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A PROFESSIONAL CORPORATION
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February 28, 2020

HAND DELIVERED

Robert M. Fuster, Jr., Chair
Zoning Board of Appeals
Town of Lenox
6 Walker Street
Lenox, MA 01240

RE: Krishna Lenox, LLC
Our File No. 19-094

Dear Mr. Fuster:

In accordance with Section 3.4 of the Town of Lenox Zoning Bylaw, Krishna Lenox, LLC ("Krishna") hereby submits a Special Permit Application. In connection with that application, enclosed please find the following documents along with four (4) copies:

1. Special Permit Application;
2. Community Host Agreement;
3. Security Plan;
4. Line Queue Plan;
5. Traffic Impact Statement with exhibits;
6. Parking & Transportation Analysis;
7. Odor Plan;
8. Signage Plan;
9. Community Outreach Meeting Presentation materials;
10. Floor Plan (full sized plans are folded and contained within the enclosed folders);
11. Plot/Site Plans (full sized plans are folded and contained within the enclosed folders); and
12. A check in the amount of $150.00 for the filing fee to the Town of Lenox.

An electronic copy of all the submitted documents has also been emailed to Jessica Cote, the Land Use Assistant. Please feel free to contact me at any time if you have questions or require any additional information.

Very truly yours,

Andrew M. Hochberg

STM/smf

Enclosures

cc: Mr. Navin Shah
James E. Smith, Esquire

# The Commonwealth of Massachusetts
## TOWN OF LENOX

Filing fee is due with the petition. If hearing expenses exceed this amount the Zoning Board of Appeals will bill the petitioner.

The undersigned hereby petitions the Town of Lenox Zoning Board of Appeals for:

☒ A Special Permit for exception under the provisions of Section 3.4 of the Town of Lenox Zoning By-Law.

☐ A Variance from the following provisions of Section _____ of the Town of Lenox Zoning By-Law.

To permit the following use or activity (describe proposed use or activity):

To establish and operate an adult use marijuana retail sale facility in accordance with Section 8.13 and per the requirements of Section 3.4 and 3.5 for special permit applications and site plan approval in the C-3A zone.
Please see attached supporting documents necessary to be filed or considered as part of this application.

For premises:

Owner of Record BHG Group, LLC

Address 55 Pittsfield Road, Aspinwell Village, Unit 2, Lenox, MA 01240

Map and Parcel 17_40_0

Zoned as C3A

Deed Reference Book 3692 Page 213

*(This information is available from the Assessor's Office or townoflenox.com in the Property Assessments-Online Database section.)*

Petitioner _____

*(Your signature here also acknowledges that you agree to pay all hearing expenses relative to this petition.)* By Andrew M. Hochberg, Attorney for Petitioner, Krishna Lenox, LLC

Address (Mailing Addr.) Hochberg Law Offices, PC, 122 North St, Ste. 301 Pittsfield, MA 01201

Telephone Number 413-499-2323

Email address ahochberg@hochberglawyers.com

Date 2/28/2020

06182009 rev.

TOWN OF LENOX
AND KRISHNA LENOX, LLC

**HOST COMMUNITY AGREEMENT**

THIS HOST COMMUNITY AGREEMENT ("AGREEMENT") is entered into this 22nd day of January 2020 (the "Effective Date") by and between Krishna Lenox, LLC., a Massachusetts limited liability company with a principal office address of 55 Pittsfield Road, Lenox Commons, Lenox, MA 01240(the "Company"), and the Town of Lenox, a Massachusetts municipal corporation with a principal address of 6 Walker St, Lenox, MA 01240 (the "Town") (Company and Town, collectively the "Parties"), acting by and through its Board of Selectmen, in reliance upon all of the representations made herein.

RECITALS

WHEREAS, the Company wishes to locate a marijuana retail establishment for adult-use, with approximately 7,464 square feet at a parcel of land located at 55 Pittsfield Road, Lenox Commons, Lenox, MA 01240, more accurately described by the deed recorded with the Berkshire County Registry of Deeds Book 5862, page 62 on, and on Map 17 and Parcel Key Number 3734 in the Assessor's database (the "Facility"), in accordance with and pursuant to applicable state laws and regulations, including, but not limited to G.L. c.94G and 935 CMR 500.00 and such approvals as may be issued by the Town in accordance with its Zoning Bylaw and other applicable local regulations; and

WHEREAS, the Town recognizes this development and Facility will benefit the Town and its citizens through increased economic development, additional employment opportunities for residents, and a strengthened local tax base; and

WHEREAS, the Company anticipates that the Town will incur additional expenses and impacts on the Town's road and other infrastructure systems, law enforcement, fire protection services, inspectional services, permitting and consulting services and public health, as well as unforeseen impacts, both quantifiable and unquantifiable on the Town; and

WHEREAS, the Company intends to provide certain benefits to the Town in the event that it receives the requisite License from the Cannabis Control Commission (the "CCC") or such other state licensing or monitoring authority, as the case may be, to operate the Facility and receives all required local permits and approvals from the Town; and

WHEREAS, the parties intend by this AGREEMENT to satisfy the provisions of G.L. c.94G, Section 3(d) applicable to the operation of Facility, such activities to be only done in accordance with the applicable state and local laws and regulations in the Town; and

WHEREAS, the Parties agree that the above Recitals are true and accurate and that they are incorporated herein and made a part hereof.

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, the Company and the Town agree as follows:

1. **Representations and Warranties**

The Parties respectively represent and warrant that:

a. Each is duly organized and existing and in good standing, has the full power, authority, and legal right to enter into and perform this AGREEMENT, and the execution, delivery and performance hereof and thereof (i) will not violate any judgment, order, state law, bylaw, or regulation, and (ii) do not conflict with, or constitute a default under, any agreement or instrument to which either is a party or by which either party may be bound or affected; and

b. Once this AGREEMENT has been duly authorized, executed and delivered, this AGREEMENT constitutes legal, valid and binding obligations of each party, enforceable in accordance with its terms; and

c. There is no action, suit, or proceeding pending, or, to the knowledge of either party, threatened against or affecting wither wherein an unfavorable decision, ruling or finding would materially adversely affect the performance of any obligations hereunder, except as otherwise specifically noted in this AGREEMENT.

2. **Annual Payments**

In the event that the Company obtains the requisite Final License from the CCC and all necessary and required state approvals required for the operation of the Facility and receives any and all necessary and required permits and licenses of the Town, and at the expiration of any final appeal period related thereto, which permits and/or licenses allow the Company to locate, occupy and operate the Facility in the Town, then the Company agrees to provide the following Annual Community Impact Fee:

A. Community Impact Fee

In order to mitigate the anticipated impacts of the Facility on the Town, including, but not limited to impacts on roads and other infrastructure systems, law enforcement, inspectional services, as well as unforeseen impacts, both quantifiable and unquantifiable on the Town's resources, the Company agrees to pay an Annual Community Impact Fee to the Town to account for both quantifiable and unquantifiable impacts to the Town, in the amount and under the terms provided herein.

1. Company shall annually pay an Annual Community Impact Fee in an amount equal to three percent (3%) of gross annual sales of marijuana and marijuana products at the Facility. The term "gross sales" shall mean the total of all sales transactions of the Facility without limitation, including the sale of marijuana, marijuana infused products, and any other marijuana products sold by the Facility.

2. The Annual Community Impact Fee shall continue for a period of five (5) years from the date the Facility commences operations. The Facility shall be deemed in operation upon receipt of both an occupancy permit from the Building Commissioner and the issuance of a final License and "Approval to Sell" at the Facility from the CCC.

3. The Company shall pay the Annual Community Impact Fee in quarterly installments as follows:

   For sales between January 1 and March 31, payment shall be made on or before May 1;
   For sales between April 1 and June 30, payment shall be made on or before August 1;
   For sales between July 1 and September 30, payment shall be made on or before Nov. 1;
   For sales between Oct. 1 and December 31, payment shall be made on or before Feb 1.

   With regard to any quarter year of operation for the Facility which is not a full quarter year, the applicable quarterly installment of the Community Impact Fee shall be pro-rated accordingly.

At the conclusion of the five (5) year term, the Parties shall negotiate the terms of a new Annual Community Impact Fee as an Amendment to this Agreement; provided, however, that any new Annual Community Impact Fee must be negotiated in good faith based upon evidence of the actual impact of the Facility and in compliance with applicable laws. If the parties are unable to reach an agreement on a successor Community Impact Fee, the Annual Community Impact Fee specified in Paragraph 2.A.1 of this Agreement may remain in effect if the Town is able to provide evidence that the amount set forth in the Annual Community Impact Fee is equal to the actual impact of the Facility and shall not be reduced below the amount set forth above until such time as the Parties negotiate a successor Community Impact Fee.

4. The Town may use the above referenced payments as it deems appropriate 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 Town.

5. Pursuant to M.G.L. c. 94G, §3(d), a "community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of

the marijuana establishment..." Notwithstanding the foregoing, the Parties hereby acknowledge the difficulty in computing actual Town costs and agree that impacts may result in municipal budgetary increases that cannot be separately identified or precisely quantified. In no event shall the Town be required to refund any fees paid pursuant to the AGREEMENT. Notwithstanding the above, the Applicant shall have the right, after two-and-half years, to request a review of the Town's calculation of its costs related to the Facility and may request a concomitant adjustment to the fee for the final two years of the AGREEMENT. After said calculation have been produced the parties agree to negotiate in good faith.

B. Additional Costs, Payments and Reimbursements

1. Permit and Connection Fees: The Company 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 Town.

2. Facility Consulting Fees and Costs: The Company shall reimburse the Town for any and all reasonable and customary consulting costs and fees, including without limitation, reasonable attorneys' 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: The Company shall reimburse the Town for reasonable and customary costs incurred by the Town in connection with holding public meetings not held in public buildings and forums not within the Town's regularly scheduled public hearings and meetings, which are solely devoted to discussing the Facility.

4. Late Payment Penalty: The Company 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 thirty (30) days of the dates provided in section 2.A.3 above, the Company shall be required to pay the Town the late payment penalty equal to 5% of the payment

C. Community Benefit Payment for Substance Abuse Prevention

The Company shall pay to the Town a Community Benefit Payment in the sum of $10,000 annually for the term of the AGREEMENT for purposes of funding substance abuse prevention and mental health services in the Town, including, but not limited to school substance abuse education and counselling services. The Community Benefit Payment shall be based on the calendar year with the payment for the preceding year due to the Town no later than February 1. The

Community Benefit Payment for the first year of operation to be prorated based on the number of months the Facility is in operation. The Facility shall be deemed in operation upon receipt of both an occupancy permit from the Building Commissioner and the issuance of a final License and "Approval to Sell" at the Facility from the CCC.

The parties hereby recognize and agree that the Community Benefit Payment to be paid by the Company shall not be deemed a community impact fee subject to the requirements or limitations set forth in G.L. c.94G, §3(d).

D. Annual Reporting for Host Community Impact Fees and Compliance

The Company shall submit an annual written report to the Town's Board of Selectmen 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 all other requirement of this AGREEMENT. During the term of this AGREEMENT the Company shall agree, upon request of the Town, to appear before a meeting of Board of Selectmen to review compliance with the terms of this AGREEMENT. Such meeting shall occur no later than thirty (30) days following written notice from the Town.

The Company 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 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 it is required by the CCC and Department of Revenue for purposes of obtaining and maintaining a License for the Facility.

The Company shall submit annual financial statements to the Town within thirty (30) days after the payment of its Annual Community Impact Fee with a certification of its annual sales. The Company 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 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 it is required by the CCC and Department of Revenue for purposes of obtaining and maintaining a license for the Facility.

During the term of this AGREEMENT, and for three (3) years following the termination of this AGREEMENT, the Company shall agree, upon request of the Town, to have its financial records examined, copied and audited by an Independent Financial Auditor, the expense of which shall be borne by the Company if a discrepancy is found upon the Town's review of the Company's submitted financial records. The Independent Financial Auditor shall review the Company's financial records for purposes of determining that the payment of its Annual Community Impact Fee are in compliance with the terms of this AGREEMENT. Such examination shall be made

not less than thirty (30) days following written notice from the Town and shall occur only during normal business hours and at such place where said books, financial records and accounts are maintained. The Independent Financial Audit shall include those parts of the Company's books and financial records which relate to the payment, and shall include a certification of itemized gross sales for the previous calendar year, and all other information required to ascertain compliance with the terms of this AGREEMENT. The independent audit of such records shall be conducted in such a manner as not to interfere with the Company's normal business activities.

3. **Local Vendors and Employment**

To the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company 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 Facility when such contractors and suppliers are properly qualified and price competitive, and shall use good faith efforts to hire Town residents.

4. **Local Taxes**

At all times during the term of this AGREEMENT, property, both real and personal, owned or operated by the Company shall be treated as taxable, and all applicable real estate and personal property taxes for that property shall be paid either directly by the Company or by its landlord, and neither the Company nor its landlord shall object or otherwise challenge the taxability of such property and shall not seek any 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 the Company 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 the Company 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 the Company shall pay to the Town 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 the Company under Section 2 of this AGREEMENT. Nothing in this paragraph shall prohibit The Company from seeking an abatement due to a claim of an excess valuation.

5. **Security and Safety**

To the extent requested by the Town'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, the Company shall work with Town's Police Department in

reviewing and approving all security plans prior to implementation and commencement of operations.

The Company agrees to cooperate with the 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 ensure that the marijuana and marijuana products sold in the Facility are not being transferred to the illegal market or to minors.

The Company shall implement a comprehensive diversion prevention plan to prevent diversion of marijuana and marijuana products into the illicit market and to minors, such plan to be in place prior to the commencement of operations at the Facility. The Company shall present the diversion plan as prepared pursuant to 935 CMR 500.000 to the Police Department for its review and feedback and C work collaboratively to implement any suggested changes, amendments or modifications to address local concerns.

The Company agrees and acknowledges that annual inspections of the Facility by the Town's Police Department, Town's Fire Department, Building Department and Board of Health shall be a condition of continued operation in Town and agrees to cooperate with the Town's Police Department, Town's Fire Department and Board of Health in providing access for scheduled and unscheduled inspections of the Facility subject to 935 CMR 500.110(4)(e). Any findings of non-compliance by the Town shall be corrected by the Facility within fifteen (15) days of written notice.

The Company further agrees that all signage and packaging for marijuana products shall comply applicable state laws and regulations, including, but not limited to G.L. c.94G and 935 CMR 500.000, and further agrees that to the extent 935 CMR 500.000 imposes more stringent requirements on packaging, labeling, marketing or the form of permitted edibles, the Company will comply with the more restrictive regulatory provisions.

6. **Community Impact Hearing Concerns**

The Company agrees to conduct a Community Outreach Meeting prior to commencement of operations to work collaboratively and cooperatively with its neighboring businesses and residents and shall make a good faith effort to respond to the concerns raised. After said meeting, the Company will provide the Board of Selectmen a written report describing the comments made and issues raised at the meeting and the Company's response or actions planned to address those comments and issues. The Company shall meet at least annually at the invitation of the Board to review and address any complaints and/or concerns raised during the previous year.

7. **Additional Obligations**

The obligations of the Company and the Town recited herein are specifically contingent upon the Company obtaining a Final License from the CCC for operation of the Facility in the Town, and

the Company's receipt of any and all necessary local approvals to locate, occupy, and operate the Facility in the Town.

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 for the Facility to operate in the Town, or to refrain from enforcement action against the Company and/or its Facility for violation of the terms of said permits and approvals or said statutes, Bylaws, and regulations.

8. **Support**

The Town agrees to submit to the CCC, or such other state licensing or monitoring authority, as the case may be, the required Letter of Support or Non-Opposition relating to the Company's application for a License to operate the Facility, 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 Town normal and regular course of conduct and in accordance with its rules and regulations and any statutory guidelines governing them.

9. **Term**

Except as expressly provided herein, this AGREEMENT shall take effect on the date set forth above (the "Effective Date"), and shall be applicable for as long as the Company operates the Facility in the Town, with the exception of the Community Impact Fee, which shall be governed by the provisions of Paragraph 2.A of this AGREEMENT.

In the event the Company has not secured a Final License from the CCC and all necessary local permits from the Town and commenced operations at the Facility within one (1) year from the Effective Date of this AGREEMENT, this AGREEMENT shall expire and the Company shall be required to negotiate a new AGREEMENT in order to operate the Facility within the Town, unless the Board of Selectmen, in its discretion, agrees to an additional extension of time, for good cause, which shall include the time required to pursue CCC licensing assuming Company zealously pursues said licensing or await the determination of an appeal of the special permit or other legal proceeding.

10. **Successors/Assigns**

The Company 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 Town, in each instance, which consent shall not be unreasonably withheld, conditioned, or delayed and shall not assign or obligate any of the monies payable under this AGREEMENT, except by and with the written consent of the Town. This AGREEMENT is binding upon the parties hereto,

their successors, assigns and legal representatives. The Company shall not assign, sublet, or otherwise transfer any interest in the AGREEMENT without the written consent of the Town.

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

11. 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 Town:**

**Christopher J. Ketchen**
**Chief Administrative Officer**
Town of Lenox
6 Walker Street
Lenox, Massachusetts 01240

Copy To:
Town Counsel
Joel B. Bard
KP-Law, PC
101 Arch Street, 12th Floor
Boston, MA 02110

**To Company:**

**Krishna Lenox LLC**
**Navin Shah**
55 Pittsfield Road,
Lenox Commons,
Lenox, MA 01240

Copy To:
Company Counsel
James E. Smith
Smith, Costello & Crawford Public Policy Law
50 Congress Street, Suite 420

Boston, MA 02109

12. **Severability**

If any term or 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 Town would be substantially or materially prejudiced. To the extent the validity or enforceability of the AGREEMENT is challenged by the Company in a court of competent jurisdiction, and a court upholds the validity and/or enforceability of the AGREEMENT, the Company shall pay all reasonable fees and costs incurred by the Town in enforcing this AGREEMENT.

13. **Governing Law**

This AGREEMENT shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, and the Company submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this AGREEMENT.

14. **Entire Agreement**

This AGREEMENT constitutes the entire integrated agreement between the Company and the Town 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.

15. **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.

16. **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.

17. **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.

18. **Signatures**

Facsimile signatures affixed to this AGREEMENT shall have the same weight and authority as an original signature.

19. **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 Town and the Company and any other successor, affiliate or corporate entity as joint ventures or partners.

20. **Nullity**

This AGREEMENT shall be null and void in the event that the Company does not locate the Facility in the Town or relocates the Facility out of the Town. Further, in the case of any relocation out of the Town, the Company agrees that an adjustment of Annual Community Impact Fee due to the Town hereunder shall be calculated based upon the period of occupation of the Facility within the Town, but in no event shall the Town be responsible for the return of any funds provided to it by the Company.

21. **Indemnification**

The Company shall indemnify, defend, and hold the Town 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 Town, their agents, departments, officials, employees, insurers and/or successors, by any third party arising from or relating to the development of the Facility to the extent caused by or contributed to by the Company, but specifically excluding such matters caused by the fraud or willful misconduct of the Town, its agents, departments, officials, employees, insurers and/or successors. 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 Town's choosing incurred in defending such claims, actions, proceedings or demands. The Company 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 with respect to any such claim, action, proceeding or demand. As a condition of indemnification pursuant to this Section, the Town shall: (a) notify the Company within a reasonable period of time of any matter concerning which the Town may seek indemnification hereunder; (b) at the request of the Company give the Company control over the investigation, defense and/or settlement of such matter; and (iii) cooperate to the greatest possible extent in such investigation, defense and/or settlement.

22. **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 Town or the Company.

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

TOWN _____
BOARD OF SELECTMEN

Edward P. Kane
, Chair

Dave Rowe

Warren E. Archey

Marylyn J. Mitt

_____

COMPANY

_____

Krishna Lenox, LLC
Lenox Special Permit Application

February 28, 2020

Lenox Town Hall
6 Walker Street
Lenox, MA 01240
ATTN: Zoning Board of Appeals

**RE: Krishna Lenox, LLC**
**Security Plan**

Krishna Lenox, LLC ("Krishna") security plan is to protect the premises, provide a safe environment for staff, visitors and the general public, and to deter and prevent theft and diversion of product. Krishna recognizes and prepares for both internal and external security threats, all employees will go through security training. Security plans will be reviewed and amended as needed. Violation of security policies by Krishna agents and employees is grounds for immediate dismissal.

Pursuant to 935 CMR 500.110(1)(a)-(o), Krishna will implement sufficient safety measures to prevent unauthorized entrance into the Krishna facility and theft of marijuana from occurring. These security measures include, but are not limited to: properly identifying individuals entering the Krishna facility to limit access to those 21 years or older; preventing loitering; properly disposing of marijuana products; securing entrances and establishing limited access areas for authorized personnel; ensuring proper storage of marijuana and marijuana products; keeping locks in good condition and preventing keys to said locks from being accessible to unauthorized individuals; ensuring property lighting of the exterior of the Krishna facility; keeping marijuana products out of plain site; developing emergency procedures; and sharing Krishna's security plan and procedures and relevant updates with law enforcement and fire services. If Krishna identifies alternate security provisions that might be regarded as adequate substitutes for any security requirements, Krishna will submit a request for acceptance of these provisions pursuant to 935 CMR 500.110(2).

Krishna will have limited access areas identified with clear signage designating the access point for authorized personnel only, pursuant to 935 CMR 500.110(4). Identification badges will be required to be worn at all times by Krishna employees while at the facility or engaged in transportation. All outside vendors, contractors and visitors shall be required to wear visitor badges prior to entering limited access areas and shall be displayed at all times. Visitors shall be logged in and out and be escorted while at the Krishna facility. The visitor log will be available for inspection by the Commission at all times. All visitor badges will be returned to Krishna upon exit. All Limited Access areas will be clearly described by the filing of a diagram of the registered premises, as determined by the Commission, reflecting, where applicable, entrances and exits, walls, partitions, vegetation, flowering, processing, production, storage, disposal and retail sales areas. Access to Limited Access areas will be restricted to employees, agents or volunteers specifically permitted by Krishna, agents of the Commission, state and local law enforcement and emergency personnel. All Krishna employees will visibly display an employee identification badge issued by Krishna at all times while at Krishna's Marijuana Establishments or transporting marijuana.

All finished marijuana products will be stored in a secure, locked safe or vault in such a manner as to prevent diversion, theft or loss, pursuant to 935 CMR 500.110(1)(f). Additionally, Krishna will prohibit keys, if any, from being left in the locks or stored or place in a location accessible to persons other than specifically authorized personnel. Krishna will also ensure that that all marijuana products are kept out of plain sight and are not visible from a public place without the use of binoculars, optical aids or aircraft.

Pursuant to 935 CMR 500.105(12)(b), all liquid waste containing marijuana or marijuana byproducts shall be disposed of in compliance with all applicable state and federal requirements. Any remaining marijuana waste shall be ground and mixed with other organic materials, as defined in 301 CMR 16.02 and in accordance with 935 CMR 500.105(12)(c)(2.b). Solid waste containing cannabis waste generated at our Marijuana Establishment may be ground up and mixed with solid wastes such that the resulting mixture renders the cannabis unusable for its original purpose, in compliance with 935 CMR 500.105(12)(c). A minimum of two Marijuana Establishment Agents must witness and document how the marijuana waste is disposed or otherwise handled in accordance with 935 CMR 500.105(12).

In accordance with 935 CMR 500.110(5), Krishna will have a security system to prevent and detect diversion, theft or loss of marijuana. Pursuant to 935 CMR 500.110(5)(a)-(f), Krishna's security system shall include, but is not limited to: perimeter alarms; a failure notification system that provides notification of any failure in the surveillance system within five minutes after failure via telephone, email or text message; duress alarm; video cameras in all areas containing marijuana; 24-hour recordings that are retained for at least 90 days, contain a date and time stamp and can be exported as still images; and the ability to remain operational during power outages. Additionally, the security system will be maintained in secure locations with a back-up alarm system provided by a company different than that provided by our primary system. Access to said systems will be limited to personnel essential to security operations, law enforcement, the security company and the Commission. All equipment shall be in good working order at all times.

Any incident occurring at the Krishna facility that is a breach of security shall be immediately reported within 24 hours to law enforcement and the Commission, pursuant to 935 CMR 500.110(7). Breaches include, but are not limited to: discovery of discrepancies of inventory; diversion, theft or loss of product; criminal action involving the Krishna facility; unauthorized destruction of marijuana or suspicious acts involving said marijuana; loss or alteration of records; and alarm activation or failure of the security system. Incident reports shall be submitted to the Commission within 10 days of the occurrence of the act and documentation of the incident will be maintained for at least one year or throughout the duration of any related investigation.

Krishna will annually obtain a security system audit by a vendor approved by the Commission and at Krishna's expense, pursuant to 935 CMR 500.100(8). Krishna will submit said report within 30 days after the audit is completed and, if areas of concerns are identified, Krishna will submit a mitigation plan to address the issue.

Krishna Lenox, LLC
Lenox Special Permit Application

February 28, 2020

Lenox Town Hall
6 Walker Street
Lenox, MA 01240
ATTN: Zoning Board of Appeals

**RE: Krishna Lenox**
**Line Queue Plan**

In accordance with the Lenox special permit application and Section 8 of the Lenox Zoning Bylaw, Krishna Lenox LLC "Krishna" intends to implement the following line queue plan. Krishna is located at 55 Pittsfield Road, Lenox, MA 02140 ("Location"), which was partially vacant.

Krishna will prioritize the safety of our employees, customers and neighbors. In order to ensure a safe environment, Krishna will hire a full time, unarmed security guard whose job responsibilities will include line control management. It is Krishna's intent that customers will be checked through the initial screening at the first security external checkpoint as quickly as possible and the line will queue in the interior vestibule waiting to go through the second security checkpoint where the customers will then have their IDs scanned. This will minimize any exterior line and as a result, minimize impact on the surrounding commercial and residential areas. In the event a line forms outside of the retail establishment, the security guard and/or a Krishna employee will assist with line management in order to improve the entry and exit flow of customers moving.

Communication will be a key aspect in Krishna's crowd and line queue management. The front desk and management and security will be in constant contact through 2-way radio communications. Customers will be instructed on the appropriate line formation if the need for a line becomes necessary.

Employees at the point of sale (POS), will communicate the "3 deep" rule to the receptionist when it becomes necessary. In the event that Krishna has a three person wait behind all available POS, the 3 deep rule will be implemented. The staff will inform the receptionist that all employees at the POS have 3 customers in waiting, and the receptionist will then allow a one in, one out customer flow. Krishna will make a good faith effort to accommodate waiting customers.

Krishna management will plan for extra help, security and full staff on certain days such as the opening day and busier days of the week based on historical sales data. The maximum capacity of the building will be strictly enforced. In case of an emergency evacuation all Krishna employees and security guards will be trained to comply with the evacuation route for the location.

Krishna will continuously engage with Town of Lenox officials to ensure our line queue plan remains in compliance. Krishna looks forward to engaging with you further on our plan and is willing to consider alternative ideas city officials may have.

FUSS & O'NEILL

February 25, 2020

Navin Shah, President
Berkshire Hotels Group
462 Pittsfield Road
Lenox, MA 01240

RE: Traffic Review
MA, Lenox – Lenox Commons Dispensary
Fuss & O'Neill Reference No. 20200175.A10

Dear Mr. Shah:

As requested, Fuss & O'Neill has reviewed certain traffic related issues concerning the proposed re-use of the former restaurant at 55 Pittsfield Road, Lenox as a retail marijuana dispensary. Based on currently available industry standard data, the dispensary use is expected to have less traffic activity associated with it than the former restaurant.

## Traffic Generated By Proposed Project

The expected site generated traffic volume was calculated using existing empirical data from the Institute of Transportation Engineers (ITE) publication Trip Generation, 10th edition, 2017. This publication is an industry-accepted resource for estimating vehicle tips associated with proposed development.

Trip generation estimated for the proposed dispensary was estimated based on the average number of trips counted at all the sites in the ITE database.

During the weekday morning and afternoon peak hour the proposed subdivision expansion is estimated to generate 13 entering trips and 10 exiting trips based on ITE rates. The following table presents the peak hour and weekday trip estimates.

1550 Main Street
Suite 400
Springfield, MA
01103
t 413.452.0445
800.286.2469
f 413.846.0497

www.fando.com

California
Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

F:\P2020\0175\A10\Deliverables\Report\20200175A10_Traffic Impact Letter_022120.Docx
Corres.

| Lenox Dispensary<br>Estimated Weekday Net New Vehicle Trip Generation | Enter (vte*) | Exit (vte*) | Total (vte*) |
|---|---|---|---|
| **Weekday AM Adjacent Street Peak Hour** | | | |
| High-Turnover (Sit-Down) Restaurant (932) | 37 | 31 | 68 |
| Marijuana Dispensary (882) | 13 | 10 | 23 |
| **Difference** | -25 | -21 | -46 |
| **Weekday PM Adjacent Street Peak Hour** | | | |
| High-Turnover (Sit-Down) Restaurant (932) | 41 | 25 | 66 |
| Marijuana Dispensary (882) | 19 | 19 | 38 |
| **Difference** | -22 | -6 | -28 |
| **24-Hour Weekday Total** | | | |
| High-Turnover (Sit-Down) Restaurant (932) | 382 | 382 | 763 |
| Marijuana Dispensary (882) | 272 | 272 | 545 |
| **Difference** | -109 | -109 | -219 |

*VTE = Vehicle Trip Ends

## Comparison with Previous Uses

Traffic activity associated with the proposed dispensary use is estimated to be significantly lower than the previous 170 seat restaurants. The afternoon commuting peak hour demand will be about 40% less, and the daily trips will be about 30% less than the former restaurant. This maintains the overall vehicular trip generation for the entire Lenox Crossing site below levels previously allowed under current land use, environmental, and access permitting.

## Crash Analysis & Crash Data Review

A review of the level of safety at the Lenox Crossing / Pittsfield Road intersection was conducted using crash data obtained from MassDOT. The records were gathered for the most recent 3 years of available data, 2017 through 2019. Over the three year period there was a total of 15 crashes at the intersection, an average of 5 per year. The predominant crash type was rear-end collision, which is typical for signalized intersections.

The crash rate, expressed as "crashes per Million Entering Vehicles" (MEV), was determined using the standard MassDOT intersection crash rate formula. Compared to the daily traffic demand of about 36,000 vehicles per day entering the intersection, the resulting crash rate was 0.38 crashes per million entering vehicles. The statewide average crash rate for signalized intersections is 0.78, so there is no indication of any existing safety concern or hazardous condition at the site driveway intersection.

## Conclusion & Recommendations

Based on the trip comparison and results relating to traffic safety, it is the professional opinion of Fuss & O'Neill, Inc. that the proposed re-use of the former restaurant at 55 Pittsfield Road, Lenox as a retail marijuana dispensary will not have a significant impact to vehicular movements at the existing driveway nor exacerbate any pre-existing safety concerns.

Sincerely,

Stephen J. Savaria, PE, PTOE
Senior Project Manager

2.3.5 *Electric, Telephone, Television*

The property is currently serviced by these utilities which will be extended (underground) to the new areas of the development.

## 2.4 Signs

All signs will conform to Section 7 of the zoning bylaw. Two pre-existing, nonconforming signs presently exist which will remain the same size in the same location, although the lettering and style of the signs will change.

## 2.5 Traffic

The project is expected to have a minimal impact on traffic in the area. A Traffic Impact Study was prepared by Fuss & O'Neill, Inc. and submitted in connection with an Environmental Notification Form (ENF) in May 2005. The ENF represented the full build-out of the project. A copy of that study has been included herewith as Appendix C.

*"CONCLUSIONS AND RECOMMENDATIONS*

*Based on the traffic analysis discussed above, the following is concluded:*

1. *The addition of12 units of residential apartment development, 39 units of residential townhouse development, and 52,000 square feet of retail space to the Lenox Shops site is expected to generate approximately396 vehicles (198 entering and 198 exiting) during the weekday afternoon peak hour period.*
2. *Traffic on Route 7/20 as a result of this project is expected to increase by approximately 181 vehicles to the north and 215 vehicles to the south of the site during the afternoon peak hour period assuming full occupancy of both the residential and retail development.*

3. *The only vehicle movements on Route 7/20 which are expected to see a change in levels of service comparing the BUILD condition to the No-Build condition during the PM peak hour are northbound left-turning movement and southbound right-turning movement.*

2.6 Environmental

The property contains areas of protected wetlands including a Certified Vernal Pool, Rare Wetland Wildlife (Jefferson Salamander), and protected plant species (orchis, sedge). To that end, the Proponent has filed a Notice of Intent with the Lenox Conservation Commission for approval of the portions of work in proximity to these protected resource areas. At the time of this application, the Conservation Commission has reserved vote on the application until a final resolution has been made regarding the Rare Wetland Wildlife and Protected Plant Species. The Natural Heritage and Endangered Species Program, which has jurisdiction over these issues, has agreed, in principle, to the current site plan and the methods proposed to mitigate any potential impacts. A key component to the mitigation is the dedication of approximately 7 acres of forested land to a Conservation Restriction. Said land is located immediately west of the vernal pool (see attached plans).

The project has undergone a thorough review by the Massachusetts Executive Office of Environmental Affairs pursuant to the Massachusetts Environmental Policy Act (M.G.L.c.30, ss 61-624). Said review considered all potential impacts associated with the project (including traffic). A final Record of Decision was issued favorably for the project (see Appendix F – Final Record of Decision of MEPA Filing).

# Appendix C

Traffic Impact Study

# TRAFFIC IMPACT STUDY
# LENOX GATEWAY MASTERPLAN
# LENOX, MA

**May 11, 2005**
**Revised September 12, 2005**


Fuss & O'Neill

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# TRAFFIC IMPACT STUDY
# LENOX GATEWAY MASTERPLAN
# LENOX, MA

## INTRODUCTION

The following report summarizes the analysis and evaluation of the traffic impact expected from a renovation of the Lenox Shops located on Pittsfield Road (Route 7/20) in Lenox, MA. This study included a field investigation of the site area, analysis of the traffic estimated to be generated by the site, and evaluation of the resulting traffic increases on the adjacent road. Figure 1 indicates the location of the site relative to the adjacent Route 7/20 corridor in Lenox.

Figures and other analysis, including capacity analysis worksheets, are appended to the report.

## PROJECT DESCRIPTION

This traffic study involves an assessment of the Masterplan for renovation and additional future development at the Lenox Shops site. This traffic analysis assumed that the project will consist of the addition of retail space and the renovation of the existing commercial buildings, along with the addition of 39 townhouse-style condominiums and 12 apartments. The apartments will be located above the existing retail buildings, following renovation. In total, approximately 52,000 square feet of new retail space was assumed to be added. Currently, there is a total of approximately 29,580 sq. ft. of retail space occupied, and approximately 51,720 sq. ft. of unoccupied space (including the 9,300 sq. ft. former Lenox House Restaurant space) at the site. The traffic analysis for the Masterplan build-out assumed a total retail area of 133,300 square feet. Access to the site will be provided by means of the existing driveway to the Lenox Shops, intersecting Route 7/20 at the existing signalized intersection.

Since the preparation of the May 11, 2005 Traffic Impact Study, some minor revisions have been made to the proposed plan. It is currently planned to add only 8 apartments (4 less than assumed in this traffic study), and 44,700 square feet of additional retail space (not 52,000 sq. ft. as assumed in this traffic study). This traffic study analysis, accordingly, assumes slightly larger future development than is currently proposed.

## EXISTING TRAFFIC CONDITIONS

Pittsfield Road is an urban extension of a rural principal arterial connecting Lenox and Pittsfield. Past traffic counts, taken by the Massachusetts Highway Department, indicate that the peak hour on a weekday occurs typically in the later afternoon period. The average daily traffic on Route 7/20 south of the site was approximately 17,496 in year 2003. This is based on MassHighway traffic count station 1179, located approximately one-half mile south of the Route 7A junction. Based on count data from an automatic traffic recorder (ATR) placed across the Lenox Shops driveway, it was determined that on an average

weekday there are approximately 980 total trips, (total entering and exiting) at the existing Lenox Shops. On Saturday the total trips increase to approximately 1,050.

The roadway adjacent to the site consists of a four lane divided highway, with exclusive left and right turn lanes at the Lenox Shops driveway intersection in the northbound and southbound travel directions. Within the study area, the pavement width on Pittsfield Road varies from 50 to 75 feet, approximately. The posted speed limit in the vicinity of the site is 45 MPH.

The study area consisted of four intersections in the vicinity of the site. These were the intersections of Route 7/20 at Route 7A, East Dugway Road at Route 7/20, Lenox Shops at Route 7/20, and West Dugway Road at Route 7/20. Traffic counts were conducted at these intersections on a weekday morning in April 2005 between 7 and 9 AM. Weekday evening and midday Saturday traffic counts were taken from a previous traffic study done at the proposed site. These counts were performed in December 2003. A factor was applied to the 2003 counts to account for growth in the area over the last two years. The typical peak hour for traffic occurred between 4:15 and 5:15 PM. Figures 2 through 4 indicate the existing traffic for an average month.

Accident history for the most recent three year period was researched based on available crash data on record with the MassHighway Department. Data for the years 2001, 2002, and 2003 was reviewed for the section of Route 7/20 between Route 7A and West Dugway Road. A total of 16 crashes occurred at study area intersections over the three year period: none of which occurred at the intersection of Route 7/20 and the Lenox Shops driveway. Accordingly, there appears to be no significant accident history at this project area. A crash rate of 0.58 was calculated for the intersection of Route 7/20 with Route 7A, where 15 of the 16 crashes occurred, using Massachusetts Highway Department (MassHighway) procedures. This rate is lower than the statewide average for signalized intersections of 0.87 suggesting that no significant safety hazards exist at this intersection. A summary table of the crash data is appended.

It is important to note that the State completed the reconstruction of Route 7/20 in the project area and beyond around the end of December 2000. The reconstruction improvements in this area included minor roadway widening, provision of turn lanes, improving roadside clearance (e.g. cutting back of ledge outcrops and roadside embankments), and reducing some vertical curves along the roadway to improve sight distance.

## PROJECTED TRAFFIC

In order to evaluate the impact of the additional site traffic on the adjacent highway, traffic conditions were projected to a future year in accordance with standard practice. A five-year projection (year 2010) was analyzed in this study. The background traffic on Pittsfield Road was increased to reflect traffic growth within that time period. An annual traffic increase of 3.62 percent per year was used as the growth rate for background traffic, based on the traffic count history on Route 7/20 from MHD count station 1179. Figures 5 through 7 indicate the estimated future peak hour traffic without the proposed development, i.e. the NO BUILD condition.

## TRAFFIC EXPECTED FROM THE PROJECT

An estimate was made of the traffic volume to be generated by the fully occupied retail space and the additional residential units. Table 1 indicates the estimated traffic volume for the Saturday midday and weekday AM and PM peak hours and 24-hour periods. These traffic estimates are based on trip rates published by the Institute of Transportation Engineers (ITE) in their report, *"Trip Generation"*, Seventh Edition, 2003. Land Use Activity Code 820, Shopping Center was used for the retail portion of the project while Land Use Activity Codes 221 and 230, Low-Rise Apartment and Residential Condominium/Townhouse, were used for the residential segment.

In order to determine the total number of new trips generated by the retail segment when fully occupied, estimates were made for both the existing occupied retail space and for full occupancy of the proposed retail space after project completion (i.e. full occupancy of the site based on the Masterplan). The difference between these estimates was taken as the expected increase in the retail generated trips.

As seen in Table 1, it is estimated that the project will generate approximately 681 vehicles (355 entering and 326 exiting) during the Saturday midday peak hour and 515 vehicles (255 entering and 260 exiting) during the Weekday evening peak hour. The "project" herein assumes the additional 52,000 sq. ft. of new retail space, the approximate 51,720 sq. ft. of unoccupied retail and restaurant space, and condominium and apartment development.

Figures 8 through 10 indicate the estimated traffic generated by the proposed development as it is distributed to turning movements at the driveway intersection with Route 7/20 and other study area intersections.

TABLE 1
SITE TRIP GENERATION ESTIMATES – ADDED DEVELOPMENT

| | Total Trips | Pass-By Trips | New Trips |
|---|---|---|---|
| Saturday Daily (24 hour) | | | |
| Entering | 3558 | - | - |
| Exiting | 3558 | - | - |
| Total | 7116 | - | - |
| Saturday Midday Peak Hour | | | |
| Entering | 355 | 85 | 270 |
| Exiting | 326 | 78 | 248 |
| Total | 681 | 163 | 518 |
| Weekday Daily (24 hour) | | | |
| Entering | 2738 | - | - |
| Exiting | 2738 | - | - |
| Total | 5476 | - | - |
| Weekday Morning Peak Hour | | | |
| Entering | 74 | - | 74 |
| Exiting | 71 | - | 71 |
| Total | 145 | - | 145 |
| Weekday Evening Peak Hour | | | |
| Entering | 255 | 57 | 198 |
| Exiting | 260 | 62 | 198 |
| Total | 515 | 119 | 396 |

*Pass-by Traffic*

Highway-oriented businesses typically generate a significant proportion of their driveway traffic volumes by attracting vehicles from the existing traffic already using the transportation network in the vicinity of the site. This amount of traffic which enters and leaves the proposed project not as a primary origin or destination but as an intermediate stop in a trip made for some other purpose is defined as the pass-by trip percentage. This percentage is applied to the total trip generation of the proposed project to calculate the total amount of traffic that will be added to the adjacent transportation facilities as a result of the development.

Pass-by trips are attracted from traffic passing the site on an adjacent roadway with direct access to the generator. The average value for pass-by trip percentage reported in the ITE Trip Generation Report for site impact assessment of shopping centers of 34 percent during the weekday PM peak hour and 26 percent during the Saturday midday peak hour. For the purposes of this study, however, a pass-by rate of 25 percent was applied to the estimated trips to be generated by the retail segment during the weekday evening and Saturday midday peak hours, allowing for a conservative estimate of the potential impact of the project.

*New Traffic*

Vehicle trips by customers whose sole reason to be on the road is to travel to and from the project or have traveled out of their way to patronize the site are considered primary, or new trips. New trips will increase the traffic volume on the adjacent streets as well as on the site driveways. New trips will account for three-quarters of the total site traffic, based on a conservative application of the 25% pass-by factor used for MEPA reports.

## IMPACT OF ADDED TRAFFIC

Figures 11 through 13 indicate the result of adding the residential project traffic to the NO BUILD peak hour traffic at the study area intersections. As shown in Tables 2 through 4 below, an analysis of the traffic level of service with these traffic volumes for the average month condition indicates that there will be a level of service "B" or better for traffic turning into the site from Route 7/20 during all peak periods. Left and right turns out of the site drive onto Route 7/20 will operate at level "E" during the PM peak hour. During the Saturday peak hour left turns out of the site will continue to operate at level of service "E" while right turns will operate at level of service "F" based on existing signal timing. To address the future Saturday peak hour right turn delay, an adjustment in the signal timing may be required. With an adjustment in signal timing, the site driveway exit level of service on a Saturday peak hour could be improved to a level "D". See Table 8 in the Appendix. Complete level of service tables for the entire study area are appended.

The project, at full occupancy, could potentially add an estimated 181 vehicles to the north and 215 vehicles to the south of the site during the PM peak hour of the adjacent highway. This is a relatively small increase of approximately 7 percent (6.9%) in the peak hour traffic south of the site for the year 2010.

TABLE 2
WEEKDAY MORNING PEAK HOUR
INTERSECTION LEVEL OF SERVICE SUMMARY

| Intersection | Movement | 2005 Existing | | 2010 No Build | | 2010 Build | |
|---|---|---|---|---|---|---|---|
| | | Delay | LOS | Delay | LOS | Delay | LOS |
| Route 7/20 at Lenox Shops Driveway | NB LT | 7.0 | A | 11.7 | B | 13.1 | B |
| | NB TH | 11.9 | B | 13.5 | B | 13.5 | B |
| | NB RT | 8.3 | A | 8.3 | A | 8.3 | A |
| | SB LT | 4.5 | A | 5.8 | A | 5.8 | A |
| | SB TH | 14.3 | B | 18.7 | B | 18.7 | B |
| | SB RT | 8.4 | A | 8.4 | A | 8.6 | A |
| | EB LT/TH | 36.7 | D | 36.7 | D | 37.8 | D |
| | EB RT | 36.7 | D | 36.7 | D | 37.7 | D |
| | WB LT/TH | 36.6 | D | 36.6 | D | 36.6 | D |
| | WB RT | 24.3 | C | 24.3 | C | 24.3 | C |
| | OVERALL | 13.3 | B | 16.5 | B | 16.8 | B |

Note: LOS= Level of Service; Delay is Control Delay in Seconds

TABLE 3
WEEKDAY EVENING PEAK HOUR
INTERSECTION LEVEL OF SERVICE SUMMARY

| Intersection | Movement | 2005 Existing | | 2010 No Build | | 2010 Build | |
|---|---|---|---|---|---|---|---|
| | | Delay | LOS | Delay | LOS | Delay | LOS |
| Route 7/20 at Lenox Shops Driveway | NB LT | 5.5 | A | 7.4 | A | 11.9 | B |
| | NB TH | 14.9 | B | 18.7 | B | 18.1 | B |
| | NB RT | 8.4 | A | 8.4 | A | 8.4 | A |
| | SB LT | 7.7 | A | 12.0 | B | 11.4 | B |
| | SB TH | 12.8 | B | 14.6 | B | 14.3 | B |
| | SB RT | 8.5 | A | 8.6 | A | 9.4 | A |
| | EB LT/TH | 37.9 | D | 38.2 | D | 67.2 | E |
| | EB RT | 37.9 | D | 38.2 | D | 69.4 | E |
| | WB LT/TH | 36.8 | D | 36.8 | D | 36.9 | D |
| | WB RT | 24.6 | C | 24.7 | C | 24.7 | C |
| | OVERALL | 14.5 | B | 17.3 | B | 21.0 | C |

Note: LOS=Level of Service; Delay is Control Delay in Seconds

TABLE 4
SATURDAY MIDDAY PEAK HOUR
INTERSECTION LEVEL OF SERVICE SUMMARY

| Intersection | Movement | 2005 Existing | | 2010 No Build | | 2010 Build | |
|---|---|---|---|---|---|---|---|
| | | Delay | LOS | Delay | LOS | Delay | LOS |
| Route 7/20 at Lenox Shops Driveway | NB LT | 4.9 | A | 6.3 | A | 10.6 | B |
| | NB TH | 11.7 | B | 12.8 | B | 12.5 | B |
| | NB RT | 8.4 | A | 8.4 | A | 8.4 | A |
| | SB LT | 4.6 | A | 5.7 | A | 5.4 | A |
| | SB TH | 11.8 | B | 13.0 | B | 12.7 | B |
| | SB RT | 8.8 | A | 8.9 | A | 10.2 | B |
| | EB LT/TH | 38.4 | D | 38.7 | D | 68.4 | E |
| | EB RT | 38.3 | D | 38.6 | D | 89.1 | F |
| | WB LT/TH | 36.9 | D | 37.0 | D | 37.2 | D |
| | WB RT | 24.7 | C | 24.7 | C | 24.7 | C |
| | OVERALL | 13.0 | B | 14.0 | B | 21.6 | C |

Note: LOS= Level of Service; Delay is Control Delay in Seconds

## ACCESS AND ON-SITE TRAFFIC CIRCULATION

The development will use the existing driveway for access to Route 7/20. The driveway is approximately 70 feet wide with a center island and a designated right-turn lane leaving the development. The preliminary site plan indicates a 20-foot access road serving the residential townhouses to be located to the northwest of the retail development. This road connects to the parking lot access road on the north side of the retail development. The site plan shows a total of 451 parking spaces. The site driveway intersection with Route 7/20 (Pittsfield Road) provides a two lane approach to Route 7/20, with a designated right-turn lane. The existing traffic signal provides safe access to Route 7/20.

## CONCLUSIONS AND RECOMMENDATIONS

Based on the traffic analysis discussed above, the following is concluded:

1. The addition of 12 units of residential apartment development, 39 units of residential townhouse development, and 52,000 square feet of retail space to the Lenox Shops site is expected to generate approximately 396 new vehicles on the site driveway (198 entering and 198 exiting) during the weekday afternoon peak hour period. The expected trip generation used in this traffic analysis herein reflects slightly higher traffic volumes than is now currently proposed, based on a subsequent reduction to 8 apartments, and a reduction to 44,700 square feet of added retail space.

2. Traffic on Route 7/20 as a result of this project is expected to increase by approximately 181 vehicles to the north and 215 vehicles to the south of the site during the afternoon peak hour period assuming full occupancy of both the residential and retail development.

3. The only vehicle movements on Route 7/20 which are expected to see a change in levels of service comparing the BUILD condition to the No-Build condition during the PM peak hour are northbound left-turning movement and southbound right-turning movement into the proposed development. These movements are expected to go from a level "A" to a level of service "B" when the proposed development is fully occupied. These levels will still represent a good level of service for turning traffic.

4. The existing site driveway is signalized and has a two lane exit at its intersection with Route 7/20. This will help mitigate any delays to traffic leaving the site during peak traffic periods on Pittsfield Road.

5. A designated left turn lane is already in place at the existing intersection on the northbound approach of Route 7/20 allowing left-turning vehicles to be safely channeled into the site.

6. Overall, the proposed site development as assumed in this Traffic Study for this Masterplan for Lenox Gateway at approximately 133,300 square feet of retail space plus some apartments and town-house condominiums (that has subsequently been reduced to 128,670 square feet of total retail, office and restaurant use) is still <u>less</u> development than previously proposed and approved for this site as the Up-Country Shops at Lenox (EOEA #8079), when 167,135 square feet of retail shopping area was proposed.

Krishna Lenox
Lenox Special Permit Application

February 28, 2020

Zoning Board of Appeals
6 Walker Street
Lenox, MA 01240

**RE: Krishna Lenox, LLC**
**Parking and Transportation Analysis**

In accordance with the Lenox special permit application and Section 8.13 of the Lenox Zoning Ordinance, Krishna Lenox, LLC "(Krishna") is submitting the following parking analysis. Krishna Lenox, LLC is located in the Lenox Commons at 55 Pittsfield Rd, Lenox, MA 01240 ("Location"), the prior use of this building was as a 200-seat restaurant.

The Location is in the Commercial (C3A) zoning district, and has adequate parking accommodations available at the Location. There are no designated parking spaces but there are ample spaces throughout the Aspinwell Shopping Center and 30 spaces in the immediate vicinity of Unit 2, the building for which this permit is sought. Krishna is aware and will be conscientious of the fact that these are shared parking spaces with the neighboring businesses within the Lenox Commons. Krishna is willing to engage and seek input from the neighboring businesses if parking becomes throughout the shared parking of the commons.

In order to create more parking for the customers Krishna will promote employees to find alternative measures of transportation for their shifts. One recommendation will be to carpool or rideshare to the Location in order to leave the parking spaces available for customers. Company will require employees to park behind the building in order to make the parking spaces near the Location more readily available for customers.

Krishna will continuously engage with Town of Lenox officials to ensure this traffic and parking plan remains fully compliant. Krishna looks forward to engaging with you further on our traffic impact plan and is willing to consider alternative ideas Town officials may have.

Krishna Lenox
Lenox Special Permit Application

February 28, 2020

Lenox Town Hall
6 Walker Street
Lenox, MA 01240
ATTN: Zoning Board of Appeals

**RE: Krishna Lenox**
**Odor Plan**

In accordance with the Lenox special permit application and Section 8 of the Lenox Zoning Bylaw, Krishna Lenox LLC ("Krishna") intends to implement the following odor plan. Krishna is located at 55 Pittsfield Road, Lenox, MA 02140 ("Location"), which was partially vacant.

The odor producing activities and processes at this facility relate to the storage of trimmed cannabis plants. The odor is caused by the release of terpenes that are naturally present in the cannabis plant. Carbon filters will be inconspicuously placed on the sales floor, the product vault and the receiving vestibule. It is standard practice for Krishna to place carbon filters close to exits, operational doors or odor escape areas.

The establishment manager is responsible for the oversight of all the operations at the facility, including general housekeeping, retail operations, establishment management and proper operation for odor mitigation.

The industry standard engineering control for odor mitigation in cannabis facilities is to clean the air using carbon filtration. All filtered rooms at this facility will be equipped with an activated carbon filter attached to a stand-alone fan. The fan & filter will be turned on at all times. These filters are light weight and incredibly effective at removing the most potent odors.

Krishna Lenox
Lenox Special Permit Application

February 28, 2020

Lenox Town Hall
6 Walker Street
Lenox, MA 01240
ATTN: Zoning Board of Appeals

**RE: Krishna Lenox**
**Signage Plan**

Krishna Lenox LLC ("Krishna") is located at 55 Pittsfield Road, Lenox, MA 02140 ("Location"). As part of special permit application, Krishna intends to implement a signage plan in accordance with Section 7.2 and 7.3 of the Lenox Zoning Bylaw.

Per the requirements of 935 CMR 500.105(4)(a), Krishna will develop a logo to be used in labeling, signage, and other materials that does not make use of medical symbols, images of marijuana, or related paraphernalia. Colloquial references to cannabis and marijuana will be prohibited from being used in this logo.

Pursuant to 935 CMR 500.105(4)(b) Krishna will not install any neon or illuminated external signage that fails to comply with all local ordinances and requirements. Krishna will also refrain from the installation of any external signage that is illuminated beyond the period of 30 minutes before sundown until closing.

# Krishna Lenox

55 PITTSFIELD ROAD, LENOX COMMONS, LENOX, MA 01240

# Our Team

**Navin Shah, CEO**

- President of Berkshire Hotels Group
- Navin has been operating in the hotel industry for over thirty years. He currently owns and operates the Days Inn, Howard Johnson Express Inn, and the Knights Inn here in Lenox.
- Navin has developed excellent business relationships with lending institutions in the Berkshires as well as in the Pioneer Valley.
- Resident of Lenox since 1988.

**Jim Smith, Esq. as Regulatory Counsel**

- Smith, Costello & Crawford Public Policy Law Group
- Jim is a founding partner of Smith, Costello & Crawford – Boston's largest public policy law group. He is widely recognized as a leading advocate for the Commonwealth's emerging cannabis industry
- Smith, Costello & Crawford represents dozens of cannabis clients throughout Massachusetts. The firm works closely with its clients to successfully guide them through the strict requirements of the Cannabis Control Commission.

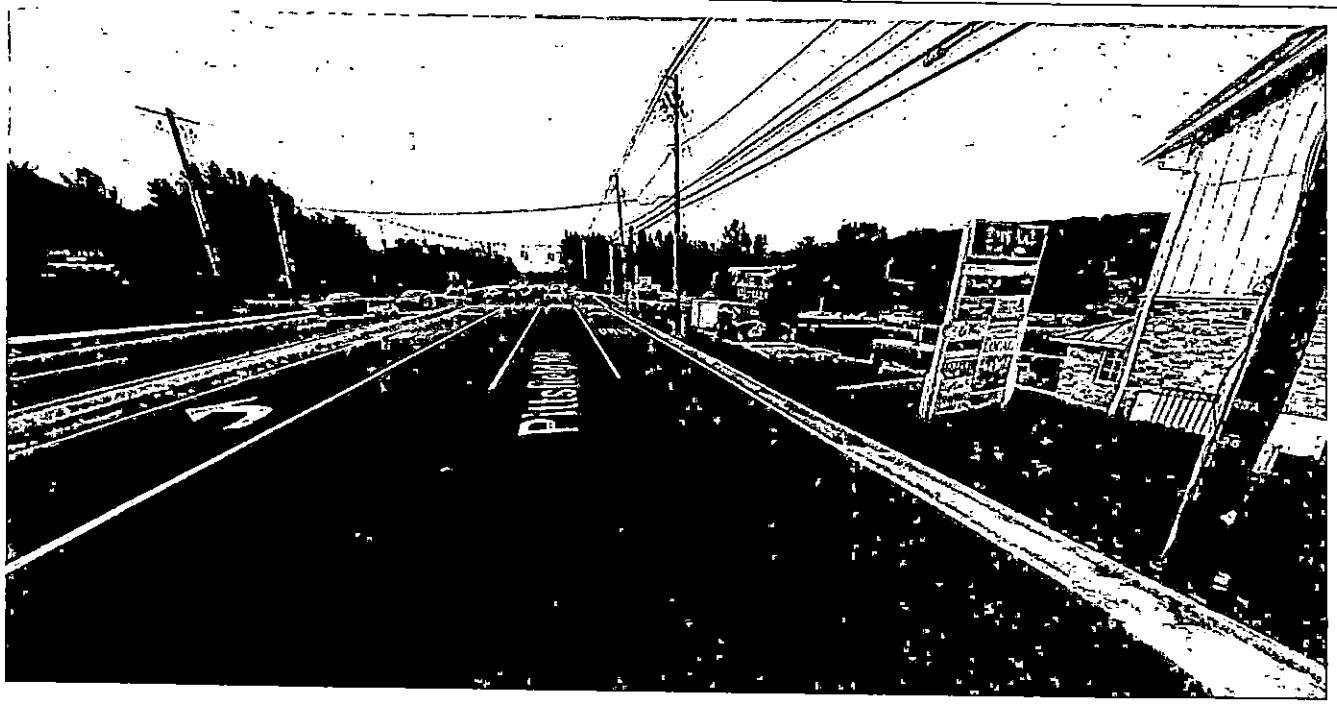
**Andrew Hochberg, Esq. as Land Use and Zoning Counsel**

- Hochberg Law Offices
- Andrew Hochberg is a Pittsfield attorney and the founding partner of Hochberg Law Offices.
- Hochberg has been counsel for Navin Shah since 1988 and has assisted him in most of his business ventures in Berkshire County.
- The firm provides representation in residential and commercial real estate transactions and financing, land use & zoning and Landlord/Tenant Law.

# Retail Location

- 55 Pittsfield Road, Lenox Commons, Lenox, MA 01240
- Full compliance with Lenox's zoning ordinance.
- Ample parking.
- Traffic light controlling the intersection.

# Location

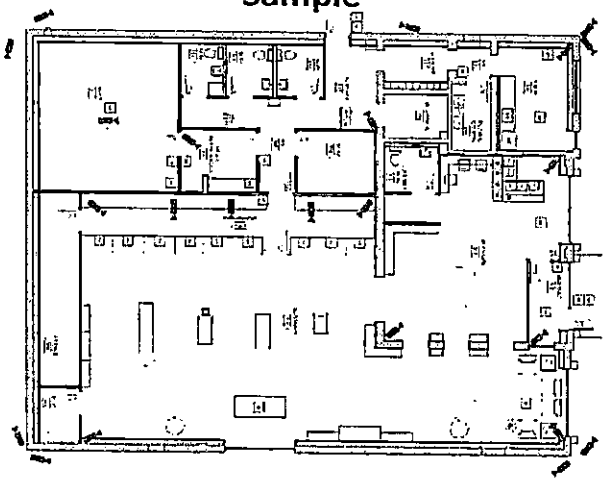


# Parking

# Security Plan

- Constant video surveillance of the interior and exterior of the establishment.
- Multiple ID verifications to ensure that all those who enter the establishment are 21 years of age.
- Adopting procedures to prevent loitering.
- Securing all entrances and exits.
- Establishing limited access areas.
- Storing all finished products in a secure, locked safe or vault to prevent diversion, theft, loss.
- Ensuring the outside perimeter is sufficiently lit to facilitate surveillance.
- Ensuring all marijuana products are kept out of plain sight and are not visible from a public place.
- Sharing security plan and procedures with law enforcement authorities and fire services, periodically updating.

**Sample**



**20 Cameras**

**11 panic buttons**

**8 motion detectors**

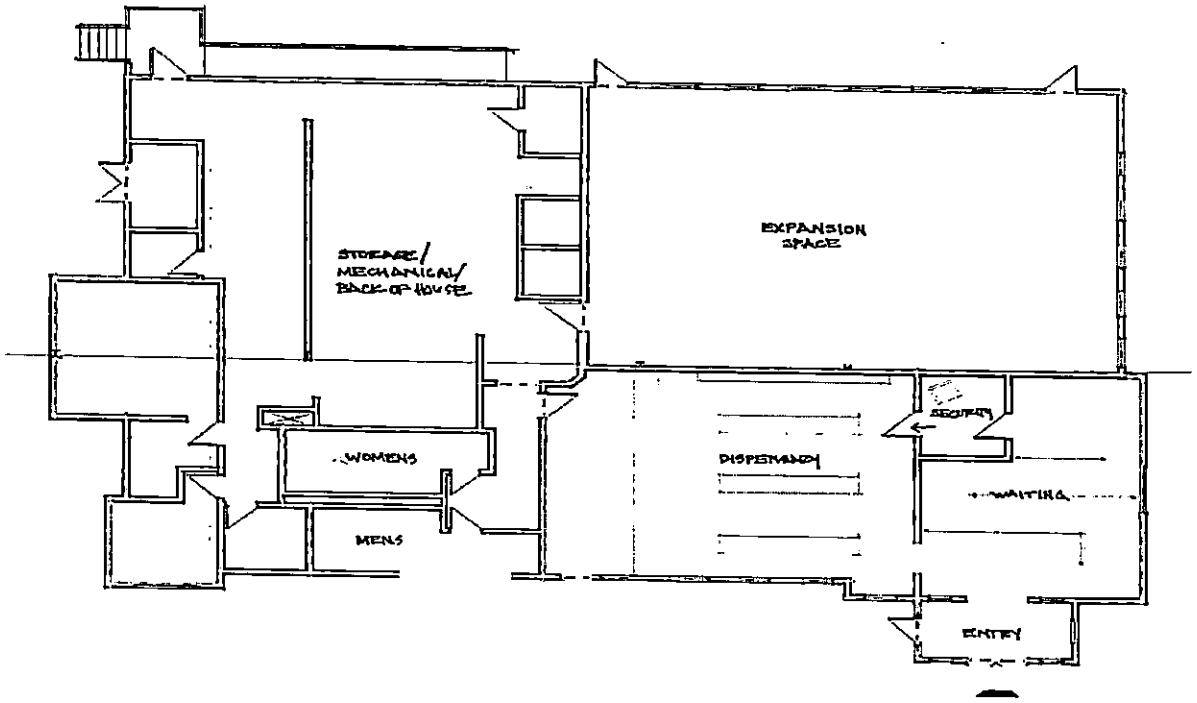
**3 two-way intercoms**

**Redundant intrusion detection**

**Seismic detector**

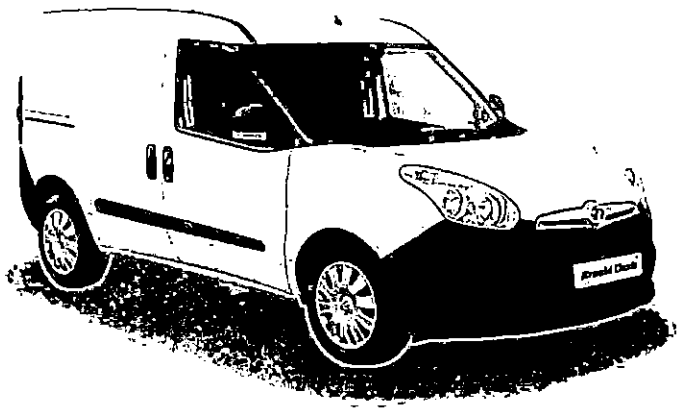
**Military-grade access control**

**Comprehensive software integration**


STORAGE/
MECHANICAL/
BACK-OF-HOUSE
EXPANSION
SPACE
WOMENS
MENS
DISPENSARY
SECURITY
WAITING
ENTRY

# Transportation Security

- Product stored in secured vault, limited access only to certain senior ranking team members.
- Randomized routes for pick-up and delivery.
- Small commercial vehicles.

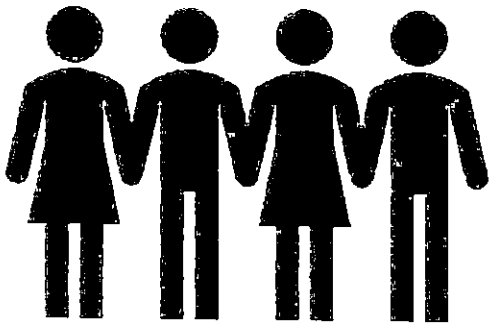


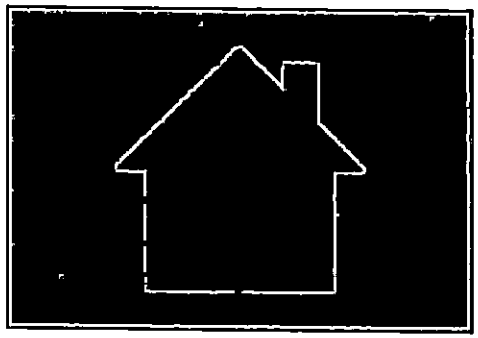
# Cooperation with Lenox Police Department

- Security team will maintain open line of communication with Lenox Police.
- Report suspicious activity to law enforcement
- Lenox Police will have live and direct access to our video surveillance system.
- Will assist Lenox Police with any video surveillance that may help solve crimes in the surrounding area.

# Registered Agent Employees

- All Agents, employees, managers, and owners are required to register
- Annual "Agent" Registration
- Updated CORI report annually.
- Verifies that employees understand CCC regulations regarding transportation and sale of marijuana
- Verifies that employees understand CCC protocols regarding dispensing and storage



# Community Impact

- 17% State Sales Tax for all adult-use cannabis transactions.
- 3% Local Sales Tax for all adult-use cannabis transactions.
- Up to 3% Community Impact Fee.