

SAMPLE HOST COMMUNITY AGREEMENT – MARIJUANA RETAILER

CITY OF [REDACTED], MASSACHUSETTS
AND
[REDACTED]

HOST COMMUNITY AGREEMENT

THIS HOST COMMUNITY AGREEMENT (“AGREEMENT”) is entered into this ____ day of _____, 2018, by and between [REDACTED], a Massachusetts Corporation with a principal office address of [REDACTED], and the City of [REDACTED], a Massachusetts municipal corporation with a principal address of [REDACTED], (the “City”), acting by and through its mayor in reliance upon all of the representations made herein (with [REDACTED] and City collectively referred to as the “Parties”).

WHEREAS, [REDACTED] wishes to locate a Marijuana Retail Establishment (the “Marijuana Establishment”) for the dispensing and sale of marijuana, marijuana infused products and related products for medical and adult use marijuana as well as merchandise in a retail facility consisting of approximately 2,220 sq/ft. (the “Facility”) at [REDACTED] (the “Property”), in accordance with and pursuant to applicable state laws and regulations, including, but not limited to M.G.L. c.94G, 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; and

WHEREAS, [REDACTED] intends to provide certain benefits to the City in the event that it receives the requisite licenses from the Cannabis Control Commission (“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 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 RMD and Marijuana Retailer, such activities to be only done in accordance with the applicable state and local laws and regulations 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, [REDACTED] and the City 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 [REDACTED] 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 from the City, and at the expiration of any final appeal period related thereto, said matter not being appealed further, which permits and/or licenses allow [REDACTED] to

[REDACTED]

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locate, occupy and operate the Marijuana Establishment in the City, then [REDACTED] agrees to provide the following Annual Payments, provided, however, that if [REDACTED] fails to secure any such other license and/or approval as may be required or any of the required municipal approvals, [REDACTED] shall not be obligated to make any such payments except that [REDACTED] shall reimburse the City for its reasonable legal fees associated with the negotiation of this Agreement which will be capped at five thousand dollars (\$5,000.00):

A. Community Impact Fee

The City anticipates that it will incur additional expenses and impacts on the City's, law enforcement, inspectional services, and permitting and consulting services, as well as unforeseen impacts on the City related to [REDACTED] operation of the Marijuana Establishment. Accordingly, in order to mitigate the financial impact on the City and use of City resources, [REDACTED] agrees to pay an Annual Community Impact Fee to the City, in the amount and under the terms provided herein.

1. [REDACTED] 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.
2. The Annual Community Impact Fee shall be made quarterly within thirty (30) days following the end of each three (3) months of operation, and shall continue for a period of five (5) years. The first payment shall be due after six (6) months of operation, the second due after twelve (12) months of operation; subsequent payments shall be quarterly thereafter. At 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 before the conclusion of the five (5) year term, the Annual Community Impact Fee shall be set at the average of the City's related costs over the previous three (3) years until such time as the Parties negotiate a successor Community Impact Fee.
3. The City 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 City.
4. The term "gross sales" referenced above shall mean the total of all sales transactions by [REDACTED] at the Facility, and shall include the sale medical and adult-use marijuana, and marijuana infused products, and any other products containing marijuana sold by the Facility.

[REDACTED]

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B. Additional Costs, Payments and Reimbursements

1. Permit and Connection Fees: [REDACTED] hereby acknowledges and agrees to pay the usual and customary 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 City.
2. Facility Consulting Fees and Costs: [REDACTED] shall reimburse the City for any and all reasonable and customary 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, and any related reasonable disbursements at standard rates charged by the above-referenced consultants in relation to the Facility.
3. Other Costs: [REDACTED] shall reimburse the City for the actual costs incurred by the City in connection with holding public meetings not held in public buildings and forums not within the City's regularly scheduled public hearings and meetings, which are solely devoted to discussing the Facility. [REDACTED] shall also reimburse the City for costs incurred reviewing the proposed Facility applications and related equipment and systems and for any and all reasonable and customary consulting costs and fees.
4. Late Payment Penalty: [REDACTED] 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 within ten (10) business days of the date written notice has been received, [REDACTED] shall be required to pay the City a late payment penalty equal to five percent (5%) of such required payments.

C. Annual Charitable/Non-Profit Contributions

[REDACTED], in addition to any funds specified herein, shall annually contribute to public local charities/non-profit organizations of its choosing.

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

[REDACTED] shall submit annual financial statements to the City within thirty (30) days after the payment of its Annual Community Impact Fee with a certification of its annual sales. [REDACTED] 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, [REDACTED] shall provide the City with the same access to its financial records (to be treated as confidential, to the extent allowed by law) as it is required

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by the CCC and Department of Revenue for purposes of obtaining and maintaining a license for the Facility.

In the event that the parties disagree as to the accuracy of the accuracy of the certification of [REDACTED] annual sales, the City may conduct an audit of such sales. If, after such audit and recomputation, an additional fee or payment is owed to the City, such fee or payment shall be made within thirty (30) days after such audit and recomputation. If the discrepancy is more than ten percent (10%) or five thousand dollars (\$5,000.00), whichever is greater, [REDACTED] shall also pay the entire cost of the audit.

3. Community Support

[REDACTED] agrees to participate in community service activities including but not limited to: City-sponsored educational programs on public health and drug abuse prevention, senior assistance, community cleanup, and veteran's assistance.

[REDACTED] shall annually certify to the City at the time of its Annual Payments the number of hours and nature of the community service rendered by its employees/management within the community.

4. Local Vendors and Employment

To the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, [REDACTED] 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 Marijuana Establishment when such contractors and suppliers are properly qualified and price competitive and shall use good faith efforts to hire City residents.

5. Local Taxes

At all times during the Term of this Agreement, property, both real and personal, owned or operated by [REDACTED] shall be treated as taxable, and all applicable real estate and personal property taxes for that property shall be paid either directly by [REDACTED] and [REDACTED] shall not 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 [REDACTED] 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 [REDACTED] 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 [REDACTED] 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

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██████████ under Section 2 of this Agreement. Nothing in this paragraph shall prohibit ██████████ from seeking an abatement due to excess valuation.

6. 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, ██████████ shall work with the City's Police Department in determining the placement of exterior security cameras.

██████████ agrees to cooperate with the City's 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 City's Police Department, ██████████ shall work with the City's 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 Facility.

7. Community Impact Hearing Concerns

██████████ agrees to employ its best efforts to work collaboratively and cooperatively with its neighboring businesses and residents to establish 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 foreseeable concerns or issues raised at ██████████ required Community Outreach Meeting relative to the operation of the Facility; said policies and procedures, as may be amended from time to time, shall be reviewed by the City.

8. Additional Obligations

The obligations of ██████████ and the City recited herein are specifically contingent upon ██████████ obtaining a license for operation of a Marijuana Establishment in the City, and ██████████ receipt of any and all necessary local approvals to locate, occupy, and operate a Marijuana Establishment in the City.

This Agreement does not affect, limit, or control the authority of 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 a Marijuana Retailer to operate in the City, or to refrain from enforcement action against ██████████ and/or its Marijuana Establishment for violation of the terms of said permits and approvals or said statutes, ordinances, and regulations.

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9. 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 [REDACTED] 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 City 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 [REDACTED] operates the Facility 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).

11. Successors/Assigns

[REDACTED] 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; in each instant, which consent shall not be unreasonably withheld, conditioned, or delayed, and shall not assign any of the monies payable under this Agreement, except by and with the written consent of 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; in each instant, which consent shall not be unreasonably withheld, conditioned, or delayed. This Agreement is binding upon the Parties hereto, their successors, assigns and legal representatives. Neither the City nor [REDACTED] 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) [REDACTED] final and adjudicated bankruptcy whether voluntary or involuntary; (ii) [REDACTED] takeover or merger by or with any other entity; (iii) [REDACTED] outright sale of assets and equity, majority stock sale to another organization or entity for which [REDACTED] does not maintain a controlling equity interest; (iv) or any other change in ownership or status of [REDACTED]; (v) any assignment for the benefit of creditors; and/or (vi) any other assignment not approved in advance in writing by the City.

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 City of [REDACTED]

[REDACTED]

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With a copy to: [REDACTED]

[REDACTED]:

With a copy to: [REDACTED]

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 City would be substantially or materially prejudiced. To the extent the validity of this Agreement is challenged by [REDACTED] in a court of competent jurisdiction, and the validity of this Agreement is upheld, [REDACTED] shall be required to pay for any fees and costs incurred by the City 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 [REDACTED] 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 [REDACTED] and the City 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 authorized representatives of both Parties 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.

[REDACTED]

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

22. Indemnification

████████ 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 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's choosing incurred in defending such claims, actions, proceedings or demands. ████████ agrees, within thirty (30) days of written notice by the City, to reimburse the City for any and all actual and reasonable 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 City or ████████.

████████

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

City of [REDACTED]:

[REDACTED]

By: [REDACTED]

By: [REDACTED]

[REDACTED]

[REDACTED]