

Town of Ashby and Minuteman Farm, LLC

**HOST COMMUNITY AGREEMENT**

This HOST COMMUNITY AGREEMENT (“Agreement”) is entered into this 30<sup>th</sup> of October, 2019 by and between Minuteman Farm LLC, and any successor in interest, with a principal office address of 238 Piper Road, Ashby, Massachusetts 01431 (“the Company”), and the Town of Ashby, a Massachusetts municipal corporation with a principal address of 895 Main Street, Ashby, Massachusetts 01431 (“the Town”), acting by and through its Board of Selectmen, in reliance upon all of the representations made herein.

WHEREAS, the Company wishes to locate the following adult use marijuana establishment at 238 Piper Road, Ashby, shown on the Ashby Assessors records as Map 8, parcel 67 (hereinafter referred to as the “Site”), in accordance with and pursuant to applicable state laws and regulations, including, but not limited to 935 CMR 500.00, as well as such approvals as may be issued by the Town in accordance with its Zoning By-law and other applicable local regulations:

An approximately 2,500 +/- square feet indoor licensed adult-use marijuana cultivation establishment, and an approximately 2,500 square feet outdoor licensed adult-use marijuana cultivation establishment (together, the “Marijuana Cultivator” as that term is defined and used pursuant to M.G.L. c.94G and 935 CMR 500.000); and

WHEREAS, the Company intends to provide certain benefits to the Town in the event that it receives the requisite licenses from the Commonwealth’s Cannabis Control Commission (“the CCC”) or such other State licensing or monitoring authority, as the case may be, to operate the Marijuana Cultivator Establishment (“Marijuana Establishment”), and receives all required local permits and approvals from the Town; and

WHEREAS, in order to apply for, obtain, and maintain a license from the CCC for the Marijuana Establishment, the Company is required to enter into a host community agreement with the Town pursuant to M.G.L. c. 94G, § 3(d); and

WHEREAS, the parties intend by this Agreement to satisfy the provisions G.L. c.94G, §3(d) applicable to the operation of the Marijuana Establishment, with such activities to be undertaken only in accordance with the applicable state and local laws and regulations of the Town.

NOW, THEREFOR, 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. Recitals**

The parties agree that the above recitals are true and accurate and that they are incorporated herein and made a part hereof.

**2. Annual Payments**

In the event that the Company obtains the requisite licenses and/or approvals as may be required for the operation of the Marijuana Establishment, 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, said matter not being appealed further, such permits and/or licenses allow the Company to locate, occupy, and operate the Marijuana Establishment in the Town, then the Company agrees to provide the following annual payments, provided, however, that if the Company fails to secure any such other license and/or approval as may be required, or any of the required municipal approvals, the Company shall reimburse the Town for its legal fees associated solely with the negotiation of this Agreement:

**A. Community Impact Fee**

The Company anticipates that the Town will incur additional expenses and impacts on the Town's roads; water and other infrastructure systems; communication systems; law enforcement; fire protection services; inspectional services; and permitting and consulting services; as well as other, unforeseen impacts on the Town. Accordingly, in order to mitigate the financial impact on the Town and use of Town resources, the Company agrees to pay an annual Community Impact Fee to the Town, the payment of which shall be subject to MGL Ch. 40, s.57, as accepted, in the amount and under the terms provided herein.

1. The Company shall annually pay an Annual Community Impact Fee in the amount of three percent (3%) of the gross wholesale value of marketable products produced by the operations at the Marijuana Establishment, and 3% of the gross sales value of product not produced at the Establishment. Wholesale value shall be determined by arms-length wholesale sales made by the Marijuana Establishment during the year and shall include all marijuana, marijuana infused products, paraphernalia and any other products produced and sold by the Marijuana Establishment. In the event that the Company distributes marketable product to an affiliated or subsidiary organization or company for consideration less than wholesale fair market value, the Town Annual Community Impact Fee shall be calculated using the fair market valuation of such transactions.
2. In the event that the Town Zoning Bylaw is changed, and that the change allows the Company to engage in retail sales, and/or in the event that retail sales become viable through so called "home delivery" or some other method, the

2. In the event that the Town Zoning Bylaw is changed, and that the change allows the Company to engage in retail sales, and/or in the event that retail sales become viable through so called "home delivery" or some other method, the Company shall, prior to undertaking such additional activities, be required to negotiate a new Host Community Agreement with the Town.
3. The Annual Community Impact Fee(s) shall be paid annually on February 1<sup>st</sup>, and be calculated on the gross sales of the Marijuana Establishment for the preceding calendar year as detailed in Section A1 of this agreement. The Annual Community Impact fee(s) shall begin after the company has received all necessary State and Town permits to begin operation and after the Company has notified the Town in writing that it has begun operations. Written notification of the beginning of operations should be sent to the Town no later than 30 days after the marijuana establishment actually begins operations. Fees shall continue for a period of five (5) years. Six months prior to the expiration of each five-year period, the parties shall negotiate in good faith the terms of a new Annual Community Impact Fee(s). If in the event the parties are unable to reach an Agreement at the end of each 5-year period, then the Company shall, until such time as an agreement is reached, pay an annual community benefit payment ("Community Benefit Payment") of one percent (1%) of gross sales, as described in Section A1, as applicable, from the Marijuana Establishment or \$33,444 per year, whichever is greater. The parties acknowledge and agree that the Community Benefit Payment to the Town shall not be deemed an impact fee subject to the requirements and limitations set forth in M.G.L.c.94G.
4. The Town shall use the above-mentioned payments in its sole discretion, but shall make a good faith effort, to the extent allowed by law, to allocate said monies to offset costs related to roads; water; and other infrastructure systems; communication systems; law enforcement; fire protection services; inspectional services; public health and addiction 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 ..." ("Town Costs"). Notwithstanding the foregoing, the Parties acknowledge the difficulty in computing actual Town Costs and agree that impacts may result in budgetary increases to the Town that cannot be separately identified or precisely quantified. Consequently, the Company acknowledges and agrees that the Annual Community Impact Fees due under this Agreement are reasonably related to Town Costs and waives any claims to the contrary.

6. The Company and the Town shall negotiate in good faith regarding appropriate and sufficient provisions for public safety, traffic control, and exterior security for the opening of the marijuana establishment. Cost of Police details, as agreed in the aforementioned negotiation shall be borne by the Company. Cost of additional Public Safety personnel, if required, will be paid by the Town. Notwithstanding the foregoing, the Company may pay or secure the necessary services in order to accommodate the requests of the town to pay for community impact(s) related to the initial opening and/or commencement of operations and the Town, at its discretion, may allow the Company to deduct such costs from its fees due under this Agreement.

**B. Additional Costs, Payments, and Reimbursements**

1. Permit and Connection Fees: The Company hereby acknowledges and accepts, and waives all rights to challenge, contest, or appeal the Town's building permit fee and any other permit application fees, water connection fees, and all other local charges and fees but only to the extent such fees are 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 consulting costs and fees related to any land use applications concerning the facility; negotiation of this and any other related agreement(s); and any review concerning the facility, including planning, engineering, legal, and/or environmental professional consultants; 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 pay the Town's actual costs for holding public meetings and forums substantially devoted to discussing the facility and/or reviewing the facility, and for any and all reasonable consulting costs and fees incurred by the Town related to the monitoring and enforcement of the terms of this Agreement, including but not limited to independent financial auditors and legal fees.
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 made in full within ten (10) days of the date they are due, the Town shall provide the Company with written notice of such failure to make a timely payment. The Company shall have a ten (10) day period from date of receipt of said notice to cure the failure in payment. If the Company fails to achieve full payment within such cure period, the Company shall be obligated to pay the Town a late payment penalty equal to five percent (5%) of the full required payment amount.

**C. Annual Charitable/Non-Profit Contributions:**

The Company, in addition any other funds specified herein, shall annually contribute to public, local charities and/or non-profit organizations in the town, an amount not less than \$5000. The funds shall be distributed among the eligible entities at the direction of a Committee, appointed by the Board of Selectmen in its reasonable discretion. The said Charitable/Non-Profit Contribution shall be paid annually, beginning on the first anniversary of the date of award of a license to the Company by the Cannabis Control Commission, and continue to be paid on said anniversary date for the duration of this Agreement. If the company increases the size of the greenhouse, adds additional greenhouses, or in any way increases the canopy area available for growing, then the minimum annual charitable contribution will increase by \$1 per square foot of additional space, payable annually. For example, adding 100 square feet of growing area will increase the minimum annual charitable contribution from \$5000 per year to \$5100 per year.

**D. Annual Reporting for Host Community Impact Fees and Benefit Payments**

The Company shall submit annual financial statements to the Town within 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 from the Cannabis Control Commission. All records will 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 provided by law) as is required by the Cannabis Control Commission and Department of Revenue for purposes of obtaining and maintaining a license for the facility.

During the term of this Agreement and for three 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, acceptable to the Town, the expense of which shall be borne by the Company. The Independent Financial Auditor shall review the Company's fiscal records for purposes of determining that the Annual Payments made have been 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 said payments, 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.

**E. Emergency Communications Antenna Site**

The Company agrees to secure a permanent deed of easement from the owner of the Site to the Town at no cost to the Town, for the siting of an emergency communications antenna. The site will be chosen and the easement granted to the Town after consultations between the Town and the Company before the end of calendar year 2021, unless a delay is granted by the Town. The easement will allow access for utilities and maintenance and provide enough space for the antenna, an equipment shed, parking for a maintenance vehicle, and the required "fall zone".

**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 Marijuana Establishment 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 a 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.

## 5. Security

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 the Town's Police Department in determining the placement of exterior security cameras.

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 Marijuana Establishment, and with regard to any anti-diversion procedures.

To the extent requested by the Town's Police Department, the Company 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 Marijuana Establishment.

## 6. Community Impact Hearing Concerns

The Company agrees to employ its best efforts to work collaboratively and cooperatively with its neighboring businesses and residents to establish written policies and procedures to address mitigation of any concerns or issues that may arise through its operation of the Marijuana Establishment, including, but not limited to any and all concerns or issues raised at the Company's required Community Outreach Meeting relative to the operation of the Marijuana Establishment; copies of said written policies and procedures applicable to the town impacts, as may be amended from time to time, shall be reviewed and approved by the Town and shall be incorporated herein by reference and made a part of this Agreement, the same as if each were fully set forth herein.

## 7. Additional Obligations

The obligations of the Company and the Town recited herein are specifically contingent upon the Company obtaining a license for operation of the Marijuana Establishment in the Town, and the Company's receipt of any and all necessary local approvals to locate, occupy, and operate the Marijuana Establishment in the Town, provided, however, that if the Company fails to secure any such other license and/or approval as may be required, or any of required municipal approvals, the Company shall reimburse the Town for its legal fees associated with the negotiation of this agreement.

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/Ordinances] 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 Marijuana Establishment to operate in the Town, or to refrain from enforcement action against the Company and/or its Marijuana Establishment for violation of the terms of said permits and approvals or said statutes, bylaws, and regulations.

**8. Re-Opener/Review**

The Company, as defined in 935 CMR 500.02, shall be required to provide to the Town notice and a copy of any other Host Community Agreement entered into for any establishment in which the Company has any interest and which is licensed by the CCC as the same type of establishment as the entity governed by this agreement.

In the event the Company enters into a Host Community Agreement for a Marijuana Establishment with another municipality in the Commonwealth that contains financial terms resulting in payments of a Community Impact Fee or other payments totaling a higher percentage of gross sales for the same type of establishment than the Company agrees to provide the Town pursuant to this Agreement, then the parties shall reopen this Agreement and negotiate an amendment resulting in financial benefits to the Town equivalent or superior to those provided to the other municipality.

**9. Support**

The Town agrees to submit to the CCC, or such other state licensing or monitoring authority, as the case may be, the required certifications relating to the Company's application for a license to operate the Marijuana Establishment where such compliance has been properly met, 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 Marijuana Establishment, in any particular manner and other than by the Town's normal and regular course of conduct in accordance with its rules and regulations and any statutory guidelines governing them.

**10. Term**

Except as expressly provided herein, this Agreement shall take effect on the date set forth above, and shall be applicable for as long as the Company operates the Marijuana Establishment in the Town with the exception of the Community Impact Fee, which shall be subject to the five (5) year statutory limitations of G.L. c.94G, §3(d).

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 Marijuana Establishment within two years from the date this Agreement takes effect, this



Agreement shall expire and the Company shall be required to negotiate a new Host Community Agreement in order to operate the Marijuana Establishment within the Town. The Board of Selectmen, in its discretion, may agree to an extension of the two-year expiration, for good cause, which shall include the time required to pursue or await the determination of an appeal of the special permit or other legal proceeding.

**11. 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, 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. Neither the Town nor the Company shall assign, sublet, or otherwise transfer any interest in the Agreement without the written consent of the other.

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.

Notwithstanding, the above terms and obligations the Town shall not unreasonably withhold approval of the Company's request to assign, sublet or transfer its rights so long as such request has been approved by the Cannabis Control Commission.

**12. 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:      Town of Ashby  
                    895 Main Street  
                    Ashby, MA 01431

To Company: Minuteman Farm, LLC  
238 Piper Road  
Ashby, MA 01431

**13. 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. Further, the Company agrees that it 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 by the Company in a court of competent jurisdiction, the Company shall pay for all reasonable fees and costs incurred by the Town in enforcing this Agreement.

**14. 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.

**15. Entire Agreement**

This Agreement, including all documents incorporated herein by reference, 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.

**16. 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.

**17. 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.

**18. 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.

**19. Signatures.**

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

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

**21. Nullity**

This Agreement shall be null and void in the event that the Company does not locate a Marijuana Establishment in the Town or relocates any of the Marijuana Establishment out of the Town, provided, however, that if the Company decides not to locate the Marijuana Establishment in the Town, the Company shall reimburse the Town for its legal fees associated with the negotiation of this Agreement. Further, in the case of any relocation out of the Town, the Company agrees that an adjustment of Annual Payments due to the Town hereunder shall be calculated based upon the period of occupation of the Marijuana Establishment within the Town, but in no event shall the Town be responsible for the return of any funds provided to it by the Company.

**22. 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, its agents, departments, officials, employees, insurers and/or successors, by any third party arising from or relating to the development of the Property and/or the Marijuana Establishment and the operation of said Establishment. 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.

**23. 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 OF ASHBY  
BY ITS BOARD OF SELECTMEN

Janet L. Dunkerton  
Mike McCallum  
Jan T. [Signature]

MINUTEMAN FARM, LLC

Richard H. Bany  
By:  
Its: MANAGING PARTNER  
President