

HOST COMMUNITY AGREEMENT

This **HOST COMMUNITY AGREEMENT** (this “Agreement”) is made as of the 20th day of April, 2021 (the “Effective Date”) by and between the **CITY OF SOMERVILLE** (hereinafter referred to as the “City”), a municipal corporation existing within the Commonwealth of Massachusetts with an address of 93 Highland Avenue, Somerville, Massachusetts 02143, and BOTANICA LLC (hereinafter referred to as the “Applicant”) a corporation with a usual place of business located at 31 ROGERS AVENUE, SOMERVILLE, MA 02144. The City and the Applicant shall be collectively known herein as the “Parties”.

BACKGROUND

WHEREAS, on November 8, 2016, the voters of the Commonwealth approved legislation regulating commerce in marijuana, marijuana accessories, and marijuana products and for the taxation of proceeds from sales of such products. It also authorized cities and towns to adopt reasonable restrictions on the time, place, and manner of operating marijuana businesses; and,

WHEREAS, in order for a marijuana establishment to be licensed by the Massachusetts Cannabis Control Commission (CCC), the establishment must execute a Host Community Agreement (HCA) with the municipality in which it intends to be located; and,

WHEREAS, in November 2018, the Somerville City Council elected to pass an ordinance creating a licensing procedure that requires marijuana establishments to receive a license from the Somerville Licensing Commission; and,

WHEREAS, in December 2018, the Somerville City Council, after first approving a moratorium on marijuana establishments, elected to pass zoning allowing marijuana establishments in a specific districts through the City as-of-right or by Special Permit from the ZBA or Planning Board (hereinafter the “Special Permit Granting Authority” or “SPGA”); and,

WHEREAS, the Mayor created a Marijuana Advisory Committee, that created an application and review process for marijuana establishments interested in opening in Somerville; and,

WHEREAS, after extensive review by the Mayor’s Marijuana Advisory Committee, the Applicant was chosen to be awarded a Host Community Agreement by the City; and,

WHEREAS, the Applicant desires to support community initiatives and interests in Somerville to express its appreciation for the community support it has received to operate a marijuana establishment in Somerville; and,

WHEREAS, the Applicant desires to mitigate any actual or potential adverse community impacts and to improve the security and health of the people of Somerville; and,

WHEREAS, the City and the Applicant enter into this Agreement to memorialize the terms of the Applicant's support of community initiatives and interests in Somerville, and the Applicant's commitment to mitigate actual or potential adverse community impacts of the marijuana establishment; and,

WHEREAS, it is the intention of the parties that each be bound by the provisions of this Agreement and that this Agreement be fully enforceable by a court of competent jurisdiction in accordance with its terms,

NOW, THEREFORE, the Applicant and the City agree as follows:

1. Community Impact. The City anticipates that, as a result of the Applicant's operation of a marijuana retailer, the City will incur additional expenses and impacts upon its road system, law enforcement, inspectional services, permitting services, administrative services, and public health services, in addition to potential additional unforeseen impacts upon the City. Accordingly, in order to mitigate the direct and indirect financial impact upon the City and use of City resources, the Applicant agrees to annually pay a community impact fee to the City, in the amounts and under the terms provided herein (the "Public Benefits Payments").
2. Contributions Framework. The parties hereto desire to outline public benefits to be provided by the Applicant in connection with the marijuana retailer, including, without limitation, financial contribution to provide for certain public and community benefits to the City and its residents to help offset anticipated expenses and impacts of the marijuana retailer.
3. Public Benefits Payments. The Applicant acknowledges that substance abuse prevention programs are important to the City of Somerville, and hereby seeks to provide funding to support education, prevention and treatment for substance abuse through the City of Somerville and to provide assistance to small marijuana related businesses. Applicant agrees to provide a financial commitment to the City of Somerville. Upon approval by the City Council, these funds will be dedicated towards programs to support substance abuse prevention treatment and business assistance programs. This funding may be provided for the following:
 - a) To support substance abuse prevention programs;
 - b) To support education, prevention, treatment or related costs;
 - c) To support housing programs for recovery purposes; and,
 - d) To provide business assistance programs to small marijuana related businesses that otherwise do not have access to other assistance programs offered by the City of Somerville.
 - e) For related and/or ancillary uses as deemed appropriate by the Somerville Health and Human Services Department.

Funds shall be provided to and administered by the Somerville Health and Human Services Department (hereinafter "the HHSD"), and may be expended by the Department or distributed by the Department to other city departments, schools or non-profit organizations.

4. Payment Amount. Without in any way limiting applicant's obligations under any other agreement, the Applicant shall contribute to the fund an amount that is equal to 3% of gross sales from the marijuana retailer that will be located in Somerville.

The applicant agrees to deposit the funds into an account established by the City to address the priorities identified in item #3, above.

5. Payment Schedule. Applicant agrees to make payments as frequently as every six months. The detailed term of payments will be established by the Department. Payments are due 30 days after the end of a six-month period. The first payment will, therefore, be due seven (7) months after the opening date of the marijuana retailer, and a payment will be due every six months thereafter.

6. Hiring of Employees. When hiring workers for available positions at the marijuana establishment, the applicant shall use best efforts to hire workers for those positions as follows: first, qualified residents of the City of Somerville of African American or Latino decent or residents that are veterans; and then, at least 30% of staff to fall under any of the following categories:

- a) Somerville resident of African American decent
- b) Somerville resident of Latino decent
- c) Somerville resident who is a veteran
- d) Individuals formally incarcerated for a marijuana offence

If workers cannot be obtained in sufficient numbers, positions may be open to other qualified workers, with a preference for Somerville residents. In furtherance of this commitment the applicant shall work in concert with local workforce organizations and programs in an effort to inform the community and to help identify Somerville residents who have or can acquire the appropriate training, skills and work experience to work for the applicant. Job advertisements must be published in Spanish, Portuguese, and Creole. The City encourages the Applicant to pay all employees a living wage that is sufficient to provide the necessities and comforts essential to an acceptable standard of living.

7. Real Estate Taxes. At all times during the Term of this Agreement, the real estate taxes for the property at which the marijuana establishment is operated will be paid either directly by the Applicant or by its landlord, and the Applicant will not seek a non-profit exemption from paying such taxes.
8. Advertising. The Applicant makes a commitment to follow the Cannabis Control Commission (CCC) Regulations (935 CMR 500.105(4)) with respect to advertising requirements and will ensure that warning language is reasonably conspicuous to those that such advertisement is targeted toward.

9. Terms and Termination. The Term of this Agreement shall commence on the date that the Applicant is issued a license by the Somerville Licensing Commission to operate a marijuana retailer in Somerville and shall remain in effect until one of the following occurs:
- a.) CCC or Somerville Licensing Commission revokes the Applicant's license, thereby requiring the Applicant to cease operation of the marijuana establishment; or,
 - b.) the Applicant terminates this Agreement upon the permanent cessation of all business and operations at the establishment and within the City of Somerville; or,
 - c.) the Applicant sells the business or introduces new investors into their corporate structure.
 - d.) the Applicant changes to a non-profit organization or there is otherwise a change in corporate structure.
 - e.) on the fifth occurrence of the 31st day of the month of December from the effective date of the Agreement, at which time the provisions of item #10, below shall be in effect.

However, terminations pursuant to section 9.c.) and 9.d.) shall not occur where a corporation (whether stocks are traded publicly or privately) introduces new investors or otherwise makes changes in their corporate structure that do not result in the provisions of 935 CMR 500.104(1)(b) being triggered.

10. Continuation Beyond Terms. This Agreement may be renegotiated by mutual agreement of the parties. The parties shall make best efforts to renegotiate the agreement upon completion of the 5-year effective period. In the event that the parties reopen negotiations under this section and are unable to successfully negotiate an amendment, the status quo shall be maintained under the existing Agreement until such time that any successful amendment is negotiated.

11. Assignment. This Agreement may not be transferred by the Applicant to a new marijuana retailer at the same location and may not be transferred to a marijuana retailer at a different location. A transfer of ownership of a marijuana retailer requires the signing of a new Host Community Agreement, and a new license from the Somerville Licensing Commission.

12. Notice. Any notice hereunder shall be in writing and shall be deemed duly given if mailed by certified or registered mail, postage and registration charges prepaid, at the addresses set forth below:

The City: Somerville City Hall
 93 Highland Avenue
 Somerville, MA 02143
 Attention: Office of Strategic Planning and Community
 Development (OSPCD)

and to: Somerville City Hall
 93 Highland Avenue
 Somerville, MA 02143
 Attention: City Solicitor

Applicant: Name: BOTANICA LLC
Address: 31 ROGERS AVENUE
City: SOMERVILLE, State: MA, Zip: 02144
Attention: DENISE O'DONOVAN

13. Entire agreement. This agreement supersedes any and all other agreements, either oral or in writing, between the Parties hereto with respect to the subject matter of the Agreement. This Agreement may not be changed verbally, and may only be amended by an agreement in writing signed by both Parties.
14. No Rights in Third Parties. This Agreement is not intended to, nor shall it be construed to, create any rights in third parties.
15. Severability. If any portion of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible and the remaining provisions shall remain in full force and effect, unless to do so would result in either party not receiving the benefit of its bargain.
16. Dispute Resolution. If a dispute arises concerning the performance of either party hereunder, prior to resorting to court, the parties first shall provide notice to the other and shall meet and work in good faith either directly or with the assistance of a mutually-agreed third party to attempt to resolve their dispute in a prompt manner. If the dispute has not been resolved as aforesaid within ninety (90) days of its inception, either party shall be free to seek a judicial remedy.
17. 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 that a court of competent jurisdiction in Middlesex County shall be the exclusive venue for any legal proceedings that may arise from this Agreement.
18. Successors. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their respective heirs, executors, and administrators and assigns.
19. Filing. This Agreement shall be filed with the Middlesex South Registry of Deeds with the filing of the Special Permit decision approving the RMD.

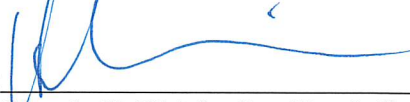
[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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


CITY:

CITY OF SOMERVILLE
By: 
Joseph A. Curtatone, Mayor

Approved as to form:

By: 
Francis X. Wright, Jr., City Solicitor
Hannah Poppenheim Asst.

Applicant:

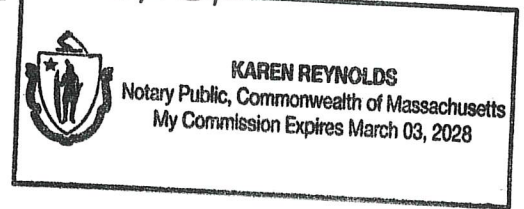
By: 
Name: Denise O'Donovan
Title: MANAGER, BOTANICA LLC

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 10th day of MAY, 2021, before me personally appeared the above-named Joseph A. Curtatone, as Mayor of the City of Somerville, who proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding instrument, and acknowledged to me that such person signed said instrument voluntarily for its stated purpose as his/her free act and deed in such capacity.

Karen Reynolds
Notary Public:
My commission expires: 03/03/2028



STATE/Commonwealth of Massachusetts

COUNTY OF: Middle Sex

On this 10th day of April, 2021, before me personally appeared the above-named Denise O'Donovan, the MANAGER of BOTANICA LLC, a Limited Liability Company, who proved to me through satisfactory evidence of identification, which was personally known to me, to be the person whose name is signed on the preceding instrument, and acknowledged to me that such person signed said instrument as the MANAGER of BOTANICA LLC and voluntarily for its stated purpose as his/her free act and deed.

Sean O'Donovan
Notary Public:
My commission expires:

