

TOWN OF TEMPLETON AND TEMPEST, INC.
HOST COMMUNITY AGREEMENT

THIS HOST COMMUNITY AGREEMENT (“AGREEMENT”) is entered into this 23rd day of September, 2019 by and between Tempest, Inc., with a principal office address of 130 South Royalston Road, Royalston, MA 01368 (“the Company”) (proof of good standing is attached hereto as Exhibit A), and the Town of Templeton, a Massachusetts municipal corporation with a principal address of Templeton Town Hall, 160 Patriots Road Templeton, MA 01438 (“the Town”), acting by and through its Board of Selectmen, in reliance upon all of the representations made herein.

WHEREAS, Tempest, Inc, wishes to locate an Adult-Use Marijuana Retail Establishment (the “Marijuana Retail Establishment”) for the retail sale of adult-use marijuana and marijuana products at 248 Gardner Road, Templeton, MA, Assessors Map 6-12/30 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 Company intends to provide certain benefits to the Town in the event that they receive the requisite licenses from the Cannabis Control Commission (“CCC”) or such other state licensing or monitoring authority, as the case may be, to operate the Facility and it 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), applicable to the operation of a Marijuana Retail Establishment, whereby such activities are to be done only in accordance with the applicable state and local laws and regulations in the Town;

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:

I. THE FACILITY

The Facility shall be located at 248 Gardner Road, Templeton, MA (the “Site”) (proof of ownership is attached hereto as Exhibit B). As designed, the Company proposes to operate as a Marijuana Retailer, pursuant to *M.G.L.* c.94G and 935 CMR 500.000. The Facility shall not be used for any other purpose, including the sale of medical marijuana or for the cultivation and processing of adult-use marijuana and marijuana products, unless the Town and the Company have executed a new Host Community Agreement or an amendment to this Agreement.

II. IMPACTS

- A. Impacts to the Town from the Facility.** The Company anticipates that, as a result of the Company’s operation of the Marijuana Retail Establishment, the Town will incur additional expenses and impacts on the Town’s road and other infrastructure systems,

law enforcement, fire protection and emergency medical services, inspectional services, permitting services, administrative services, and public health services, in addition to potential additional unforeseen impacts upon the Town. Accordingly, in order to mitigate the direct and indirect financial impact on the Town and use of Town resources, the Company agrees to pay to the Town the Community Impact Fee and such additional costs outlined herein.

- B. Increased Impacts.** Both Parties agree that, as the Facility makes additional profits, the impact to the Town will be greater.
- C. Reasonably Related.** The Parties agree that the fees paid pursuant to this Agreement are reasonably related to the costs imposed upon the Town by the Company's operation of the Facility. The Company explicitly waives any claim that fees paid pursuant to this Agreement exceed the impacts that are reasonably related to the operation of the Facility.
- D. Unanticipated Impacts.** Although the Parties reasonably anticipate that the construction and operation of the Facility will cause the impacts listed above, both Parties acknowledge that additional impacts may arise. The Parties agree to reopen this agreement if the payments required pursuant to Section III do not fully compensate the Town for the actual impacts of the Facility and to negotiate in good faith to reach an agreement on additional payments or mitigation.

III. THE COMPANY'S OBLIGATIONS

- A. Community Impact Fee ("CIF").** In the event that the Company obtains a Final License, or such other license and approval as may be required, for the operation of the Marijuana Retail Establishment in the Town by the CCC, or such other state licensing or monitoring authority, as the case may be, and receives any and all necessary and required permits, licenses, and approvals required by the Town, and at the expiration of any final appeal period related thereto, said matter not being appealed further, which said permits, licenses, and approvals allow the Company to locate, occupy and operate the Marijuana Retail Establishment in the Town (the "Opening"), then the Company agrees to provide the following Community Impact Fee Payment ("CIF Payment") for each year this Agreement is in effect:
 - i Tempest, Inc shall make a CIF Payment in an amount equal to the greater of (a) three percent (3%) of Gross Sales of the Marijuana Retail Establishment from retail marijuana and retail marijuana product sales, including marijuana-infused products, at the Facility; or (b) fifty thousand dollars (\$50,000).
 - ii The Company shall make the CIF Payment quarterly each fiscal year (July 1 - June 30) on September 30, December 31, March 31, and June 30 beginning on the first of such dates after the Opening of the Facility. Upon payment, the Company shall submit all Sales and Use Tax Returns (Form ST-9) submitted to the Department of Revenue during that period.

- iii If the term of this Agreement expires during any year in which the Facility is in operation, the CIF Payment shall be prorated, unless the Company and the Town agree otherwise in a new host community agreement.
- iv The term “Gross Sales” referenced above shall mean the total of all sales transactions by the Company at the Facility and shall include the sale of adult-use marijuana, marijuana infused products, and any other products containing marijuana sold by the Facility.
- v The CIF Payment shall be pro-rated to the extent that the Company is not in operation for a full Fiscal Year or the Agreement expires or the Board terminates the Agreement.

B. Local Charity Program. The Company, in addition to any other payments specified herein, confirms that it shall annually voluntarily provide to any customer who is also a resident of Templeton or Phillipston a “marijuana edibles safe”. The Company agrees that it shall purchase approximately 500 safes per year for distribution with a contribution of up to ten thousand dollars (\$10,000) towards the purchase of the safes. The Annual Donation shall not be considered part of the Community Impact Fee Payment to the Town.

C. Legal Defense Fees. Where applicable, the Company shall make the following Legal Defense Fee Payments. The Company agrees that any payments due from the Company to the Town under this Section shall not be reduced by the amount of any other payments, including the CIF Payment.

- i. Third Party Claims. 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 and use of the Facility. The Company shall pay all reasonable costs and expenses, including, but not limited to, attorney fees. The Company agrees to reimburse the Town for any and all costs and fees incurred with respect to any such claim, action, proceeding or demand, within thirty (30) days of written notice by the Town.
- ii. Permitting Appeals. If the Town is successful in defending any claim or dispute filed by the Company and relating to the Company’s applications for a local approval, the Company shall reimburse the Town for all costs and expenses (including, but not limited to, attorney fees) associated with such defense. Payment shall be made within 30 days of written notice by the Town.
- iii. Enforcement. If the Town is successful in pursuing any claim or dispute relating to the Company’s compliance with this agreement, the Company shall

reimburse the Town for all costs and expenses (including, but not limited to, attorney fees) associated with such claim. Payment shall be made within 30 days of written notice by the Town.

D. Additional Payments. The Company shall make the following Additional Payments. The Company agrees that any payments due from the Company to the Town under this Section shall not be reduced by the amount of any other payments, including the CIF Payment.

- i. Permit and Connection Fees. The Company 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 fee generally applicable to other commercial developments in the Town, which it shall pay in the normal and customary manner.
- ii. Sewer and Water Fees. The Company anticipates that it will be making purchases of water and sewer from the Town, which it shall pay in the normal customary manner.
- iii. Facility Consulting Fees and Costs: The Company shall pay all costs associated with the hiring of a consultant to peer review all documents submitted as part of the local permitting, licensing, and approval process. Payment shall be made upon the hiring of the consultant or as otherwise agreed upon by the Town and the Company in writing. In addition, the Company shall make a payment in the amount of twenty thousand dollars (\$20,000) in consideration for any and all costs incurred by the Town for legal review of the requisite permits, licenses, and approvals, including this HCA, within sixty (60) calendar days of Opening.
- iv. Facility Expansion Fees: In addition to any peer review fees and costs described above, the Company shall pay an additional amount of twenty thousand dollars (\$20,000) in consideration for any and all costs incurred by the Town for legal review of the requisite permits, licenses, and approvals for each proposed expansion of the Facility

- v. **Taxes.** At all times during the Term of this Agreement, the property located at the site, 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 directly by the Company, and the Company shall not object or otherwise challenge the taxability of such property. Notwithstanding the foregoing, (i) if real or personal property owned, leased or operated by the Company are determined to be non-taxable or partially non-taxable, (ii) if the value of such property is abated with the effect of reducing or eliminating the tax that would otherwise be paid if assessed at fair cash value as defined in *M.G.L. c. 59, §38*, or (iii) if the Company is determined to be entitled to or subject to exemption with the effect of reducing or eliminating the tax that would otherwise be due if not so exempted, then the Company shall pay to the Town an amount that, when added to the taxes, if any, paid on such property, shall be equal to the taxes that 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.

E. Security.

- i. **General.** The Company shall maintain security at the Facility at least in accordance with the security plan presented to the Town and approved by the CCC, or such other state licensing or monitoring authority, as the case may be. In addition, the Company shall at all times comply with all applicable laws and regulations regarding the operation of the Facility and the security thereof. Such compliance shall include but will not be limited to: providing hours of operation; after-hour contact information and access to surveillance operations; and requiring dispensary agents to produce their Agent Registration Card to law enforcement upon request.
- ii. **Cameras.** 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 use reasonable efforts to work with the Town's Police Department in determining the placement of exterior security cameras.
- iii. **Cooperation.** The Company agrees to use reasonable efforts 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, 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, and access to the Facility to provide training for officers and other safety officials.
- iv. **Reporting.** The Company shall promptly report the discovery of the following occurrences within the Town to the Police within twenty-four (24) hours of the Company becoming aware of such event: diversion of marijuana; unusual

discrepancies identified during inventory; theft; loss and any criminal action; unusual discrepancy in weight or inventory during transportation; any vehicle accidents, diversions, losses, or other reportable incidents that occurred during transport; any suspicious act involving the sale of marijuana by any person; unauthorized destruction of marijuana; any loss or unauthorized alteration of records related to marijuana; an alarm activation or other event related to that requires response by public safety personnel; failure of any security alarm system due to a loss of electrical power or mechanical malfunction that is expected to last longer than eight hours; and any other breach of security.

- F. Approval of On-Site Managers.** The Company shall provide, for review and approval by the Board of Selectmen, the name of the person proposed to act as the on-site managers of the Facility and relevant information pertaining to that person, as determined by the Board. The submittal shall include authorization to perform a criminal history check. The Board shall consider such request for approval within thirty (30) calendar days following submittal to determine, in consultation with the Chief of Police, if the person proposed is of suitable character to act as on-site manager. The approval process shall apply to any changes of on-site manager.
- G. Noise/Hours of Operation.** The Company shall comply with all local bylaws and regulations regarding noise. The Company shall not conduct retail sales before 8 AM nor after 10 PM.
- H. Inspections.** In accordance with all applicable laws and regulations, the Company shall allow inspections of the Facility by Town officials (Police Department, Fire Department, Board of Selectmen, Board of Health, Building Department) to ensure compliance with all applicable state laws, local bylaws, and the terms of this Agreement.
- I. Community Support.**
- i. Local Vendors. To the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company shall make every effort in a legal and non-discriminatory manner to give priority to businesses and vendors based in the Town in the provision of goods and services called for in the construction, maintenance and continued operation of the Facility. The annual report to the Board shall detail efforts taken to comply with this provision, including specific actions taken and the results thereof.
 - ii. Employment. Except for senior management, and to the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company shall use good faith efforts to seek out and employ Town residents and veterans of the armed services at the Facility. The annual report to the Board shall detail efforts taken to comply with this provision, including specific actions taken and the results thereof.

- iii. Cooperation. The Company shall work cooperatively with all necessary Town departments, boards, commissions, and agencies ensure that Company's operations are compliant with all of the Town's codes, rules, and regulations. The Company also agrees to provide no less than 150 man hours annually, to be provided by the Facility's management and employees, to participate in community meetings and community service activities, including but not limited to: community education and drug abuse prevention programming, senior assistance, community clean up, or veterans' assistance within the Town.
- iv. Community Impact Hearing Concerns. The Company agrees to employ its best efforts to work collaboratively and cooperatively with any neighboring businesses and residents to establish, if requested by the Town, written policies and procedures to address mitigation of any reasonable concerns or issues that may be raised at the Company's required Community Outreach Meeting or arise through the Company's operations of the Facility; said written policies and procedures, as may be amended from time to time by the Company, 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.

J. Reporting.

- i. Annual Report. No later than July 31 of each year, the Company shall submit a report to the Town certifying the gross revenue from the preceding fiscal year, in addition to any records or reports that may be required to submit to any state licensing or regulatory authority, including the CCC and the Department of Revenue. The Annual Report shall specify the CIF Payment as calculated under Section III.A and shall be prepared by a Certified Public Accountant in accordance with generally accepted accounting principles. The Annual Report shall also include a summary of the Company's compliance with each terms of this Agreement, including the Local Charitable Program requirement. At the request of the Board of Selectmen, the Company shall appear at a public meeting to discuss the Annual Report.
- ii. CCC Documentation. Throughout the year, the Company shall provide the Town with copies of all reports submitted to the CCC regarding the operation of the Facility, including, but not limited to, security audit reports. Reports shall be provided within five (5) calendar days of submission to the CCC.

K. Financial Records. 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 years following the termination of this Agreement the Company shall agree, upon the reasonable 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. The Independent Financial Auditor shall review the Company's financial records solely for purposes of determining that the Annual Payments 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.

- L. **Other Laws and Regulations.** The Company agrees to comply with all state and local laws, rules, regulations and orders applicable to the Site and the Facility, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the performance of construction, operation and renovation of the Site and the Facility.

IV. THE TOWN'S OBLIGATIONS

- A. **Zoning Certification Form.** Within seven (7) business days of request, the Town agrees to execute a certification of compliance with applicable local bylaws relating to the Company's application for a CCC Marijuana Retailer License at the Facility, where such compliance has been properly demonstrated, but makes no representation or promise that it will act on any other license or permit request, including, but not limited to any Special Permit or other zoning application or a Board of Selectmen license application submitted by the Company, in any particular way other than by the Town's normal and regular course of conduct, subject to applicable statutes, regulations, rules, guidelines and procedures.
- B. **Community Support Obligations.** The Town agrees to use its best effort to work with the Company to help advise the Company on their community support.

V. MISCELLANEOUS TERMS

- A. **Term and Termination.** This Agreement shall take effect on the day above written and shall continue in effect for five (5) years. If the Facility is expanded during the five year term, this Agreement shall take effect for an additional 5 years from the date the expansion becomes operational. The Town may terminate this Agreement upon the occurrence of any of the following:

- i. The Company fails to diligently pursue licensure;
- ii. The Company fails to obtain, and maintain in good standing, any and all necessary licenses and permits for the Facility;
- iii. The Company ceases to operate a Marijuana Retailer at its proposed location;
- iv. The Company fails to make payments to the Town as required under this Agreement, and such failure remains uncured with reasonable written notice from the Town for thirty (30) calendar days; or
- v. The Company fails to comply with any other term of this Agreement, its Final License from the CCC, any permit or license issued by the Town, or any other state or local law.

B. Payments Upon Termination of the Agreement.

- i. The Company shall be responsible for the pro-rated portion of the CIF Payment due, as well as any other payment required under Section III. Payment shall be made within thirty (30) calendar days from the date of termination.
- ii. The Town shall not be required to refund any payments made by the Company to the Town prior to termination of the Agreement.
- iii. If this agreement is terminated prior to the Company becoming operational, the Company shall pay the Town as liquidated damages an amount equal to twenty thousand dollars (\$20,000) in consideration of the expenditure of resources by the Town in negotiating this agreement and preparing for impacts, as well as any payments required under Section III.C and Section III.D. Payment shall be made within thirty (30) calendar days from the date of termination.

C. Survive Termination. Upon termination or expiration of this Agreement, the Company's obligations with respect to fees payable hereunder, in accordance with Section III.A, Section III.C, Section III.D, and Section V.B, and such other provisions that by their nature are intended to survive termination, shall survive the termination or expiration of this Agreement.

D. Re-Opener/Review. In the event that the Company enters into a host community agreement for a Retail Marijuana Establishment with another municipality in the Commonwealth of Massachusetts that contains terms that are superior to what the Company agrees to provide the Town pursuant to this Agreement, then the parties shall reopen this Agreement and negotiate an amendment resulting in benefits to the Town equivalent or superior to those provided to the other municipality. The Company shall provide the Board with a copy of any HCA that it negotiates with another municipality in the Commonwealth within thirty (30) days of execution.

E. 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 its obligation to pay 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 do not maintain a controlling equity interest; (iv) any assignment for the benefit of creditors; and/or (v) any other assignment not approved in advance in writing by the Town, provided that the Company may assign this Agreement and its rights and obligations hereunder in connection with any of the foregoing if the successor or transferee assumes the Company's obligations under this Agreement.

- F. Governing Law.** This Agreement shall be governed in accordance with the laws of the Commonwealth of Massachusetts and venue for any dispute hereunder shall be in the courts of Worcester County.
- G. Amendments and 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.
- H. Severability.** If any provision of this Agreement shall be found invalid for any reason in a court of competent jurisdiction, such invalidity shall be construed as narrowly as possible, and the balance of the Agreement shall be deemed to be affected to the minimum extent necessary, so as to secure to the parties the purposes thereof.
- I. Successors/Assigns.** This Agreement is binding only upon the parties hereto. Neither the Town nor the Company may assign or transfer any interest in the Agreement. A new host community agreement must be executed with any new owner of the Facility. The Company understand that if there are any changes to ownership, the town may unilaterally withdraw its Letter of Support or Non-Opposition and declare the HCA null and void, effective immediately, and shall notify the state of these actions.
- J. Entire Agreement.** This Agreement 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.
- K. 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:


Board of Selectmen
Town Hall
160 Patriots Road
East Templeton, MA 01438

To Licensee:


Tempest, Inc.
130 Royalston Road
Royalston, MA 01368

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


TOWN OF TEMPLETON
By its Board of Selectmen



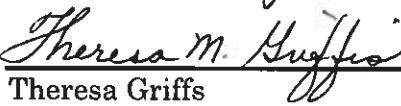
Michael Currie, Chairman



Diane Haley Brooks, Vice-Chair



Julie Richard, Clerk



Theresa Griffs




Jeffrey Bennett


TEMPEST, INC.

By: 

Signature



Printed Name



Title