

TOWN OF PROVINCETOWN AND
BWELL HOLDINGS, INC.

HOST COMMUNITY AGREEMENT

THIS HOST COMMUNITY AGREEMENT ("AGREEMENT") is entered into this 16th day of April, 2019 by and between BWELL HOLDINGS, Inc., d/b/a BWell, a Massachusetts corporation and any successor in interest, with a principal office address of 11 Conant Street, #2, Provincetown, MA 02657 ("the Company"), and the Town of Provincetown, a Massachusetts municipal corporation with a principal address of 260 Commercial Street, Provincetown, MA), acting by and through its Board of Selectmen.

WHEREAS, the Company wishes to locate a MARIJUANA RETAIL ESTABLISHMENT for the RETAIL SALE of marijuana at 336 Commercial Street, Unit 5, Provincetown, MA 02657, ("The Facility"), in accordance with and pursuant to applicable state laws and regulations, including, but not limited to 105 CMR 750.00 and 935 CMR 500.00 and such approvals as may be issued by the Town of Provincetown in accordance with its Zoning Bylaw 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 RETAIL ESTABLISHMENT and receives all required local permits and approvals from the Town;

WHEREAS, the parties intend by this Agreement to satisfy the provisions of G.L. c.94G, Section 3(d), applicable to the operation of MARIJUANA RETAIL ESTABLISHMENT, such activities to be only done in accordance with the applicable state and local laws and regulations in the Town of Provincetown;

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 of Provincetown 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. **Payments**

In the event that the Company obtains the requisite licenses and/or approvals as may be required for the operation of the Facility and receives any and all necessary and required permits and licenses of the Town of Provincetown, 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 Facility in the the Town of Provincetown, then the Company agrees to provide the following Payments:

A. Community Impact Fee

The Company anticipates that the Town of Provincetown will incur additional expenses and impacts upon the Town of Provincetown's road and other infrastructure systems, law enforcement, fire protection services, inspectional services, and permitting and consulting services, as well as unforeseen impacts upon the Town of Provincetown. Accordingly, in order to mitigate the financial impact upon the Town and use of Town resources, the Company agrees to pay a Quarterly Community Impact Fee to the Town of Provincetown, in the amount and under the terms provided herein.

1. Company shall pay, on a quarterly basis, a Community Impact Fee in an amount equal to three percent (3%) of gross revenue from the sale of all marijuana and marijuana product sales at the Facility. The Community Impact Fee shall be paid to the Town according to the following schedule:
 - a. Three percent (3%) of gross revenues received in July through September: Due before the last business day of October.
 - b. Three percent (3%) of gross revenues received in October through December: Due before the last business day of January.
 - c. Three percent (3%) of gross revenues received in January through March: Due before the last business day of April.
 - d. Three percent (3%) of gross revenues received in April through June: Due before the last business day of July.
2. The Community Impact Fee shall continue for a period of 5 years after the execution of this agreement. At the conclusion of each of the respective five year terms, the parties shall negotiate a new Quarterly Community Impact Fee; provided however, that the Quarterly Community Impact Fee shall not be reduced below the amount set forth above.
3. The Town of Provincetown shall use the above referenced payments in its sole discretion, but shall make a good faith effort to allocate said payments for 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 of Provincetown.
4. The term "gross revenue" referenced above 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 medical marijuana, recreational marijuana, marijuana infused products, paraphernalia, and any other products or services sold by the Facility.

B. Community Benefits

In addition to the Quarterly Community Impact Fee, the Company shall agree to the following community benefits:

1. BWell and The Facility shall be operated as a Year-Round Business as defined by being open a minimum of four hours a day, four days per week, with an exception for a once a year break in operation not to exceed 30 consecutive days. The Facility must prominently post and advertise their hours of operation.

The Company shall annually certify compliance with the year round hours of operation to the Town of Provincetown at the time of its Annual Financial Statement.

C. 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 of Provincetown's building permit 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 of Provincetown.
2. Facility Consulting Fees and Costs: The Company shall reimburse the Town of Provincetown 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 municipal rates charged by the above-referenced consultants in relation to the Facility.
3. Other Costs: The Company shall reimburse the Town of Provincetown for the actual costs incurred by the Town of Provincetown 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 Company shall be required to pay the Town of Provincetown a late payment penalty equal to five percent (5%) of such required payments.

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

The Company shall submit annual financial statements to the Town Treasurer within 30 days after the anniversary of its Opening Date, identifying payment of its Quarterly Community Impact Fee with a certification of its Quarterly 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 of Provincetown, the Company shall provide the Town of Provincetown 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 of Provincetown to have its financial records examined, copied and audited by an Independent Financial Auditor, the expense of which shall be borne by the Company. The Independent Financial Auditor shall review the Company's financial records for purposes of determining that the Quarterly 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 of Provincetown 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. Any discrepancies between the audited gross sales figures and the Company's payments will be due prior to the next scheduled payment.

3. Community Support

- A. The Company agrees that integration and participation in the community is critical for the successful implementation of providing marijuana services to the community. The Company agrees to provide no less than one hundred (100) hours annually of community service activities including but not limited to: Town of Provincetown-sponsored educational programs on public health and drug abuse prevention, senior assistance, youth programs, community

cleanup, and veteran's assistance, OR participation on Town Boards by one of its employees/management.

The Company shall annually certify to the Town of Provincetown at the time of its Annual Financial Statement the number of hours and nature of the community service rendered by its employees/management within the community.

B. Annual Charitable Contributions

The Company, in addition to any funds specified herein, shall annually contribute a minimum of 1% of gross revenues to a special fund established by the Town of Provincetown to provide grant funding for local charitable or non-profit organizations that provide social services to the community, said charities to be determined by the Town's Grant Program and Guidelines in its reasonable discretion. The Company shall certify such payment to the Town at the time of its Annual Financial Statement.

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 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 Facility when such contractors and suppliers are properly qualified and price competitive and shall use good faith efforts to hire Town of Provincetown residents. Such efforts shall include actively soliciting bids from Town of Provincetown vendors through local advertisements and direct contact, advertising any job expansion or hiring of new permanent full-time employees first to Town of Provincetown residents a minimum of two (2) weeks before advertising through all typical regional employment advertising outlet coordination with the Town of Provincetown Chamber of Commerce and such other reasonable measures as the Town of Provincetown may from time to time request. The Company also agrees to make reasonable efforts to utilize women-owned and minority-owned vendors within the Town of Provincetown.

5. Local Taxes:

At all times during the Term of this Agreement, property, both real and personal, owned or operated by the Company and/or the Landlord 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 the Landlord, and neither the Company nor the 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.

6. Security

To the extent requested by the Town of Provincetown'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 obtain the approval of 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 Facility, and with regard to any anti-diversion procedures.

To the extent requested by the Town of Provincetown'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.

7. Additional Obligations

The obligations of the Company and the Town of Provincetown recited herein are specifically contingent upon the Company obtaining a license for operation of the Facility in the Town of Provincetown, and the Company's receipt of any and all necessary local approvals to locate, occupy, and operate the Facility in the Town of Provincetown, 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 of Provincetown for its legal fees associated with the negotiation of this agreement.

This agreement does not affect, limit, or control the authority of Town of Provincetown 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 Bylaws of the Town, or applicable regulations of those boards, commissions, and departments or to enforce said statutes, Bylaws, 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 the Facility to operate in the Town of Provincetown, or to refrain from enforcement action against the Company and/or the Facility for violation of the terms of said permits and approvals or said statutes, bylaws, and regulations

8. Re-Opener/Review

The Company or any "controlling person" in the Company, as defined in 935 CMR 500.02, shall be required to provide to the Town of Provincetown 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 a MARIJUANA RETAIL ESTABLISHMENT with another municipality in the Commonwealth that contains financial terms resulting in payments of a Community Impact Fee and Quarterly Community Benefit Payment totaling a higher percentage of gross sales for the same type of establishment than the Company agrees to provide the Town of Provincetown pursuant to this Agreement, then the parties shall reopen this Agreement and negotiate an amendment resulting in financial benefits to the Town of Provincetown equivalent or superior to those provided to the other municipality.

9. **Support:**

The Town of Provincetown 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 of Provincetown normal and regular course of conduct and in accordance with its rules and regulations and any statutory guidelines governing them.

10. **Term**

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 the Facility in the Town of Provincetown.

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 of Provincetown, and shall not assign any of the monies payable under this Agreement, except by and with the written consent of the Town of Provincetown and shall not assign or obligate any of the monies payable under this Agreement, except by and with the written consent of the Town of Provincetown. This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Neither the Town of Provincetown 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 of Provincetown.

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 of Provincetown:

To Licensee: BWELL HOLDINGS, Inc.
11 Conant Street, #2
Provincetown, MA
02657

13. Severability

If any term of 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 of Provincetown 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 of Provincetown in enforcing this Agreement.

14. Governing Law

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. Entire Agreement

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the Company and the Town of Provincetown 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. 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 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 of Provincetown, or the Town of Provincetown 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 RETAIL ESTABLISHMENT in the Town of Provincetown or relocates the MARIJUANA RETAIL ESTABLISHMENT out of the Town of Provincetown, provided, however, that if the Company decides not to locate a MARIJUANA RETAIL ESTABLISHMENT in the Town of Provincetown, the Company shall reimburse the Town of Provincetown for its legal fees associated with the negotiation of this Agreement. Further, in the case of any relocation out of the Town of Provincetown, the Company agrees that an adjustment of Quarterly Payments due to the Town of Provincetown hereunder shall be calculated based upon the period of occupation of the MARIJUANA RETAIL ESTABLISHMENT within the Town of Provincetown, but in no event shall the Town of Provincetown 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 of Provincetown harmless from and against any and all claims, demands, liabilities, actions, causes of actions, defenses, proceedings and/or costs and expenses, including attorney's fees, brought against the Town of Provincetown, their 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 CITY/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 of Provincetown, to reimburse the Town of Provincetown 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 of Provincetown or the Company.

24. License Compliance

The Company acknowledges the Town intends to establish a license for such retail activities. The Company hereby agrees the Town may, at its own discretion, incorporate any or all of the restrictions and conditions of this Host Agreement in said license.

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

TOWN OF PROVINCETOWN



DAVID PANAGORE
TOWN MANAGER

On behalf of the
Town of Provincetown Select Board

BWELL HOLDINGS, INC.



Karen Nash
President

On behalf of BWELL HOLDINGS, INC.