HOST COMMUNITY AGREEMENT FOR MARIJUANA CULTIVATION ESTABLISHMENT

BETWEEN COMMONWEALTH FARM 1761, INC. AND

THE CITY OF FRAMINGHAM, MASSACHUSETTS

THIS HOST COMMUNITY AGREEMENT ("Agreement") is entered into this__ day of October, 2019 by and between **Commonwealth Farm 1761, Inc.,** a Massachusetts corporation with a place of business in Framingham at 650 Worcester Road, Framingham, Massachusetts 01701 ("OPERATOR") and the **CITY OF FRAMINGHAM**, a Massachusetts municipal corporation with a principal address of 150 Concord Street, Framingham, MA ("CITY").

RECITALS

1. OPERATOR is the sublessee of 4.14 acres of the property at **1062 Edmands Road, Framingham, Massachusetts 01701** (hereafter, the land at 1062 Edmands Road shall be referred to as "the Premises" and that portion subleased by Commonwealth Farm 1761, Inc. shall be referred to as "the Subleased Premises") owned by D.W. Stephan, Trustee of the Stephan Family Realty Trust, u/d/t/d April 18, 1978 recorded with the Middlesex South District Registry of Deeds at Book **13423**, Page 144 ("Trust") under the deed at Book 47379, Page 188, leased to Charlotte Ann, LLC as evidenced by a **Notice of Lease** between the Trust and Charlotte Ann, LLC, a Massachusetts domestic limited liability company with a usual place of business dated 842 Edmands Road, dated September 19, 2019 recorded with said Deeds at Book 73312, Page 21; a **Notice of Intent to Sublease** between the Charlotte Ann, LLC and Commonwealth Farm 1761, Inc., dated September 19, 2019 recorded with said Deeds at Book 73321, Page 118; as affected by a **Notice of Sublease** to Commonwealth Farm 1761, Inc. dated October 25, 2019 and recorded with said Deeds at Book 73532, Page 067.

2. OPERATOR is a seeks a license from the Cannabis Control Commission to operate **an adult use, i.e., non-medical, Marijuana Cultivation Establishment** within the meaning of 935 CMR 500.002 located at the Subleased Premises at **1062 Edmands Road, Framingham,** MA in compliance with 935 CMR 500. and M.G.L. c. 94C, § 34 **to be co-located with its Marijuana Product Manufacturing Establishment** if so licensed by the Cannabis Control Commission;

3. OPERATOR has warranted and represented, and the CITY's Planning Administrator has verified, that the OPERATOR'S **Marijuana Cultivation Establishment** is not located within 500 feet, measured in a straight line from the nearest point of the Premises to the nearest point of any pre-existing public or private school providing education in kindergarten or grades 1 through 12;

4. M.G.L. c. 94G, § 3(d), as affected by Chapter 55 of the Acts of 2017 at SECTION 25 requires that:

   [a] marijuana establishment or a medical marijuana treatment center seeking to operate or continue to operate in a municipality which permits such operation shall execute an agreement with the host community setting forth the conditions to have a marijuana establishment or medical marijuana treatment center located within the host community which shall include, but not be limited to, all stipulations of responsibilities between the host community and the marijuana establishment or a medical marijuana treatment center. An agreement between a marijuana establishment or a medical marijuana treatment center and a host community may include a community impact fee for the host community; provided, however, that the community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment or medical marijuana treatment center and shall not amount to more than 3 per cent of the gross sales of the marijuana establishment or medical marijuana treatment center or be effective for longer than 5 years. Any cost to a city or town imposed by the operation of a marijuana establishment or medical marijuana treatment center shall be documented and considered a public record as defined by clause Twenty-sixth of section 7 of chapter 4;

5. M.G.L. c. 94G, § 12 (h), as affected by Chapter 55 of the Acts of 2017 at SECTION 37 requires that "[e]ach licensee shall file an emergency response plan with the fire department and police department of the host community";

6. OPERATOR and the CITY enter into this Agreement with the intention of being bound by its terms such that this Agreement shall be fully enforceable by a court of competent jurisdiction;

NOW THEREFORE, in accordance with M.G.L. c. 94G, as affected by Chapter 55 of the Acts of 2017, and the regulations of the Cannabis Control Commission ("COMMISSION") promulgated thereunder as 935 CMR 500.00, and in consideration of the mutual promises herein contained, the OPERATOR and CITY agree as follows:

1. **Compliance.** OPERATOR shall comply with all laws, rules, bylaws or ordinances, regulations and orders applicable to the operation of **an adult use, i.e., non-medical, Marijuana Cultivation Establishment,** such provisions being incorporated herein by reference, including, but not limited to:

   a. M.G.L. c. 94G, as affected by Chapter 55 of the Acts of 2017 and the regulations of the COMMISSION as the same may be amended from time to time; and the

   b. Framingham General Bylaws, Sign Bylaws, Zoning Bylaws and Board of Health Regulations as the same may be amended from time to time, and

c. The Framingham Planning Board Decision dated July 15, 2019 as all of the same may be amended from time to time.

OPERATIOR shall be responsible for obtaining from the Commission and the CITY all necessary licenses, permits, and approvals required for the operation of its **Marijuana Cultivation Establishment** at the Premises. OPERATOR shall consult with the Board of Health, which shall determine whether OPERATOR has made adequate provision for odor mitigation and waste disposal. OPERATOR shall use an industrial grinder for disposal of waste containing cannabis or cannabis residue.

2. **Community Impact Deposit**. Prior to commencing business operations as a **Marijuana Cultivation Establishment**, OPERATOR shall make a one-time community impact deposit payment to the CITY in the sum of $25,000.00 which the CITY may, in its sole discretion, use to address public health, safety and other effects or impacts the OPERATOR'S **Marijuana Cultivation Establishment** may have on the CITY, including community wellness programs and other efforts and initiatives. The OPERATOR's community impact deposit payment shall not be refundable but shall be credited toward OPERATOR'S annual community impact fee described in Paragraph 3 following.

3. **Community Impact Fee.** OPERATOR shall pay to the CITY, an annual community impact fee in the sum of 3.0 (3%) per cent of the gross sales of its **adult use, i.e., non-medical, Marijuana Cultivation Establishment** at the Subleased Premises.

   a. OPERATOR understands and agrees that the purpose of the Community Impact Fee is to alleviate the impacts of the siting of the Marijuana Cultivation Establishment in the City, which include, but are not limited to, expenditures of City funds to: i) promote and maintain a positive perception of the City to other residents, visitors and businesses; ii) address impacts on public health and safety, including creation of addiction prevention and education programs; iii) maintain roads and public services; iv) pay for increased administrative, regulatory, police, fire, and inspectional services; v) pay for legal services other than those related to the negotiation, drafting and execution of this Agreement.

   b. OPERATOR expressly agrees that 3.0 per cent (3%) of the gross sales of its **adult use, i.e., non-medical, Marijuana Cultivation Establishment** is reasonably related to the costs imposed upon the CITY by OPERATOR's operation of its **Marijuana Cultivation Establishment** at the Premises. Payment shall be made as follows: within 30 days after the end of OPERATOR's first fiscal year of the operation of its Marijuana Cultivation and Product Manufacturing Establishment and on each anniversary thereof during the Term of this Agreement. OPERATOR'S fiscal year runs from January 1 to December 31.

c. The Parties further expressly agree that the community impact fee is treated by the CITY as general fund revenue pursuant to M.G.L. c. 44, §53 and is not a donation or grant under M.G.L. c. 44, §53A. While OPERATOR is not prevented from making a gift or grant to the City or to any organization in the City for the benefit of the residents of Framingham, OPERATOR is not compelled to make any such gift or grant, and no offset or reduction to the Community Impact Fee shall be made as a result of, or in consideration for, the same.

4. **Financial Reporting:** OPERATOR shall furnish the CITY with annual profit and loss statements, as soon as they become available, reflecting gross sales figures for its Marijuana Cultivation Establishment in Framingham and shall provide the CITY with all copies of its periodic financial filings to agencies of the Commonwealth documenting gross sales and gross annual revenues and copies of its filings to the Commission, Secretary of the Commonwealth's Corporations Division, and the Massachusetts Department of Revenue.

5. **Confidentiality:** To the extent permitted by M.G.L. c. 66, § 10, (the "Public Records Law") OPERATOR may provide to the CITY with certain financial information, investment materials, products, plans, documents, details of company history, know-how, trade secrets, and other nonpublic information related to OPERATOR, its affiliates and operations (collectively, the "Confidential Information"). The CITY (inclusive of its employees, agents, representatives or any other of its affiliated persons) shall not, at any time during the term of this Agreement or thereafter, disclose any Confidential Information to any person or entity, except as may be required by court order or the Public Records Law.

6. **Monitoring and Accounting for Community Impacts**. Following the OPERATOR's payment of the first year's community impact fee, the OPERATOR may make written request to the CITY for review of the community impact fee. So that the CITY may respond to such request, the OPERATOR agrees that it shall append Police, Fire and Inspectional Services Department incident reports involving incidents within a two-mile radius of the **Marijuana Cultivation Establishment**.

7. **Security**.

[redacted]

[redacted]

b. OPERATOR expressly understands that review of its proposed security, traffic management and emergency response plans shall not prevent the CITY from enforcement of Federal, State or local laws or regulations promulgated by any agency or board having jurisdiction over the OPERATOR's marijuana establishment. Further OPERATOR expressly holds harmless the CITY and its employees and agents from claims of any nature with respect the review of OPERATOR's security, traffic management and emergency response plans.

8. **Hours of Operation**. OPERATOR's days and hours of operation shall be seven days per week from 8:00 a.m. to 8:00 p.m.

9. **Incorporation of Planning Board Decision Conditions by Reference.** OPERATOR acknowledges that compliance with all conditions set forth in the Framingham Planning Board's Decision is a condition of this Host Community Agreement, and that any breach of any condition therein, if not cured within 15 days, may result in notice of such breach being sent to the Cannabis Control Commission.

10. **Cooperation**. OPERATOR shall maintain a cooperative relationship with the City's Police and Fire Departments and shall meet no less than once every 6 months to review operational concerns, cooperation in investigations, and communication to Framingham Police Department of any suspicious activities on the Premises.

11. **Hiring Framingham Residents**. OPERATOR shall make a diligent effort to hire local, qualified employees to the extent consistent with law and shall work in a good faith, legal and non-discriminatory manner to hire local vendors, suppliers, contractors and builders from the Framingham area where possible.

12. **Personal Property and Real Estate Taxes.** OPERATOR acknowledges that marijuana cultivation may not be an agricultural or horticultural use within the meaning of M.G.L. c. 61A, §§ 1-2, and that if the use of the Subleased Premises for a **Marijuana Cultivation Establishment** is determined by the Framingham Assessor in accordance with guidance

from the Massachusetts Department of Revenue or applicable law to be a change of use subject to roll-back or conveyance taxes under M.G.L. c. 61A, then OPERATOR shall pay the same in accordance with applicable law.

OPERATOR hereby represents that all personal property, real estate taxes, and water charges for the Premises, are paid in full through the current tax period, i.e. December 31 2019.Further, OPERATOR agrees that at all times during the term of this Agreement, all property, both real and personal, owned or operated by OPERATOR shall be treated as taxable, and that all applicable real estate and personal property taxes for that property shall be paid either directly by OPERATOR or by its landlord.

Except for the assessment, valuation or taxation of the Subleased Premises as agricultural or horticultural land pursuant to M.G.L. c. 61A as may be determined by the Massachusetts Department of Revenue or applicable law, OPERATOR further agrees that it shall not object or otherwise challenge the taxability of such property and shall not seek a non-profit exemption from paying such taxes and that, notwithstanding the foregoing, if:

a. any real or personal property owned or operated by OPERATOR is determined to be non-taxable or partially non-taxable, or
b. the value of such property is abated with the effect of reducing or eliminating the tax which would otherwise be paid if assessed at full value, or
c. OPERATOR 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 OPERATOR shall pay to the CITY 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 full assessed 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 OPERATOR under Section 1 of this Agreement.

13. Water and Sewer Metering; Inflow and Infiltration Fee. The Premises is served by municipal water , the meter(s) for which have not yet been installed and will be inspected by the City prior to issuance of a Certificate of Occupancy. OPERATOR expressly understands that the Subleased Premises shall be served by municipal water and an on-site private septic system, and that illegal connections and inflow into the City's sewer system is expressly prohibited by the Framingham Wastewater Regulations dated May 2015 ("Regulations").

14. Term, Continued Operation and Extension of Term. The term of this Agreement is **three years**, terminating three years from the execution date of this Agreement unless sooner terminated by:

a. revocation of OPERATOR's license by the Commission; or
b. OPERATOR's voluntary or involuntary cessation of operations; or
c. the CITY's termination of this Agreement for breach of the conditions contained herein that remain uncured 15 days from the date of notice of such breach.

OPERATOR expressly understands and agrees that is continued operation of its Marijuana Retail Establishment (either at the Premises or elsewhere in Framingham if the Marijuana Retail Establishment should relocate) after the end of term of this Agreement, i.e. three years from the execution date of this Agreement, shall require either a renewal of this Agreement upon the same terms (or a new Agreement with new terms) for an additional period of no less than one year nor more than five years.

15. Amendment. Other than the initial three-year duration of this Agreement and the sum of the first year of the community impact fee, neither of which shall be amended, this Agreement may be amended after the payment of the first year of the community impact fee by a fully executed mutual written agreement appended hereto, provided however, that OPERATOR shall have paid all taxes and fees due and payable to the Commission and the CITY as of the date when the OPERATOR executes of such amendment, it being understood that the CITY shall be the final signatory to such amendment.

16. Bond. Prior to commencing operations, OPERATOR shall place $10,000 in escrow to support the orderly dismantling and winding down of the Marijuana Establishment if the OPERATOR should cease operations, i.e., should not transact business for a period greater than 60 days with no substantial action taken to reopen. The CITY's requirement for such bond is analogous to that stated in the Commission's Regulations promulgated as 935 CMR 500.105 (16).

17. Assignment. OPERATOR shall not assign, sublet or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the CITY and shall not assign any of the moneys payable under this Agreement, except by and with the written consent of the CITY. This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives.

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

19. Notice. Any and all notices 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, to the parties at the addresses set forth on Page 1 of this Agreement or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence 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.

20. 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 one or both parties would be substantially or materially prejudiced.

21. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and OPERATOR submits to the jurisdiction of the Trial Court for Middlesex County for the adjudication of disputes arising out of this Agreement.

22. Integration. This Agreement, including all documents incorporated herein by reference, constitute 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.

SIGNATURES ON FOLLOWING PAGE

OPERATOR Executed this 25th day of October 2019

By: Jonathan Tucker

Its duly authorized

CITY OF FRAMINGHAM Executed this __ day of October 2019

Yvonne Spicer, Mayor

APPROVED AS TO FORM Executed this 29th day of October 2019

By: Christopher J. Petrini, City Solicitor