with the exception of the Community Impact Fee, which shall be subject to the five (5) year statutory limitations of G.L. c.94G, §3(d).

In the event the Company has not secured a final license from the CCC and all necessary local permits from the Town and commenced operations at the Facility within two years from the date this Agreement takes effect, this Agreement shall expire and the Company shall be required to negotiate a new Host Community Agreement in order to operate the Facility within the Town. The Board of Selectmen, in its discretion, may agree to an extension of the two year expiration, for good cause, which shall include the time required to pursue or await the determination of an appeal of the special permit or other legal proceeding.

11. 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 Town, and shall not assign or obligate any of the monies payable under this Agreement, except by and with the written consent of the Town, such consent not to be unreasonably withheld, conditioned or delayed. This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Neither the Town nor the Company shall assign, sublet, or otherwise transfer any interest in the Agreement without the 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 Town.

12. Notices

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 Town: Michael J. Driscoll
Town Manager
Town Hall
149 Main Street
Watertown, MA 02472

To Company: Alexander Mazin, President
BUD'S GOODS & PROVISIONS, CORP.
12 Pennsylvania Avenue
Newton, MA 02464

With a copy to: Brian S. Grossman
Bowditch & Dewey, LLP
200 Crossing Boulevard, Suite 300
Framingham, MA 01702

13. <u>Severability</u>

If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless the Town would be substantially or materially prejudiced. Further, the Company agrees that it will not challenge, in any jurisdiction, the enforceability of any provision included in this Agreement; and to the extent the validity of this Agreement is challenged by the Company in a court of competent jurisdiction, the Company shall pay for all reasonable fees and costs incurred by the Town in enforcing this Agreement.

14. <u>Governing Law</u>

This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, and the Company submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

15. <u>Entire Agreement</u>

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

16. <u>Amendments/Waiver</u>:

Amendments, or waivers of any term, condition, covenant, duty or obligation contained in this Agreement may be made only by written amendment executed by authorized representatives of both parties to the original Agreement, prior to the effective date of the amendment.

17. <u>Headings</u>:

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 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 Town, or the Town 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 a Marijuana Establishment in the Town or relocates the Marijuana Establishment out of the Town, provided, however, that if the Company decides not to locate a Marijuana Establishment in the Town, the Company shall reimburse the Town for its legal fees associated with the negotiation of this Agreement. Further, in the case of any relocation out of the Town, the Company agrees that an adjustment of Annual Payments due to the Town hereunder shall be calculated based upon the period of occupation of the Marijuana Establishment within the Town, but in no event shall the Town be responsible for the return of any funds provided to it by the Company.

22. Indemnification

The Company shall indemnify, defend, and hold the Town harmless from and against any and all claims, demands, liabilities, actions, causes of action, defenses, proceedings and/or costs and expenses, including attorney's fees, brought against the Town, its agents, departments, officials, employees, insurers and/or successors, by any third party arising from or relating to the development of the Property and/or Facility. Such indemnification shall include, but shall not be limited to, all reasonable fees and reasonable costs of attorneys and other reasonable consultant fees and all fees and costs (including but not limited to attorneys and consultant fees and costs) shall be at charged at regular and customary municipal rates, of the Town's choosing incurred in defending such claims, actions, proceedings or demands. The Company agrees, within thirty (30) days of written notice by the Town, to reimburse the Town for any and all costs and fees incurred in defending itself with respect to any such claim, action, proceeding or demand.

23. 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 Town or the Company.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

TOWN OF WATERTOWN

Michael J. Driscoll
Town Manager,
On behalf of the
TOWN OF WATERTOWN

BUD'S GOODS & PROVISIONS, CORP.

Alexander Mazin, President
On behalf of BUD'S GOODS & PROVISIONS, CORP.

FIRST AMENDMENT TO
HOST COMMUNITY AGREEMENT

This First Amendment to Host Community Agreement (the "Amendment") is entered into this day of ______________, 2023 (the "Effective Date") by and between the City of Watertown (the "City"), a municipal corporation duly organized under the laws of the Commonwealth with a principal office address of 149 Main Street, Watertown, Massachusetts, acting by and through its Town Council (the "City"), in reliance upon all of the representations made herein, and Bud's Goods and Provisions, Corp., a Massachusetts corporation with a principal office address of 54 West Boylston Street, Worcester, Massachusetts (the "Company") (the City and Company, collectively, the "Parties" and each a "Party").

Commented [NJC1]: Please confirm; this is the address listed with the Secretary of State, which is different from the address provided in the HCA.

RECITALS

WHEREAS, the City and the Company entered into a Host Community Agreement on or about July 23, 2020 (the "HCA"), with respect to the Company's use of land known as at 330-350 Pleasant Street, Watertown, Massachusetts (the "Property"), as a licensed marijuana retail establishment (the "Facility");

WHEREAS, the Company obtained a final license from the Cannabis Control Commission (the "CCC") to commence operations at the Facility on or about ____________________ and seeks to continue operations in accordance with and pursuant to applicable state laws and regulations, including, but not limited to G.L. c.94G and 935 CMR 500.000, et seq., and such approvals as may be issued by the City in accordance with its ordinances, rules, regulations, and policies;

WHEREAS, Chapter 180 of the Acts of 2022, "An Act Relative to Equity in the Cannabis Industry" (the "Act"), amends G.L. c. 94G, §3 relative to host community agreements and community impact fees effective November 9, 2022;

WHEREAS, the CCC has been charged with promulgating rules and regulations for the implementation, administration and enforcement of the Act by November of 2023;

WHEREAS, the Company agrees that the City has already and will continue to experience additional expenses and impacts, both quantifiable and unquantifiable, on the City's road and other infrastructure systems, law enforcement, fire protection services, inspectional services, substance abuse programs and services, permitting and consulting services and public health, as well as unforeseen impacts on the City in the future as a result of the Company's continued operation of the Facility ("City Impact Costs");

WHEREAS, the Company desires to be a good corporate citizen and responsible member of the business community of the City and to reimburse the City for impacts associated with the Facility over and above typical economic development impacts attributable to typical retail operations in the City;

WHEREAS, the PARTIES agree that there is a dispute as to whether the Act retro-actively affects pre-existing host community agreements, such as the HCA; and

WHEREAS, the Parties desire to compromise and settle all disputes and potential disputes among them arising from the Act, and to commit the complete terms of their settlement to writing.

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

1. The PARTIES agree that the above Recitals are true and accurate and that they are incorporated herein and made a part hereof.

2. The following language in the first paragraph of Section 2 of the HCA shall be stricken in its entirety:

   An amount equal to three (3%) of the gross sales from marijuana and marijuana product sales from the Marijuana Establishment. The term "gross sales" shall have the same meaning as defied in Paragraph 2.A.1 below.

3. Section 2. A of the HCA shall be stricken in its entirety and replaced with the following new Section II. A:

   A. Community Impact Fees

      The Company acknowledges that, as a result of the Company's operation of the Facility, the City may incur both direct and indirect expenses and impacts including, but not limited to, consulting services, administrative services and public health education and substance abuse counseling services, and any necessary and related legal and enforcement costs, as well as unforeseen impacts on the City. Accordingly, in order to mitigate any direct and indirect financial impacts on the City and use of City resources, both quantifiable and unquantifiable, the Company agrees to pay community impact fees to the City under the terms provided herein (the "Community Impact Fees").

      The Company shall annually provide written notice to the City within forty-eight (48) hours of each renewal of its marijuana establishment license (the "Annual License Renewal") from the CCC to operate the Facility.

      Not later than one (1) month after the date of each Annual License Renewal, the City shall transmit to the Company its documentation of all actual costs, both incurred and reasonably anticipated, imposed upon City in the preceding year in relation to the operation of the Facility ("City Impact Costs") (the "Transmittal"); provided, however, that upon prior written notice to the

Commented [NJC2]: This is the timeframe required by the Act.

Company, the City may request an extension of time for the Transmittal, which request shall not be unreasonably denied by the Company. The Company agrees that the term "actual costs" includes anticipated costs rather than solely already-incurred costs, where such anticipated costs are part of an annual fiscal year budget approved by the City. The Company further agrees that an appropriation for funds or a contract for services shall be sufficient document of City Impact Costs.

The Company agrees and acknowledges that City Impact Costs shall include costs of the City for substance abuse counseling and waives any and all claims to the contrary. The Company shall therefore annually pay the City $20,000.00 annually in Community Impact Fees for substance abuse counseling upon the City's inclusion of said amount in the Transmittal.

Commented [NJC3]: This is the specific payment the City is seeking. The new impact fee language in this draft amendment is broad enough to allow the City to invoice for any other impacts that become known in the future as well.

Each annual Transmittal setting forth the City Impact Costs shall constitute an invoice for Community Impact Fees and shall be payable by the Company within two (2) months of the issuance of the Transmittal; provided, however, that if the Company believes that the Community Impact Fees due (with the exception of the aforementioned substance abuse counseling costs) are not reasonably related to actual costs imposed upon City in the preceding year by the operation of the Facility, the Company shall submit a written request to the City within one (1) month of the issuance of the respective Transmittal (the "Request") and shall engage in good faith negotiations with the City to review the Community Impact Fees due.

Commented [NJC4]: See waiver above.

In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding paragraph of this Section, the Company agrees to submit the dispute to mediation prior to challenging the Community Impact Fees in a court of competent jurisdiction. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator, unless a longer time period is agreed to by the Parties. In the event that the Parties fail to agree upon a mediator, the Parties shall request the American Arbitration Association to appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed ninety (90) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties shall each bear their own costs of the mediation. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, either Party shall be entitled to seek judicial review of the Community Impact Fees.

Further, the Company acknowledges that the impacts of its operations at the Facility may be impracticable to ascertain and assess as impacts may result in budgetary increases though not separately identified, and consequently, unless the Company timely submits a timely Request to the City and engages in information negotiations and mediation as set forth in the preceding paragraphs of this Section, the Community Impact Fees shall be deemed reasonably related to the actual City Impact Costs, due and payable, and the Company hereby expressly waives any claims to the contrary; in exchange for and in reliance on such representation, among others, the City has entered into this Agreement. Therefore, the Parties agree that in the event that the Company challenges the City Impact Costs and Community Impact Fees requested by the City, it shall, notwithstanding the result of such challenge, waive any claim or request for the City to pay the Company its attorneys' fees and costs. The Company agrees that the foregoing provision is not intended to prohibit it from exercising any right to judicial relief nor as a penalty for any such exercise, but as an allocation of a specified risk to the Company.

The Community Impact Fees shall continue for a period of eight (8) years from the date the Company first commenced operations at the Facility.

The Community Impact Fees payments shall be sent to the City, Attn: ___________________.

The Community Impact Fees are expressly included as "other municipal charges" pursuant to M.G.L. c. 40, § 57. A City licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers, of the Company or agent thereof if the Company's name appears on a list furnished to the licensing authority from the City Collector of individuals delinquent on their taxes and/or water bills.

The Company acknowledges that time is of the essence with respect to performance of its obligations hereunder and that late payments shall be subject to interest at the rates prescribed by G.L. c. 59, §57.

The Company agrees that City Impact Costs sought as Community Impact Fees may include anticipated costs rather than solely already-incurred costs. The Company acknowledges that the City may use the monies received from it as Community Impact Fees in its sole discretion. The City shall make a good faith effort to allocate such expenditures to off-set actual and anticipated costs arising from the impacts of the operation of marijuana establishments within its borders, including but not limited to Company's operations.

4. Section 2.C of the HCA shall be stricken in its entirety.

Commented [NJC5]: The Act allows impact fees for a term of 8 years from operation, did the City want to extend the impact fee term to the 8 years?

Commented [NJC6]: City treasurer?

Commented [NJC7]: Please confirm. The Act prohibits charitable contributions.

5. Section 2.D of the HCA shall be stricken in its entirety.

6. The following language in the first paragraph of Section 10 of the HCA shall be stricken in its entirety:

    with the exception of the Community Impact Fee, which shall be subject to the five (5) year statutory limitations of G.L. c.94G, §3(d)

7. Capitalized terms used herein, but not otherwise defined, shall have the meanings set forth in the HCA.

8. Except as expressly set forth in this Amendment, the HCA otherwise remains in full force and effect and is incorporated and restated herein as if fully set forth at length. Any reference in the HCA to the HCA shall be deemed to also refer to this Amendment.

9. In the event of any inconsistencies between the HCA and this Amendment, the terms of this Amendment shall take precedence.

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

11. Each Party hereto represents and warrants that it is duly organized and existing and in good standing, has the full power, authority, and legal right to enter into and perform this Amendment, and the execution, delivery and performance hereof and thereof (i) will not violate any judgment, order, state law, bylaw, or regulation, and (ii) does not conflict with, or constitute a default under, any agreement or instrument to which the parties may be bound or affected.

12. Each person signing this Amendment hereby represents and warrants that he or she has the full authority and is duly authorized and empowered to execute this Amendment on behalf of the Party for which he or she signs.

13. Facsimile and electronic signatures affixed to this Amendment shall have the same weight and authority as an original signature.

14. This Amendment shall be effective as of _______________, 2023.

[SIGNATURE PAGE TO FOLLOW]

Commented [NJC8]: This section required certification of gross sales for purposes of the impact fee percent based payment.

Commented [NJC9]: See comment above re: 8 vs. 5 years.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment under seal as of the day and year first written above.

CITY OF WATERTOWN, **by and through its Town Council,**	**BUD'S GOODS & PROVISIONS, CORP.,**
________________________ Mark S. Sideris Council President Authorized by Town Council	________________________ Alexander Mazin, President

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