

## **HOST COMMUNITY AGREEMENT | SOUTHBOROUGH, MA**

THIS HOST COMMUNITY AGREEMENT (“Agreement”) is entered into pursuant to M.G.L. 44, §53A this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by and between COMMCAN, INC. a Massachusetts not-for-profit corporation with a principal office address of 730 Main Street, Millis, MA 02054 (“OPERATOR”) and the TOWN OF SOUTHBOROUGH, a Massachusetts municipal corporation with a principal address of 17 Common Street, Southborough, MA 01772 (“TOWN”).

WHEREAS OPERATOR wishes to locate a Registered Marijuana Dispensary dispensing facility (“RMD”) in the TOWN, in accordance with regulations issued by the Commonwealth of Massachusetts Department of Public Health (“DPH”);

WHEREAS OPERATOR intends to provide certain benefits to the TOWN by way of gift or grant in the event that it receives a Final Certificate of Registration to operate a RMD in the TOWN by the DPH;

WHEREAS OPERATOR has applied for a certificate of registration from the DPH to operate the RMD in the TOWN at 255 Turnpike Road, Southborough, MA 01772 (the “FACILITY”); and

WHEREAS OPERATOR has received a letter of non-opposition from the TOWN for the siting and operation of an RMD in the TOWN.

NOW, THEREFORE, in consideration of the above, OPERATOR offers and the TOWN accepts the following benefits pursuant to the terms of this Agreement, and in accordance with M.G.L. 44 §53A:

1. OPERATOR shall pay to the TOWN 3% of the gross revenue received by OPERATOR from retail sales at the FACILITY beginning on the date which is twelve months (the “Grace Period”) from the date of commencement of sales in the TOWN (“Sales Commencement Date”). The initial payment to the TOWN shall be made on the first day of the seventh month after the Grace Period (“Initial Payment Date”), based upon revenue received beginning on the first day following the Grace Period. Following the Grace Period, OPERATOR’S obligations under this paragraph shall not exceed \$500,000.00 annually. Payments under this paragraph shall be made twice annually, no later than December 31<sup>st</sup> and June 30<sup>th</sup> of each

year. OPERATOR shall notify the TOWN when OPERATOR commences dispensing within the TOWN. OPERATOR will provide the TOWN with copies of its periodic financial filing to DPH documenting gross revenues, and also a copy of its annual filing as a non-profit, if any, to the Massachusetts Office of Attorney General. The TOWN may notify OPERATOR to delay the initial payment, in which case the initial payment shall be made as specified by the TOWN; however, the timing of subsequent payments shall be made as if the initial payment had been on the Initial Payment Date.

2. OPERATOR shall make a one-time payment to TOWN of \$50,000.00 one year following the Sales Commencement Date, which payment will be credited towards OPERATOR'S payment obligations under Section 1 above.
3. OPERATOR shall make additional annual payments to TOWN of \$50,000 beginning two years following the Sales Commencement Date, which payments shall be used to fund school drug education programs and/or used for the benefit of the Southborough Police Department for purchase of capital items that relate to the operations of the Southborough Police Department as they pertain to the RMD.
4. OPERATOR shall provide to the TOWN, for review and approval, the name and relevant information, including but not limited to, the information set forth in 105 CMR 725.030, of the person proposed to act as on-site manager of the RMD. The submittal shall include authorization to perform a criminal history (CORI) check. The Board of Selectmen shall consider such request for approval within thirty (30) days following submittal to determine, in consultation with the Police Chief, if the person proposed is of suitable character to act as on-site manager. Such approval shall not be unreasonably denied, conditioned or delayed. This approval process shall also apply to any change of on-site manager.
5. OPERATOR shall prepare, in cooperation with the Southborough Police Department, a Traffic Management Plan ("TMP"), which will include the preferred routes for accessing the RMD. Copies of the plan will be provided to all patients. Discharge and pick up of passengers is not

allowed within any portion of the adjacent state highway, including the break down lane, or other public ways, and OPERATOR will take steps to prevent any discharge or pick up of passengers on the state highway or public ways; such steps may include appropriate signage, notification of patients, and notification of transit, taxi, and other drivers who pick up or discharge passengers at the FACILITY.

6. OPERATOR will maintain a cooperative relationship with the Southborough Police Department, including but not limited to, periodic meetings to review operational concerns, cooperation in investigations, and communication to the Southborough Police Department of any suspicious activities occurring at the FACILITY or the area immediately surrounding the FACILITY.
7. OPERATOR shall work with the Southborough Police Department to implement a comprehensive diversion prevention plan to prevent diversion. Such plan will include, but is not limited to, (i) training RMD employees to be aware of, observe, and report any unusual behavior in patients, caregivers, authorized visitors or other RMD employees that may indicate the potential for diversion; (ii) strictly adhering to certification amounts and time periods (per DPH guidelines); (iii) rigorous patient identification and verification procedures through the MMJ Online System; (iv) utilizing seed-to-sale tracking software to closely track all inventory at the RMD; and (v) refusing to complete a transaction if the patient or caregiver appears to be under the influence of drugs or alcohol; requests additional medicine because a prior purchase was damaged or lost; threatens or attempts to coerce a RMD employee in order to obtain excess medicine; or attempts to elicit guilt or sympathy from a RMD employee in order to obtain excess medicine.
8. OPERATOR commits to hiring local, qualified employees to the extent consistent with law and the availability of qualified applicants. In addition to the direct hiring, OPERATOR will work in a good faith, legal, and non-discriminatory manner to hire local vendors, suppliers, contractors, and builders from the Southborough area, when possible.

9. At all times during the Term of this Agreement, property, both real and personal, owned or operated by OPERATOR shall be treated as taxable, and all applicable real estate and personal property taxes for that property shall be paid either directly by OPERATOR or by its landlord, and OPERATOR shall not object or otherwise challenge the taxability of such property and shall not seek a non-profit exemption from paying such taxes. Notwithstanding the foregoing, (i) if real or personal property owned or operated by OPERATOR 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 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 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 OPERATOR under Section I of this Agreement.

10. If the TOWN receives other payments from OPERATOR (other than additional voluntary payments made by OPERATOR), or from the Department of Revenue or any other source, the funds for which have been collected by assessment against OPERATOR, including but not limited to, taxes imposed by an act of the legislature of the Commonwealth of Massachusetts, or a mandate from the TOWN for said payments, the amounts due from OPERATOR to the TOWN under the terms of this Agreement shall be reduced by the amount of such other payments.

11. This Agreement shall be reopened for negotiations on the first day of the third year after the Initial Payment Date to ensure that the financial terms are equitable. On that date, the Parties shall assess what other host communities for the dispensing of marijuana are being paid by the businesses sited in those communities, particularly those that entered into such

agreements after the execution date of this Agreement. Those figures shall be used as a basis for fair market value negotiation subsequent to this Agreement being reopened for negotiation. The terms of the current agreement shall remain in full force and effect until any new agreement is put in place. The parties agree to negotiate in good faith.

12. The purpose of this Agreement is to assist the TOWN in addressing any public health, safety and other effects or impacts the RMD may have on the TOWN. The TOWN shall use the above-referenced payments in its sole discretion consistent with the purpose of the agreement, which may include allocating a portion of said payments for community wellness programs, and other efforts and initiatives for the support of the health of the citizens of the TOWN.
13. This Agreement applies solely to the operations of the RMD dispensing facility in accordance with the DPH Final Certificate of Registration, for Humanitarian Medical Use of Marijuana, in accordance with 105 CMR 725.000. If, during the term of this Agreement, it becomes permissible under Massachusetts law for the Operator to sell or distribute marijuana at the RMD dispensing facility for purposes other than those initially authorized by the DPH Final Certificate of Registration, then prior to the Operator's sale or distribution of marijuana for those other purposes, the parties shall renegotiate the terms of this Agreement, including (but not limited to) increasing the amount of the payments to be made to the Town, in recognition that the additional purposes of the RMD dispensing facility may have greater impacts and effects on the Town with an understanding that any such renegotiation will need to comply with Massachusetts law. In no case shall the payments be reduced from the amounts specified in Paragraph 2 of this Agreement unless necessary to comply with rules enacted or amended by the Commonwealth of Massachusetts. Nothing in this Section 13 shall be construed as an obligation of the Town to allow the Operator to sell or distribute marijuana at the RMD dispensing facility for other purposes than those initially authorized by the DPH.
14. This Agreement shall terminate at the time that either of the following occur:

- a. the TOWN notifies OPERATOR of the TOWN's termination of this Agreement; or
  - b. OPERATOR ceases to operate a RMD in the TOWN.
15. The obligations of OPERATOR and the TOWN recited herein are specifically contingent upon the issuance by DPH to OPERATOR of a Final Certificate of Registration for the operation of a RMD in the TOWN.
16. OPERATOR shall not assign, sublet or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the TOWN and shall not assign any of the moneys payable under this Agreement, except with the written consent of the TOWN, provided, however, that a pledge or assignment of assets, profits or receivables required in connection with financing the business by OPERATOR shall not be considered an assignment for the purposes of this paragraph.
17. This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Neither the TOWN nor OPERATOR shall assign or transfer any interest in the Agreement without the written consent of the other.
18. OPERATOR shall comply with all laws, rules, regulations and orders applicable to the operation of an RMD, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the operation of an RMD.
19. 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 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. 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 one or both parties would be substantially or materially prejudiced.
21. 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 Worcester County for the adjudication of disputes arising out of this Agreement.
22. 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.

TOWN OF SOUTHBOROUGH

COMMCAN, INC.

BOARD OF SELECTMEN

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Dated: \_\_\_\_\_