

**CITY OF AMESBURY, MASSACHUSETTS
AND
NUG RUN, LLC**

HOST COMMUNITY AGREEMENT

This HOST COMMUNITY AGREEMENT (the “Agreement”) is entered into this 27th day of May, 2022 (the “Effective Date”) by and between the City of Amesbury (the “City”), a municipal corporation existing within the Commonwealth of Massachusetts with an address of 62 Friend St, Amesbury, MA 01913, acting by and through its duly authorized Mayor in reliance upon all of the representations made herein, and Nug Run, LLC (the “Company”), a Massachusetts corporation with a principal office address of 57 South Hunt Road, Amesbury, MA 01913 (collectively, referred to as the “Parties”).

RECITALS

WHEREAS, the Company seeks to obtain a Marijuana Delivery Operator License and operate a licensed Marijuana Delivery Operator Establishment on an 2,000 square foot parcel of land known as 57 South Hunt Road, more accurately described by the deed recorded with the Essex County Registry of Deeds Book 37250, page 256 on, and on Map 95 and numbered Lot 7 in the Assessor’s database (the “Property”), to be solely limited to the storage, sale, and delivery of marijuana and marijuana products for adult use (the “ Establishment”), in accordance with and pursuant to applicable state laws and regulations, including, but not limited to G.L. c.94G and 935 CMR 500.00 and such approvals as may be issued by the City in accordance with its Zoning Ordinances and other applicable local regulations;

WHEREAS, the Company anticipates that the City will incur additional expenses and impacts on the City’s road and other infrastructure systems, law enforcement, fire protection services, inspectional services, permitting and consulting services and public health, as well as unforeseen impacts, both quantifiable and unquantifiable on the City;

WHEREAS, the Company intends to provide certain benefits to the City in the event that it receives the requisite license from the Cannabis Control Commission (the “CCC”) or such other state licensing or monitoring authority, as the case may be, to operate the Establishment and receives all required local permits and approvals from the City;

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

WHEREAS, in addition to any payments required under this Agreement, the Company desires to support community initiatives and interests in the City to express its appreciation for the community support it has received to operate the Establishment in the City.

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

AGREEMENT

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

The Company agrees to provide the City the following annual payments (the “Annual Payments”). The Annual Payments shall be in addition to and separate from any local sales tax required to be paid to the City pursuant to G.L. c. 64N, §3.

A. Community Impact Fees. The Company anticipates that, as a result of the Company’s operation of the Establishment at the Property, the City will incur additional expenses and impacts upon its roads and other infrastructure systems, law enforcement, inspectional services, permitting 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 upon the City. The Parties, however, acknowledge that on or about December 22, 2021, the City suspended the collection of community impact fees from marijuana establishments while it monitors and studies such impacts. Accordingly, in order to mitigate the direct and indirect financial impacts upon the City and use of the City’s resources, both quantifiable and unquantifiable, the Company agrees to annually pay community impact fees to the City, in the amounts and under the terms provided herein (the “Annual Community Impact Fees”), in the event that the City provides written notice to the Company that the suspension has been lifted (the “Resumption”):

1. The Company shall pay an Annual Community Impact Fees in an amount equal to two percent (2%) of gross sales from any and all operations of Establishment. The term “gross sales” shall mean the total of all sales transactions of the Establishment without limitation, including the sale of marijuana, marijuana infused products, paraphernalia, and any other products sold by the Establishment (the “Gross Sales”). The Company agrees that calculation of the Community Impact Fees in this manner will be within the statutory cap of three percent (3%) of gross sales under G.L. c.94G §3(d) and the Company waives any claims to the contrary.
2. The Annual Community Impact Fees shall be made in quarterly installments each year per the City’s fiscal year (July 1 - June 30) on September 30, December 31, March 31, and June 30 with the first payment due thirty (30) days after the City provides the Company written notice of the Resumption. The Annual Community Impact Fees for the first (1st) year of operation shall be prorated based on the number of months that the Establishment is in operation; provided, however, that in

no event shall the City be responsible for the return of the Annual Community Impact Fees or portion thereof already provided to the City by the Company.

3. The Annual Community Impact Fees shall each continue for a period of five (5) years from the date of the Resumption, and shall be subject to renegotiation for successive terms for as long as the Establishment remains in operation. At least ninety (90) days before the conclusion of the five (5) year term, 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 Fees specified in Paragraph 2.A.1 of this Agreement shall automatically renew and shall not be reduced below the amount set forth above.
4. The City 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, permitting and consulting services, public health education and substance abuse counseling services, and any necessary and related legal and enforcement costs, as well as unforeseen impacts upon the City. The Company acknowledges and agrees that the City is under no obligation to use the Community Impact Fees in any particular manner.
5. Pursuant to G.L. c. 94G, §3(d), a “community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment...” (“City Costs”). Notwithstanding the foregoing, the Parties acknowledge the difficulty in computing actual City Costs and have agreed to utilize a fixed percentage of Gross Sales as specified in Paragraph 2.A.1 above in lieu of attempting to determine actual City Costs incurred. The Company acknowledges that the impacts of its operation may be impracticable to ascertain and assess as impacts may result in budgetary increases though not separately identified, and consequently, the Company acknowledges that the payments due under this Agreement are reasonably related to City Costs and waives any claims to the contrary.
6. Annual Community Impact Fees are expressly included as “other municipal charges” pursuant to 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.

B. Annual Charitable/Non-Profit Contributions

The Company, in addition to any funds specified herein, shall annually contribute to local charities/non-profit organizations in the City of Amesbury in an amount no less than five thousand dollars (\$5,000) said local charities/non-profit organizations to be determined by the Company (“Annual Charitable Non/Profit Contribution”).

The Annual Charitable Non/Profit Contribution shall be made annually beginning on the first twelve (12) month anniversary following the commencement of operations at the Establishment, and shall continue annually for the term of this Agreement. The commencement of operations shall be deemed in effect upon the Company’s receipt of both an occupancy permit from the Building Commissioner and the issuance of a final license from the CCC (the “Commencement of Operations”). The Company shall provide the City with evidence of the Annual Charitable Non/Profit Contribution each year.

The Parties hereby recognize and agree that any Annual Charitable Non/Profit Contribution to be paid by the Company shall not be deemed a community impact fee subject to the requirements or limitations set forth in G.L. c.94G, §3(d).

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 City’s building permit fee and other permit application fees, sewer and water connection fees, and all other local charges.
2. Establishment Consulting Fees and Costs: The Company shall reimburse the City for any and all reasonable third-party consulting costs and fees related to any land use applications concerning the Establishment, negotiation of this and any other related agreements, and any review concerning the Establishment, 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 Establishment that may be required in addition to review under the zoning ordinances, for which reimbursement will be required pursuant to G.L. c.44 §53G.
3. Legal Fees and Costs: Any City legal fees and costs associated with the Establishment, including the cost to negotiate this Agreement, shall be paid from a \$5,000 payment made by the Company to the City within thirty (30) days of the execution of this Agreement, and City shall provide an invoice for review by Company. Legal fees and costs exceeding the \$5,000 shall be reimbursed to the City within thirty (30) days of the City’s request for the same. In the event of a Resumption, all amounts paid to the City pursuant to this paragraph shall be credited against the Annual Community Impact Fees owed by Company as set forth in Section 2.A.1 herein.

4. Other Costs: Upon presentation to Company of invoices, Company shall reimburse the City for the actual costs incurred by the City in connection with holding public meetings and forums substantially devoted to discussing the Establishment and/or reviewing the Establishment 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. In the event of a Resumption, all amounts paid to the City pursuant to this paragraph shall be credited against the Annual Community Impact Fees owed by Company as set forth in Section 2.A.1 herein.

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

The Company shall notify the City within seven (7) days of its Commencement of Operations at the Establishment. The Company shall submit annual written reports to the City within thirty (30) days after the payment of its fourth (4th) quarterly installment of the Annual Community Impact Fees with a certification of: (1) its annual Gross Sales; and (2) its compliance with all other requirements of this Agreement. During the term of this Agreement the Company shall, upon request of the City, appear before a meeting of City Council to review compliance with the terms of this Agreement.

The Company shall maintain books, financial records, and other compilations of data pertaining to the requirements of this Agreement in accordance with standard accounting practices and any applicable regulations or guidelines of the CCC. All records shall be kept for a period of at least seven (7) years. Upon request by the City, the Company shall provide the City or its agents 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 Commonwealth, including the CCC and Department of Revenue, for purposes of obtaining and maintaining a license(s) at the Establishment.

Upon request of the City, during the term of this Agreement and for three (3) years following the termination of this Agreement, the Company shall 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 Community Impact Fees are in compliance with the terms of this Agreement. Such examination shall be made not less than thirty (30) days following written notice from the City and shall occur only during normal business hours and at such place where said books, financial records and accounts are maintained. The Independent Financial Audit shall include those parts of the Company's books and financial records which relate to the payment and shall include a certification of itemized Gross Sales for the previous calendar year, and all other information required to ascertain compliance with the terms of this Agreement. The independent audit of such records shall be conducted in such a manner as not to interfere with the Company's normal business activities.

3. No Off-Set Payments

If the City receives additional payments from the Company, or from the Department of Revenue or any other source, the funds for which have been collected by assessment against the Company, including, but not limited to taxes imposed by an act of the legislature of the Commonwealth of Massachusetts, or a mandate from the City for said payments, the amounts due from the Company to the City under the terms of this Agreement shall not be reduced by the amount of such other payments.

4. Local Property 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 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 City 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. Vehicle Management

The Company shall keep any and all vehicles used in connection with the delivery and/or transportation of marijuana and other products from the Establishment in the City, shall register all such vehicles in the City and shall pay motor vehicle excise taxes on such vehicles to the City. The Company agrees that during loading and unloading of marijuana and marijuana products, all vehicles shall be adequately screened from the public way.

6. Community Support

A. Local Vendors and Employment.

To the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company shall use good faith efforts in a legal and non-discriminatory manner to give priority to qualified local businesses, contractors and vendors in the provision of goods and services called for in the construction, maintenance and continued operation of the Establishment.

Except for senior management, and to the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company shall use good

faith efforts in a legal and non-discriminatory manner to give priority to hire qualified residents of the City as employees of the Establishment.

Good faith efforts shall include, at a minimum, actively soliciting bids from City vendors through local advertisements and direct contact, as well as advertising any job expansion or hiring of new permanent full time employees first to City residents before advertising through all typical regional employment advertising outlets.

The Company's annual report to the City shall include information concerning the number of Amesbury residents employed at the Establishment and a description of the measures taken to fulfill this workforce hiring commitment. The Company shall furnish the City with such further information and documentation as the City may reasonably request to support and document compliance with this Agreement.

B. Educational Programs/Community Service.

The Company shall use best efforts to provide staff to sponsor and/or participate in one hundred (100) hours annually of local educational programs on public health and drug abuse prevention, and to work cooperatively with City public safety departments and/or other community service activities. The Company's annual report to the City shall include information concerning the number of educational programs provided and/or community service activities sponsored or participated in.

7. Security

To the extent requested by the City'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 City's Police Department in reviewing and approving all security plans prior to implementation and Commencement of Operations.

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 Establishment and with regard to any anti-diversion procedures to ensure that marijuana and marijuana products are not being transferred to the illegal market or to minors. To the extent requested by the City'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.

The Company shall promptly report the discovery of the following to City Police within twenty-four (24) hours of the Company becoming aware of such event: diversion of marijuana; unusual discrepancies identified during inventory; theft; loss and any criminal action; unusual discrepancy in weight or inventory during transportation; any vehicle accidents, diversions, losses, or other reportable incidents that occur during transport; any suspicious act involving the

storage, sale, distribution, transportation or delivery of marijuana by any person; unauthorized destruction of marijuana; any loss or unauthorized alteration of records related to marijuana, registered qualifying patients, personal caregivers, or dispensary agents; an alarm activation or other event that requires response by public safety personnel; failure of any security alarm system due to a loss of electrical power or mechanical malfunction that is expected to last longer than eight (8) hours; and any other breach of security.

8. Community Impact Hearing Concerns

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 Establishment, including, but not limited to any and all concerns or issues raised at the Company's required Community Outreach Meeting relative to the operations of the Establishment. In addition, at the request of the City, the Company shall hold community forums for discussion with neighboring residences and businesses owners in order to address community feedback and neighborhood concerns with respect to the operation of the Establishment; the Company shall establish or update its written policies and procedures to address concerns raised. Said written policies and procedures shall be presented to the City and reviewed annually by the Board as part of the Company's annual report to ensure compliance with the policies and procedures and to address any further impacts requiring mitigation. The policies and procedures addressing community impact mitigation adopted by the Company and presented to the City shall be incorporated herein by reference and made a part of this Agreement, the same as if each were fully set forth herein.

The Company further agrees and acknowledges that in the event the City receives complaints with respect to the failure to mitigate conditions at the operation of the Establishment, the Company shall be required to meet with the City, which may require that additional mitigation measures be taken, at the Company's sole expense, to address the specific nature of the complaints to the satisfaction of the City.

9. Additional Obligations

A. Retained Authority of the Municipality

This Agreement does not affect, limit, or control the authority of the City boards, commissions, and departments to carry out their respective powers and duties to decide upon and to issue, or deny, applicable permits and other approvals under the statutes and regulations of the Commonwealth, the general and zoning ordinances of the City, or applicable regulations of those boards, commissions, and departments or to enforce said statutes, ordinances, and regulations. The City, by entering into this Agreement, is not thereby required or obligated to issue such permits and approvals as may be necessary for the Establishment to operate in the City, or to refrain from enforcement action against the Company and/or the Establishment for violation of the terms of said permits and approvals or said statutes, ordinances, and regulations.

B. Annual Reporting

The Company shall file an annual report with the City in connection with its annual financial submissions on July 31 of each year for purposes of reporting on compliance with each of the terms of this Agreement and shall, at the request of the City Council, appear at a regularly scheduled meeting to discuss the Annual Report.

C. Annual Inspections

The Company agrees that it will voluntarily submit to annual inspections by the Police, Fire and Building Departments to ensure compliance with the terms of this Agreement and other local approvals. This provision shall not preclude the City or any of its departments from conducting inspections at other times during the year to address enforcement matters.

D. Improvements to the Property

Any capital improvements to the Property shall match the look and feel of the City and the surrounding parcels, and be of construction standards at least at the quality of other nearby businesses. The Company shall comply with all laws, rules, regulations and orders applicable to the Establishment, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the performance of such work.

E. Limitation on Use

The Company agrees that, even if authorized under CCC regulations, it shall not permit on-site social consumption at the Establishment absent prior written approval from the City.

10. Hours of Operation

The Company agrees that in no event shall any sale or delivery of marijuana and/or marijuana products occur at the Establishment between hours of 9:00 P.M. through 8:00 A.M. Monday through Sundays, unless further restricted by the City's special permit granting authority.

11. Odor Control Technology

The Company shall ensure that odor from the Establishment is not released so as to constitute a nuisance to surrounding properties. The Company shall employ odor scrubbers and utilize a closed air system at the Establishment to not relive or introduce any outdoor air into the Establishment, nor allow any indoor air to escape. The Company shall employ odor control technology to remove odors and harmful volatile organic compounds (VOCs) from the Establishment. The Company shall ensure proper maintenance of all odor mitigation equipment to ensure maximum efficiency.

The Company shall keep a record of any and all odor complaints received, which record shall be maintained by the Company for the term of this Agreement. All complaints received shall be immediately reported to the City and remedied by the Company.

In the event the City receives five (5) or more complaints with respect to odor impacts in relation to the operation of the Establishment, the Company shall be required to meet with the City Council and take mitigation measures, at the Company's sole expense, to address the specific nature of the complaints to the satisfaction of the City. Such additional measures shall include, but not be limited to, having its odor prevention mechanism and technologies reviewed and assessed by independent engineer. The Company agrees and acknowledges that if odor mitigation is not addressed to the satisfaction of the City, the Company shall, within thirty (30) days of notice, cease all operations at the Establishment upon the request of the City.

Nothing set forth herein, shall limit the authority or jurisdiction of the Building Inspector, Board of Health, or any other local enforcement official from enforcing applicable state laws and regulations, the City's local ordinances and regulations, with respect to odor violations.

12. 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 City 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 establishment that contains terms that are superior to what the Company agrees to provide the City pursuant to this Agreement, then the Parties shall reopen this Agreement and negotiate an amendment resulting in benefits to the City equivalent or superior to those provided to the other municipality. The re-negotiation of the Host Community Agreement under this provision would not preclude the Company from operating during the negotiation of the successor agreement, provided the Company is in full compliance with all other terms of this Agreement.

13. Municipal Support

The City agrees to submit to the CCC, or such other state licensing or monitoring authority, as the case may be, the required certifications relating to the Company's application for a license to operate the Establishment where such compliance has been properly met, but makes no representation or promise that it will act on any license or permit request, including, but not limited to any zoning application submitted for the Establishment, in any particular way other than by the City's normal and regular course of conduct and in accordance with its rules and regulations and any statutory guidelines governing them.

14. Term and Termination

Except as expressly provided herein, this Agreement shall take effect on the Effective Date set forth above, and shall be applicable for as long as the Company operates the Establishment in the City 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 City and commenced operations at the Establishment within eighteen (18) months from the date of execution of this Agreement, this Agreement shall expire at the discretion of the City, and the Company shall be required to negotiate a new Host Community Agreement in order to operate the Establishment within the City. The City, in its discretion, may agree to an extension of the eighteen (18) month 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.

The City may terminate this Agreement for cause by providing written notice to the Company in the event that: (i) Company with willful or gross negligence violates any laws of the City or the Commonwealth with respect to the operation of the Establishment, and such violation remains uncured for thirty (30) days following the City's issuance to Company of written notice of such violation; (ii) Company fails to make payments to the City as required under this Agreement, and such failure remains uncured for ten (10) days following the City's issuance to Company of written notice of such violation; or (iii) there is any other material breach of the Agreement by the Company, which material breach remains uncured for thirty (30) days following the City's issuance to Company of written notice of such violation.

In the event of termination of this Agreement, the Company shall immediately cease all operations at the Establishment.

15. Successors/Assigns

This Agreement is binding upon the Parties hereto, their successors, assigns, and legal representatives. The Company shall not assign, sublet, or otherwise transfer its rights nor delegate its obligations under this Agreement, in whole or in part, without the prior written consent from the City and shall not assign or obligate any of the monies payable under this Agreement, except by and with the written consent of the City.

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 material change in ownership or status of the Company; (v) any assignment for the benefit of creditors; and/or (vi) any other assignment not approved in advance in writing by the City.

16. 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 services

To the City: City Hall
Attn: Mayor's Office
62 Friend Street
Amesbury, MA 01913

With a copy to: Amesbury City Solicitor
KP Law, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110

To the Company: Nug Run, LLC
c/o Resident Agent, Christian Zielinski
57 South Hunt Road
Amesbury, MA 01913

17. 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 authorized representatives of both parties to the original Agreement, prior to the effective date of the amendment.

18. Entire Agreement

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

19. Third Parties

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or the Company.

20. Severability

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 City 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 fees and costs incurred by the City in enforcing this Agreement.

21. Governing Law and Exclusive Venue

The Parties agree that this Agreement shall be governed by and construed 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.

22. 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.

23. 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.

24. Signatures

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

25. No Joint Venture

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

26. Nullity

This Agreement shall be null and void in the event that the Company does not locate the Establishment in City; provided however, that Company shall reimburse the City for its legal fees and costs associated with the negotiation of this Agreement within thirty (30) day of the City's request for same. Further, in the case of the cessation of operations or relocation of the Establishment out of the City, an adjustment of payments due to the City under Section 2 of this Agreement including, but not limited to, the Annual Community Impact Fees, shall be calculated based upon the period of occupation of the Establishment within the City and shall be paid by the Company within thirty (30) days of said cessation and/or relocation but in no event shall the City be responsible for the return of any funds provided to it by the Company.

27. Indemnification

The Company shall indemnify, defend, and hold the City 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 City, 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 Establishment. 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 of the City's choosing incurred in defending such claims, actions, proceedings or demands. The Company agrees, within thirty (30) days of written notice by the City, to reimburse the City for any and all costs and fees incurred in defending itself with respect to any such claim, action, proceeding or demand.

28. Representation of Authority and Warranties

The Company 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 Agreement, and the execution, delivery and performance hereof and thereof (i) will not violate any judgment, order, state law, ordinance, or regulation, and (ii) does not conflict with, or constitute a default under, any agreement or instrument to which the Company is a party or by which the Company may be bound or affected.

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

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

CITY OF AMESBURY,
By and through its Mayor:


Kassandra Gove

NUG RUN, LLC,
By:


Name: Christian Zielinski
Title: CEO