## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT	("Agreement") is entered into this day of
2019 by and between	, a Massachusetts corporation with a
principal office address of	(the "Developer") and the Town
of , Massachusetts (the "Town"	), acting by and through its Board of Selectmen,
in reliance upon all of the representations made	herein, a Massachusetts municipal corporation
with a principal address of	(collectively, the
"Parties").	

#### **RECITALS**

WHEREAS, the Developer wishes to locate and operate a licensed facility consisting of the cultivation, manufacturing, processing and related transportation of cannabis (the "Facility"), and will be located at Massachusetts (the "Property").

WHEREAS, Developer requires a letter of support or non-opposition and host community agreement from the Town to obtain: (1) Marijuana Establishment licenses from the Massachusetts Cannabis Control Commission ("CCC"); and/or (2) a license for cultivation and processing of medical marijuana from the Massachusetts Department of Public Health ("DPH") or Cannabis Control Commission, as the case may be;

WHEREAS, the Developer intends to provide certain benefits to the Town in the event that it receives the requisite licenses from the DPH and/or the CCC to operate the Facility pursuant to the licenses described above, and receives all required local permits and approvals from the Town;

WHEREAS, the Parties intend by this Agreement to satisfy the provisions of G.L. c.94G, Section 3(d);

WHEREAS, the Parties agree that the above Recitals are true and accurate and that they are incorporated herein and made a substantive part of this Agreement.

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 Parties agree as follows:

#### 1. Local Permitting

The Developer agrees that it shall apply for, and must receive, all necessary permits and approvals pursuant to the Town's Bylaws and Regulations. In accordance with the procedures set forth in G.L. c.44, §53G, any Town board or official from whom the Developer requires a permit or approval may require the Developer to fund the reasonable costs of the such board's or

official's employment of outside consultants, including without limitation, engineers, architects, scientists and attorneys.

# 2. Development Agreement Payments to the Town

Developer agrees to provide the following Payments to the Town:

- A. <u>Annual Development Fee</u>: During the Term hereof, the Developer shall pay to the Town the sum of Four and 00/100 Dollars (\$4.00) per square foot of licensed mature, canopy space, as defined by the CCC ("**Annual Development Fee**"); provided, further, that:
  - i. The Annual Development Fee shall reflect a minimum payment for 2,000 s.f. of mature canopy space, or Eight Thousand Dollars (\$8,000.00) ("Minimum Annual Development Fee" or "MADF").
  - ii. The Annual Development Fee shall be paid on an annual basis, paid quarterly, commencing on the first day of the first full calendar quarter month which is at least 90 days after the first certificate of occupancy is issued for any part of the Facility which contains a cultivation canopy.
  - iii. Beginning on the first anniversary of the first payment due under the immediately prior provision, the Annual Development Fee and the MADF each shall escalate at the rate of Two and One Half Percent (2 ½ %) per year.
  - iv. The parties hereby recognize and agree that the Annual Development Fee to be paid by the Developer shall not be deemed an impact fee subject to the requirements or limitations set forth in G.L. c.94G, §3(d).
- B. <u>Permit and Connection Fees</u>: The Developer hereby acknowledges and accepts, and waives all right to challenge, contest or appeal, the Town's standard building permit and other permit application fees, sewer and water connection fees, and all other local charges and fees generally applicable and uniformly assessed to other commercial developments in the Town.
- C. Facility Consulting Fees and Costs: The Developer shall reimburse the Town for any and all reasonable consulting costs and fees related to the Facility (including but not limited to special permit, site plan and zone change applications), negotiation of this and any other related agreements, and any review concerning the Facility, including planning, engineering, legal and/or environmental professional consultants and any related reasonable disbursements at standard municipal rates charged by the above-referenced consultants in relation to the Facility. Such fees and costs shall be pre-funded upon request by the Town or

- reimbursed within fourteen (14) days following request by the Town, which shall provide reasonable documentation of the expense but shall not be required to provide privileged attorney client materials.
- D. Other Costs: The Developer shall reimburse the Town for the reasonable costs incurred to third parties by the Town in connection with holding public meetings and forums substantially devoted to discussing the Facility and/or reviewing the Facility.
- E. <u>Late Payment Penalty</u>: The Developer acknowledges that time is of the essence with respect to performance of its obligations hereunder and that late payments shall be subject to interest at the rates prescribed by G.L. c. 59, §57, which interest shall not begin to accrue until five business days following notice by the Town of non-payment and failure to cure. These payments or benefits shall be made payable to the TOWN at the direction of the Town Manager.
- F. Town's Obligations: In consideration for the Annual Development Fees set forth in Section A hereinabove, the Town shall, within the later of fourteen (14) days after written request by the Developer or two business days subsequent to next regularly scheduled meeting of the Board of Selectmen execute and deliver: (a) a non-opposition letter directed towards the DPH, CCC, or any successor agency; (b) a Host Community Agreement Certification Form and (c) a Host Community Agreement, which shall provide that the Licensed Marijuana Establishment pay a community impact fee to the Town in an amount equal to three percent (3%) of the gross sales as defined therein, in accordance with then applicable law and regulations (the "Community Impact Fee").

#### 3. Local Hiring and Vendors:

To the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Developer shall make best efforts in a legal and non-discriminatory manner to give priority to Town businesses, suppliers, contractors, builders and vendors located in the Town in the provision of goods and services called for in the construction, maintenance and continued operation of the Facility and to hire Town residents for jobs in and related to the Facility. Such efforts shall include actively soliciting bids from Town vendors through local advertisements and direct contact, advertising any job expansion or hiring of new employees first to Town residents a minimum of two (2) weeks before advertising through all typical regional employment advertising outlets, coordination with the Chamber of Commerce and such other reasonable measures as the Town may from time to time reasonably request. The Developer also agrees to make best efforts to utilize women-owned and minority-owned vendors within the Town and the region.

#### 4. Security

To the extent requested by the Town's Police Department, and subject to the security and architectural review requirements of the DPH, CCC, or such other state licensing or monitoring authority, the Developer shall work with the Town's Police Department in determining the placement of exterior security cameras.

The Developer agrees to cooperate with the Town's Police Department, including but not limited to periodic meetings to review operational concerns, security, delivery schedule and procedures, cooperation in investigations, and communications with the Police Department of any suspicious activities at or in the immediate vicinity of the Facility, and regarding any anti-diversion procedures.

To the extent requested by the Town's Police Department, the Developer shall work with the Police Department to implement a comprehensive diversion prevention plan to prevent diversion, such plan to be in place prior to the commencement of operations at the Facility. Such plan shall include, but is not limited to, (i) training the employees of each tenant of the Facility to be aware of, observe, and report any unusual behavior in authorized visitors or other employees of the Facility that may indicate the potential for diversion; and (ii) utilizing seed-to-sale tracking software to closely track all inventory at Facility.

# 5. Support:

The Town agrees to submit to the DPH, CCC, or such other state licensing or monitoring authority, as the case may be, a letter of support or non-opposition and certification of compliance with applicable local bylaws relating to the Developer's application for a license to operate the Facility subject only to the requirement that such applicant satisfies any applicable local permitting and approval requirements. With the exception of the specifics contained herein, the Town makes no representation or promise that it will act on any 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's normal and regular course of conduct and in accordance with its rules and regulations and any statutory guidelines governing them.

#### 6. Term:

The provisions of this Agreement shall be applicable as long as the Developer, or any related or successor entity(s), operate the Facility at the Property.

# 7. Nullity:

In the event the Facility is no longer used for the cultivation or manufacture of medical or adult use marijuana, this Agreement shall become null and void; however, the Developer hereby acknowledges and agrees that it shall be jointly and severally responsible for the prorated portion of the payments set forth herein, but in no event shall the Town be responsible for the return of any funds provided to it by the Developer.

#### 8. Local Taxes:

At all times during the Term of this Agreement, property, both real and personal, shall be treated as taxable, and all applicable real estate and personal property taxes for that property shall be paid directly by the Developer, and the Developer shall not object or otherwise challenge the taxability of such property and shall not seek a non-profit or agricultural exemption or reduction with respect to such taxes.

The Developer hereby certifies and agrees that the taxable value of the Facility shall be no less than One Hundred Dollars (\$100.00) per square foot of interior space, including without limitation cultivation space, storage areas, warehousing areas, office space, kitchen and sanitary facilities or any other interior space, whether or not climate controlled or conditioned. ("Minimum Taxable Value"). The Minimum Taxable Value shall increase annually by two and one half percent (2½%). If, in any year, and for any reason, the assessed value of the Property and the Facility are less than the Minimum Taxable Value, the Developer agrees to pay to the Town a true-up payment in an amount equal to the difference between the real property taxes assessed and the amount that would be due were the assessment based upon the Minimum Taxable Value ("Minimum Taxable Value True Up Payment"). The Minimum Taxable Value True Up Payment shall be paid no later than September 1 following the close of the municipal fiscal year for which the Minimum Taxable Value True Up Payment is due.

# 9. Assignment/Change in Corporate Structure:

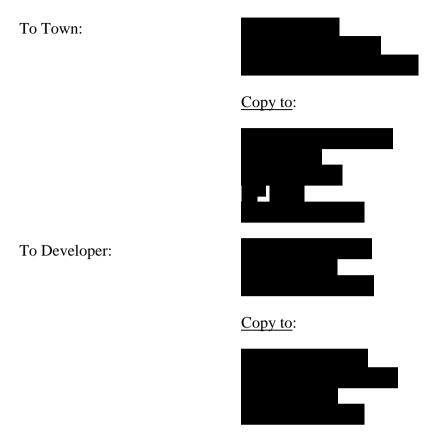
The Developer shall not assign, sublet or otherwise transfer or their rights nor delegate their obligations under this Agreement, in whole or in part, without the prior written consent of the Town, which consent shall not be unreasonably withheld, conditioned or delayed, provided however such consent shall not be required in the event such transfer or assignment is between the Company and another entity which is authorized by the CCC or other authorizing entity to operate the Facility for the same uses described herein, and shall not assign any of the moneys payable under this Agreement, except by and with the prior written consent of the Town.

## 10. Successors/Change in Control:

This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Subject to Section 23, neither the Town nor the Developer shall assign or transfer any interest in the Agreement or control of the Facility without the written consent of the other, however, such consent shall not be required for an assignment to any entity owner or controlled by the Developer.

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



## 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 the 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. The Developer agree they will not challenge, in any jurisdiction, the enforceability of any provision included in this Agreement; and to the extent the validity of this Agreement is challenged, the Developer shall pay for all reasonable fees and costs incurred by the Town in defending such challenge; furthermore, the Developer shall pay for all reasonable fees and costs incurred by the Town in enforcing this Agreement if the Town prevails.

#### 13. Governing Law:

This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, the Parties agree that Land Court, Suffolk Business Litigation Session or Plymouth County shall each serve as a proper forum for any litigation for the adjudication of disputes arising out of this Agreement.

# 14. Entire Agreement:

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the Parties with respect to the matters described. 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. Retention of Regulatory Authority:

Except as specifically provided for herein, this Agreement does not affect, limit or control the authority of the Town, its boards, commissions, or department to carry out their respective powers and duties to decide upon and to issue, or deny applicable permits and other approvals under the statues and regulations of the Commonwealth, the general and zoning bylaws of the Town or applicable regulations of those boards, commissions, and a department or to enforce said statutes, bylaws, and regulations. Except as specifically provided for herein, 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 for violation of the terms of said permits, approvals or statutes, bylaws and regulations. Except as specifically provided for herein, the Facility remains subject to all applicable general and special state and local laws, bylaws, building, fire and other codes, rules and regulations, and the Agreement set forth herein shall not relieve the Developer of any obligations they might have thereunder.

# 16. <u>Indemnification</u>:

Excluding any Claims (as herein defined) caused by the gross negligence or willful misconduct of the Town, the Developer 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 (collectively, the "Claims"), brought against the Town, is agents, departments, officials, employees, insurers and/or successors, by any third party arising from or relating to the development of the Property and/or Facility. Such indemnification shall include, but shall not be limited to, all reasonable fees and reasonable costs of attorneys and consultants of the Town's choosing incurred in defending such claims, actions, proceedings or demands. The Developer 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.

# 17. 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 all signatories to the original Agreement, prior to the effective date of the amendment.

# 18. 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.

## 19. 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.

# 20. Signatures.

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

# 21. 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 Developer, or the Town and any other successor, affiliate or corporate entity as joint ventures or partners.

### 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 Town or the Developer.

## 23. Assignment of Developer's Interests.

It is acknowledged and agreed that Developer, at the time it acquires the Property, may cause a single purpose real estate entity (the "**Title Entity**") to be formed to take title to the Property. At such time, the Developer shall convey all of its right, title and interest in this Agreement to the Title Entity and such Title Entity shall assume all the obligations of Developer arising hereunduer.

[Signature Page to Follow]

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

Executed under seal.	_			
	:			
Board of Selectmen				
		_		
		_		
		_		
By:				

#### HOST COMMUNITY AGREEMENT

<u>This Host Community Agreement (the "HCA") is entered into by and between the Town of</u>
(the "TOWN"), a municipal corporation duly organized under the laws of the
Commonwealth, acting through its Board of Selectmen (the "SELECTMEN") and
, a Massachusetts limited liability company with a principal office address of
("LICENSEE").
This HCA represents the understanding between the TOWN and LICENSEE (the "PARTIES")
with respect to proposed use of a tract of land with improvements located at
MA (the "PROPERTY"). The development of the PROPERTY is also
subject to a Development Agreement (the "DEVELOPMENT AGREEMENT"), intended to
provide benefits to the TOWN in order to secure approval for LICENSEE to develop and utilize
the PROPERTY for its intended use of a Registered Marijuana Dispensary (for cultivation and
processing only), licensed marijuana cultivator and product manufacturer.

#### RECITALS

WHEREAS, LICENSEE plans to seek registrations and licenses from the Department of Public Health ("DPH) and/or Cannabis Control Commission ("CCC") and to commence a significant capital investment in the development of the PROPERTY for use as a Registered Marijuana Dispensary (for cultivation and processing only) under Massachusetts medical marijuana laws and as a licensed marijuana cultivator and product manufacturer under the Massachusetts adultuse marijuana laws (the "FACILITY"); 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, the DEVELOPMENT AGREEMENT, and a strengthened local tax base; and WHEREAS, the PARTIES agree and acknowledge that the TOWN has identified certain concerns with respect to the impact of the construction of the expanded and improved facilities on the PROPERTY, as well as their subsequent operation; and

WHEREAS, the PARTIES intend to enter this HCA as a means of memorializing their obligations with respect to mitigation of these impacts, as well as their intention to collaborate to the fullest extent possible to ensure the proposed improvements and operations occur efficiently: NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the PARTIES hereby agree as set forth herein.

- 1. 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 HCA, 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. This HCA has been duly authorized, executed and delivered, this HCA constitutes legal, valid and binding obligations of each party, enforceable in accordance with

its terms, 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 HCA.

- 2. LICENSEE agrees it is required to seek and obtain a special permit from the Town's Planning Board, in accordance with the procedures and standards set forth in the Zoning Bylaws. In accordance with the procedures set forth in G.L. c.44, §53G, the Planning Board may require LICENSEE to fund, to the extent necessary to review and analyze the special permit application for any proposed facility, the reasonable costs of the Planning Board's employment of outside consultants, including without limitation, engineers, architects, scientists and attorneys.
- 3. LICENSEE shall remit to the TOWN annual impact fees in the amount of 2% of the gross revenue derived from the sale of marijuana and marijuana-infused items produced at the Facility for both medical and adult use and sold by Licensee, including without limitation at its own dispensaries or to third party wholesale purchasers. This amount shall be delivered to the TOWN on a quarterly basis within ten days following the conclusion of each quarter following the commencement of the payment term ("PAYMENT DATE") and on the same day of each quarter thereafter. The payment term shall be measured from the issuance of a certificate of occupancy for the FACILITY. These payments or benefits shall be made payable to the TOWN at the direction of the Town Manager.
- 4. These payments shall be made payable to TOWN at the direction of the Town Manager.
- 5. These payments shall remain in effect for the full duration of LICENSEE's use of the Facility for the purposes stated herein. Upon voluntary or involuntary termination of the use, and upon delivery to the TOWN of written notice of such termination, payments or benefits shall immediately cease; provided, however, that LICENSEE shall, within seven (7) days of such notice, pay to the TOWN the payments required as of the date of termination, which shall be prorated based upon the number of days that elapsed from the immediately prior PAYMENT DATE to the date of such written notice.
- 6. LICENSEE acknowledges that time is of the essence with respect to performance of its obligations hereunder and that late payments shall be subject to interest at the rates prescribed by G.L. c. 59, §57, which interest shall not begin to accrue until five business days following notice by the Town of non-payment and failure to cure.
- 7. LICENSEE is deeply committed to creating a non-discriminatory workplace and a welcoming work environment. Within those strictures, LICENSEE is also deeply committed to being a Good Neighbor to the TOWN. Therefore, where allowed by Federal, State and Municipal laws and regulations, a "Local Labor Hiring Preference" shall exist for all residents of the TOWN applying for employment by LICENSEE at the PROPERTY. That is, within the confines of the law, and all other factors being equal,

	LICENSEE shall reasonably seek to enother candidates for open positions.	residents before considering
8.	provision of real-time access to the interest of the interest	nd transparent cooperation with the CENSEE therefore shall facilitate the reasonable ernal and external security camera footage feeds to , or their designated agent within the
9.		Neighbor Policy regarding the TOWN. As an shall seek reasonable ways to contribute to the access of the TOWN.
10	The LICENSEE's obligations under the are hereby incorporated by reference in	e terms of the DEVELOPMENT AGREEMENT nto this HCA.
11	This HCA may only be modified by the	ne express written consent of both parties.
	required or permitted under this HCA, postage prepaid, return receipt requeste	s, requests, approvals or other communications shall be in writing and delivered by hand or mailed ed, by registered or certified mail or by other effective upon receipt for hand or said delivery er Party at the following addresses:
	To Town:	
		Copy to:
	To Licensee:	
		Copy to:

Each of the PARTIES shall have the right by notice to the other to designate additional persons to whom copies of notices must be sent, and to designate changes in address.

- 12. If and to the extent that either party is prevented from performing its obligations hereunder by an event of *force majeure*, such party shall be excused from performing hereunder and shall not be liable in damages or otherwise, and the parties shall instead negotiate in good faith with respect to appropriate modifications of the terms hereof. For purposes of this HCA, the term *force majeure* shall mean the supervening causes described here, each of which is beyond the reasonable control of the affected party: acts of God, fire, earthquakes, floods, explosion, actions of the elements, war, terrorism, riots, mob violence, a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, laws or orders of any governmental or military authorities, or any other cause similar to the foregoing, not within the control of such party obligated to perform such obligation.
- 13. Failure by LICENSEE to perform any non-monetary term or provision of this HCA shall not constitute a default under this HCA unless LICENSEE fails to commence to cure, correct or remedy such failure within thirty (30) days of receipt of written notice of such failure from the TOWN and thereafter fails to complete such cure, correction or remedy within ninety (90) days of the receipt of such written notice, or, with respect to defaults which cannot be remedied within such ninety (90) day period, within such additional period of time as is required to reasonable remedy such default, if LICENSEE is exercising due diligence in the remedying of such default.
- 14. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
- 15. The failure of any party to strictly enforce the provisions hereof shall not be construed as a waiver of any obligation hereunder. This HCA can be modified only in a written instrument signed by the SELECTMEN and LICENSEE. This HCA shall be binding upon the PARTIES and their successors and assigns.
- 16. Excluding any Claims (as herein defined) caused by the gross negligence or willful misconduct of the TOWN, the LICENSEE 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 (collectively, the "Claims"), brought against the TOWN, is agents, departments, officials, employees, insurers and/or successors, by any third party arising from or relating to the this HCA and/or Facility. 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 such claims, actions, proceedings or demands. The

LICENSEE 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.

17. 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 Board of Selectmen votes to ratify the HCA notwithstanding such adjudication. The LICENSEE 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, the LICENSEE shall pay for all reasonable fees and costs incurred by the TOWN in defending such challenge; furthermore, the LICENSEE shall pay for all reasonable fees and costs incurred by the TOWN in enforcing this HCA if the Town prevails.

Executed under seal.	
: Board of Selectmen	
By:	