

**FIRST AMENDMENT TO THE HOST COMMUNITY AGREEMENT
BETWEEN THE TOWN OF MONTAGUE AND
253 ORGANIC, LLC**

This First Amendment to Host Community Agreement (the “Amendment”) is entered into this ____ day of _____, 2023 (the “Effective Date”) by and between the Town of Montague, a Massachusetts municipal corporation with a principal address of One Avenue A, Turners Falls, Massachusetts 01376 (the “Town”), acting by and through its Board of Selectmen in reliance upon all of the representations made herein, and 253 Organic, LLC (the “Operator”), a Massachusetts corporation with a principal address of 253 Millers Falls Road, Turners Falls, Massachusetts 01376 (Operator and Town, collectively the “Parties” and each a “Party”).

RECITALS

WHEREAS, the Town and the Operator entered into a Host Community Agreement, dated April 2, 2018 (the “HCA”), with respect to the Operator’s intention to locate a licensed marijuana retail establishment, marijuana cultivation establishment, and marijuana product manufacturer establishment (collectively and individually, the “Facility”) at the property known as 253, Millers Falls Road, Turners Falls, Massachusetts;

WHEREAS, the Operator has commenced operations at the Facility and wishes to continue operations in the Town;

WHEREAS, Chapter 180 of the Acts of 2022, “An Act Relative to Equity in the Cannabis Industry” (the “Act”), amends G.L. c. 94G, §3 relative to host community agreements and community impact fees effective November 9, 2022;

WHEREAS, the Cannabis Control Commission has been charged with promulgating rules and regulations for the implementation, administration and enforcement of the Act by November of 2023;

WHEREAS, the Parties agree that there is uncertainty as to whether the Act retroactively affects pre-existing host community agreements, and desire to compromise and settle all disputes and potential disputes among them arising from the Act, and to commit the complete terms of their settlement to writing; and

WHEREAS, the Parties agree that the Town has already and may continue to incur additional expenses and impacts, both quantifiable and unquantifiable, as well as unforeseen impacts on the Town in the future (“Town Costs”); and

WHEREAS, the Operator seeks to be a good corporate citizen, and the Town wishes to acknowledge that the Operator has been a good corporate citizen to date, has adhered to the HCA, has mitigated Town Costs, and has provided extensive fee payments to the Town (“Prior Payments”).

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and

valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. The Parties agree that the above Recitals are true and accurate and that they are incorporated herein and made a part hereof.
2. The Operator hereby agrees and acknowledges that any and all Prior Payments made by the Operator are reasonably related to past, present, and future Town Costs. The Operator agrees and acknowledges that it shall not challenge the Town costs or seek reimbursement of the Prior Payments, or a portion thereof, under any circumstances even if otherwise permitted by law. The Town agrees that future costs, excepting those noted below in Section 6, incurred by the Town are covered by unexpended Prior Payments that exist at the time of the signing of this Amendment and will not seek reimbursement for future costs, excepting those noted below in Section 6, under any circumstances.
3. In consideration of the Operator's waiver to any and all claims related to the Prior Payments, Section 1 of the HCA shall be stricken in its entirety and replaced with the following new Section 1:

1. **Local Concerns**

The Operator agrees and acknowledges that in the event the Town receives complaints with respect to the failure to mitigate conditions at the Facility, the Operator shall meet with the Town's Selectboard or its designee, and shall, at the Selectboard's request, take additional mitigation measures, at the Operator's sole expense, to address the specific nature of the complaints to the Town's reasonable satisfaction including, but not limited to, having its odor prevention mechanisms and technologies reviewed and assessed by an Independent Engineer to address the nature of odor complaints to the best practicable engineering capability.

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 Town's local bylaws and regulations, with respect to complaints and violations.

4. Section 2 of the HCA shall be amended by striking the existing paragraph in its entirety and replacing it with the following new paragraph:

In the event the Operator enters into a host community agreement that contains nonmonetary terms that are superior to what the Operator agrees to provide the Town pursuant to this Agreement, then the Parties shall reopen this Agreement and negotiate an amendment resulting in benefits to the Town equivalent or superior to those provided to the other municipality.

5. Section 5 of the HCA shall be amended by striking the existing paragraph in its entirety and replacing it with the following paragraphs:

5. Duration and Termination

This Agreement shall continue in effect for a term of eight (8) years from the date that the Operator first commenced operations at the Facility unless terminated in accordance with the following provisions.

The Town may terminate this Agreement for cause by providing written notice to the Operator in the event that: (i) Operator with substantial willful or gross negligence violates any laws of the Town or the Commonwealth with respect to the operation of the Facility, and such violation remains uncured for thirty (30) days following the Town's issuance to the Operator of written notice of such violation; (ii) Operator fails to make payments to the Town 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; (iii) there is any other material breach of the Agreement by the Operator, which breach remains uncured for thirty (30) days following the Town's issuance to Operator of written notice of such violation; or (iv) the Operator's license is revoked by the Commission.

In the event of termination of this Agreement, the Operator shall immediately cease all operations at the Facility.

6. Section 6 of the HCA shall be stricken in its entirety and replaced with the following new Section 6:

6. Surety/Closure and Clean-Up.

In the event the Operator ceases operations at the Facility for a period greater than sixty (60) days with no substantial action taken to reopen, the Operator shall remove all growing materials, plants, chemicals or hazardous materials, and cannabis paraphernalia from the Facility within thirty (120) days of such cessation. The Parties acknowledge that the failure to remove said materials in their entirety and within the timeframe set forth herein will cause actual damage to the Town, which damages are difficult or impracticable to calculate. Thus, in the event that such materials are not removed within said timeframe, the Operator shall pay to the Town as liquidated damages, and not as a penalty.

To ensure payment of such liquidated damages, prior to commencing operations at the Facility, the Operator shall provide proof to the Town of having obtained a surety bond, naming the Town as payee, in an amount equal to adequately support the removal of regulated materials noted in the prior paragraph. For the avoidance of doubt and notwithstanding anything contained herein to the contrary, the obligation of Operator in this paragraph to provide proof of a surety bond may be satisfied by the delivery of evidence that Operator is in compliance with 935 CMR 500.105(16) and has satisfied the requirements thereunder and is not intended to obligate Operator to obtain a separate bond in addition to that required by 935 CMR 500.105(16). The Operator's obligations pursuant to this Section 6 are limited to, and exclusively covered by, the surety bond referenced therein.

7. Section 7 of the HCA shall be amended adding the following new second paragraph:

The, Operator in its sole discretion, may donate funds to local community initiatives in the Town as a good corporate citizen at any time it wishes. Such donations of volunteer time or money shall not be required, however, as obligations to the Town under this

Agreement or otherwise.

8. Section 8 shall be amended by replacing the second paragraph in its entirety with the following new second paragraph:

This Agreement is binding upon the Parties, their successors, assigns, and legal representatives. The Operator shall not assign, or otherwise transfer or delegate its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the Town, which consent shall not be unreasonably withheld. In exercising its discretion, the Town may require that the assignee, transferee or successor entity submit all information deemed relevant to such transaction by the Town and reserves the right to require such additional information as the Town deems necessary.

Events deemed an assignment include, without limitation: (i) Operator's final and adjudicated bankruptcy whether voluntary or involuntary; (ii) the Operator's takeover or merger by or with any other entity; (iii) the Operator's outright sale of assets and equity, majority stock sale to another organization or entity for which the Operator does not maintain a controlling equity interest; (iv) any other change in majority ownership or status of the Operator; (v) any assignment for the benefit of creditors; and/or (vi) any other assignment that requires approval by the Commission.

9. Section 9 of the HCA shall be amended by replacing the existing two paragraphs in their entirety with the following:

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 will be effective upon receipt for hand or said delivery and three days after mailing, to the other Party at the following addresses:

To TOWN: Town Administrator 1
Avenue A
Turners Falls, MA 01376

With a copy to: Montague Town Counsel KP
Law, PC
101 Arch Street 12th
Floor
Boston, MA 02110

To OPERATOR: 253 Organic, LLC
Attn: CEO
253 Millers Falls Road
Turners Falls, MA 01376

With a copy to: Locke Lord LLP
c/o Richard D. Glovsky
111 Huntington Ave.

10. Capitalized terms used herein, but not otherwise defined, shall have the meanings set forth in the HCA.
11. Except as set forth in this Amendment, all other provisions of the HCA shall remain in full force and effect.
12. This Amendment may be signed in any number of counterparts, each of which is an original, and all of which taken together shall constitute one and the same instrument, and any party hereto may execute this Amendment by signing one or more counterparts.
13. Each party hereto 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 Amendment, and the execution, delivery and performance hereof and thereof (i) will not violate any judgment, order, state law, bylaw, or regulation, and (ii) does not conflict with, or constitute a default under, any agreement or instrument to which the Operator is a party or by which the Operator may be bound or affected.
14. 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 Amendment on behalf of the Party for which he or she signs.
15. Facsimile and electronic signatures affixed to this Amendment shall have the same weight and authority as an original signature.

IN WITNESS THEREOF, the Town and the Operator have executed this Amendment on the day and year first written above.

TOWN OF MONTAGUE,
By and through its Selectboard:

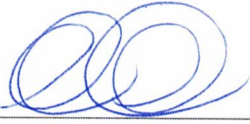
Richard Kuklewicz, Chair

Christopher Boutwell, Vice Chair

Matthew Lord, Clerk

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253 ORGANIC, LLC,
By: **SETH RUTHERFORD**



Name, Title
Co-CEO