

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is entered into this 23 day of November 2021 (the "**Effective Date**"), by and between the Town of Heath, a Massachusetts municipal corporation with a principal address of 1 East Main Street, Heath, MA 01346, acting by and through its Select Board in reliance upon all of the representations made herein (the "**Town**"), and 11 Bellow, LLC, a Massachusetts limited liability corporation with a principal office address of 1615 S. Telegraph Rd., Bloomfield Hills, MI 48302 (the "**Developer**") (collectively, the "**Parties**").

RECITALS

WHEREAS, the **Developer** wishes to locate, construct and operate a commercial facility on a 55 acre parcel of land known as 11 Bellow Road, Heath, MA 01346, more accurately described by the deed recorded with the Franklin/Hampshire County Registry of Deeds Book 6625, Page 346, and on Map 207 and numbered Lots 35 and 40 in the Assessor's database (the "**Property**");

WHEREAS, the **Developer** wishes to lease between 479,160 and 566,280 square feet of space on the **Property** within which various licensed operators shall be given the opportunity to lease space solely for the cultivation, manufacturing, processing and related transportation of marijuana and marijuana products outdoors and in an approximately 2,300 foot barn structure (the specified outdoor space and barn structure, collectively, the "**Facility**"); and

WHEREAS, the **Developer** will hold title to the **Property** and the **Facility** and will lease to Alchemy Cannabis, Inc., a Massachusetts corporation, with a principal office address of 1615 S. Telegraph Rd., Bloomfield Hills, Michigan 48302 ("**Alchemy**"), and other licensed operators (collectively, the "**Operators**") space in the **Facility** and on the **Property** in which those licensed operators will locate and operate cultivation and/or manufacturing establishments, each with up to 100,000 square feet of marijuana cultivation canopy, together with ancillary cultivation, processing, manufacturing, storage and administrative space for adult use and/or medical purposes, pursuant to 935 CMR 500.000, et seq. and 935 CMR 501.000, et seq.; and

WHEREAS, the **Operators** will require host community agreements from the Town to obtain licenses from the Massachusetts Cannabis Control Commission (the "**CCC**") to cultivate, process, manufacture and transport marijuana for adult use and/or medical purposes; and

WHEREAS, the **Developer** intends to provide certain benefits to the Town in the event that it receives the requisite permits and approvals from the Town to operate the **Facility**.

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 **Parties** agree as follows:

1. Recitals

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

2. Local Permitting

The Developer agrees that it shall apply for, and must receive, all necessary permits and approvals pursuant to applicable bylaws, statutes. In accordance with the procedures set forth in G.L. c.44, §53G, any Town board or official from whom the Developer requires a permit or approval may require the Developer to fund the reasonable costs of such board's or official's employment of outside consultants, including without limitation, engineers, architects, scientists and attorneys.

2. Development Agreement Payments to the Town

In the event that the **Developer** obtains all permits and approvals to construct the **Facility** and **Alchemy** or any other **Operator** obtains the requisite license(s) and/or approvals as may be required for the operation of one (1) or more cultivation or manufacturing operation at the **Facility** in the **Town**, then the **Developer** agrees to provide the following payments to the **Town**:

- A. **Permit and Connection Fees:** The **Developer** shall pay any and all fees associated with the local permitting of the **Facility**. If the **Town** receives other payments from the **Developer**, or from the Department of Revenue or any other source, the funds which have been collected by assessment against the **Developer**, 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 the **Developer** to the **Town** under the terms of this **Agreement** shall not be reduced by the amount of such other payments. The **Developer** hereby acknowledges and accepts, and waives all right to challenge, contest or appeal, the **Town's** standard building permit and other permit application fees, and all other local charges and fees generally applicable and uniformly assessed to other commercial developments in the **Town**.
- B. **Facility Consulting Fees and Costs:** The **Developer** shall reimburse the **Town** for any and all reasonable consulting costs and fees related to the development of the **Facility** (including but not limited to special permit, site plan and zone change applications), negotiation of this and any other related agreements, and any review concerning the **Facility**, including planning, engineering, legal and/or environmental professional consultants and any related reasonable disbursements at standard municipal rates charged by the above-referenced consultants in relation to the **Facility**. Such fees and costs shall be pre-funded upon request by the **Town** where such upfront fees and costs are typically requested by the **Town** in the normal course or reimbursed within fourteen (14) days following request by the **Town**, which shall provide reasonable documentation of the expense but shall not be required to provide privileged attorney client materials.

- C. Legal Fees and Costs: Any documented **Town** legal fees and costs associated with the Facility, including the cost to negotiate this **Agreement**, shall be reimbursed to the Town by the **Developer** within thirty (30) days of the **Town's** request for the same.
- D. Other Costs: The **Developer** shall reimburse the **Town** for the reasonable costs incurred to third parties by the **Town** in connection with holding public meetings and forums substantially devoted to discussing the Facility and/or reviewing the **Facility**; provided however, that such costs shall be pro-rated where applicable.
- E. Late Payment Penalty: The **Developer** acknowledges that time is of the essence with respect to performance of its obligations hereunder and that any late payments shall be subject to interest at the rates prescribed by G.L. c. 59, §57, which interest shall not begin to accrue until five (5) business days following notice by the **Town** of non-payment and failure to cure.
- F. Town's Obligations: In consideration of the foregoing, the Town shall, within the later of seven days (7) days after written request by the **Developer** or fourteen (14) business days subsequent to next regularly scheduled meeting of the Select Board execute and deliver: (a) a Host Community Agreement Certification Form and (c) a Host Community Agreement, in the form attached hereto as Exhibit A for no more than four **Operators**, which shall provide that each of the four (4) Licensed Marijuana Establishments shall pay a community impact fee to the Town in an amount equal to one and one-half percent (1.5%) of the gross sales as defined therein, in accordance with then applicable law and regulations, and in no event shall the community impact fee exceed Seventy-Five Thousand and No/100 Dollar (\$75,000.00) annually per licensee (the "**Community Impact Fee**"); provided however, that the Town's obligations to execute said host community agreements shall lapse after one (1) year from the Effective Date of this Agreement and provided further, that if Developer seeks to lease the Property to any Operator(s) after said year and/or expand operations at the Property, such that the Developer will have more than four (4) Operators, it shall be required to negotiate an amendment to this Agreement to allow for the for the use of the Property for more than four (4) Operators and/or the issuance of any host community agreement(s) one year after the Effective Date of this Agreement. There shall be no restrictions regarding the proximity of any **Operator's** leased space to another **Operator's** leased space used for outdoor cultivation; provided, however, that each such leased space shall in all manners adhere to the local bylaws, rules and regulations of the Town, as well as the requirements of the Town's permit granting authorities, statutes of the Commonwealth of Massachusetts and the rules promulgated by the CCC. A security fence surrounding the perimeter of all leased space on the **Property** shall be installed in satisfaction of applicable CCC rules. For the avoidance of doubt, "the perimeter of all leased space" shall be read to mean all leased space in the aggregate and not each individual leased space.

3. Local Hiring and Vendors

To the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the **Developer** shall make commercially reasonable efforts in a legal and non-discriminatory manner to give priority to **Town** businesses, suppliers, contractors, builders and vendors located in the **Town** in the provision of goods and services called for in the construction, maintenance and continued operation of the **Facility**. Such efforts shall include actively soliciting bids from **Town** vendors through local advertisements and direct contact, advertising any job expansion or hiring of new employees first to **Town** residents a minimum of two (2) weeks before advertising through all typical regional employment advertising outlets and such other reasonable measures as the **Town** may from time to time reasonably request. The **Developer** also agrees to make commercially reasonable efforts to utilize women-owned and minority-owned businesses within the **Town** and the region.

4. Improvements to the Property

The **Developer** shall make capital improvements to the **Facility** and the **Property** such that they 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, to the maximum extent possible. The **Developer** shall comply with all laws, rules, regulations and orders applicable to 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 such work, including all costs thereof.

5. Security

The **Developer** shall cooperate with the **Town's** Police Department, including but not limited to participation in periodic meetings, to review operational concerns, security, cooperation in investigations, and communications with the Police Department of any suspicious activities at or in the immediate vicinity of the **Facility**, and regarding any anti-diversion procedures.

6. On-site Consumption

The **Developer** agrees that, even if permitted by statute or regulation, it shall prohibit on-site consumption of marijuana and marijuana-infused products at the **Facility** and on the **Property**.

7. Lighting

The **Developer** shall use, and shall ensure that all **Operators** use, lighting practices at the **Facility** and on the **Property** to reduce light pollution and that minimize the impact on maintaining a 'dark sky', by using best practices for outdoor lighting such as shielding lights and directing them down, selecting lamps with warmer colors, using less light and only where necessary, and shielding any indoor lighting after sunset and before sunrise.

8. Water Consumption

The **Developer** shall install water meters at the **Facility** and/or on the **Property**, conduct regular water audits to determine the amount and location of water use, and develop and implement a water savings strategy. Upon request from the **Town**, the **Developer** shall report to the Select Board on water usage at the **Facility**.

9. Odor Control Technology

The **Developer** shall take reasonable steps to mitigate odor from the **Facility** and **Property** so as to not constitute a public nuisance, in the opinion of the Select Board and the Board of Health. At a minimum, the **Developer** shall use odor control technologies, including, but not limited to, lavender plants, buffer trees, and misting technologies. In addition, the **Developer** shall use charcoal scrubbers to remove odors and harmful volatile organic compounds from any indoor structures on the **Facility** and **Property** used for the cultivation, manufacturing and processing of marijuana. The **Developer** shall maintain all odor mitigation equipment to ensure maximum efficiency. Further, the **Developer** shall not permit any marijuana to be stored, planted, processed, and/or manufactured at the **Property** and **Facility** until an odor mitigation plan has been presented to and approved by the Select Board.

Complaints received by the **Town** concerning odors that are, in the opinion of the Select Board and/or the Board of Health, detectable from an abutting property or public rights of way shall be addressed thoroughly and expediently by the **Developer** upon notice to the **Developer** of the same. In the event that the **Town** receives five (5) or more complaints with respect to odor impacts in relation to the operation of the **Facility** and/or **Property**, the **Developer** shall be required to meet with the Select Board upon request of the Select Board, which may require that additional mitigation measures be taken, at the **Developer's** sole expense, as reasonably necessary to address the specific nature of the complaints, including, but not limited to, having odor prevention mechanisms and technologies reviewed and assessed by an independent engineer, to address the specific nature of the complaints to the satisfaction of the Select Board and/or the Board of Health. The **Developer** shall have sixty (60) days to implement any additional mitigation measures to the satisfaction of the Select Board. Further, the **Developer** shall ensure that all marijuana operations at the **Property** cease if odor mitigation is not addressed to the satisfaction of the **Town** within said sixty (60) days.

Nothing set forth herein, shall limit the authority or jurisdiction of the Building Inspector, Board of Health, or any other local enforcement official from enforcing applicable state laws and regulations, and the **Town's** local bylaws and regulations, with respect to odor violations.

10. Municipal Support

The **Town** agrees to submit to the CCC, or such other licensing or monitoring authority, as the case may be, required certifications and/or approvals relating to the **Developer's** or **Operator's** operation of the **Facility** where such compliance has been properly undertaken, but makes no representation or promise that it will act on any 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's** normal and regular course of conduct and in accordance with its bylaws, rules, and regulations and any statutory guidelines governing them.

11. Term and Termination

This **Agreement** shall take effect on the **Effective Date** set forth above and shall remain in effect as long as the **Developer**, or any related or successor entity(s), permits one or more marijuana establishment to operate at the **Facility** or the **Property**.

The **Town** may terminate this **Agreement** for cause by providing written notice to the **Developer** in the event that: (i) the **Developer** willfully or negligently violates any laws of the **Town** or the Commonwealth with respect to the operation of the **Facility** and/or **Property**, and such violation remains uncured for thirty (30) days following the **Town's** issuance to **Developer** of written notice of such violation; (ii) the **Developer** fails to make payments to the **Town** as required under this **Agreement**, and such failure remains uncured for ten (10) days following the **Town's** issuance to the **Developer** of written notice of such violation; (iii) the **Developer** fails to satisfactorily address odor issues to the satisfaction of the Select Board within sixty (60) days as set forth in Section 9; or (iv) there is any other material breach of the **Agreement** by the **Developer**, which material breach remains uncured for thirty (30) days following the **Town's** issuance to **Developer** of written notice of such violation.

In the event of termination of this **Agreement**, the **Developer** shall immediately cease all operations at the **Facility** and the **Property** within thirty (30) days of notice from the **Town**.

12. Nullity

In the event the **Facility** and the **Property** are no longer used for the cultivation or manufacturing of medical or adult use marijuana, this **Agreement** shall terminate within thirty (30) days' of written notice by the **Town** to the **Developer**; provided, however, that the **Developer** shall be responsible for any payments due under Section 2 of this **Agreement**, but in no event shall the **Town** be responsible for the return of any funds provided to it by the **Developer**.

13. Local Taxes

At all times during the term of this **Agreement**, property, both real and personal, shall be treated as taxable as is other property in **Town**, and all applicable real estate and personal property taxes for that property shall be paid directly by the **Developer**; provided however, that the **Developer** shall not 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 **Developer** 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 **Developer** 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 **Developer** 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 **Developer** under Section 2 of this **Agreement**.

14. No Off-Set Payments

If the **Town** receives additional payments from the **Developer**, the **Operators**, or from the Department of Revenue or any other source, the funds for which have been collected by assessment against the **Developer**, 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 the **Developer** to the **Town** under the terms of this **Agreement** shall not be reduced thereby.

15. Assignment/Change in Corporate Structure

The **Developer** shall not assign, sublet or otherwise transfer or its rights nor delegate its obligations under this **Agreement**, in whole or in part, without the prior written consent of the **Town**, which consent shall not be unreasonably withheld, conditioned or delayed, and shall not assign any of the moneys payable under this **Agreement**, except by and with the prior written consent of the **Town**.

Events deemed an assignment include, without limitation: (i) the **Developer's** final and adjudicated bankruptcy whether voluntary or involuntary; (ii) the **Developer's** takeover or merger by or with any other entity; (iii) the **Developer's** outright sale of assets and equity, majority stock sale to another organization or entity for which the **Developer** does not maintain a controlling equity interest; (iv) or any other material change in ownership or status of the **Developer**; (v) any assignment for the benefit of creditors; and/or (vi) any other assignment not approved in advance in writing by the **Town**.

16. Successors/Change in Control

This **Agreement** is binding upon the **Parties** hereto, their successors, assigns and legal representatives. Subject to Section 15, neither the **Town** nor the **Developer** shall assign or transfer any interest in the **Agreement** or control of the **Facility** or **Property** without the written consent of the other; provided, however, that such consent shall not be required for an assignment to any entity owner or controlled by the **Developer**.

17. 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 will be effective upon receipt for hand or said delivery and three days after mailing, to the other **Party** at the following addresses:

To Town:

Attn: Town Coordinator
Town Hall
1 East Main Street
Heath, MA 01346

Copy to:

Town Counsel
KP Law, PC
101 Arch Street
12th Floor
Boston, MA 02110

To Developer:

Attn: Gregory Yatooma
11 Bellor, LLC
1615 S. Telegraph Rd.
Bloomfield Hills, MI 48302

Copy to:

Fleming Yatooma & Borowicz, PLC
Attn: Mark R. James
1615 S. Telegraph Rd.
Bloomfield Hills, MI 48302

18. Severability

If any term or condition of this **Agreement** or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this **Agreement** shall not be deemed affected thereby unless the Town would be substantially or materially prejudiced. The **Developer** agrees 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, the **Developer** shall pay for all reasonable fees and costs incurred by the **Town** in defending such challenge.

19. Governing Law

The **Parties** agree that this **Agreement** shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, and the **Developer** submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this **Agreement**

20. Entire Agreement

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.

21. Retention of Regulatory Authority

Except as specifically provided for herein, this **Agreement** does not affect, limit or control the authority of the **Town**, its boards, commissions, or department 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 a department or to enforce said statutes, bylaws, and regulations. Except as specifically provided for herein, the **Town** by entering into this **Agreement** is not thereby required or obligated to issue such permits and approvals as may be necessary for the **Facility** to operate in the **Town** or to refrain from enforcement action for violation of the terms of said permits, approvals or statutes, bylaws and regulations. Except as specifically provided for herein, the **Facility** and **Property** remain subject to all applicable general and special state and local laws, bylaws, building, fire and other codes, rules and regulations, and no provision of this **Agreement** shall relieve the **Developer** of any obligations it might have thereunder.

22. Indemnification

Excluding any Claims (as herein defined) caused by the gross negligence or willful misconduct of the **Town**, the **Developer** 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 (collectively, the "**Claims**"), brought against the **Town**, its agents, departments, officials, employees, insurers and/or successors, by any third party arising from or relating to the **Property** and/or **Facility**. Such indemnification shall include, but shall not be limited to, all reasonable fees and reasonable costs of attorneys and consultants of the **Town's** choosing incurred in defending such **Claims**. The **Developer** 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 **Claims**.

23. 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.

24. 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**.

25. 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.

26. Signatures

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

27. 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 **Developer**, or the **Town** and any other successor, affiliate or corporate entity as joint ventures or partners.

28. 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 **Developer**.

29. Representation of Authority

The **Developer** represents and warrants that it 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) does not conflict with, or constitute a default under, any agreement or instrument to which the **Developer** is a party or by which the **Developer** may be bound or affected.

Each person signing this **Agreement** hereby represents and warrants that they have the full authority and are duly authorized and empowered to execute this **Agreement** on behalf of the party for which they sign.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the **Parties** have executed this **Agreement** under seal as of the day and year first above written.

TOWN OF HEATH,

11 BELLOR, LLC,

Bolton Dufour
By Its Select Board

Brian DeWine
Susan Lively

By: [Signature]
Title: Attorney at Law

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