TOWN OF PHILLIPSTON
AND TEMPEST, INC.

HOST COMMUNITY AGREEMENT

THIS HOST COMMUNITY AGREEMENT ("AGREEMENT") is entered into this 3rd day of June, 2020 (the "Effective Date") by and between Tempest, Inc., a Massachusetts corporation with a principal office address of 130 South Royalston Road, Royalston, MA 01368 (the "Company"), and the Town of Phillipston, a Massachusetts municipal corporation with a principal address of 50 The Common, Phillipston, MA 01331 (the "Town") (Company and Town, collectively the "Parties"), acting by and through its Board of Selectmen, in reliance upon all of the representations made herein.

RECITALS

WHEREAS, the Company wishes to locate a Marijuana Retail Establishment to be limited to the retail sale of marijuana, marijuana infused products and related products for adult use, comprising an approximately 4,000 square foot structure, of which approximately 2,500 square feet of gross floor area shall be public retail space, on approximately 20 acres at a parcel of land located at 420 State Road, more accurately described by the deed recorded with the Worcester County Registry of Deeds Book 55631, page 114 on, and on Map 37 and numbered Lot 9 in the Phillipston Assessor's database (the "Facility"), 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 anticipates that the Town will incur additional expenses and impacts on the Town's road and other infrastructure systems, law enforcement, fire protection services, inspectional services, permitting and consulting services and public health, as well as unforeseen impacts, both quantifiable and unquantifiable on the Town; and

WHEREAS, the Company intends to provide certain benefits to the Town in the event that it receives the requisite License from the Cannabis Control Commission (the "CCC") or such other state licensing or monitoring authority, as the case may be, to operate the Facility and receives all required local permits and approvals from the Town; and

WHEREAS, the parties intend by this AGREEMENT to satisfy the provisions of G.L. c.94G, Section 3(d) applicable to the operation of Facility, such activities to be only done in accordance with the applicable state and local laws and regulations in the Town; and

WHEREAS the Parties agree that the above Recitals are true and accurate and that they are incorporated herein and made a part hereof.

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:

1. **Representations and Warranties**

The Parties respectively represent and warrant that:

1. Each is duly organized and existing and in good standing, has the full power, authority, and legal right to enter into and perform this AGREEMENT, and the execution, delivery and performance hereof and thereof (i) will not violate any judgment, order, state law, bylaw, or regulation, and (ii) do not conflict with, or constitute a default under, any agreement or instrument to which either is a party or by which either party may be bound or affected; and

2. Once this AGREEMENT has been duly authorized, executed and delivered, this AGREEMENT constitutes legal, valid and binding obligations of each party, enforceable in accordance with its terms; and

3. There is no action, suit, or proceeding pending, or, to the knowledge of either party, threatened against or affecting wither wherein an unfavorable decision, ruling or finding would materially adversely affect the performance of any obligations hereunder, except as otherwise specifically noted in this AGREEMENT.

2. **Annual Payments**

In the event that the Company obtains the requisite Final License from the CCC and all necessary and required state approvals required for the operation of a Marijuana Retail 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, which permits and/or licenses allow the Company to locate, occupy and operate the Facility in the Town, then the Company agrees to provide the following Annual Community Impact Fee:

A. Community Impact Fee

In order to mitigate the anticipated impacts of the Facility on the Town, including, but not limited to impacts on roads and other infrastructure systems, law enforcement, fire protection services, inspectional services, as well as unforeseen impacts, both quantifiable and unquantifiable on the Town's resources, the Company agrees to pay an Annual Community Impact Fee to the Town to account for both quantifiable and unquantifiable impacts to the Town, in the amount and under the terms provided herein.

1. Company shall annually pay an Annual Community Impact Fee in an amount equal to three percent (3%) of Gross Sales at the Facility. The term "gross sales" shall mean the total of all sales transactions of the Facility, without limitation, whether wholesale or retail, and shall include all sales from marijuana and marijuana product sales, including marijuana-infused products, paraphernalia, and any other products sold by the Facility.

2. The Annual Community Impact Fee shall continue for a period of five (5) years from the date the Facility commences operations unless the Company ceases to operate in which case the Community Impact Fee shall be prorated based on the number of months the Company is in operation in the year it ceases to operate; provided, however, that in no event shall the Town be responsible for the return of any Annual Community Impact Fee and/or Community Benefit Payment or portion thereof already provided to the Town by the Company. The Facility shall be deemed in operation upon receipt of both an occupancy permit from the Building Commissioner and the issuance of a final License and "Approval to Sell" at the Facility from the CCC.

3. The Company shall pay the Annual Community Impact Fee in quarterly installments as follows:

   For sales between January 1 and March 31, payment shall be made on or before May 1;
   For sales between April 1 and June 30, payment shall be made on or before August 1;
   For sales between July 1 and September 30, payment shall be made on or before Nov. 1;
   For sales between Oct. 1 and December 31, payment shall be made on or before Feb 1.

   With regard to any quarter year of operation for the Facility which is not a full quarter year, the applicable quarterly installment of the Community Impact Fee shall be pro-rated accordingly. The Town reserves the right to amend the timing and frequency of the Annual Community Impact Fee payments.

4. A minimum of three (3) months prior to the conclusion of the five (5) year term, the Parties shall negotiate the terms of a new Annual Community Impact Fee as an Amendment to this Agreement; provided, however, that if the parties are unable to reach an agreement on a successor Community Impact Fee, the Annual Community Impact Fee specified in Paragraph 2.A.1 of this Agreement shall remain in effect and shall not be reduced below the amount set forth above until such time as the Parties negotiate a successor Community Impact Fee.

5. The Town may use the above referenced payments as it deems appropriate in its sole discretion, but shall make a good faith effort to allocate said payments for road and other infrastructure systems, law enforcement, fire protection services, inspectional services, public, health and addiction services and permitting and consulting services, as well as unforeseen impacts upon the Town.

6. 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..." Notwithstanding the foregoing, the Parties hereby acknowledge the difficulty in computing actual Town costs and agree that impacts may result in municipal budgetary increases that cannot be separately identified or precisely

quantified. Consequently, the Company agrees that the payments due under this Agreement are reasonably related to Town costs and waives any claims to the contrary.

B. Additional Costs, Payments and Reimbursements

1. Permit and Connection Fees: The Company hereby 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 fees 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 and customary consulting costs and fees, including without limitation, reasonable attorneys' fees related to any land use applications concerning the. Facility, negotiation of this and any other related agreements, and any review concerning the Facility, including planning, engineering, and any related reasonable disbursements at standard rates charged by the above-referenced consultants in relation to the Facility. Any Town legal costs associated with the Facility, including the cost to negotiate this Agreement, shall be paid from a five thousand dollar ($5,000) contribution made by the Company to the Town. Any unexpended funds shall be returned by the Town; legal fees exceeding the five thousand dollar ($5,000) contribution shall be reimbursed to the Town.

3. Other Costs: The Company shall reimburse the Town for the actual costs incurred by the Town in connection with holding public meetings not held in public buildings and forums not within the Town's regularly scheduled public hearings and meetings, which are solely devoted to discussing the Facility.

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 fully made with five (5) days of the date they are due, the Company shall be required to pay the Town a late payment penalty equal to five percent (5%) of such required payments if the Company fails to cure the default within five (5) days following issuance of written notice from the Town of the default.

C. Annual Charitable/Non-Profit Contributions

The Company, in addition to any funds specified herein, shall annually contribute to public local charities/non-profit organizations in the Town, or a regional non-profit organization that directly benefits residents of the Town, in an amount no less than $6,000.00, said charities/non-profit organizations to be determined by the Company in its reasonable discretion. The Annual Charitable Non/Profit Contribution shall be made annually beginning on the first anniversary following the commencement of sales at the Facility, and shall continue for the term of this Agreement.

The parties hereby recognize and agree that any charitable/non-profit contributions to be paid by the Company shall not be deemed a community impact fee subject to the requirements or limitations set forth in G.L. c.94G, §3(d).

D. Annual Reporting for Host Community Impact Fees and Compliance

The Company shall submit an annual written report to the Town's Board of Selectmen within thirty (30) days after the payment of its fourth quarterly installment of the Annual Community Impact Fee with a certification of: (1) its annual sales; and (2) its compliance all other requirements of this AGREEMENT. During the term of this AGREEMENT the Company shall agree, upon request of the Town, to appear before a meeting of Board of Selectmen to review compliance with the terms of this AGREEMENT. Such meeting shall occur no later than thirty (30) days following written notice from the Town.

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 (3) years following the termination of this AGREEMENT, the Company shall agree, upon a 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 for purposes of determining that the payment of its Annual Community Impact Fee is 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.

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 Facility when such contractors and suppliers are properly qualified and price competitive, and shall use good faith efforts to hire Town residents.

4. **Approval of Manager**

If requested by the Town, the Company shall provide to the Town, for review and approval, the name and relevant information, including but not limited to the information set forth applicable state regulations of the person proposed to act as on-site manager of the Facility. The submittal shall include authorization and all fees necessary to perform a criminal history (CORI) check or similar background check. The Town, through its 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. **Hours of Operation**

The Company agrees that in no event shall the Facility be open to the public, nor shall any sale or other distribution of marijuana occur at the Facility outside the hours of 8:00 A.M. through 10:00 P.M. seven days per week.

6. **Local Taxes**

At all times during the term of this AGREEMENT, property, both real and personal, owned or operated by the Company shall he 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 any 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.

7. **Security and Safety**

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 Town's Police Department in reviewing and approving all security plans prior to implementation and commencement of operations.

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 Facility, and with regard to any anti-diversion procedures to ensure that the marijuana and marijuana products sold in the Facility are not being transferred to the illegal market or to minors.

The Company shall implement a comprehensive diversion prevention plan to prevent diversion of marijuana and marijuana products into the illicit market and to minors, such plan to be in place prior to the commencement of operations at the Facility. The Company shall present the diversion plan to the Police Department for its review and feedback and, to the extent required by the Police Department, work collaboratively to implement any suggested changes, amendments or modifications to address local concerns.

The Company agrees and acknowledges that annual inspections of the Facility by the Town's Police Department, Town's Fire Department, Building Department and Board of Health shall be a condition of continued operation in Town and agrees to cooperate with the Town's Police Department, Town's Fire Department and Board of Health in providing access for scheduled and unscheduled inspections of the Facility.

The Company further agrees that all signage and packaging for marijuana products shall comply applicable state laws and regulations, including, but not limited to G.L. c.94G and 935 CMR 500.000, and further agrees that to the extent 935 CMR 500.000 imposes more stringent requirements on packaging, labeling, marketing or the form of permitted edibles, the Company will comply with the more restrictive regulatory provisions.

8. **Community Impact Hearing Concerns**

The Company agrees to conduct a Community Outreach Meeting prior to commencement of operations to work collaboratively and cooperatively with its neighboring businesses and residents. The Company shall, as a result of community feedback and neighborhood concerns, establish written policies and procedures to address mitigation of any concerns or issues that may arise through its operation of the Facility; said written policies and procedures, as may be amended from time to time at the request of the Board of Selectmen, shall be reviewed annually by the Board of Selectmen as part of the Company's annual report to ensure compliance with the policies and procedures and to address any further impacts requiring mitigation. The policies and procedures addressing community impact mitigation shall be incorporated herein by reference and made a part of this AGREEMENT, the same as if each were fully set forth herein.

9. **Additional Obligations**

The obligations of the Company and the Town recited herein are specifically contingent upon the Company obtaining a Final License from the CCC for operation of an Adult Marijuana Use Retail Store in the Town, and the Company's receipt of any and all necessary local approvals to locate, occupy, and operate the Facility in the Town.

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 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 an Adult Marijuana Use Retail Store to operate in the Town, or to refrain from enforcement action against the Company and/or its Facility for violation of the terms of said permits and approvals or said statutes, Bylaws, and regulations.

10. **Support**

The Town agrees to submit to the CCC, or such other state licensing or monitoring authority, as the case may be, the required Letter of Support or Non-Opposition relating to the Company's application for a License to operate the Facility, 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 Facility, in any particular way other than by the Town normal and regular course of conduct and in accordance with its rules and regulations and any statutory guidelines governing them.

11. **Term**

Except as expressly provided herein, this AGREEMENT shall take effect on the date set forth above (the "Effective Date"), and shall be applicable for as long as the Company operates the Facility in the Town, with the exception of the Community Impact Fee, which shall be governed by the provisions of Paragraph 2.A of this AGREEMENT.

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 Facility within eighteen (18) months from the Effective Date of this AGREEMENT, this AGREEMENT shall expire and the Company shall be required to negotiate a new AGREEMENT in order to operate the Facility within the Town, unless the Board of Selectmen, in its discretion, agrees to an additional extension of time, 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.

12. **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. The Company shall not assign, sublet, or otherwise transfer any interest in the AGREEMENT without the written consent of the Town.

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.

13. **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 Administrator
50 The Common
Phillipston, MA 01331

Copy To:
Town Counsel
Thomas McEnaney
KP-Law, PC
101 Arch Street, 12th Floor
Boston, MA 02110

To Company:

Tempest, Inc.
130 South Royalston Road
Royalston, MA 01368

14. **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.

15. **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.

16. **Entire Agreement**

This AGREEMENT 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.

17. **Amendments/Waiver**

Amendments, or waivers of any term, condition, covenant, duty or obligation contained in this AGREEMENT may be made only by written amendment executed by authorized representatives of both parties to the original Agreement, prior to the effective date of the amendment.

18. **Headings**

The article, section, and/or paragraph headings in this AGREEMENT are for convenience of reference only, and shall in no way affect, modify, define or be used in interpreting the text of this AGREEMENT.

19. **Counterparts**

This AGREEMENT may be signed in any number of counterparts all of which taken together, each of which is an original, and all of which shall constitute one and the same instrument, and any party hereto may execute this AGREEMENT by signing one or more counterparts.

20. **Signatures**

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

21. **No Joint Venture**

The Parties hereto agree that nothing contained in this AGREEMENT or any other documents executed in connection herewith is intended or shall be construed to establish the Town and the Company and any other successor, affiliate or corporate entity as joint ventures or partners.

22. **Nullity**

This AGREEMENT shall be null and void in the event that the Company does not locate an Adult Marijuana Use Retail Store in the Town or relocates the Facility out of the Town. Further, in the case of any relocation out of the Town, the Company agrees that an adjustment of Annual Community Impact Fee due to the Town hereunder shall be calculated based upon the period of occupation of the Facility within the Town, but in no event shall the Town be responsible for the return of any funds provided to it by the Company.

23. **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, their agents, departments, officials, employees, insurers and/or successors, by any third party arising from or relating to the development of the Facility to the extent caused by or contributed to by the Company, but specifically excluding such matters caused by the fraud or willful misconduct of the Town, its agents, departments, officials, employees, insurers and/or successors. 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. As a condition of indemnification pursuant to this Section, the Town shall: (a) notify the Company within a reasonable period of time of any matter concerning which the Town may seek indemnification hereunder; (b) at the request of the Company give the Company control over the investigation, defense and/or settlement of such matter; and (iii) cooperate to the greatest possible extent in such investigation, defense and/or settlement.

24. **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 PHILLIPSTON

_____, Chair

_____

_____

713509/PHIL/0001

COMPANY

_____

JESSICA ARMAO
MY COMMISSION EXPIRES ON 08-29-2025
COMMONWEALTH OF MASSACHUSETTS
NOTARY PUBLIC