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September 19, 2022

**VIA EMAIL**

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**Re: Public Comment for September 19, 2022 Council Meeting**

Dear Ms. Johnson and City Council Members,

I hope you are well. As before, please be advised that our offices represent OI Holdings LLC and Higher Love Corp. Inc. (“Higher Love”). Please kindly present this letter to council members as public comment relative to item N) ADJOURN TO CLOSED SESSION, “Pending marihuana related litigation against the City of Menominee” of the City Council Agenda for September 19, 2022.

The purpose of this public comment is to provide a short and correct summary of the settlement offer now pending, which was made by plaintiffs Higher Love, Rocky North, Highwire, and Nu Group (Proposing Parties).

**1. Current settlement offer.**

Since early August 2022, the Proposing Parties have made 3 formal settlement offers to the City via email on August 13, August 23, and September 2. The main idea behind all settlement offers is for the City to agree to award licenses to all the plaintiffs (including Lume) in exchange for plaintiffs dismissing their claims against the City with prejudice. The award of licenses would be pursuant to a consent judgment, approved by council and signed by the Judge; it would not require any amendment to the City’s cannabis ordinance.

Also, in the pending settlement offer, the Proposing Parties offered to defend and indemnify the City against future lawsuits relating to its 2021 licensing process. As such, the settlement offer gives the City finality because it (a) settles with all plaintiffs (not only with Lume, as Lume's proposal did) and (b) the City receives defense and indemnification against future claims, if any. This is truly a full and final settlement for the Defendants.

## **2. This issue of “uncapping.”**

The Proposing Parties have not received any formal response to their settlement offers; however, Mr. Cross has continually led the Proposing Parties to believe that Council wants to uncap its cannabis ordinance and that therefore Proposing Parties should make a settlement offer that includes uncapping.

From the perspective of the Proposing Parties, if Menominee City Council desires to “uncap” to allow an unlimited number of cannabis businesses, the Proposing Parties have no objection to that. Nonetheless, the Proposing Parties have not included co-called “uncapping” as a material term of their settlement proposal because it's not pertinent to settling this case.

## **3. Alleged detrimental reliance and concerns about future litigation.**

City Manager Botbyl and Mayor Stegeman have expressed concern that settlement with the plaintiffs will result in claims by Rize and the The Fire Station (“TFS”) based on a “detrimental reliance” theory. Mr. Cross has not explained that legal theory to the Proposing Parties, but the Proposing Parties presume it to mean that the City is worried that Rize and TFS would have a claim against the City because they would have more market competition.

If that is the rationale for the detrimental reliance concern, then there is little reason for concern. There is no general right to certain market conditions, and the City of Menominee did not promise or guarantee Rize or TFS fixed or unchanging cannabis market conditions (nor could it). In the absence of a guarantee or a legally-recognized entitlement to a certain level of market competition, Rize and TFS have no claims. Further, even if Rize or TFS relied on a certain number of licenses when they applied, reliance on that number never changing is unreasonable, because cities can amend their ordinances. Where reliance is not reasonable, there is no claim for detrimental reliance.

The Proposing Parties are willing to stand behind their legal analysis in this regard and have offered to defend and indemnify the City against ongoing or future litigation against the City, that is based on this settlement scenario.

In closing, Higher Love emphasizes that settling with all parties may be imperfect, but such settlement is still positive for everyone – *i.e.*, the settlement is imperfect because the certain members of Council disapprove of cannabis and want very limited cannabis business in the City.

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The settlement is also imperfect for the Proposing Parties because they (like Rize and TFS) would be competing against more businesses than they expected to when they applied for licensure. On the other hand, however, the proposed settlement is positive for the City because the offer (with dismissal with prejudice and defense and indemnification) resolves contentious litigation and frees up the City to focus on other pressing issues.

In addition, Higher Love respectfully suggests that the proposal is better public policy for the City, than only 2 Medical and 2 Adult Use licenses, because it is a basic principle of capitalism that choice and competition promote higher quality goods and services. The Proposing Parties wholeheartedly believe that, and they are eager to impress Menominee and maintain top level operations. Higher Love is unafraid of competition because its staff is well-educated and well-compensated, and its house-grown cannabis products are of the highest quality on the market. Simply put, it is better for Menominee to have a few more stores bringing their best game at all times, than is it to have fewer stores who simply rely on the volume from Wisconsin for their success.

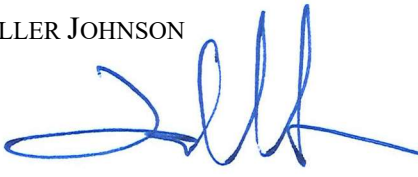
Last, please consider that the purpose of both Michigan's cannabis statutes – MMFLA and MRTMA – is to promote and protect public health and safety. The legislature and voters recognized that cannabis is pervasive in our communities, but because it was illegal, there was no way to regulate the safety of cannabis or to collect tax revenue on the billions of dollars of black-market transactions. The larger Michigan's regulated market, the faster black-market participants are out of business. Hopefully everyone can agree that the illegal drug market is bad for public health.

Higher Love urges Council to accept the Proposing Parties' offer. Although maybe imperfect, Higher Love is nonetheless confident that the resolution will be good for the City's residents – and Higher Love is up for the challenge of greater market competition.

Thank you very much for your attention to this important and historic issue.

Sincerely,

MILLER JOHNSON

By 

Joslin E. Monahan

CC: Matt Cross (via email)