TOWN OF CHESHIRE

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OFFICE OF THE BOARD OF SELECTMEN

Meeting Minutes – August 31, 2021

Pursuant to a notice duly filed with the Town Clerk, a meeting of the Board of Selectmen was held in person at 191 Church St (Cheshire Elementary School) on Tuesday August 31, 2021, at 6:30 PM.

Members Present: Michelle Francesconi, Chair
Jason Levesque, Clerk
Mark Biagini
Ray Killeen
Shawn McGrath

Others Present: Jennifer Morse, Town Administrator; Peter Traub; John Tremblay (remote), Sonia Orenstein; Craig Kahn; Jessica Wells (remote); Karen Kruszyna (remote); Katherine Bierwas; Greg Fournier, I-Berkshires; Dick Lindsay, Berkshire Eagle; Ron Lancia.

M. Francesconi called the meeting to order at 6:31 p.m.

1. Host Community Agreement – Mass Yield Cultivation

Sonia Orenstein, Craig Kahn, Jessica Wells and Katherine Bierwas joined the board to discuss the DRAFT host community agreement.

Section 1 – A. Community Impact Fee - Discussion regarding the community impact fee and payments. J. Levesque suggested that payments commence for years 2-6. Katherine Bierwas will check with the CCC to get clarification if that is possible or if the agreement must be for years 1-5.

Section 1 – B. Additional Cost, Payments and Reimbursements- The Board clarified that these fees are prior obtaining a Special Permit and the start of the project.

Section 1 – C. Community Development and Other Benefits: S. McGrath suggested a donation to the Hoosac School gardening club and/or an Annual Scholarship to a student pursuing a college degree in agriculture. There was further discuss on a Community Garden. Katherine Bierwas stated that many entities who get federal funds may not accept the donation. There was discussion about a donation to the Cheshire Garden Club or the Cheshire Community Association.

Section 7 - Term Discussion on the language in the second paragraph changing one year to two years from the date from the date of the agreement with an extension of up to one- year.

There was further discussion about Community Impact Fee with both parties agreeing on a minimum guaranteed fee of $20,000 per year or 3%.

2. Building Commissioner Position

Discussion regarding both applicants and the vision the board has for the board including availability, willingness to update the board, team approach and support/mentoring for overall growth of the community. Members

noted that they were torn about the decision. There was discussion about the timeline for certification, community/town staff experiences, zoning experience, and longevity/succession.
A motion was made by R. Killeen and seconded by J. Levesque to appoint Travis Fachini to the Building Commissioner position and repost the local inspector position.
Roll Call Vote: J. Levesque – Yes; S. McGrath – Yes; R. Killeen – Yes; M. Biagini – Yes, M. Francesconi – Yes
Motion Passes: 5-0

M. Francesconi noted that Brian Duval filled a need, and his services were very much appreciated. Michelle will draft a letter to Mr. Duval notifying him of the choice and that it was not a simple decision.

3. Unanticipated Business
Community Center Use - Barry Emery reached out regarding the use of the Community Center on September 20, 2021, at 6:30 p.m. for a historical presentation. Conversation ensued about the use of all town buildings and having a central person to schedule events/meetings. After discussion it was decided that the Town Administrator will manage the use of buildings with the Town website calendar.

A driveway permit was received from B&B Construction for property owned by Michael and Sara Brisette on Stafford Hill Road. The Highway Superintendent has approved.
A motion was made by M. Francesconi and seconded by M. Biagini to approve the driveway permit.
Roll Call Vote: J. Levesque – Yes; S. McGrath – Yes; R. Killeen – Yes; M. Biagini – Yes, M. Francesconi – Yes
Motion Passes: 5-0

S. McGrath inquired about an inspection at Stafford Green to ensure that the conditions are being met, J. Morse will send a letter to the property owner regarding a site inspection on September 28, 2021

M. Biagini was approached regarding the flag at the Community Center which has been replaced with a Welcome Flag. Peter Traub stated that the flag had been removed since there was no town wide policy. The board agreed that the American Flag needs to be rehung and asked J. Morse to inquire with the Police Chief if that is something the police could oversee.

M. Biagini asked if the Harbormaster has received the logbooks from the former Harbormaster. J. Morse will follow up.

R. Killeen requested that the Water Department attend the next meeting to discuss upcoming water projects. M. Francesconi updated the board on the meeting last week with Berkshire Engineering, one water commissioner, one member of the Board of Selectmen, the Water Superintendent, Town Administrator and Highway Superintendent regarding Depot Street water and resurfacing project.

4. Adjournment - A motion was made by M. Biagini and seconded by J. Levesque to adjourn the meeting at 8:57 p.m.
Roll Call Vote – All members yes – motion carried.

Respectfully Submitted,
Jennifer Morse
Town Administrator
September 1, 2021

Document List

1. Agenda – August 31, 2021
2. DRAFT – Host Community Agreement

Approved: 9/7/21

Town of Cheshire and
Mass Yield Cultivation

Host Community Agreement

This Host Community Agreement ("Agreement") is entered into this ____day of _____,___("Effective Date") by and between Mass Yield Cultivation with its main office at _____herein referred to as Mass Yield Cultivation and the Town of Cheshire ("Town"), a municipal corporation validly existing under the laws of the Commonwealth of Massachusetts, with a principal base of business at 80 Church Street, Cheshire MA 01225, acting by and through its Board of Selectmen in reliance upon all of the representations made herein.. Collectively, Mass Yield Cultivation and the Town may be referred to as the parties.

WHEREAS, the Company wishes to locate a Tier ____, _____ square foot Marijuana Cultivator for the cultivation, processing and packaging of marijuana, and the delivery of marijuana or transfer of marijuana to other marijuana establishments, but not to consumers, (the "Establishment") at _____ Map ____ lot ___ 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 Town recognizes the Establishment may benefit the Town and its citizens through increased economic development, additional employment opportunities for residents, and a strengthened local tax base; 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 if it receives the requisite licenses from Cannabis Control Commission (the "CCC") or such other state licensing or monitoring authority to operate the Establishment and 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 the Establishment, 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:

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1. Annual Payments

In the event that the Company obtains the requisite licenses and/or approvals as may be required for the operation of the Establishment, and receives any and all necessary and required permits and licenses of the Town, and at the expiration of any final appeal period related thereto, said matter not being appealed further, which permits and/or licenses allow the Company to locate, occupy and operate the Establishment in the Town, then the Company agrees to provide the following Annual Payments:

A. Community Impact Fee

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, and permitting and consulting services, as well as unforeseen impacts on the Town. Accordingly, to mitigate the financial impact on the Town and use of Town resources, the Company agrees to pay an Annual Community Impact Fee to the Town, in the amount and under the terms provided herein.

1. Company shall pay an Annual Community Impact Fee in an amount equal to three percent (3%) of the Gross Sale Price or a minimum of twenty-thousand ($20,000) per year of all marijuana and marijuana-infused products cultivated at the Facility (the "Community Impact Fee"). Gross Sales Price shall be defined as: a) with respect to sales of marijuana or marijuana products sold to third parties unrelated to the Company, the actual wholesale price paid by such parties; and b) with respect to sales of marijuana and marijuana products at Marijuana Retailers owned, operated or affiliated with the Company, the highest unit prices for products wholesaled to third parties in an arms-length transaction during the previous twelve months, calculated separately with respect to: i) flower; and ii) extracted products, as the case may be.

2. The Community Impact Fee shall be made in semiannual installments per the Town's fiscal year (July 1 - June 30). The Community Impact Fee for the first year of operation shall be prorated based on the number of months the Establishment is in operation. The Establishment shall be deemed in operation upon receipt of both an occupancy permit from the Building Commissioner and the issuance of a final license from the Cannabis Control Commission ("Commencement of Operations").

3. The Community Impact Fee shall continue for a period of five (5) years from the date the Establishment commences operations. A minimum of 3 months prior to the conclusion of the five-year term, the parties shall negotiate in good faith the terms of a new 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 Community Impact Fee specified in paragraph 1 of this Agreement shall remain in effect until such time as a successor agreement is reached.

4. The Town shall use the above referenced payments in its sole discretion but shall make a good faith effort to allocate said payments to off-set costs related to road and other infrastructure systems, law enforcement, fire protection services, inspectional services, public

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health, and addiction services and permitting and consulting services, as well as unforeseen impacts upon the Town.

5. Pursuant to M.G.L. c. 94G, §3(d), a "community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment…" 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 accepts, and waives all rights to challenge, contest or appeal the Town's building permit fee 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. Establishment Consulting Fees and Costs: The Company shall reimburse the Town for any and all reasonable third-party consulting costs and fees related to any land use applications concerning the Establishment, negotiation of this and any other related agreements, and any review concerning the Establishment, including planning, engineering, legal and/or environmental professional consultants and any related reasonable disbursements at standard rates charged by the above-referenced consultants in relation to the Establishment that may be required in addition to the Planning Board's review under the Bylaw, for which reimbursement will be required pursuant to G.L. c.44 §53G.

3. Other Costs: The Company shall reimburse the Town for the actual costs incurred by the Town in connection with holding public meetings and forums substantially devoted to discussing the Establishment and/or reviewing the Establishment and for all reasonable consulting costs and fees related to the monitoring and enforcement of the terms of this Agreement, including, but not limited to independent financial auditors and legal fees.

4. Late Payment Penalty: The Company acknowledges that time is of the essence with respect to its timely payment of all funds required under Section 1 of this Agreement. If 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. Community Development and Other Benefits

1. Education???

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2. **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 Establishment when such contractors and suppliers are properly qualified and price competitive and shall use good faith efforts to hire Town residents and make reasonable efforts to utilize women-owned, minority-owned, and veteran-owned vendors within the Town. The Company's annual report to the Board of Selectmen shall include information concerning the number of Cheshire residents employed at the Establishment.

3. **Local Taxes**

At all times during the Term of this Agreement, property, both real and personal, owned or operated by the Company shall be treated as taxable, and all applicable real estate and personal property taxes for that property shall be paid either directly by the Company or by its landlord and neither the Company nor its landlord shall object or otherwise challenge the taxability of such property and shall not seek a non-profit or agricultural exemption or reduction with respect to such taxes.

Notwithstanding the foregoing, (i) if real or personal property owned, leased or operated by the Company is determined to be non-taxable or partially non-taxable, or (ii) if the value of such property is abated with the effect of reducing or eliminating the tax which would otherwise be paid if assessed at fair cash value as defined in G.L. c. 59, §38, or (iii) if the Company is determined to be entitled or subject to exemption with the effect of reducing or eliminating the tax which would otherwise be due if not so exempted, then the Company shall pay to the Town an amount which when added to the taxes, if any, paid on such property, shall be equal to the taxes which would have been payable on such property at fair cash value and at the otherwise applicable tax rate, if there had been no abatement or exemption; this payment shall be in addition to the payment made by the Company under Section 2 of this Agreement.

4. Security

To the extent requested by the Town's Police Department, and subject to the security and architectural review requirements of the CCC, or such other state licensing or monitoring authority 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 Establishment and with regard to any anti-diversion procedures to ensure that marijuana and marijuana products are not being transferred to the illegal market or to minors.

To the extent requested by the Town's Police Department, the Company shall work with the Police Department to implement a comprehensive diversion prevention plan to prevent diversion of marijuana

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and marijuana products to the illegal market or to minors, such plan to be in place prior to the commencement of operations at the Establishment. The Company shall promptly report the discovery of the following to Town Police within 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 occur during transport; any suspicious act involving the sale, cultivation, distribution, processing, or production of marijuana by any person; unauthorized destruction of marijuana; any loss or unauthorized alteration of records related to marijuana, registered qualifying patients, personal caregivers, or dispensary agents; an alarm activation or other event 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.

5**. Additional Obligations**

A. Permitting

The obligations of the Company and the Town recited herein are specifically contingent upon the Company obtaining a license for operation of the Establishment in the Town, and the Company's receipt of all necessary local approvals to locate, occupy, and operate the Establishment in the Town.

B. Retained Authority of the Municipality

This agreement does not affect, limit, or control the authority of the 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 hereby required, or obligated to issue such permits and approvals as may be necessary for the Establishment to operate in the Town, or to refrain from enforcement action against the Company and/or the Establishment for violation of the terms of said permits and approvals or said statutes, Bylaws, and regulations.

C. Annual Inspections

The Company agrees that it will voluntarily submit to a minimum of one annual inspections by the Police, Fire and Building Departments to ensure compliance with the terms of this Agreement and other local approvals. These provisions shall not preclude the municipality or any of its departments from conducting inspections at other times during the year to address enforcement matters.

D. Improvements to the Property

The Company shall make capital improvements to the property such that the property will match the look and feel of the Town and the surrounding parcels and be of construction standards at least at the quality of other nearby businesses.

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6. Municipal Support

The Town agrees to submit to the CCC, or such other state licensing or monitoring authority, as the case may be, the required certifications relating to the Company's application for a license to operate the Establishment where such compliance has been properly met, but makes no representation or promise that it will act on any other license or permit request, including, but not limited to any zoning application submitted for the Establishment, in any particular way other than by the Town's normal and regular course of conduct and in accordance with its rules and regulations and any statutory guidelines governing them.

7. Term

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

In the event the Company has not secured a final License from the CCC and all necessary local permits from the Town for both the adult use and medical marijuana operations and commenced both adult use and medical marijuana operations at the Facility within two years from the date this Agreement takes effect, this Agreement shall expire, and the Company shall be required to negotiate a new Host Community Agreement to operate the Facility within the Town. The Board of Selectmen, in its discretion, may agree to an extension of one-year expiration, for good cause, which shall include the time required to pursue or await the determination of an appeal of the special permit or other legal proceeding.

8. 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.

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.

9. Severability

If any term of 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

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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.

10. 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.

11. Entire Agreement

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the Company and the Town with respect to the matters described herein. This Agreement supersedes all prior agreements, negotiations, and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

12. 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 all signatories to the original Agreement, prior to the effective date of the amendment.

13. 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.

14. 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.

15. Signatures

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

16. No Joint Venture

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

17. Nullity

This Agreement shall be null and void if the Company does not locate the Establishment in the Town or relocates the Establishment out of the Town. Further, in the case of any relocation out of the Town, the Company agrees that an adjustment of Annual Payments due to the Town hereunder shall be calculated

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based upon the period of occupation of the Establishment within the Town, but in no event shall the Town be responsible for the return of any funds provided to it by the Company.

18. Indemnification

The Company shall indemnify, defend, and hold the Town harmless from and against 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 Property and/or Establishment. Such indemnification shall include, but shall not be limited to, all reasonable fees and reasonable costs of attorneys and other reasonable consultant fees and all fees and costs (including but not limited to attorneys and consultant fees and costs) shall be at charged at regular and customary municipal rates, of the Town's choosing, incurred in defending such claims, actions, proceedings or demands. The Company agrees, within thirty (30) days of written notice by the Town, to reimburse the Town for all costs and fees incurred in defending itself with respect to any such claim, action, proceeding or demand.

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