

HOST COMMUNITY AGREEMENT  
between  
The Town of Sandisfield, Massachusetts  
and  
Berkshire Mountain Cannabis, LLC

This Host Community Agreement (“Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 2022 by and between Berkshire Mountain Cannabis, LLC, a Massachusetts limited liability company with a principal address of 1500 General Knox Road, Russell, Massachusetts (“Operator”) and the Town of Sandisfield, a Massachusetts municipal corporation with a principal address of 66 Sandisfield Road / P.O. Box 90, Sandisfield, MA 01255 (“Town”).

WHEREAS, Operator wishes to locate a Marijuana Retailer Establishment (“Establishment”), in Town, on land located at 88 South Main Street (“Property”) in accordance with regulations issued by the Commonwealth of Massachusetts Cannabis Control Commission (CCC), in accordance with 935 CMR 500: ADULT USE OF MARIJUANA; and

WHEREAS, Operator is seeking a license from the Commonwealth of Massachusetts Cannabis Control Commission to operate a Marijuana Retailer in Town.

WHEREAS, Operator acknowledges that the Establishment will impact Town resources in ways unique to the business of the Establishment and draw upon Town resources in a manner not shared by the general population.

NOW THEREFORE, in consideration of the above, the Operator and the Town agree as follows:

1. **Host Community Impact Fee**. The Parties acknowledge that the Town will incur additional expenses and impacts upon the Town's road system, law enforcement, fire protection services, inspectional services and permitting services, public health services, and other additional unforeseen impacts. Accordingly, in order to mitigate such impacts upon the Town and use of Town resources, Operator shall provide as a payment to the Town a community impact fee (the “**Community Impact Fee**”). Operator acknowledges and agrees that the Town is under no obligation to use the Community Impact Fee in any particular manner and while the purpose of these payments is to assist the Town in addressing impacts the Establishment may have on the Town, the Town may expend the Community Impact Fee for any proper public purpose, as determined by Town Meeting, subject to M.G..L. c. 44, § 53 or any other general or special law.

Notwithstanding any provision herein, the Community Impact Fee is designed so that it shall be reasonably related to the actual or anticipated costs imposed upon the Town as a result of the operation of the Establishment. The parties recognize and agree that it is inherently difficult to fully identify, evaluate and quantify the impacts to the Town of the Establishment and that the Community Impact Fee is a fair and reasonable estimation of such impacts and shall remain so for the duration of operation of the Establishment. Therefore, the Parties expressly

agree that the Community Impact Fee is reasonably related to the costs that will be imposed upon the Town as a result of operation of the Establishment.

In the event that the Operator obtains a Final License, or such other license and/or approval as may be required, for the Establishment in the Town by the CCC or such other state licensing or monitoring authority, Operator shall make payments to the Town in an amount equal to 3% of the gross revenue from the Establishment's annual cannabis or marijuana product sales.

Such payments shall be made quarterly each calendar year on the 1st Tuesday of January, April, July and October, beginning on the first of such dates after the Operator's receipt of payment from its initial revenue event. Operator shall submit financial records to the Town within 30 days after each such payment with a certification of sales with respect to each such payment. Operator shall maintain its 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.

2. **Additional Costs, Payments and Reimbursements.** In addition to the Community Impact Fee, Operator shall be responsible for all of the additional costs, payments and reimbursements set forth below.

- a. **Property Taxes.** Operator agrees that all real and personal property taxes owing for the properties at which the Establishment operates will be paid when due. Operator agrees not to object to or otherwise challenge the taxability of the real property where the Establishment is located or the personal property and shall pay all local, state and federal taxes as required to be paid by Operator in accordance with applicable law, as now existing or as hereafter may from time to time be enacted, repealed or modified. Operator shall not request any tax credits or subsidy from the Town for the Establishment, and shall not object or otherwise challenge the taxability of the Establishment.
- b. **Voluntary Contributions.** Operator shall make an additional annual contribution of fifteen thousand dollars (\$15,000.00) to the Town, with the recommendation for allocation to be as follows: one thousand five hundred dollars (\$1,500.00) to the Brien Center for Mental Health and Substance Abuse Services, ten thousand dollars (\$10,000.00) for Town highway maintenance, one thousand dollars (\$1,000.00) to the Town Recreation Committee, and two thousand five hundred dollars (\$2,500.00) to the Town Library. The contributions and donations under this paragraph shall be known as the "Annual Donations." The Annual Donations shall not be considered part of the Community Impact Fee set forth herein and shall escalate annually at the rate of 2½%. The first Annual Donations shall be paid within twelve months after the Operator's receipt of payment from its initial revenue event, and each subsequent payment shall be made on or before each annual anniversary of the first Annual Donations.
- c. **Local Option Excise Tax.** Operator acknowledges that the Town intends to adopt the local option sales tax upon the sale or transfer of marijuana or marijuana products by a marijuana retailer operating within the Town, pursuant to the provisions of G.L. c.64N.

Accordingly, Operator, as required by applicable law, shall remit to the Massachusetts Department of Revenue the excise tax rate determined by the Commonwealth of Massachusetts for the sale of adult-use marijuana and adult-use marijuana-infused products, currently at 3.0% of gross annual sales. Pursuant to G.L. c.64N, §3, the excise taxes received by the Department of Revenue “shall at least quarterly be distributed, credited and paid [to the Town] by the state treasurer.” Nothing herein shall limit the ability of the Town to adjust the local sales tax in the future, should the law be amended to allow for an increase in such allowable sales tax.

- d. Permit Fees. Operator hereby acknowledges and agrees to pay the usual and customary building permit and other permit application fees, and all other local charges and fees generally applicable to other commercial developments in the Town.
- e. Consulting Fees and Costs. Operator shall reimburse the Town for any and all consulting costs and fees, including without limitation, reasonable attorneys’ fees, related to any land use applications concerning the Establishment, negotiation of this and any other related agreements, or otherwise incurred in relation to or concerning the Establishment, including planning, engineering, and any related reasonable disbursements. Payment for such consultants shall be made within fourteen days after issuance of written request therefor.
- f. Late Payments. The Community Impact Fee and all other payments due under this HCA by Operator shall be payable to the Town of Sandisfield and delivered in a timely fashion to the Select Board. Operator acknowledges that time is of the essence with respect to performance of its payment obligations hereunder and that payments made ten (10) business days or more after they are due shall be subject to interest at the rate of 10% per annum.

**3. Annual Reporting/Compliance.** Operator shall submit an annual written report to the Town’s Select Board within thirty (30) days after the payment of its fourth quarterly installment of the Annual Community Impact Fee with a certification of: (1) its annual sales; and (2) its compliance with all other requirements of this HCA. Upon request, Operator shall appear at a meeting of Select Board to review compliance with the terms of this HCA. Such meeting shall occur no later than thirty (30) days following written notice from the Town, unless the Parties mutually agree upon an alternative date.

Operator shall maintain books, financial records, and other compilations of data pertaining to the requirements of this HCA 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, the Company shall provide the Town with the same access to its financial records (to be treated as confidential, to the extent allowed by law) as is required by the CCC and Department of Revenue for purposes of obtaining and maintaining a License for the Establishment.

The Town, by and through its building official and/or other designees of the Select Board, shall be entitled to inspect the Establishment on reasonable notice and subject to compliance with reasonable safety and security protocols as may be required by the CCC, for the

purpose of ensuring compliance with this HCA and any licenses, permits and approvals issued by the Town.

**4. Operational Commitments.**

- a. All exterior lighting shall be dark sky compliant.
- b. Operator shall comply at all times with all security requirements of the CCC and shall cooperate with all reasonable requirements of the Town's Chief of Police.
- c. If determined to be reasonably necessary by the Town's Chief of Police, Operator shall employ a police detail at customer rates to control traffic in and out of the Establishment.

5. **Term.** The term of this Agreement shall commence on the Execution Date and shall, subject to the provisions set forth below, run through the fifth anniversary following the first Community Impact Payment to the Town, unless sooner terminated or extended pursuant to the provisions contained herein.

- a. This Agreement shall terminate immediately if the CCC revokes or fails to renew for any reason Operator's license to operate the Establishment, subject to any applicable cure periods or appeal by Operator of such revocation or non-renewal.
- b. The Town may terminate this Agreement for cause by providing written notice to Operator in the event that: (i) Operator with willful or gross negligence violates any laws of the Town or the Commonwealth with respect to the operation of the Establishment, and such violation remains uncured for thirty (30) days following the Town's issuance to Operator of written notice of such violation; (ii) Operator fails to make payments to the Town or any of the Annual Donations as required under this Agreement, and such failure remains uncured for ten (10) days following the Town's issuance to Operator of written notice of such violation; or (iii) there is any other material breach of the Agreement by Operator, which material breach remains uncured for thirty (30) days following the Town's issuance to Operator of written notice of such violation.
- c. Notwithstanding the above, all payments required hereunder shall remain in effect for the full duration of Operator's operation of the Establishment. In the event such term is deemed to be contrary to law, the payments shall remain in effect for the longer of five years or the maximum period allowed by law, and this agreement together with such payments shall automatically renew for successive terms of the longer of five years or the maximum period allowed by law. Operator hereby expresses its commitment to make all payments provided for herein, notwithstanding any statutory change or court ruling that would otherwise relieve Operator of its legal obligation to do so.
- d. At the conclusion of the five-year term set forth above, the Parties may agree upon an extension of this HCA or may negotiate the terms of a new HCA. If the parties are unable to reach agreement on such an extension or a new HCA, this HCA shall remain in full force and effect. Under no circumstances shall the Establishment be in operation without an operative HCA voluntarily entered into by the Town.

6. **Local Boards.** This Agreement does not affect, limit, or control the authority of Town 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 to operate in the Town, or to refrain from enforcement for violation of the terms of said permits and approvals or said statutes, Bylaws and regulations. Operator acknowledges that it may be required to pay the reasonable costs of the employment by Town boards and officials of outside consultants, including without limitation engineers, architects, scientists and attorneys in connection with the review of any application or request for such local permits required to operate the Establishment.

7. **Facility Design.** Operator agrees that the Establishment shall be designed, constructed and improved to reflect high quality construction standards and to improve the general design aesthetic of the area. Internally lit and flashing signs shall not be permitted.

8. **Local Vendors and Hiring.** Where allowed by federal, state and local laws and regulations, a “Local Labor Hiring Preference” shall exist for all residents of the Town applying for employment by Operator. To this end, any qualified Sandisfield resident shall be offered employment at the Establishment before such position is offered to a non-resident. Operator shall likewise make all reasonable efforts to procure goods and services from Sandisfield-based vendors in the construction, maintenance and operation of the Establishment, including the purchase of wholesale cannabis products for resale in the Establishment.

8. **Notice.** Any and all notices, consents, demands, requests, approvals, or other communications required or permitted under this Agreement shall be deemed to be received by the intended recipient (a) when delivered personally, (b) by the day following delivery to a nationally recognized overnight courier service with proof of delivery, (c) three (3) days after mailing by U.S. Postal Service certified mail, postage prepaid with return receipt requested. Notice to the Town shall be delivered to the following address:

Select Board  
Town of Sandisfield  
66 Sandisfield Road, Suite 1  
Sandisfield, MA 01255

Notice to Operator shall be delivered to the following address:

Berkshire Mountain Cannabis, LLC  
1500 General Knox Road  
Russell, MA 01071

9. **Validity.** If any provision of this HCA is adjudicated to be invalid or unenforceable, this HCA shall be void of no effect unless, prior to the expiration of thirty (30) days of any final judgment declaring such provision void, the Town’s Select Board votes to ratify the HCA

notwithstanding such adjudication; Operator agrees it shall not operate the Establishment without a valid and effective HCA. Operator further agrees it will not challenge, in any jurisdiction, the enforceability of any provision included in this HCA; and to the extent the validity of this Agreement is challenged, Operator shall pay for all reasonable fees and costs incurred by the Town in defending such challenge; furthermore, Operator shall pay for all reasonable fees and costs incurred by the Town in enforcing this HCA if the Town prevails.

10. **Indemnification**. Excluding any Claims (as herein defined) caused by the gross negligence or willful misconduct of the Town, Operator shall indemnify, defend, and hold the Town harmless from and against any and all claims, demands, liabilities, actions, causes of actions, defenses, proceedings, subpoenas, document requests and/or costs and expenses, including attorney's fees (collectively, the "Claims"), brought against or initiated as to the Town, its agents, departments, officials, employees, insurers and/or successors, by any third party, including any private or public entity, arising from or relating to the this HCA and/or Establishment. Such indemnification shall include, but shall not be limited to, all reasonable fees and reasonable costs of attorneys and consultants of the Town's choosing incurred in defending or responding to such Claims. Operator agrees, within thirty (30) days of written notice by the Town, to reimburse the Town for any and all costs and fees incurred in defending itself from or responding to such Claims.

11. **No Waiver**. The failure of any party to strictly enforce the provisions hereof shall not be construed as a waiver of any obligation hereunder.

12. **Amendments**. This Agreement may only be amended by a written document duly executed by both Parties.

13. **Entire Agreement**. This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the Town and Operator 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.

14. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to conflict of laws principles.

15. **Severability**. If any provision 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 of this Agreement will remain in full force and effect, unless to do so would result in either Party not receiving the benefit of its bargain under this Agreement.

16. **No Rights in Third Parties**. This Agreement is not intended to, nor shall it be construed to, create any rights in any third party.

17. **Binding Effect.** This Agreement is binding upon the Parties hereto, their successors, assigns and legal representatives. Neither the Town nor Operator shall assign, sublet or otherwise transfer any interest in the Agreement without the written consent of the other party. Operator 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 of the Town, and shall not assign or obligate any of the monies payable under this Agreement, except by and with the written consent of the Town.

18. **Counterparts; Signatures.** This Agreement may be signed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement. The Parties hereto and all third parties may rely upon copies of signatures to this Agreement to the same extent as manually signed original signatures.

Executed under seal.

Town of Sandisfield, by its Select Board:

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George Riley, Chairman

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Alex Bowman, Member

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Steven Seddon, Member

Berkshire Mountain Cannabis, LLC

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By: Cheryl Shea, Manager  
Duly Authorized