

RECEIVED  
TOWN CLERK  
TOWN OF AYER

2017 AUG 11 AM 8:42

Town of Ayer  
Board of Selectmen  
Ayer Town Hall – 1<sup>st</sup> Floor Meeting Room  
Ayer, MA 01432



*Susan E. Copeland*

Tuesday August 15, 2017  
Open Meeting Agenda

7:00 PM

Call to Order

Pledge of Allegiance; Review and Approve Agenda; Review of Warrant(s);  
Announcements

7:05 PM\*

Public Input

Appointment of Administrative Coordinator

7:10 PM

Chief William A. Murray

1. Appointment of Part-Time Dispatcher
2. Appointment of Special Police Officer

7:15 PM

Ms. Alicia Hersey, CDBG Program Director

1. FY '15 CDBG – CDF1 Grant

7:20 PM

Alan Manoian, Dir. Community & Economic Development

1. 1934 Historic Fire Station Purchase and Sales Agreement
2. Presentation of Special Tax Assessment Agreement - 114 East Main Street/14 Sandy Pond

7:50 PM

Superintendent Mark Wetzel, Dept. of Public Works

1. Central Avenue Heavy Commercial Vehicle Exclusion Study
2. Ayer Solar East (Landfill) Lease
3. Update on Parking Management Study and Recommendation
4. Streetlight Light Design Update

8:20 PM

Town Administrator's Report

1. Administrative Update
2. Opening of Special Fall Town Meeting Warrant
3. Retail Marijuana Update
4. Proposed Government Reorganization Discussion
5. Amendment #3 Agreement with Mass Development Veteran's Services

9:00 PM

New Business/Selectmen's Questions

8:00 PM

Approval of Meeting Minutes

July 18, 2017

\*\*Adjournment

*\*Agenda times are for planning purposes only and do not necessarily constitute exact times*



# HEATHER HAMPSON

**OBJECTIVE**

To obtain an administrative position within municipal government.

**APPOINTMENTS  
EDUCATION**

Notary Public

2002-2004

**Mount Wachusett Community College**  
• A.S., Liberal Arts & Sciences

**Gardner, MA**

**Experience**

September 2014 – Present

**Town of Lancaster** **Lancaster, MA**  
**OFFICE OF COMMUNITY DEVELOPMENT AND PLANNING – OFFICE MANAGER**

- Draft and post agendas and public hearing notices
- Attend all meeting for Board of Appeals, Conservation, Planning and Board of Health
- Draft minutes and all correspondence for meetings
- Draft decision, site plan approvals and Stormwater permits
- Maintain files
- Weekly turnover
- Biweekly warrants
- Answer inquiries regarding zoning and permitting
- Answer phones
- Maintain permit logs for Building Department
- Prepare Boards meeting packets

April 2014 – September 2014

**Town of Maynard** **Maynard, MA**  
**OFFICE OF MUNICIPAL SERVICES - CLERK**

- Answer phones
- Maintain permitting Department files
- Maintain permit logs
- Complete department turnovers
- Assist residents and applicants with questions
- Accept all permitting applications and distribute as needed
- Complete mailings for Zoning Board of Appeals Hearings

November 2011- April 2014

**Town of Shirley** **Shirley MA**  
**ZONING BOARD OF APPEALS - CLERK**

- Draft and post agendas and public hearings
- Take minutes at all public hearings
- Schedule public hearings
- Draft decisions
- Maintain and organize all files
- Answer all inquiries regarding zoning applications
- Accept all incoming Special Permits and Variance Request
- Prepare meeting packets

**Town of Littleton  
CONSERVATION COMMISSION - ADMINISTRATOR**

- **Draft and post agendas**
- Take minutes at bimonthly meetings
- Schedule public hearings
- Go out on site inspections
- Issue and file Orders of Conditions, Request for Determinations and other DEP mandated permits.
- Assist town residents and engineers with understanding local wetland by-laws and government wetland laws.
- Handle all accounts receivable and accounts payable for the Department
- Draft yearly budget
- Maintain and organize all files and permits
- Prepare meeting packets

2005 – January 2008

**Atlas Copco Compressors, LLC  
INSIDE SALES ADMINISTRATIVE ASSISTANT / ACCOUNTS  
PAYABLE**

Ayer, MA

- Provide senior-level administrative support to the Inside Sales team
- Processed all New Customer Credit applications
- Field all incoming Sales calls
- Prepared customer proposals
- Handle and dispense information of a confidential nature
- Process all accounts payable/receivable, general ledger, journal entries, account reconciliation
- Readiness to perform other assignments as requested.
- Work independently on complex projects with a minimum amount of supervision
- Perform all administrative functions
- Well organized

**SKILLS**

Windows	MS Outlook 2010	Internet	Notary Public
MS PowerPoint 2010	MS Word 2010	MACC Fundamentals	
MS Excel 2010	Knowledge of Mass Wetlands	Certified	
Knowledge of Open Meeting Law	Protection Act	Extensive knowledge of Mass Open Meeting Laws	



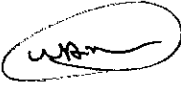
# AYER POLICE DEPARTMENT

54 Park Street · Ayer, Massachusetts 01432-1161  
Tel. (978) 772-8200 · Fax (978) 772-8202



William A. Murray  
Chief of Police

## MEMORANDUM

**To:** Board of Selectmen  
**From:** Chief William A. Murray   
**CC:** TA Pontbriand, file  
**Date:** August 2, 2017  
**Re:** Goldsmith PT Dispatcher Appointment

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I am requesting that the Board of Selectmen appoint **Elizabeth Goldsmith** as a Part-time Dispatcher effective immediately. This appointment will fill the vacancy left by the resignation of the previous part timer this past June.

Elizabeth is a long time resident of Harvard and graduated from the Bromfield School there. She has been dispatching police/fire/ems since 2012 and has all of the required certifications as a 911/EMD Dispatcher. She also has extensive experience with our CAD software and with the PowerPhone protocols on EMD, the vendor we use. Additionally, she is already certified in the NexGen 911, none of our current Dispatchers are but soon will be, and will be set when we transition to this new protocol in October. I recently received high praise from the Chief's in Shirley for Elizabeth's work ethic and professionalism.

# Town of Ayer

## Department of Planning & Development

Town Hall ♦ One Main Street ♦ Ayer, MA 01432 ♦ 978-772-8221 ♦ 978-772-8208 (fax)



### MEMORANDUM

TO: Board of Selectmen

FROM: Alan Manoian, Community and Economic Development Director  
Alicia Hersey, Program Manager

DATE: August 3, 2017

RE: BOS Approval of Chairman's Signature for Documents for  
FY15 CDBG - CDF1 Grant

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The Office of Community Development is requesting approval of a budget amendment to our CDBG FY15 grant. We are proposing to move \$14,662.92 from housing rehab to cover outstanding administration bills.

The Housing Rehab portion of the grant had targeted the rehab of 5 units, with a budget of \$101,500. We were able to rehab a total of 9 units using \$86,837.08 of the rehab funds. Our housing rehab specialist had been budgeted for oversight of 5 units. In the end he inspected 10 units and he oversaw the rehab of 9 units. I am proposing to take the remainder of the rehab money and pay the housing rehab specialist for the additional work he did. Beyond that we have some outstanding administrative bills, including our portion of the Town Audit.

Please find attached the CDBG grant amendment form for the approval of the budget amendment.

Alan Manoian  
Alicia Hersey

**Request the Board of Selectmen approve signature by the Chairman on attached documents for FY15 CDBG grant and Budget Amendment.**

## TOWN OF AYER

### HISTORIC 1934 AYER CENTRAL FIRE STATION

#### PURCHASE AND SALE AGREEMENT

1. PARTIES. This Purchase and Sale Agreement (this "Agreement") is entered into by and between the **Town of Ayer**, having an address of 1 Main Street, Ayer, MA 01432, hereinafter called "Seller," and **C. Donell Homes, Inc.**, a Massachusetts corporation, having an address of 106 Lancaster Road, Shirley, MA 01464, hereinafter called "Buyer."

2. PREMISES. Seller agrees to sell, and Buyer agrees to buy, upon the terms hereinafter set forth, a parcel of land, with the building thereon, known as the "Historic 1934 Central Fire Station" (the "Building"), located at 14 Washington Street, in Ayer, Massachusetts, being Assessor's Map 26, Lot 184, and described in deeds recorded with the Middlesex South District Registry of Deeds in Book 804, Page 511; Book 804, Page 513 and Book 804, Page 514.

3. BUILDINGS, STRUCTURES, IMPROVEMENTS. Included in the sale as a part of the Premises are the Building and fixtures belonging to Seller and used in connection therewith.

4. TITLE DEED. Said Premises are to be conveyed by a quitclaim deed running to Buyer, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except:

- (a) Provisions of existing building and zoning laws;
- (b) Existing rights and obligations in party walls which are not the subject of written agreement;
- (c) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
- (d) Any liens for municipal betterments assessed after the date of the closing;
- (e) Easements, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the use of the Premises for seven one-bedroom and one two-bedroom residential units;
- (f) A Land Development Agreement, in substantially the same form as the document attached hereto as Exhibit A, and further described at Paragraph 20 hereof, including the obligation of the Buyer to preserve the cupola, stepped gables and slate roof of the Building in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and to preserve the remainder of the exterior of the Building as it exists upon rehabilitation in accordance with approved plans and specifications; and
- (g) A DHCD Regulatory Agreement for rental projects for the affordable housing unit to be created at the Premises, by and among the Department of Housing and Community Development, the Seller and the Buyer.

5. PLANS. If said deed refers to a plan necessary to be recorded therewith, Buyer shall, at its sole cost and expense, prepare a survey plan in form adequate for recording or registration.

6. PURCHASE PRICE. The agreed purchase price for said Premises is Fifty Thousand and 00/100 Dollars (\$50,000.00), of which:

\$	5,000.00	has been paid by Buyer on this date, and shall be the deposit under this Agreement; and
\$	45,000.00	is to be paid on the closing date by certified, bank or attorney IOLTA check, or by wire transfer, at Seller's election.
\$	50,000.00	TOTAL

7. TIME FOR PERFORMANCE, DELIVERY OF DEED. Such deed is to be delivered at 11:00 o'clock a.m. at the office of Buyer's counsel, unless otherwise agreed upon in writing, within thirty (30) days of satisfaction of the contingencies set forth at Paragraph 21 hereof, but in no event later than December 31, 2017. It is agreed that time is of the essence of this Agreement.

8. POSSESSION AND DELIVERY OF PREMISES. Full possession of said Premises free of all tenants and occupants is to be delivered at the time of the delivery of the deed, said Premises to be then (a) in the same condition as they now are, reasonable use and wear thereof and minor damage by casualty excepted, and (b) in compliance with provisions of any instrument referred to in Paragraph 4 hereof. Buyer shall be entitled, within sixty (60) days from the date of this Agreement (the "Due Diligence Period"), to inspect said Premises and to conduct such investigations as are necessary, to determine whether the condition thereof complies with the terms of this Paragraph. For purposes of this paragraph, "minor" shall be defined as any nonstructural damage in an aggregate amount of less than Five Thousand (\$5,000.00) Dollars.

9. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM. If Seller shall be unable to give title or to make conveyance, or to deliver possession of the Premises in accordance with Paragraph 8 above, all as herein stipulated, or if at the time of the delivery of the deed the Premises do not conform with the provisions hereof, then any payments made under this Agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto, unless Seller elects, in its sole discretion, to use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the Premises conform to the provisions hereof, as the case may be, in which event Seller shall give written notice thereof to Buyer at or before the time for performance hereunder, in which case the closing shall be extended for an additional sixty (60) days. In no event, however, shall reasonable efforts require Seller to expend more than \$1,000.00 to make the Premises so conform to the provisions hereof, including attorneys' fees.

10. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM. If at the expiration of the extended time Seller shall have failed so to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, then any

payments made under this Agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto.

11. BUYER'S ELECTION TO ACCEPT TITLE. Buyer shall have the election, at either the original or any extended time for performance, to accept such title as Seller can deliver to the said Premises in their then condition and to pay therefore the purchase price, without deduction, in which case Seller shall convey such title.

12. ACCEPTANCE OF DEED. The acceptance and recording of a deed by Buyer shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.

13. INSURANCE. Until the delivery and recording of the deed, Seller shall maintain insurance on the Premises as presently insured and all risk of loss shall remain with the Seller.

14. ADJUSTMENTS. A payment in lieu of taxes shall be paid in accordance with G.L. c.44, §63A, as of the day of performance of this Agreement and the net amount thereof shall be added to the purchase price payable by Buyer at the time of delivery of the deed. Charges for water, sewer, electricity, gas, telephone, fuel, and other utilities shall be adjusted as of the day of closing

15. DEPOSIT. All deposits made hereunder shall be held in escrow by the Treasurer of the Town of Ayer as escrow agent, in a non-interest bearing account, subject to the terms of this Agreement and shall be duly accounted for at the time for performance of this Agreement. In the event of any disagreement between the parties, the escrow agent may retain all deposits made under this Agreement pending instructions mutually given by Seller and Buyer.

16. BUYER'S DEFAULT; DAMAGES. If Buyer shall fail to fulfill Buyer's agreements herein, all deposits made hereunder by Buyer shall be retained by Seller as Seller's sole and exclusive remedy at law and equity for Buyer's breach of this Agreement. The parties acknowledge and agree that the Seller has no adequate remedy in the event of Buyer's default under this Agreement because it is impossible to compute exactly what damages would accrue to Seller in such event. Therefore, the parties have taken these facts into account in setting the amount of the deposit hereunder and hereby agree that: (i) the deposit hereunder is the best estimate of such damages which would accrue to Seller in the event of Buyer's default hereunder, (ii) said deposit represents damages and not a penalty against Buyer, and (iii) the parties have had the benefit of counsel with regard to the provisions of this Paragraph.

17. LIABILITY OF SHAREHOLDER, TRUSTEE, FIDUCIARY. If Seller or Buyer executes this Agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither Seller nor Buyer so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.



18. REPRESENTATIONS AND WARRANTIES. Buyer acknowledges that Buyer has not been influenced to enter into this transaction nor has it relied upon any warranties or representations not set forth or incorporated in this Agreement, except for the following additional warranties and representations: NONE.

19. BROKERS. Buyer and Seller each represent and warrant to the other that each has not contacted any real estate broker in connection with this transaction and was not directed to the other as a result of any services or facilities of any real estate broker. Buyer and Seller agree to defend and indemnify the other against and hold the other harmless, to the extent permitted by law, from any claim, loss, damage, costs or liabilities for any brokerage commission or fee which may be asserted against the other by any broker in connection with this transaction. The provisions of this Paragraph shall survive the delivery of the deed.

20. LAND DEVELOPMENT AGREEMENT. Seller shall convey the Premises to Buyer subject to the Land Development Agreement attached hereto as Exhibit A and incorporated herein (the "LDA"), which the parties shall execute at the closing and record immediately after the recording of the deed and prior to any mortgages. Said LDA shall govern the development of the Premises and require, among other things, the following mandatory terms:

- (a) *Construction Obligation:* Buyer shall, at its sole cost and expense, construct (i) 6-8 residential units within the Building, of which one (1) of the units will be Low/Moderate Income (LMI) units, to be leased to individuals/families with an annual income which does not exceed eighty percent (80%) of the Area Median Income adjusted for family size as determined by the U.S. Department of Housing and Urban Development ("HUD"), all of which affordable units in the Premises shall be counted on the Town's Subsidized Housing Inventory (the "Project"), if permitted under DHCD rules and regulations. Buyer shall commence construction within sixty (60) days of the recording of the LDA. Buyer shall complete said construction within two (2) years from the date of recording of the LDA or within such extended period as is set forth more particularly in the LDA;
- (b) *Sale or Transfer of Premises:* Buyer shall not convey or transfer the Premises or any portion thereof to any person or entity, except to an entity which is entirely controlled by the principals of Buyer, or to such other person or entity, with the approval of Seller, which approval shall not be unreasonably withheld or delayed, until the Project has been substantially completed.

21. CONTINGENCIES. The obligations of the parties are contingent upon the satisfaction of each of the following conditions:

- (a) *Disclosure:* Buyer shall have complied with the disclosure provisions of G.L. c.7C, §38, and Seller and Buyer agree to diligently pursue full compliance with said statute. Seller shall prepare and file all required statements;

- (b) *Financing*: Buyer shall have obtained financing sufficient in the reasonable judgment of the Seller for Buyer to design, construct, operate and maintain the Project and other improvements required under the LDA. Buyer shall, within the Due Diligence Period, provide Seller with firm Project financing commitments, including, but not limited to, evidence of Buyer's own funds, public funding commitments, construction loan commitments, and/or permanent loan commitments from institutional or private lenders and/or public or quasi-public entities all on terms and in amounts reasonably satisfactory to Seller. In the event Buyer use its own funds to construct or partially construct the Project, Buyer shall produce documentary evidence, acceptable to Seller, that such funds are available to be used at the Project, and said funds shall be retained in a separate, dedicated account until completion of the Project. Buyer shall, prior to or simultaneously with the execution and delivery of the deed to the Premises, close on Project financing, whereby Buyer shall provide evidence of the receipt of funds from institutional or private lenders and/or, public or quasi-public entities in amounts reasonably satisfactory to Seller, in connection with Buyer's own funds, to complete the Project;
- (c) *Permits and Approvals*: Buyer shall have obtained all permits and approvals necessary to undertake construction of the Project, including, but not limited to, a variance and/or special permit to allow the creation of residential units on the first floor of the Building on the Premises. The period for appeal under each of such permits and approvals shall have expired without appeal by a third party or, if appealed, such appeal shall have been successfully resolved in the reasonable determination of Buyer; and, further, none of such permits and approvals shall have a condition(s) which renders the Project uneconomic. The Seller agrees to execute any and all applications for such permits and approvals as may be required by governmental authorities due to the Seller's ownership of the Premises. In the event, however, that Buyer does not receive a variance and/or special permit to allow the creation of residential units on the first floor of the Building this Agreement shall be null and void, and the Deposit shall be returned, and the parties shall have no further recourse against one another. Seller cannot represent that any permits and approvals will be forthcoming from any board, agency or officer that has a role in reviewing and granting any such permit or approval. Notwithstanding the foregoing, in the event Buyer does not have all such permits and approvals by December 15, 2017, which date may be extended by the parties if the delay is through no fault of the Buyer, either party may declare this Agreement null and void, whereupon the Deposit shall be returned, and the parties shall have no further recourse against one another.
- (d) *Approved Plans and Specifications*: Buyer shall prepare plans and specifications for the construction of the Project and for any work done or improvements made on or to the Premises in connection therewith, showing in detail the location, layout, and the design of the Building, the landscaping, and all other improvements to be constructed on the Premises. Within sixty (60) days from the date of this Agreement, Buyer shall submit the plans and specifications (the "Approved Plans and Specifications") to the Town for its approval, not to be unreasonably withheld. In the event of disapproval, Seller shall give Buyer an itemized statement of reasons for disapproval within thirty

(30) days after the plans and specifications are submitted to Seller. Buyer shall use reasonable efforts to cause the plans and specifications to be appropriately revised as soon as possible after receipt of such notice of disapproval and resubmit the same to Seller for approval pursuant to this Paragraph. Buyer and Seller agree to cooperate reasonably and in good faith with each other to resolve any objections of the other to such items and/or requested modifications by the other. If no response is received from Seller within said thirty (30) day period, the plans and specifications shall be deemed approved by Seller, so long as said notice to Seller sets forth that failure to respond within said thirty (30) day period shall be considered a deemed approval. The approval herein shall conform to the state building code;

- (e) *Environmental Assessment*: Seller shall conduct an environmental inspection of the Premises, at its sole cost and expense. In the event Hazardous Materials are found on the Premises in quantities that must be reported to the Department of Environmental Protection under the provisions of G.L. c. 21E or the regulations thereunder, this Agreement shall be null and void and without recourse to the parties, unless Seller, at Seller's sole option, gives written notice to Buyer within thirty (30) days of said finding gives notice to Buyer of its intention to remediate such contamination and thereafter remediates such Hazardous Materials in compliance with applicable law, with Seller paying all of the costs of remediation. Nothing herein shall require Seller to remediate any contamination on the Premises;
- (f) *LDA*: Buyer and Seller shall execute and record the LDA attached hereto as Exhibit A;
- (g) *Regulatory Agreement*: Buyer and Seller shall execute and record the standard DHCD form of Regulatory Agreement for rental housing for the one (1) affordable unit; and
- (h) *Compliance*: Compliance with any other requirements of the Massachusetts General or Special Laws relative to the sale of property by Seller.

22. HAZARDOUS MATERIALS. Buyer acknowledges that Buyer has not been influenced to enter into this transaction and has not relied upon any warranties or representations not set forth in this Agreement. Buyer is aware of the condition of the Premises, and will accept the Premises "AS IS." Except as set forth in Paragraph 21(e), Buyer acknowledges that Seller has no responsibility for hazardous waste, oil, hazardous material or hazardous substances, as those terms are defined by any applicable law, rule or regulation, including, without limitation, the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M.G. L. c. 21E, the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. (herein collectively referred to as "Hazardous Waste") on, in, under or emitting from the Premises or for any other condition or defect on the Premises. The provisions of this Paragraph shall survive delivery of the deed.

23. ASSIGNMENT. Buyer shall not assign this Agreement or any of its rights hereunder, except to an entity wholly owned or controlled by the principals of Buyer, without the prior written consent of Seller, which consent may be withheld in Seller's discretion.

24. PROPERTY INSPECTION; CONDITION OF PREMISES. Buyer acknowledges and agrees that the Premises are being conveyed in their "AS IS" condition, without any representation or warranty, express or implied, and that Seller shall have no obligation to remove any furnishings, equipment, other personal property or fixtures from the Premises, to clean the Premises or render it broom-clean, or do anything to make the Premises acceptable to Buyer, and that Buyer shall be solely responsible for their removal, at its cost and expense.

25. TITLE INSPECTION. Buyer shall have until the expiration of the Due Diligence Period to examine Seller's title to the Premises and to notify Seller of its objections thereto. Any title matters affecting the Premises as of the expiration of the Due Diligence Period, and not objected to by Buyer by notice given to Seller prior to the expiration of said Due Diligence Period, shall be deemed accepted by Buyer. Nothing herein shall waive Buyer's objections to title matters arising after the expiration of the Due Diligence Period.

26. TITLE OR PRACTICE STANDARDS. Any matter or practice arising under or relating to this Agreement which is the subject of a title standard or a practice standard of the Real Estate Bar Association of Massachusetts at the time for delivery of the deed shall be covered by said title standard or practice standard to the extent applicable. It is understood and agreed by the parties that, without limitation, the Premises shall not be in conformity with the title provisions of this Agreement unless:

- (a) no building, structure or improvement of any kind belonging to any person or entity encroaches upon or under the Premises from other premises;
- (b) title to the Premises is insurable, for the benefit of Buyer, by a title insurance company acceptable to Buyer, in a fee owner's policy of title insurance at normal premium rates, in the American Land Title Association form currently in use;
- (c) all structures and improvements and all means of access to the Premises shall not encroach upon or under any property not within the lot lines of the Premises; and
- (d) the Premises shall abut a public way, duly laid out or accepted as such by the municipality in which the Premises are located, or have the benefit of a valid easement leading to a public way.

27. CLOSING. The deed and other documents required by this Agreement are to be delivered and the Purchase Price paid at the Date and Time of Closing and at the Place of Closing. Unless the Closing takes place at the appropriate Registry of Deeds, all documents and funds are to be delivered in escrow subject to prompt rundown of title and recording, which term shall include registration in the case of registered land.

28. CASUALTY; CONDEMNATION. Notwithstanding anything herein to the contrary, in the event that all or a substantial part of the Premises is damaged or destroyed by fire, vandalism or other casualty (and such fire, vandalism or other casualty is not the result of the negligence of Buyer, or its agents, employees, contractors and invitees), or in the event of a taking of all or substantially all of the Premises by eminent domain by an entity other than Seller, Seller or Buyer, may, at its option, terminate this Agreement, whereupon all deposits made by Buyer under this Agreement shall be returned. "Substantial part" shall be defined as that portion of the Premises which if damaged or taken by eminent domain would materially and adversely affect the use of the Premises for the purposes set forth herein. Notwithstanding the foregoing, Buyer shall have the election to accept the Premises after a fire casualty by paying the Purchase Price and having the insurance proceeds assigned to Buyer, in which event Buyer shall abide by the terms herein except, in the event the Façade is substantially damaged or destroyed, a reproduction of the original Façade shall be constructed.

29. BUYER'S WARRANTIES. Buyer hereby represents and warrants:

- (a) This Agreement and all documents to be executed by Buyer and delivered to Buyer at the closing are, or at the time of the closing will be, duly authorized, executed and delivered by Buyer.
- (b) Buyer hereby acknowledges and agrees that, except for the representations and warranties of Seller expressly set forth in this Agreement, Buyer has not relied upon nor been induced by any representations, warranties, guarantees, promises or statements, whether written or oral, express or implied, or whether made by Seller or any employee or representative of Seller.

30. NOTICE. Any notice required or permitted to be given under this Agreement shall be in writing and signed by the party or the party's attorney or agent and shall be deemed to have been given: (a) when delivered by hand, or (b) when sent by Federal Express or other similar courier service, or (c) when mailed by certified mail, return receipt requested, or (d) upon electronically confirmed receipt of facsimile delivery (provided that such facsimile delivery is promptly followed by one of the other permitted forms of notice contained herein), to the party with a copy to the party's attorney, addressed in the case of:

Seller: Board of Selectmen  
Ayer Town Hall  
1 Main Street  
Attention: Town Administrator  
Ayer, MA 01432  
Telephone: (978) 772-8220  
Facsimile: (978) 772-3017  
E-Mail: [rpontbriand@ayer.ma.us](mailto:rpontbriand@ayer.ma.us)

With a copy to: Katharine Lord Klein, Esq.  
KP Law, P.C  
101 Arch Street  
Boston, MA 02110  
Telephone: (617) 556-0007  
Facsimile: (617) 654-1735  
E-Mail: [kklein@k-plaw.com](mailto:kklein@k-plaw.com)

In the case of Buyer: C. Donell Homes, Inc.  
106 Lancaster Road  
Shirley, MA 01464  
Telephone: (978) 490-6903  
Facsimile:  
E-Mail: [KDonell@sapphireparkmanagement.com](mailto:KDonell@sapphireparkmanagement.com)

With a copy to: Thomas A. Gibbons, Esq.  
21 Park Street  
Ayer, MA 01432  
Telephone: (978) 772-2284  
Facsimile: (978) 772-0802  
E-Mail: [tgibbons@tgibbonslaw.com](mailto:tgibbons@tgibbonslaw.com)

By such notice, either party may notify the other of a new address, in which case such new address shall be employed for all subsequent deliveries and mailings.

32. POST CLOSING COMPLIANCE AND ADJUSTMENTS. If any errors or omissions are found to have occurred in any calculations or figures used in the settlement statement signed by the parties (or would have been included if not for any such error or omission) and notice hereof is given within two months of the date of the delivery of the deed to the party to be charged, then such party agrees to make a payment to correct the error or omission. This provision shall survive delivery of the deed.

33. EXTENSIONS. Buyer and Seller hereby authorize their respective attorneys (as the case may be) to execute on their behalf any extensions to the time for performance and any change of location and/or time for delivery of the deed. Buyer and Seller shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge before the



execution or other consent to such extensions, that either party has disclaimed the authority granted herein to bind them. For purposes of this Agreement, facsimile signatures shall be construed as original.

34. COOPERATION. Seller agrees to use reasonable efforts to assist Buyer in obtaining any and all permits, licenses, easements and other authorizations required by any governmental authorities with respect to any construction or other work to be performed on the Premises, but Buyer acknowledges that Seller has no control over and cannot guarantee that permits required from municipal boards or officers within their statutory or regulatory authority will be granted or fees waived.

35. CONSTRUCTION. This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both Seller and Buyer. If two or more persons are named herein as Buyer their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it.

36. GOVERNING LAW: This Agreement shall be governed exclusively by the provisions of the laws of the Commonwealth of Massachusetts, and any actions, suits or other claims pertaining or relating to this Agreement shall be brought within the courts of Massachusetts.

[Signature Page Follows]

In Witness Whereof, the parties sign this Agreement under seal as of this \_\_\_\_ day of August, 2017.

SELLER:

BUYER:

TOWN OF AYER, by its  
Board of Selectmen

C. DONELL HOMES, INC.

\_\_\_\_\_  
Christopher R. Hillman

By: \_\_\_\_\_  
Name: Conrad Donell  
Title: President and Treasurer

\_\_\_\_\_  
Jannice L. Livingston

\_\_\_\_\_  
Gary J. Luca

588047/AYER/0111

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**EXHIBIT A**

**LAND DEVELOPMENT AGREEMENT**

DRAFT COPY

## LAND DEVELOPMENT AGREEMENT

This Land Development Agreement (this "LDA") is made this \_\_\_ day of \_\_\_\_\_, 2017, by and between the **Town of Ayer**, acting by and through its Board of Selectmen, having an address of 1 Main Street, Ayer, MA 01432 (the "Town"), and **C. Donell Homes, Inc.**, a Massachusetts corporation, having an address of 106 Lancaster Road, Shirley, MA 01464 (the "Developer").

### Recitals

WHEREAS, the Town owned a parcel of land located at 14 Washington Street in Ayer, by deeds recorded with the Middlesex South Registry of Deeds (the "Registry") in Book 804, Page 511; Book 804, Page 513 and Book 804, Page 514 (the "Property");

WHEREAS, the Town issued a Request for Proposals (the "RFP") for a developer to purchase and develop the Property, a copy of which is incorporated herein by reference;

WHEREAS, Developer submitted a proposal dated March 24, 2017 to purchase the Property, a copy of which is incorporated herein by reference (the "Proposal");

WHEREAS, the Town, for consideration of Fifty Thousand Dollars (\$50,000.00) (the "Purchase Price"), which Developer acknowledges is less than the full and fair market value of the Property if unencumbered by this LDA, has conveyed the Property to Developer by a Quitclaim Deed of even date herewith and recorded prior hereto;

WHEREAS, Developer, in partial consideration for the Property, has agreed to rehabilitate and improve the building currently existing on the Property (the "Building"), in accordance with the RFP, the Proposal and a [variance/special permit as set forth in a Notice of Decision of the Ayer Zoning Board of Appeals, dated \_\_\_\_\_, 2017] for multi-family residential use, containing 6-8 residential units (the "Project"); and

WHEREAS, Developer shall, at its sole cost and expense, perform or cause to be performed and supply or cause to be supplied all the work, materials, equipment and supplies necessary or desirable to construct, develop and operate the Project (the "Work").

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein and other good and valuable consideration each to the other paid, receipt of which is hereby acknowledged, the parties hereby agree as follows:

## Agreement

### I. DEFINITIONS

For the purpose of this Agreement, the following terms shall have the meanings, respectively, ascribed to them below:

- (a) "Affordable Unit" shall mean the residential unit to be constructed at the Building and rented to a Low or Moderate Income Tenant.
- (b) "Approved Plans and Specifications" shall mean the plans and specifications attached hereto as Exhibit A depicting and describing the Building and other improvements to be constructed on the Property, which have been approved by the Board of Selectmen.
- (c) "Low or Moderate Income Tenant" shall mean an individual or household earning no more than eighty percent (80%) of the median household income for the area that includes the Town of Ayer, as determined by HUD, adjusted for household size.
- (d) "HUD" shall mean the United States Department of Housing and Urban Development.
- (e) "Project Documents" shall mean this LDA, the Approved Plans and Specifications, the Variance and the Special Permit/Finding of the Zoning Board of Appeals, and any other documents related to the Project, including, but not limited to, the documents required in connection with the Affordable Units.

### II. DEVELOPMENT AGREEMENT

Developer agrees (for itself and any permitted successors to, or assigns of, any interest in the Property or any portion thereof) to develop the Property and undertake the Work as follows:

#### A. Construction Obligations

1. Construction of Project: Developer shall rehabilitate and improve the Building and the Property for the following uses, being the creation of 6-8 residential units, including one affordable unit containing a minimum of 700 square feet of usable space. The Affordable Unit must contain complete living facilities including but not limited to, a stove, kitchen cabinets, plumbing fixtures, all as more fully shown in the Approved Plans and Specifications. Developer's improvements to the Property shall include, without limitation, power-washing of the Building and repointing the brick, as necessary; replacing the fire house doors with new reproduction ornamental doors not for use as an entrance; repairing, replacing and repainting the trim as necessary; replacing all windows as required by the Building Code for energy efficiency; restoring the cupola, the stepped gables and the slate roof on the Building to their original condition; improving and landscaping the grounds at the Property, in accordance with the Approved Plans and Specifications; resurfacing and striping the parking to provide \_\_\_\_\_ on-site parking spaces and conforming new exterior lighting and signage to the architecture prevalent along Main Street. The Building shall be improved and the Work performed in

accordance with the Approved Plans and Specifications. Developer agrees not to make any substantial changes or revisions to the Work as described in the Approved Plans and Specifications during the course of construction without having obtained the Town's prior written approval, which approval shall not be unreasonably withheld. All determinations as to whether a change, revision or alteration is substantial or material shall be made by the Town, acting by and through its Board of Selectmen, and the Town shall have the right to request additional information or reasonable modifications. Within forty-five (45) days of the Town's receipt of a complete plan or written request for approval hereunder, the Town shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted, in which case the Town shall provide Developer with written suggestions for modification or a written explanation for the Town's disapproval. Any failure by the Town to act within forty-five (45) days of receipt of Developer's submission or resubmission of plans or requests shall be deemed to constitute approval by the Town of the plan or request as submitted and to permit Developer to undertake the proposed activity in accordance with the plan or request submitted, so long as the notice to the Town states that failure to respond within forty-five (45) days shall constitute a deemed approval. In the event of disapproval, or requests for modifications or additional information, Developer shall promptly submit reasonable revisions to the Town for approval. Nothing herein shall be deemed to waive Developer's obligations to apply for and comply with any permits governing the Property or the Project.

3. Construction Schedule: Developer shall (a) begin construction of the Project within sixty (60) days from the date of recording of this LDA; and (b) complete the Project in accordance with the terms of this LDA within twenty-four (24) months from the date of recording of this LDA. The Town may extend these deadlines if the Town reasonably determines that Developer has proceeded diligently in its performance, and the Town shall reasonably extend the deadlines for *force majeure* and other events beyond the control of Developer. Developer shall hire, at its expense, an architect who shall be responsible for certifying to the Town, at regular intervals, and before a Certificate of Occupancy can be issued for the renovated Building or any residential unit, that the Work has been done substantially in accordance with the Project Documents.

4. Quality of Work: Developer shall procure all necessary permits before undertaking any Work, and shall cause all the Work to be performed in a good and first-class workmanlike manner, employing new materials of prime quality and in accordance with the Approved Plans and Specifications and all applicable laws, bylaws, codes and regulations.

5. Compliance: Developer shall construct the Project in compliance with all applicable approvals, licenses and permits issued by any federal, state or local governmental authority having jurisdiction thereof.

B. **Financial Obligations**

The Developer has provided evidence of sufficient funds to construct and complete the Project, to the satisfaction of the Town, acting by and through its Board of Selectmen.

C. **Use of Property**

1. **Use and Maintenance; Hazardous Substances:** Developer shall use the Property for the Permitted Uses, and maintain the Property and improvements thereon in good order, condition and repair. Developer represents and warrants to the Town that Developer shall not release or permit any release or threat of release of oil, asbestos, urea formaldehyde foam insulation, nor any other hazardous material, hazardous waste or hazardous substance (hereinafter collectively called "hazardous substances"), as those terms are defined by any applicable law, rule or regulation including without limitation, the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E, the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Sections 9601 et seq., and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sections 6901 et seq., nor generate or permit any hazardous substances to be generated on the Property; nor store or permit any hazardous substances to be stored on the Property; and Developer shall provide the Town with prompt written notice: (a) upon Developer's becoming aware of any release or threat of release of any hazardous substances upon, under or from the Property; (b) upon Developer's receipt of any notice from any federal, state, municipal or other governmental agency or authority in connection with any hazardous substance located upon or under the Property, or emanating from the Property; and (c) upon Developer's obtaining knowledge of the incurring of any expense by any governmental authority in connection with the assessment, containment or removal of any hazardous substances located upon or under the Property or emanating from the Property.

2. **Insurance:** Developer agrees to maintain the following insurance:

- (a) *Type of Insurance:* Developer shall continuously maintain in full force, for the term hereof, a policy of comprehensive casualty, and property damage insurance insuring the Property and all improvements thereto in an amount equal to at least one hundred percent (100%) of the replacement cost thereof. All such insurance shall be in the broadest form of coverage from time to time available in Massachusetts. Developer shall, at a minimum, carry comprehensive public liability insurance in the amount of \$1,000,000.00/occurrence, \$3,000,000.00/aggregate with property damage liability insurance in limits of \$1,000,000.00/occurrence, \$3,000,000.00/aggregate;
- (b) Developer shall submit to the Town evidence of such continuous insurance coverage at Closing on the Property and no less often than annually thereafter;

- (c) *Evidence of Insurance*: All policies shall be so written that the Town shall be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment;
- (d) *Acceptable Insurers*: All insurance required hereunder shall be underwritten with an insurance company or companies with an AM Best Rating of A-1 or better, licensed to write such insurance in the Commonwealth of Massachusetts.

3. Obligation to Restore: In the event that the Property or any part thereof is damaged or destroyed as a result of any fire or other casualty, Developer shall be responsible for the restoration of the Property to the extent of its insurance proceeds, provided, however, that if such damage or destruction is caused as a result of the negligent or willful act or omission of Developer, or of any of its employees or agents, members, lessees, assignees, licensees or invitees, Developer shall be responsible for the full restoration of the damaged or destroyed Property regardless of the cost thereof or the available insurance proceeds.

4. Preservation of the Building. Developer agrees as follows:

- (a) Developer shall rehabilitate, maintain, and preserve the historical and architectural features of the cupola, stepped gables and slate roof at the Building (the "Preserved Features") in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings (36 CFR 67 and 68), as these may be amended from time to time;
- (b) Developer shall rehabilitate the exterior of the Building in accordance with the Approved Plans and Specifications, and shall maintain and preserve the exterior of the Building in keeping with the existing appearance and condition after rehabilitation, subject to any upgrades and renovations permitted pursuant to subsection (c), below;
- (c) Without the prior express written approval of the Town, which approval may not be unreasonably withheld but which may be subject to such reasonable conditions as the Town in its discretion may determine, upon completion of the rehabilitation of the Building, Developer shall not make any changes to the cupola, stepped gables and slate roof, including the alteration, partial removal, construction, remodeling, or other physical or structural change thereto, and any change in design, material or color thereof. Activities by Developer to perform routine maintenance on these three features of the Building, and which are of a minor nature, shall not require the Town's prior approval;
- (d) Developer shall submit to the Town, for the Town's approval of those conditional rights set out at subsection (c) above, two copies of information (including plans, specifications, and designs where appropriate) identifying the proposed activity with reasonable specificity and submitting a timetable for the proposed activity sufficient to permit the Town to monitor such activity. In deciding whether to

grant such approval, the Town shall consider, among other things, the historical and architectural value and significance of the exterior of the Building and the general design, arrangement, texture, material, and color of these features. The Town shall not consider interior arrangements or architectural features not subject to public view. Within forty-five (45) days of the Town's receipt of any plan or written request for approval hereunder, the Town shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted, in which case the Town shall provide Developer with written suggestions for modification or a written explanation for the Town's disapproval. Any failure by the Town to act within forty-five (45) days of receipt of Developer's submission or resubmission of plans or requests shall be deemed to constitute approval by the Town of the plan or request as submitted and to permit Developer to undertake the proposed activity in accordance with the plan or request submitted, so long as any notice to the Town states that failure to respond within forty-five (45) days shall be a deemed approval;

(e) Subject to the provisions of subsections (a), (b), (c) and (d), the following rights, uses, and activities of or by Developer on, over, or under the Premises are permitted by the Town without further approval by the Town:

(i) the right to engage in all those acts and uses that: (i) are permitted by governmental statute or regulation; and (ii) do not substantially impair the preservation values of the exterior of the Building; and

(ii) the right to make changes of any kind to the interior of the Building, provided such changes do not alter the exterior of the Building.

Developer agrees, for itself and its successors and assigns, that: (i) the Building shall not be demolished, removed or razed, unless the same is damaged or destroyed by casualty and the restoration thereof is impractical or impossible, or an unexpected change in the conditions surrounding the Property makes impossible the continued ownership or use of the Property for the preservation purposes set forth herein; (ii) nothing shall be erected or allowed to grow on the Property which would impair the visibility of the Building from street level; (iii) the dumping of ashes, trash, rubbish, or any other unsightly or offensive materials on the Property shall be prohibited; and (iv) no above ground utility transmission lines, except those reasonably necessary for the Building, unless they already exist, may be created on the Property, subject to utility easements already recorded.

5. Regulatory Agreement. Developer agrees to create one (1) affordable residential unit at the Building. Prior to issuance of a Certificate of Occupancy for the Building, or any of the residential units, Developer shall enter into and record with the Registry of Deeds a Regulatory Agreement and Declaration of Restrictive Covenants for Rental Project under the Local Initiative Program with the Department of Housing and Community Development for the Affordable Unit, which shall be deemed to be an affordable housing restriction as that term is defined in G.L. c. 184, §31, and as that term is used in G.L. c. 184, §§26, 31, 32 and 33. The Affordable Unit shall be leased to a household whose annual income does not exceed eighty

(80%) per cent of the Annual Median Income for Ayer, and which Affordable Unit shall be counted on the Subsidized Housing Inventory for the Town of Ayer. The Regulatory Agreement shall be effective for Fifteen (15) years from the date of its execution.

### III. GENERAL PROVISIONS

1. Access: Developer shall permit the Town or its agents to enter the Property at any reasonable time, from time to time, to inspect the Property and to ensure compliance with the provisions of this LDA, until completion, and subject to any reasonable request of the Developer or its insurer to require access only in the presence of an agent of the Developer for safety reasons.

2. Sale; Assignment: Any sale, assignment or other transfer of the Property, whether before or after the completion of the Project, shall be subject to the terms of this LDA, and the buyer, assignee or transferee shall assume the obligations of Developer under this LDA in writing as if it were the original developer hereunder. Any attempted assignment or other transfer made contrary to this Section shall be void.

3. Compliance with Laws: Developer shall construct, develop, use and maintain the Property in compliance with all applicable federal, state and local laws, codes, bylaws, rules and regulations and with all necessary permits.

4. Development Costs: Developer shall be solely responsible for developing and constructing the Project and for all costs associated therewith, including but not limited to, land clearance, obtaining any and all necessary permits, and survey, architectural, engineering and construction costs, and legal expenses for the Project and as required by all laws, bylaws, codes and regulations.

5. Representations and Warranties

i. Developer represents that as of the date hereof:

(a) Developer is duly organized and existing in good standing under the laws of the Commonwealth of Massachusetts and has the power and authority to own or hold its properties and to enter into and perform its obligations under this LDA, and each other agreement or instrument entered into or to be entered into by it pursuant to this LDA.

(b) Developer has the power, authority, and legal right to enter into and perform this LDA, and each and every document entered into or to be entered into by it pursuant to this LDA, and the execution, delivery and performance hereof and thereof:

(i) have been duly authorized;

(ii) have the requisite approval of all governmental bodies;

(iii) will not violate any judgment, order, law or regulation applicable to



Developer or any provisions of Developer's organizational documents;  
and

- (iv) do not conflict with, constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon any assets of Developer under any agreement or instrument to which Developer is a party or by which the developer or its assets may be bound or affected.

(c) Developer represents that, to the best of its knowledge, there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition of Developer, or the ability of Developer to perform its obligations under this LDA, or under any other Project document entered into by Developer pursuant to this LDA.

(d) Developer has made or will make its independent investigation and inquiry into all matters relevant to its entering into and performing its obligations under the LDA without reliance on any statement or representation of the Town except as expressly set forth herein.

ii. The Town represents that as of the date hereof:

(a) The Town has the power, authority and legal right to enter into this LDA, and each and every agreement or instrument entered into or to be entered into by the Town pursuant to this LDA.

(b) This LDA has been duly entered into and constitutes the legal, valid and binding obligation of the Town.

6. Default: it shall be an event of default under this LDA if:

- (i) Developer fails to observe or perform, or commence cure if in default, of any of Developer's covenants, agreements, or obligations hereunder within thirty (30) days of receiving written notice from the Town, specifying such failure;
- (ii) Developer fails to observe or perform, after all applicable cure periods, any of Developer's covenants, agreements, or obligations under the Project Documents, or any other document or instrument now or hereafter in effect between the Town and Developer relating to the Project;
- (iii) Developer fails, after all applicable cure periods, to observe or perform any of Developer's covenants, agreements, or obligations relating to Developer's Financing; or
- (iv) Developer shall be declared bankrupt or insolvent according to law, or, if any assignment shall be made of Developer's property for the benefit of creditors.

7. Rights Upon Default: In addition to all other rights and remedies available to the Town in law or in equity, the Town shall also have the right to seek specific performance of Developer's obligations hereunder.

8. Costs of Enforcement: Developer agrees to reimburse the Town for any and all costs and expenses, including reasonable attorneys' fees and court fees, incurred by the Town in enforcing this LDA, only if the Town has furnished notice of default in writing and Developer has failed to cure after a reasonable cure period, if Developer is found in default by a court or by agreement of the parties.

9. Indemnification: Developer agrees to defend, indemnify, and hold the Town harmless from and against any and all liabilities, losses, costs, expenses (including attorneys' fees), causes of action, suits, claims, damages, demands, judgments or expenses from any and all claims, actions, or suits of any nature whatsoever (the "Claims") that may be imposed upon, incurred by, or asserted against the Town by reason of this LDA. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses, and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof, except those claims caused by the negligent or intentional act of the Town or any of its agents. Developer shall have the right to reasonably approve the identity of counsel selected by the Town to provide the defense of any Claims in which the Town asserts a right to indemnification pursuant to this Section 9, and Developer shall be entitled to have additional counsel selected by Developer engaged in the defense of such action, at Developer's sole cost. Subsequent to the reasonable approval by Developer of the counsel selected by the Town, Developer agrees, within thirty (30) days from written notice by the Town, to reimburse the Town for any and all costs and fees incurred in defending itself with respect to any Claims covered by this Section.

10. Notices: Any and all notices required herein shall be in writing and shall be deemed properly given upon the earlier of: (1) two business days after deposit with the United States Postal Service, if sent by registered or certified mail, return receipt requested, postage prepaid; (ii) one business day after deposit with an express courier service such as Federal Express; or (iii) actual receipt. All such notices will be delivered to the address specified below or such other address as the respective parties may designate in writing:

If to the Town:

Board of Selectmen  
Town of Ayer  
1 Main Street  
Ayer, MA 01432  
Telephone: (978) 772-8220  
Facsimile: (978) 772-3017  
E-Mail: [rpontbriand@ayer.ma.us](mailto:rpontbriand@ayer.ma.us)

With a copy to:

Katharine Lord Klein, Esq.

KP Law, P.C.  
101 Arch Street  
Boston, MA 02110  
Telephone: (617) 556-0007  
Facsimile: (617) 654-1735  
E-mail: [kklein@k-plaw.com](mailto:kklein@k-plaw.com)

If to Developer:

C. Donell Homes, Inc.  
106 Lancaster Road  
Shirley, MA 01464  
Telephone: (978) 490-6903  
Facsimile: (978)  
[KDonell@sapphireparkmanagement.com](mailto:KDonell@sapphireparkmanagement.com)

With a copy to: Thomas A. Gibbons, Esq.  
21 Park Street  
Ayer, MA 01432  
Telephone: (978) 772-2284  
Facsimile: (978) 772-0802  
[tgibbons@tgibbonslaw.com](mailto:tgibbons@tgibbonslaw.com)

11. Waiver. The failure on the part of Developer or the Town, as the case may be, to complain in any one or more cases of any action or non-action on the part of the other party, or to insist in any one or more cases upon the performance of any of the provisions, covenants, agreements or conditions of this LDA or to exercise any option contained herewith, no matter how long the same may continue, shall never be deemed or construed to be a waiver by such party of any of its rights hereunder, or a relinquishment for the future of any such provision, covenant, agreement, condition or option. Further it is covenanted and agreed that no waiver at any time of any of the provisions hereof by Developer or the Town shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions.

12. Headings and Captions for Convenience Only. The captions and headings throughout this LDA are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this LDA, nor in any way affect this LDA, and shall have no legal effect.

13. Term of Agreement. This LDA and the restrictions and covenants contained herein is acknowledged by Developer to be an "other restriction held by any governmental body" as that term is used in G.L. c.184, §26 and shall be enforceable by the Town in perpetuity or for the longest period permitted by law, which in any event shall be for at least ninety-nine (99)

years. If any statute should ever require recording of notice of this restriction to ensure continued enforceability, Developer hereby names the Town its attorney-in-fact to execute and record such notice.

14. Binding. The terms of this LDA shall be binding on the parties, and their respective successors, heirs and assigns. All covenants, agreements, terms and conditions of this LDA shall be construed as covenants running with the land.

15. Amendment. This LDA can be amended only with the written consent of Developer and the Town, acting by and through its Board of Selectmen.

16. Entire Agreement of Parties; No Oral Agreement. There are no oral agreements between the parties hereto affecting this LDA, and this LDA supersedes and cancels any and all previous negotiations, arrangements, agreements, and undertakings, if any, between the parties hereto with respect to the subject matter hereof, and none thereof shall be used to interpret or construe this LDA.

17. Governing Law. This LDA shall be governed exclusively by the provisions of the laws of the Commonwealth of Massachusetts.

[Signature Page Follows]

WITNESSED under seal as of the day and year first above written.

TOWN:

TOWN OF AYER,  
By its Board of Selectmen:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this \_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as a member of the Ayer Board of Selectmen.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

DEVELOPER:  
C. DONELL HOMES, INC.

By: \_\_\_\_\_  
Conrad Donell  
President and Treasurer

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this \_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned Notary Public, personally appeared Conrad Donell, who proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, as President and Treasurer of C. Donell Homes, Inc.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

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Exhibit A

Approved Plans and Specifications

DRAFT COPY

## DEPARTMENT OF PUBLIC WORKS

Mark L. Wetzel, P.E., Superintendent  
Daniel Vas Schalkwyk, P.E. Town Engineer  
Pamela J. Martin, Business Manager



25 BROOK STREET  
AYER, MASSACHUSETTS 01432  
T: (978) 772-8240  
F: (978) 772-8244

### MEMORANDUM

Date: August 2, 2017  
To: Board of Selectmen  
From: Mark Wetzel, P.E. Superintendent of Public Works  
Dan Van Schalkwyk, P.E., Town Engineer  
Subject: **August 8 Meeting Agenda Items**

1. **Central Avenue Heavy Commercial Vehicle Exclusion Study** – As requested by the Board of Selectmen and as required by the Massachusetts Department of Transportation, the DPW has completed the heavy commercial vehicle exclusion study for a Heavy Commercial Vehicle Exclusion for Central Avenue. In order to complete the MassDOT submittal, the DPW is requesting a letter of support from the Board of Selectmen. The study would then be submitted to MassDOT for review and approval.
2. **Ayer Solar East (Landfill) Lease** – The Ayer DPW solicited proposals for “Land Lease for Solar Photovoltaic Projects at Town Owned Locations”. The Board voted to award the lease to Citizens Energy Corporation at the February 21, 2017 meeting. The proposal included leasing land at the landfill and the wastewater treatment plant for installation of solar photovoltaic systems. Due to environmental permitting restrictions at the WWTP site, it was determined that this would not be a feasible development location at this time. However we have continued to proceed with the solar development on the Town Landfill.

We have worked with Town Counsel to develop a lease agreement for execution by the board. Note that the Lease will be with Ayer East Solar, LLC which is wholly owned and controlled by Citizens. The lease payment will be based on the watts of AC power generated. The project as designed generates 0.975 MW DC which is approximately \$26,000 per year.

3. **Update on Parking Management Study and Recommendations** – We have completed the draft Parking Management Report and held a public forum on Wednesday, August 2 to review the conclusions and parking management strategies. The forum was well attended and there was a lot of good input. I will give a brief overview of the strategies and recommendations for implementation.



## LANDFILL LEASE AGREEMENT

This Landfill Lease Agreement (“Lease”) is dated as of \_\_\_\_\_, 2017 (the “Effective Date”), and is entered into by and between Town of Ayer, Massachusetts, a municipal corporation and political subdivision of the Commonwealth of Massachusetts, with a principal office at One Main Street, Ayer, MA 01432 (hereinafter, “Lessor”), and Ayer East Solar LLC, a Massachusetts limited liability company, with a principal office at 88 Black Falcon Ave., Suite 342, Boston, Massachusetts 02210 (hereinafter “Lessee”) (each a “Party” and together, the “Parties”).

### RECITALS

WHEREAS, real property owned by Lessor which is all or part of the former (now capped) Ayer municipal landfill located at 0 Groton Harvard Road, Ayer, MA, part of Assessor’s Map 13, Lot 3, comprising approximately 12.95 acres (the “Property”), a portion of which Property shall be leased to Lessee in accordance with the terms and conditions of this Lease (such leased portion of the Property, the “Premises”), which (Property and Premises) are more particularly described in the attached Exhibit A; and

WHEREAS, Lessee desires to obtain the exclusive right to occupy the Premises and to enjoy all the rights necessary for Lessee to occupy the Premises and, at its sole cost, to develop, design, engineer, access, construct, monitor, install, own, maintain and operate the System to be located on the Premises, as well as all the rights necessary or desirable for Lessee to sell the energy generated by such System and any and all other credits, solar renewable energy credits, and any other environmental financial attributes created as a result of such energy generation;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, the receipt and sufficiency of which are acknowledged, and intending to be legally bound hereby, Lessee and Lessor hereby agree to the foregoing recitals and as follows:

1. Definitions. Capitalized terms not otherwise defined in this Lease have the meanings assigned to them in Exhibit B.

2. Premises and Related Rights.

a) Subject to receipt of the first Rent payment and the terms of this Lease, Lessor hereby agrees to lease the Premises to Lessee to occupy, and to develop, design, engineer, construct, access, monitor, install, own, operate and maintain thereon the System for the generation and distribution of electrical power (the “Permitted Use”), and for no other purpose. Lessor hereby also agrees to grant to Lessee and the applicable utility company for a period co-terminus with the Lease, a non-exclusive easement for access, ingress, egress, and utilities to the Premises to the extent reasonably necessary to install, interconnect, operate or gain access to the System or the Premises (the “Easements”). The Parties agree that, notwithstanding anything to the contrary in this Lease, the exact location of the Premises and Easements shall be as mutually agreed to by the Parties and shown on a formal plan, stamped by a registered engineer, to be produced by Lessee at its sole expense upon receipt of all Governmental Approvals necessary for construction of the



System, but in all events before such construction commences. The Parties agree to amend this Lease to incorporate said plan into Exhibit A.

b) Subject to Applicable Laws and Governmental Approvals and the terms of this Lease, Lessee shall have the right, at Lessee's expense, to install utilities at locations reasonably approved by Lessor and to improve the present utilities on the Property if such installation or improvement is necessary for the Permitted Use (including, but not limited to, the installation of emergency power generators).

c) Lessee acknowledges that the Premises consist of, all or in part, a capped landfill, and that Lessee must obtain at its sole cost and expense, among other Governmental Approvals, a Post-Closure Use Permit (the "DEP Permit") from the Massachusetts Department of Environmental Protection ("DEP") to allow Lessee to use the Premises for the Permitted Use. Lessee also acknowledges and agrees that the DEP Permit may impose certain conditions and requirements which are related to the Lessee's use of the Premises and/or the installation, construction and/or operation of the System and which would not have been imposed on Lessor were it not for this Lease, and that Lessee shall be responsible for those conditions and requirements, as well as for the routine mowing of the landfill and control of vegetation within the Premises in order to comply with any DEP requirements (hereinafter collectively referred to as "Lessee's Landfill Obligations"). Lessee agrees that, notwithstanding anything to the contrary in this Lease, it (a) shall not conduct any activities on the Premises that will, or are reasonably likely to, penetrate the landfill capping material or otherwise threaten the integrity of the landfill cap, or cause the landfill to be out of compliance with any Governmental Approvals or Applicable Laws; (b) shall not violate Applicable Laws, including but not limited to the DEP Permit and any laws, regulations, codes, and agreements with respect to the landfill, (c) shall comply with Lessee's Landfill Obligations, at Lessee's sole cost and expense, and (d) shall not interfere with or disrupt (i) Lessor's use of the Property as a capped municipal landfill, and the obligations of Lessor and Lessor Parties under Applicable Laws and Governmental Approvals in connection with the maintenance, repair, monitoring, and testing of the landfill cap and area (collectively, "Lessor Activities") or (ii) access to the Property, and/or (iii) Lessor's performance of any duties required of Lessor under Applicable Laws and Governmental Approvals, including but not limited to any laws, regulations, codes, and agreements with respect to the landfill. To the extent that the DEP Permit requires Lessor to satisfy any of the Lessee's Landfill Obligations, Lessee shall pay Lessor for the cost thereof in advance, failing which Lessor may pay for such costs and charge the same to Lessee, which costs Lessee shall pay to Lessor within thirty (30) days following Lessee's receipt of an invoice therefor.

### 3. Rents.

a) Lessee shall pay annual rent payments to Lessor for lease of the Premises ("Base Rent") in the amount of Thirty Thousand Dollars (\$30,000.00) per megawatt AC (of System capacity) per year, which shall be due annually in advance beginning on the earlier of (i) the Commercial Operations Date or (ii) the date that is six (6) months after Lessee receives its first permit from the Ayer Building Department for the installation of the System, and on every one (1) year anniversary thereof during the Lease Term. The Base Rent shall increase by 1.5 percent on each such one (1) year anniversary.



b) Lessee agrees to pay, as "Additional Rent," all real estate taxes assessed on the Premises or any part thereof, levies, personal property taxes, betterments or assessments, fees or charges, of whatever nature, that are assessed or chargeable during the Term of this Lease in relation to the Premises, Lessee's use thereof, and/or the System. "Base Rent" and "Additional Rent" shall hereinafter be collectively referred to as "Rent." The Parties acknowledge and agree that the Premises and System shall be subject to tax under M.G.L. c. 59. The Parties shall exercise all reasonable efforts to agree to a PILOT for such taxes pursuant and subject to M.G.L. c. 59, § 38H(b).

c) All payments becoming due under this Lease and not paid when due shall bear interest at 12 percent per annum from the applicable due date until received by Lessor.

d) Lessee acknowledges and agrees that except as expressly provided in this Lease, Lessee shall have the sole responsibility with regard to the Premises. All payments of Rent shall be absolutely net to Lessor so that this Lease shall yield to Lessor the Rent herein specified free of any taxes, assessments, charges, impositions or deductions of any kind charged, assessed or imposed on or against the Premises. Other than as expressly set forth herein, Lessor shall not be expected or required to pay any such charge, assessment or imposition, maintain, or furnish any services to the Premises, or be under any obligation or liability hereunder, except as expressly set forth herein. Any and all costs, expenses and obligations of any kind relating to the Premises or the condition thereof, including, without limitation, all maintenance, alterations, repairs, restoration, reconstruction and replacements as hereinafter provided, which may arise or become due under this Lease, shall be paid by Lessee at Lessee's sole cost and expense.

4. Term and Termination; Holdover.

a) The initial term of this Lease shall commence on the Effective Date, and terminate on the first December 31 following the twentieth anniversary of the Commercial Operations Date (the "Expiration Date"), unless earlier terminated in accordance with the provisions of this Lease (the "Initial Term" together with any "Renewal Term," referred to as the "Term" or "Lease Term"). This Lease may be extended upon mutual agreement of the parties for up to an additional five (5) years (the "Renewal Term"), provided that the total term shall have been approved by Ayer Town Meeting.

b) If this Lease is terminated for any reason, subject to Lessor's right to exercise the Purchase Option, Lessee shall, at its sole cost and expense, remove the System and restore the Premises in accordance with Section 5. In connection with such removal and restoration, Lessee and its Affiliates and subcontractors shall have a license to access the Premises for the purpose of completing the removal and restoration.

c) Holdover. If Lessee or any party claiming by, through or under Lessee, retains possession of the Premises or any part thereof after the expiration or termination of this Lease, then Lessor may, at its option, serve written notice upon Lessee that such holding over constitutes (i) a month-to-month tenancy, upon the terms and conditions set forth in this Lease, or, except during any removal of the System pursuant to Section 5 below, (ii) the creation of a tenancy-at-sufferance, and in either event such possession shall be upon the terms and conditions set forth in this Lease. Lessee hereby agrees that the provisions of this Section shall not constitute a waiver by Lessor of any right of re-entry as set forth in this Lease or as allowed by law; and that the receipt



of any Rent or any other act in apparent affirmance of the tenancy shall not operate as a waiver of Lessor's right to terminate this Lease for Lessee's breach of the Lease. This Section 4(c) is in addition to and not a limitation of any other rights and remedies available to Lessor under this Lease, at law or in equity.

5. Removal of System at Expiration; System Survey. Unless Lessor has exercised the Purchase Option, upon the expiration or earlier termination of the Lease, Lessee shall, at its sole cost, and no later than the Removal and Restoration Date, remove the System and restore the Premises to their original condition (i.e., the condition of the Premises as of the Effective Date). In the event Lessee fails to complete the removal of the System and restoration of the Premises by the Removal and Restoration Date, Lessor shall have the right (but not the obligation), at its option, in its sole discretion, to cause the removal of the System by a qualified contractor and complete restoration of the Premises. Within sixty (60) days after the Commercial Operations Date, Lessee, at Lessee's expense, shall commission an as-built plan of the System by an independent, certified professional engineer to confirm that the System has been sited, installed and constructed in accordance with the terms of this Lease. Lessee shall furnish a copy of the System as-built plan to Lessor promptly upon completion of such plan.

6. System Construction, Decommissioning Security, Design Plans and Specifications, and Related Requirements.

a) Decommissioning Security; Bonds. Prior to the Construction Commencement Date and as a condition precedent to commencement of construction of the System by Lessee, Lessee shall furnish the Decommissioning Security to the Lessor or DEP. In addition, prior to the Construction Commencement Date, Lessee shall also furnish a Performance and Labor and Materials Payment Bond covering construction and installation of the System and payment of all work and materials furnished to Lessee for the same in an amount equal to 100 percent of the cost of construction of the System. Each bond shall be issued by a surety who is licensed to do business in Massachusetts and satisfactory to the Lessor, whose name appears on United States Treasury Department Circular 570, and who is rated AM Best A+ XII or better. Failure to provide and maintain the aforesaid bonds shall constitute a material breach of the Lease.

b) Governmental Approvals. Lessee shall also obtain and pay for all Governmental Approvals and provide all notices to any Governmental Authority required by Applicable Law, the Lease. Further, no later than thirty (30) days before commencement of construction of the System, Lessee shall provide to Lessor for Lessor's review and approval of the Ayer Department of Public Works or its designee, which shall not be unreasonably withheld, copies of all design plans and specifications for the work. If Lessor fails to approve or object to the plans and specifications within ten (10) Business Days, the plans and specifications shall be deemed approved. This review and approval process is in addition to and not a limitation of any other processes required by a Governmental Authority or as a condition of obtaining a Governmental Approval.

c) System Design and Construction. Lessee shall, at its sole cost and expense, cause the System to be designed, engineered, permitted, installed, constructed and removed, and shall perform any other work at the Premises expressly permitted by the terms of this Lease, including but not limited to repairs or modifications to the System, in accordance with all Applicable Laws, Governmental Approvals, good industry practices, the requirements of any



Governmental Authority (including without limitation the DEP) and Local Electric Utility, and any and all applicable manufacturer's warranties and instructions. Lessee shall be responsible for the security of all materials and equipment and safety of all persons at the Premises, and shall remove all debris at the end of each day during construction. Lessee shall schedule and coordinate all work to (and Lessee shall) avoid interference with the Lessor Activities.

d) Pre-Construction Meeting and Updates. Lessee shall conduct a pre-construction meeting with Lessor at least fourteen (14) days before commencement of any construction activities. During design and construction of the System, Lessee shall keep Lessor informed on a weekly basis regarding the progress, scheduling, and coordination of the work, and shall conduct weekly progress meetings with representatives of Lessor.

7. Access to Premises.

a) Commencing on the Effective Date and throughout the Lease Term, Lessee shall have the exclusive right, subject to advance written notice to Lessor and the right of Lessor to have one or more representatives accompany Lessee, and subject to the provisions of this Lease, including without limitation Section 2(c), and excluding subsurface or destructive testing, to enter upon the Premises to perform tests, inspections, surveys and investigations reasonably necessary for construction of the System ("Tests"), provided that Lessee shall indemnify, hold harmless and defend Lessor from and against any and all claims, losses, liabilities, costs and expenses, including reasonable attorneys' fees, arising out of the Tests, and provided further that Lessee shall restore the areas of the Tests to their original condition. Lessee shall also have the right, after the Effective Date, to enter upon the Premises, subject to and in accordance with the terms of this Lease, to design, engineer, construct, install, operate, maintain, test, upgrade and repair the System on the Premises. While on the Property, Lessee shall take all precautions against any injury and damage to persons, the Property, and any and all adjacent property and structures. Lessor shall provide and designate space, if available, on the Property for the temporary construction lay-down, storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and temporary facilities reasonably necessary during the furnishing, installation, interconnection, testing, commissioning, deconstruction, disassembly, decommissioning and removal of the System, provided that Lessee shall, on a daily basis, remove trash and debris from the space so designated, and shall restore the space to its original condition promptly after such temporary use, and shall, to the same extent as provided above with respect to Tests, indemnify, hold harmless and defend Lessor from and against any and all claims etc. arising out of Lessee's construction activities.

b) Lessee and Lessee Parties shall at all times exercise reasonable care and conduct themselves in accordance with Applicable Laws and in a professional manner when on the Property, and shall comply with the reasonable requests of Lessor, including, but not limited to, when entering and exiting the Premises, and in its storage of equipment and materials at the Premises. Lessee and Lessee Parties shall not obstruct access to the Property, and shall not interfere with or disrupt Lessor's use of the Property as a capped municipal landfill, and Lessor's (or any existing tenants') use of the portions of the Property that are beyond and not included in the boundaries of the Premises (the "Reserved Property"), or with operations therein. In addition and subject to the right of "24/7" access provided to the Ayer Department of Public Works and DEP under Section 13 of this Lease, Lessor shall from time to time, upon two (2) Business Days' notice, have access to inspect the Premises during the Lease Term (including, without limitation, during



construction and installation of the System), and shall also be provided access to the books, records, and compilations of data, which pertain to the performance of the obligations, provisions and requirements of this Lease, which records shall be accurately kept, including without limitation on a generally recognized accounting basis, and all calculations shall be kept on file in legible form; provided that Lessor shall comply with Lessee's reasonable site safety requirements during any visit to the Premises, and provided further that in the event of an emergency, Lessor may enter the Premises without the need to provide a two-Business-Day notice, but shall, in such event, provide oral or written notice to Lessee as soon as practicable.

8. Lessee's Ownership of System. The System is personal property, and shall not attach to or be deemed a part of, or a fixture to, the Premises or Property. Lessee shall be the legal and beneficial owner of the System at all times and Lessor shall have no right, title or interest in the System or any component thereof, notwithstanding that any such System may be physically mounted or adhered to the Premises or Property. Lessor acknowledges and agrees that Lessee is the exclusive owner of all Environmental Financial Attributes attributable to the System.

9. Representation and Warranties of the Parties as to Authorization and Enforceability

Each Party represents and warrants that the execution of this Lease has been duly authorized, does not require any further consent or approval of any other Person other than the Governmental Approvals required to be obtained under this Lease, and that this Lease constitutes a legal and valid obligation of such Party in accordance with Applicable Law.

10. Representations, Warranties and Covenants of the Lessor and Lessee

a) Lessor's Title to Premises. Lessor represents that it has a lawful fee simple interest in title to the Property, including the Premises. Subject to the Lessor Activities and the terms of the Lease, Applicable Law and Governmental Approvals, and so long as Lessee is not in default of the Lease, Lessor also covenants that Lessee shall have quiet enjoyment of the Premises, throughout the Lease Term. Lessor's exercise of its rights under the Lease shall not be considered a breach of the covenant of quiet enjoyment notwithstanding anything to the contrary in the Lease. Lessor may sell, lease, assign, mortgage, pledge or otherwise alienate or encumber the Property, in whole or in part, without any approval of Lessee necessary, upon thirty (30) days' prior notice thereof to Lessee, which notice shall identify the transferee if known, the area of the Property to be so transferred and the proposed date of transfer, if known. Lessor agrees that this Lease and the Easements shall run with the Premises and survive any future transfer of all or any portion of the Premises.

b) No Interference With and Protection of System. Excluding the Lessor Activities, Applicable Law and Governmental Approvals, Lessor will not conduct activities on, in or about the Premises that will cause material damage to the System or operation thereof. The System shall be operated, maintained and repaired by Lessee at its sole cost and expense.

c) Non-Disturbance Agreements. Lessor shall obtain a non-disturbance agreement ("NDA") in favor of Lessee from any third party who in the future obtains, with Lessor's permission, an interest in the Property or Premises, including, without limitation, any lenders to Lessor, which NDA shall: (i) acknowledge and consent to the Lessee's rights to the Premises and the System under this Lease; (ii) acknowledge that the third party has no interest in



the System and shall not gain any interest in the System by virtue of the Parties' performance or breach of this Lease; (iii) acknowledge that the third party's interest in the Premises (if any) is subject to Lessee's interest under this Lease; (iv) waives any lien the third party may have in and to the System; and (v) agrees not to disturb Lessee's possession of the Premises.

d) Liens. Lessor shall not create any mortgage, lien (including mechanics', labor or materialman's lien), security interest, or similar encumbrance on or with respect to the System or any interest therein.

e) Representations Regarding Security Interest in System. Lessor acknowledges and understands that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected personal property security interest under the Uniform Commercial Code (the "*Security Interest*") in the System. Lessee acknowledges and agrees, however, that, notwithstanding anything to the contrary in this Lease, the Security Interest and Lessee's leasehold estate shall be subordinate to the interest of the Lessor in the Property and Premises and subject to the terms of this Lease.

f) Utilities. Lessee shall be responsible for obtaining and paying for all utilities used at the Premises, including, without limitation, electricity and, if used, water; separate meters for such utilities shall be installed and maintained at Lessee's sole cost and expense, and Lessee shall be responsible for all utility and other related expenses.

11. Representations, Warranties and Covenants of Lessee.

a) Regulatory Status. Lessee represents and warrants that it is not an electric public utility, investor owned utility, a municipal utility, a merchant power plant or electrical corporation as defined under the laws of the Commonwealth of Massachusetts.

b) Liens. Except for the Lender's Security Interest or ownership of Lessee's interest in this Lease, Lessee's personal property or the System, Lessee shall not directly or indirectly cause, create, incur, assume or, if arising out of Lessee's activities or omissions at the Premises or pursuant to this Lease, suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim on or with respect to the Property or Premises and agrees to discharge or bond, at its sole expense, any such encumbrance or interest that attaches to the Property or Premises. In addition to, and not in limitation of, any other rights and remedies available to Lessor, Lessee shall save, hold harmless, and indemnify Lessor from and against any and all damages, claims, liabilities, losses, costs and expenses, including reasonable attorneys' fees, arising out of any such liens etc. and any failure of Lessee to comply with this Section.

c) Subcontractors. Lessee shall be fully responsible to Lessor for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by the Lessee for or in connection with this Lease, and of any person for whom Lessee is responsible. Nothing contained in this Lease shall create any contractual relation between any such subcontractor or person and Lessor.

d) Statutory Filings. Lessee shall file a "Disclosure Statement" as described in M.G.L. c. 7C, § 38; and a "Tax Certificate" as described in M.G.L. c. 62C, § 49A.



e) Notice of Damage or Emergency. Lessee shall immediately notify Lessor if Lessee becomes aware, through discovery or receipt of notice or otherwise, (i) of any damage to or loss of the use of the System, Property, or Premises; (ii) of any event or circumstance that poses an imminent risk to human health, the environment, the System, Property, or Premises; or (iii) of any interruption or material alteration of the energy supply to or from the Premises or the System.

f) Condition of Premises. Notwithstanding anything to the contrary in this Lease, Lessee accepts the Premises “as is” and “with all defects,” without benefit of any services, facilities, improvements or modifications to be made by Lessor, without any representation or warranty of any kind by Lessor, and without any recourse against Lessor as to the title to and the nature, condition or usability of the Premises, or as to the use(s) to which the Property and Premises or any part thereof have been put, including, without limitation, the Lessor Activities and the uses described in Section 2(c) of this Lease.

12. Hazardous Substances. Lessee shall not introduce, use or exacerbate, or cause to be introduced, used or exacerbated, any Hazardous Substances on, in or under the Premises or Property. If Lessee becomes aware of any such Hazardous Substances, it shall promptly notify the Lessor of the type and location of such Hazardous Substances in writing. In addition to, and not in limitation of, any other rights and remedies available to Lessor, Lessee agrees to indemnify, defend and hold harmless Lessor from and against any and all Environmental Claims, including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that Lessor may suffer or incur as a result of Lessee's failure to comply with this Section 12 or with Environmental Laws. This indemnification obligation specifically includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority, and is in addition to, and not a limitation of, any other rights and remedies available to Lessor.

13. Maintenance.

a) Maintenance Standards. The System shall be operated and maintained and, as necessary, repaired by Lessee at its sole cost and expense in accordance with the terms of this Lease, Applicable Law, good industry practice, Governmental Approvals and the requirements of any Governmental Authority and the Local Electric Utility, and any applicable manufacturer's warranties and recommendations. In its operation, maintenance, repair and removal of the System, Lessee shall not interfere with Lessor Activities and shall, throughout the Lease Term, comply with Applicable Laws and Governmental Approvals.

b) System Modifications. Throughout the Lease Term, Lessee shall have the right, subject to the terms of this Lease, Applicable Laws, and Governmental Approvals (i) to add to, remove or modify the System or any part thereof, (ii) to perform (or cause to be performed) all tasks reasonably necessary or appropriate to carry out the activities permitted in this Lease, including, but not limited to, the right to clean, repair, replace and dispose of all or a part of the System, all at the sole cost and expense of Lessee, without prior notice to or consent of Lessor except as otherwise expressly provided in the Lease; provided that, notwithstanding the foregoing, before Lessee performs any material or substantial additions or modifications to the System other than the like-kind replacement of existing equipment, it shall provide Lessor with plans and specifications for such modifications for Lessor's approval in the same manner as was required



for the initial installation of the System under Section 6 of this Lease. Notwithstanding anything to the contrary in the Lease including the foregoing, other than with respect to the construction of the System in accordance with Section 6 of this Lease, under no circumstances will Lessee make any changes, extensions, alterations, additions, or other modifications to the Property or Premises.

c) Security Measures and Access. Lessee, at its expense, shall install, implement and maintain all security measures required by Applicable Laws, and may, in addition to those measures, use any and all appropriate means of restricting third-party access to the System and Premises, including without limitation, the construction of a fence. Keys to any locks shall be provided to the Ayer Department of Public Works, which together with its Health Agent(s) and consultants and representatives of the DEP, shall have unrestricted "24/7" access to the Premises for health-and-safety and landfill-related purposes notwithstanding anything to the contrary in this Lease, including, without limitation, Section 7(b) of this Lease.

d) Lessee shall, at its sole cost and expense, comply with Lessee's Landfill Obligations, and keep and maintain the Premises in clean, good and safe order and condition, including, but not limited to, by removing all Lessee's trash and waste from the Premises and Property and remove any snow and ice from the Premises, and Lessee shall not commit, or permit its agents, employees, representatives or invitees to commit waste to the Premises.

e) If Lessee or Lessee Parties damage the Premises or Property (including, but not limited to, the landfill or landfill cap), or any other property of Lessor or property of any other Lessee at the Property, Lessee shall promptly repair and restore the damaged areas or property at its sole cost and expense without any notice from Lessor. In the event Lessee fails to perform such repair or restoration, Lessor shall have right (but not the obligation), following thirty (30) days notice to Lessee, to cause such repairs or restorations to be made, without any responsibility or liability to Lessee or any other party for any damages to Lessee's or Lessee Parties' property occurring as a result thereof, and Lessee shall forthwith upon demand pay over to Lessor all of the costs and expenses, including reasonable attorneys' fees, incurred by Lessor in connection therewith, failing which Lessor may withhold the value of the same from amounts otherwise due Lessee under the Lease. If and as required by Applicable Laws and/or the DEP, Lessee shall maintain a vegetative cover over the Premises pursuant to Applicable Laws. Lessor shall have no obligation to maintain or repair the Premises or the System, or any security measures implemented by Lessee in connection therewith, notwithstanding anything to the contrary in this Lease.

f) Lessee understands and agrees that, notwithstanding anything to the contrary in this Lease, Lessor shall not be responsible (i) for the subsidence of all or any part of the landfill cap arising from the natural or ordinary decay or settlement of material constituting, underlying or beneath the cap or from any other naturally occurring process, including, but not limited to, as may result from the decay of waste buried beneath the cap, or (ii) for the effects of such subsidence on the System.

14. Temporary Removal of System. In the event that, through no fault of Lessee, the landfill cap requires repair or replacement during the term of the Lease, Lessee shall remove portions of the System as necessary for the repair or replacement work to be performed. Lessor shall provide Lessee with at least ninety (90) days advance written notice of any such repair or replacement work, except in the event of an emergency or order of any court or Governmental Authority, in which event Lessor shall provide Lessee with such advance notice as is practicable.



During the period of removal, those portions of the System that are removed from may be temporarily stored off-site, or the Lessor may designate a location for the temporary storage on other Lessor property, if available. Lessee shall be responsible to ensure that such storage conforms to industry and manufacturer's requirements for the proper storage of any such equipment. During such temporary storage, Lessee shall be responsible for the security of the System, and, if the System or any part thereof is temporarily stored on Lessor property, Lessee shall store it in a manner that prevents the public from gaining access to the System. To the extent that damage to the landfill cap or other areas of the Premises is the result of the acts or omissions of Lessee during removal or subsequent re-installation of the relevant portions of the System, Lessor shall be entitled to pursue all rights and remedies available to it, including, but not limited to, all administrative penalties or fines imposed on it, and all costs incurred in the restoration of the cap in compliance with the requirements of the DEP and any other Governmental Authority. Unless prohibited by Applicable Laws, the Term of the Lease shall be extended one day for each day all or part of the System has been removed. Lessee's rent shall be reduced proportionally for the area of the Premises and days from and during which any portion of the System has been removed until such portion of the System is fully restored and operational. Lessor shall pay the reasonable costs paid by Lessee for removal, storage, and re-installation of the relevant portions of the System that had been removed. Other than as expressly set forth in this Section 14, Lessor shall not be responsible for payment of any other claims or damages arising from such removal, storage or re- installation, including, without limitation, any claim of Lessee's lost profits, lost Environmental Financial Attributes, or lost Rebates.

15. Insurance.

a) Generally. Lessee shall maintain the insurance coverage set forth in Exhibit C in full force and effect throughout the Lease Term. Upon execution of this Lease, Lessee shall provide copies of all insurance policies to Lessor, and shall, on each anniversary of the Effective Date, furnish current certificates evidencing that the coverage required is being maintained.

b) Waiver of Subrogation. Lessee hereby waives any right of recovery against Lessor for injury or loss to personal property due to hazards covered by insurance obtained with respect to the Property or Premises, including the improvements and installations thereon.

c) System Loss. In the event of any harm to the System that was not caused in whole or in part by Lessee and, in the reasonable judgment of Lessee, results in total damage, destruction or loss of the System ("System Loss"), Lessee shall, within twenty (20) Business Days following the occurrence of such System Loss, notify Lessor in writing whether Lessee is willing, notwithstanding such System Loss, to repair or replace the System and to continue the Lease. In the event that Lessee notifies Lessor that Lessee is not willing to repair or replace the System and is terminating the Lease, the Lease will terminate effective upon the date of Lessor's receipt of such notice, and Lessee shall, subject to subtraction of amounts necessary for the repair of any damage to the Property or Premises, be entitled to the proceeds of its insurance policies with respect to the System Loss, and Lessor shall, subject to Applicable Laws, promptly return to Lessee any prepaid but unearned Rent, provided that Lessee has, removed the System and restored the Property accordance with Section 5. Nothing in this Section shall relieve Lessee of its obligation to indemnify Lessor as expressly provided in this Lease for any damages caused to the Property, including but not limited to the Premises.



16. Liability and Indemnity. Lessee shall indemnify, defend, and hold harmless Lessor and Lessor Parties against and from any and all losses, liabilities, damages, claims, costs, charges, demands, and expenses (including reasonable attorneys' fees) for injury or death to Persons, including employees of either Party, and physical damage to property arising out of or in connection with the activities of Lessee and Lessee Parties under this Lease, including without limitation the activities of Lessee and Lessee Parties on or about the Premises, except to the extent caused by the negligence of Lessor or Lessor Parties. This indemnification obligation is in addition to and not a limitation of any other rights and remedies of Lessor under this Lease, at law or in equity.

17. Casualty. In the event the Premises shall, through no fault of Lessee, be so damaged or destroyed by fire or other casualty so as to make the use of the Premises demonstrably unsuitable for the operation and maintenance of the System, then Lessee may elect to terminate this Lease without penalty upon thirty (30) days written notice to Lessor. In the event of such termination, Lessee shall remove the System and restore the Property in accordance with Section 5. If Lessee does not elect to terminate this Lease in the event of such a casualty, it shall provide written notice to Lessor of that election, provided Lessee commences such restoration promptly upon such election and diligently performs the restoration to completion. Lessee shall have the sole responsibility for restoration of the System.

18. Condemnation. In the event the Premises or Property are transferred to a condemning authority pursuant to a taking of all or a portion of the Property sufficient in Lessee's reasonable determination to render the Premises demonstrably unsuitable for Lessee's use, Lessee shall have the right to terminate this Lease immediately upon written notice to Lessor. Sale to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation. In the event of an award related to eminent domain or condemnation of all or part of the Premises, each Party shall be entitled to take from such an award that portion as allowed by law for its respective property interest appropriated.

19. Assignment.

a) Generally. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Lessee and Lessor and their respective successors and permitted assigns. Any purported assignment in violation of this Article XI shall be null and void *ab initio*.

b) Assignment by Lessor. Lessor may assign this Lease as set forth in Section 10(a).

c) Assignment by Lessee.

i. Lessee may, with advance written notice to Lessor, collaterally assign or pledge its interests hereunder and/or in the System or any monies due under this Agreement, with any such assignee/pledgee having all rights typical of a secured lender subject to the terms of this Agreement.



ii. Notwithstanding subparagraph (c)(iii) below, the parties agree and acknowledge that Lessee may assign, without Lessor's consent, all of Lessee's rights and obligations under this Lease to an Affiliate of Lessee having the experience and financial ability to perform all obligations of Lessee under this Lease, provided that (A) such Affiliate-assignee is wholly owned and controlled by Lessee or an Affiliate of Lessee, (B) Lessee cures any and all defaults under the Lease prior to the date of such assignment, and (C) provided further that such Affiliate-assignee assumes all of Lessee's obligations hereunder and under the Lease in writing. Upon the execution of such assignment and assumption by Lessee and such Affiliate-assignee and the curing of all defaults as aforesaid, Lessee shall be released from all of its obligations hereunder.

iii. Except as otherwise provided in subparagraph (c)(ii), above, Lessee may make an Assignment of Lessee's rights and obligations hereunder only upon Lessor's prior written consent, provided, however, that, other than assignments made for collateral purposes, the Agreement may not be assigned in part, and may not be assigned to any Person who does not also simultaneously take full assignment of the Lease; provided further that, subject to the limitations on assignment set forth herein, Lessor shall not unreasonably withhold its consent to an Assignment of Lessee's rights and obligations hereunder if Lessor has been provided with reasonable proof that the proposed assignee is not a tax-exempt entity and that such assignee: (x) has demonstrable experience in operating and maintaining photovoltaic solar systems comparable to the System; and (y) has demonstrable financial capability to operate and maintain the System and perform hereunder, provided that such level of experience and financial capability shall not be less than the level of experience and financial capability of Lessee-assignor. Other than as set forth in subparagraph (c)(ii) above, a direct assignee of Lessee's obligations hereunder shall assume in writing, in form and content reasonably satisfactory to Lessor, the due performance of all Lessee's obligations under this Agreement.

d) Financing Accommodations. Lessor acknowledges that Lessee will be financing the acquisition and installation of the System with funding from one or more Lenders or third-party capital providers. Such financings may include the sale or sale/leaseback of one or more of the Systems to tax advantaged entities. In order to facilitate System financings, but subject to the other provisions of this Agreement, Lessor will provide such Lenders and capital providers with reasonable consents and confirmations as may be reasonably requested, including the consent for such entities, subject to the terms of the Agreement, to enforce Lessee's rights hereunder, cure any Lessee Default, Lessee shall, within thirty (30) days following receipt of an invoice, reimburse Lessor for all reasonable costs and expenses, including Lessor's reasonable attorneys' fees, incurred in providing such consents and confirmations to Lessee or such Lenders or third-party capital providers.

## 20. Defaults and Remedies.

a) Lessee Default Defined. The following events shall be defaults of this Lease by Lessee ("Lessee Defaults"):

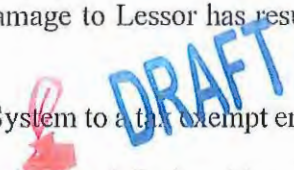
i. If Lessee breaches any material term of this Lease (other than as set forth in subsections (a)(ii)-(a)(vi), below, and (x) if such breach can reasonably be cured within thirty (30) days after Lessor's notice of such breach and Lessee fails to cure within such 30-day period, or (y) if such breach cannot reasonably be cured within such 30-day period despite Lessee's prompt commencement and diligent pursuit of a cure, if Lessee fails to promptly commence and diligently pursue and complete said cure within a reasonable period of time, provided that no cure period shall exceed 120 days;

ii. Lessee fails to timely make any payment to Lessor under this Lease, unless such failure is cured within 30 days, provided further that if any failure of Lessee to make timely payments required by this Lease occurs three or more times in any 365-day period, such occurrence shall constitute a Lessee Default even if each such failure to make a timely payment was cured;

iii. Lessee becomes Bankrupt;

iv. Lessee fails to provide the bonds required in Section 6 of this Lease, unless such failure is cured within 30 days and no damage to Lessor has resulted from such failure; and

v. Lessee sells, transfers, or conveys the System to a tax exempt entity.

b) Lessor Default Defined. The following events shall be defaults with respect to Lessor (each, a "Lessor Default"): 

i. Lessor fails to pay Lessee any undisputed amount due Lessee under this Lease within ten (10) Business Days from receipt of written notice from Lessee of such past due amount;

ii. Lessor breaches any material term of this Lease if (x) such breach can reasonably be cured within thirty (30) days after Lessee's notice of such breach and Lessor fails to so cure, or (y) if such breach cannot reasonably be cured within thirty (30) days, Lessor fails to commence and diligently pursue and complete said cure within a reasonable period of time; and

iii. Lessor becomes Bankrupt.

c) Remedies. If a Lessee Default or a Lessor Default has occurred and, where a cure period is provided above, is not cured within the cure period provided, the non-defaulting Party shall have, and shall be entitled to exercise, any and all remedies available to it at law or in equity, including damages, specific performance and/or the right to terminate the Lease upon notice to the defaulting party without penalty, all of which remedies shall be cumulative.

21. Notices. All Notices under this Lease shall be made in writing to the Addresses and Persons specified below. Notices shall be delivered by hand delivery, regular overnight delivery service, sent by registered or certified mail, return receipt requested or email. Email notices shall require confirmation of receipt. Notices shall be deemed to have been received when



delivered as shown on the records or manifest of such courier, delivery service or the U.S. Postal Service. Rejection or refusal to accept delivery of any notice shall be deemed to be the equivalent of receipt of any notice given hereunder. A Party may change its address by providing notice of the same in accordance with the provisions of this Section 21. Failure to comply strictly with the terms of this provision shall not be held against the Party claiming to have given notice so long as such Party substantially complied with this provision, the receiving Party received the notice in question, and such failure has not materially prejudiced the receiving Party.

To Lessee:

Ayer East Solar LLC  
c/o Citizens Enterprises Corporation  
88 Black Falcon Ave., Suite 342  
Boston, MA 02210  
Attn: Emily Mann  
Email: emann@citizensenergy.com

With a copy to:

Hemenway & Barnes LLP  
75 State Street  
Boston, MA 02109  
Attn: Steven L. Mangold, Esq.  
Email: smangold@hembar.com



To Lessor:

Town Administrator  
Ayer Town Hall  
One Main Street  
Ayer, MA 01432  
Email: ta@ayer.ma.us

With a copy to:

Board of Selectmen  
Ayer Town Hall  
One Main Street  
Ayer, MA 01432  
Email: ta@ayer.ma.us

22. Waiver. The waiver by either Party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein.

23. Remedies Cumulative. No remedy herein conferred upon or reserved to Lessee or Lessor shall exclude any other remedy herein or by law or in equity or by statute provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

24. Headings. The headings in this Lease are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Lease.

25. Survival. The obligations under Sections 4(b), 4(c), 5, 14, 18, 19, 21, and 26, and the indemnification obligations under Sections 7, 11 (b), 12 and 16, shall survive the expiration or termination of this Lease for any reason. For the avoidance of doubt, the expiration or earlier termination of this Lease shall not relieve the Parties of duties or liabilities that by their nature should survive such expiration or termination, prior to the term of the applicable statute of limitations.

26. Governing Law. This Lease is made and entered into and shall be interpreted in accordance with the applicable laws of the Commonwealth of Massachusetts. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth sitting in Middlesex County or the federal district court sitting in the Commonwealth, which shall have exclusive jurisdiction thereof. Lessee agrees to accept service of civil process by certified mail at the address set forth in Section 21 (Notices).

27. Severability. Subject to the other terms of this Lease: Any term, covenant or condition in this Lease that to any extent is invalid or unenforceable in any respect in any jurisdiction shall, as to such jurisdiction, be ineffective and severable from the rest of this Lease to the extent of such invalidity or prohibition, without impairing or affecting in any way the validity of any other provision of this Lease, or of such provision in other jurisdictions. The Parties shall use good faith efforts to negotiate to replace any provision that is ineffective by operation of this Section with an effective provision that as closely as practicable corresponds to the spirit and purpose of such ineffective provision.

28. Binding Effect. This Lease and its rights, privileges, duties and obligations shall bind and inure to the benefit of and be binding upon each of the Parties hereto, together with their respective heirs, personal representatives, successors and permitted assigns.

29. Counterparts. This Lease may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

30. Facsimile Delivery. This Lease may be duly executed and delivered by a Party by execution and facsimile or electronic, "pdf" delivery of the signature page of a counterpart to the other Party.

31. Entire Lease. This Lease represents the full and complete agreement between the Parties hereto with respect to the lease of the Premises and supersedes all prior written or oral negotiations, representations, communications and agreements between said Parties with respect to the lease of the Premises to Lessee. This Lease may be amended only in writing signed by both Lessee and Lessor or their respective successors in interest. Lessor and Lessee each acknowledge that in executing this Lease that party has not relied on any verbal or written understanding, promise, or representation which does not appear in this document.

32. Further Assurances. Upon the receipt of a reasonable request from the other Party, subject to Applicable Laws and the terms of this Lease, the receiving Party shall, at the expense of the requesting Party, execute such commercially reasonable additional documents, instruments



and assurances and take such reasonable actions as are reasonably necessary to carry out the terms of the Lease, including entering into any reasonable consents, assignments, affidavits, estoppels and other reasonable documents as may be reasonably required by such Party's lender to create, perfect or preserve its collateral interest in such Party's property or such party's rights and obligations under this Lease. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this section.

33. Force Majeure.

A "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with this Lease, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party, and such Party was unable to overcome such act or event with the exercise of due diligence. A Party claiming a Force Majeure Event shall not be considered in breach of this Lease or liable for any delay or failure to comply with the Lease, if and to the extent that such delay or failure is attributable to the occurrence of such Force Majeure Event; *provided that* the Party claiming relief shall promptly notify the other Party in writing of the existence of the Force Majeure Event, exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, and resume performance of its obligations hereunder as soon as practicable thereafter. A Force Majeure event shall not include ordinary or reasonably foreseeable fluctuations in insolation/sunlight or be based on the economic hardship of either Party. If a Force Majeure Event shall have occurred that has materially affected either Party's ability to perform its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then the other Party shall be entitled to terminate the Lease upon ninety (90) days' prior written notice. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, the Lease shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than Lessee's obligation to remove the System in accordance with Section 5 and any such liabilities that have accrued prior to such termination).

34. No Brokers. Lessor and Lessee hereby represent and warrant to the other that no real estate broker or agent is entitled to a commission in connection with this Lease. In the event any broker or other party claims a commission, the party responsible for the contact with that claimant shall indemnify, defend and hold the other party harmless from that claim, including, without limitation, the payment of any attorneys' fees and costs incurred.

35. No Partnership. This Lease is not intended and shall not be construed to create any partnership or joint venture or any other relationship other than one of 'lessor' and 'lessee', and neither Party shall be deemed the agent of the other Party nor have the authority to act as agent for the other Party.

36. No Intended Third Party Beneficiary. There are no intended third-party beneficiaries to this Lease.

37. Subordination to Existing Leases, Easements and Rights of Way. Lessee acknowledges and understands that this Lease and all rights of Lessee hereunder are subject and subordinate to all easements, rights of way, declarations, restrictions and other matters of record existing as of the Effective Date. Lessor reserves the right to grant additional leases, easements, leases or rights of way, whether recorded or unrecorded, as may be necessary, subject to Lessee's



right of quiet enjoyment under Section 10(a), provided, however, that notwithstanding such right of Lessee or anything to the contrary in this Lease, Lessor may continue to undertake Lessor Activities and do all such things as may be required by Applicable Law, Governmental Approvals and any Governmental Authority, including without limitation the DEP.

38. Additional Terms Regarding Lessor's Obligations. Notwithstanding anything to the contrary in this Lease:

a) Lessor shall not be required to execute documents or instruments subsequent to the execution of this Lease that will materially or unreasonably increase Lessor's risk or obligations under this Lease, or result in the waiver of any of Lessor's rights or remedies under this Lease or at law or in equity, as reasonably determined by Lessor.

b) Any requirement that Lessor cooperate with or assist Lessee or take any action shall not require Lessor to interfere with or influence the independent executive, regulatory, licensing, taxing, permitting or judicial functions of any official, department, board, committee, body or commission of Lessor.

c) This Lease shall be subject to Applicable Laws.

d) Lessor does not waive any of the rights, remedies, defenses and immunities afforded Lessor, as a municipality, under G.L. c. 258, all of which rights, remedies, defenses and immunities Lessor hereby reserves.

e) Nothing in this Lease shall interfere with the Ayer Board of Assessors or its designee in the evaluation, calculation, assessment and collection of taxes in accordance with applicable laws and regulations.

39. Notice of Lease. Lessor agrees, subject to Applicable Laws and the terms of this Lease, to reasonably cooperate with Lessee in executing a Notice of Lease which may be recorded by Lessee at the local registry of deeds.

*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -SIGNATURE PAGE FOLLOWS*

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IN WITNESS WHEREOF, the Parties have executed this Lease under seal as of the Effective Date.

**LESSOR: TOWN OF AYER**

By its Board of Selectmen

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

 **DRAFT**

**LESSEE: AYER EAST SOLAR LLC**

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

Name: \_\_\_\_\_

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

EXHIBIT A

DESCRIPTION OF PROPERTY AND PREMISES

Legal description of the Property and Premises including a parcel map and/or an abstract of survey, if available.

“Property” means the real property of Lessor located at:

- Address: 0 Groton Harvard Road, Ayer, MA
- Legal Description of Property: The Property, of which the Premises are a part, consists of one parcel of approximately 12.95 acres of land shown in Assessor’s Map 13 as Lot 3; and which Property is also depicted in the deeds recorded at Book \_\_\_\_\_, Pages \_\_\_\_\_. See copies of said deeds and copy of Assessor’s Map 13 attached as Exhibit D hereto.

“Premises” means the approximately \_\_\_ acres of the Property, as generally depicted as the “approximate limit of the work” in the attached Existing Conditions Plan, but subject to Section 2(a) of this Lease.

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EXHIBIT B

DEFINITIONS

“Affiliate” means, with respect to any Person, any other Person directly controlling, controlled by or under common control with such first Person.

“Agreement” means this Lease, including the Schedules and Exhibits attached hereto.

“Applicable Law” means any and all applicable constitutional provisions, laws, statutes, rules, regulations, ordinances, bylaws, treaties, orders, decrees, judgments, decisions, certificates, holdings, injunctions, registrations, licenses, franchises, permits, authorizations, guidelines, Governmental Approvals, and any and all approvals, consents or requirements of any Governmental Authority having jurisdiction, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority and including, if applicable, the Massachusetts prevailing wage law (G.L. c. 149, §§ 26-27) for construction work on the Premises.

“Bankrupt” means that a Party or a third party owning 100 percent of the ownership interests of a Party (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within twenty (20) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in Boston, Massachusetts are required or authorized by Applicable Law to be closed for business.

“Commercial Operations,” with respect to a System, means that the System is ready for regular, daily operation, has been interconnected to the Local Electric Utility, has been accepted by the Local Electric Utility (to the extent required), and is capable of producing Electricity at full or substantially full capacity, and has been installed in accordance with Applicable Law.

“Commercial Operations Date” means the date on which any System is ready for Commercial Operations after required testing.



“Construction Commencement Date” is the date on which any construction activities for the installation of the System have commenced at the Premises.

“Decommissioning Security” means a financial assurance in the form of an annually renewable commercial letter of credit issued by a nationally recognized bank, in a form and content reasonably acceptable to Lessor, for the purpose of decommissioning and removing the System from the Property, and the restoration of the Property to its original condition as of the Effective Date. On each anniversary of the Commercial Operations Date, Lessee shall provide written certification confirming the existence and amount of the letter of credit.

“Environmental Claims” means any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability, including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that Lessor may suffer or incur due to the introduction, use, release or exacerbation by Lessee of any Hazardous Substances on the Property or the Premises.

“Environmental Financial Attributes” means all products of the System other than electricity, including but not limited to carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, tax credits, emissions allowances, green tags, tradable renewable credits and Green-e® products, but not including grants or benefits for which only a governmental entity is eligible as determined by and under Applicable Law.

“Environmental Law” means and includes, without limitation, any present or future federal, state or local law, whether under common law, statute, rule, regulation or otherwise, requirements under Permits or other authorizations issued with respect thereto, and other orders, decrees, judgments, directive or other requirements of any Governmental Authority relating to or imposing liability or standards of conduct, disclosure or notification with regard to the protection of human health, the environment, ecological conditions, Hazardous Substances or any activity involving Hazardous Substances. Environmental Law is a part of Applicable Law.

“Expiration Date” has the meaning set forth in Section 4(a) of this Lease.

“Effective Date” has the meaning set forth in the Preamble of this Lease.

“Force Majeure Event” has the meaning set forth in Section 33 of this Lease.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license or authorization issued by or on behalf of, or required to be issued by or on behalf of, any applicable Governmental Authority or Local Electric Utility.

“Governmental Authority” means any federal, state, regional, county, town, city or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government, and any governmental or quasi-governmental entity or independent system operation or regional transmission operator, including, without limitation, the Massachusetts Department of Environmental Protection and the Local Electric Utility.



“Hazardous Substances” means and includes, without limitation, any substance, chemical, material, pollutant, or waste: (i) the presence of which causes a nuisance or trespass of any kind under any applicable Environmental Law; (ii) which is regulated by any Governmental Authority; (iii) is likely to create liability under any Environmental Law because of its toxic, flammable, corrosive, reactive, carcinogenic, mutagenic, infectious, radioactive, or other hazardous property or because of its effect on the environment, natural resources or human health and safety, including but not limited to, flammables and explosives, gasoline, petroleum and petroleum products, asbestos containing materials, polychlorinated biphenyls, lead and lead-based paint, radon, radioactive materials, microbial matter, biological toxins, mycotoxins, mold or mold spores or any hazardous or toxic material, substance or waste which is defined by those or similar terms or is regulated as such by any Governmental Authority; or (iv) which is designated, classified, or regulated as being a hazardous or toxic substance, material, pollutant, waste (or a similar such designation) under any federal, state or local law, regulation or ordinance, including under any Environmental Law.

“Lease” means this Landfill Lease Agreement.

“Lease Term” has the meaning set forth in Section 4(a).

“Lender” means any third-party entity providing financing to Lessee with respect to the System. It shall not mean Lessee’s trade creditors.

“Lessee Party” or “Lessee Parties” means, individually or collectively, Lessee, its Affiliates and any of their authorized representatives, agents, employees, managers, contractors, architects and engineers, and each of their respective officers, directors, partners, members, managers, agents, employees, representatives and invitees.

“Lessor Parties” means, individually or collectively, Lessor, its Affiliates and any of their authorized representatives, agents, employees, managers and each of their respective officers, directors, partners, members, managers, agents, employees, and representatives.

“Local Electric Utility” means the local electric distribution company providing interconnection and net metering services for the System.

“Party” means Lessor or Lessee.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm or other entity, or a Governmental Authority.

“PILOT” means the Payment-in-Lieu-of-Taxes Agreement establishing annual payments in lieu of taxes for the Premises and the System signed by the Lessee and the Lessor, as local taxing authority.

“Premises” has the meaning set forth in the Recitals of this Lease.

“Property” has the meaning set forth in the Lease, and includes the Premises.

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“Rebates” shall mean any and all Governmental Authority or utility rebates or other funding offered for the development of photovoltaic systems but does not include grants or benefits for which only a governmental entity is eligible as determined by and under Applicable Law.

“Removal and Restoration Date” means the date not later than sixty (60) days after either the Expiration Date or the date of earlier termination of this Lease, if applicable, when Lessee shall (i) complete removal from the Premises of the System and all of Lessee’s property, including, but not limited to, all equipment and components comprising the System and (ii) restore the Premises to its original condition.

“System” means the single photovoltaic solar renewable energy facility having a capacity of up to 0.750 megawatts (“MW”) AC installed by Lessee on the Premises, and which shall include but not necessarily be limited to an integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring and interconnections with the Local Electric Utility.





EXHIBIT C

LESSEE INSURANCE

The Lessee shall comply with the following requirements and maintain the following insurance coverages, as a condition of the Lease, in full force and effect throughout the Term and without interruption through insurance policies issued by insurance companies qualified to do business in Massachusetts and having a rating no lower than A- (excellent) from A.M. Best's Key Rating Guide in effect as of the date of issuance and renewal of all insurance policies, failing which Lessee shall be deemed in material breach of the Lease:

(i) **Workers' Compensation Insurance** at statutory limits and **Employer's Liability Coverage** in accordance with the Worker's Compensation Act of the Commonwealth of Massachusetts, which policy shall adequately protect all labor employed by the Lessee during the life of this Lease and, if required, Lessee shall provide written evidence to the Awarding Authority that such insurance is in fact in force. Such insurance shall be of at least \$1,000,000.00 each occurrence.

(ii) **Commercial General Liability Coverage** (Occurrence Form) written on an occurrence basis with a primary and non-contributory endorsement, and with limits of not less than \$1,000,000 each occurrence, \$1,000,000 per occurrence for personal injury liability, \$2,000,000 general aggregate (applied per job), and \$1,000,000 products and completed operations aggregate written for a period of three years following expiration or earlier termination of the Lease, on which policy the Town of Ayer shall be added as an additional insured.

(iii) **Automobile Liability Coverage** written on an occurrence basis, with a combined single limit of at least \$1,000,000.00 with a "hired and non-owned automobile" endorsement. Personal automobile liability coverage will be acceptable in lieu of commercial automobile coverage only if the insured vehicle used on or at the Premises is not commercially insured. Limits for personal automobile insurance must be at least \$250,000 for bodily injury per person, \$500,000 for bodily injury per accident, and \$250,000 for property damage per accident with an endorsement that the policy shall cover business related use with an additional \$1,000,000 personal umbrella policy, on which policy(ies) the Town of Ayer shall be added as an additional insured with coverage at least as broad as the insured.

(iv) **Umbrella Liability** of at least \$5,000,000 with terms and conditions that are at least as broad as the underlying liability policies and for concurrent terms with the underlying commercial general liability insurance, on which policy the Town of Ayer shall be added as an additional insured.

(v) **Intentionally Omitted.**

(vi) **Intentionally Omitted.**

(vii) **Intentionally Omitted.**

(viii) **Intentionally Omitted.**

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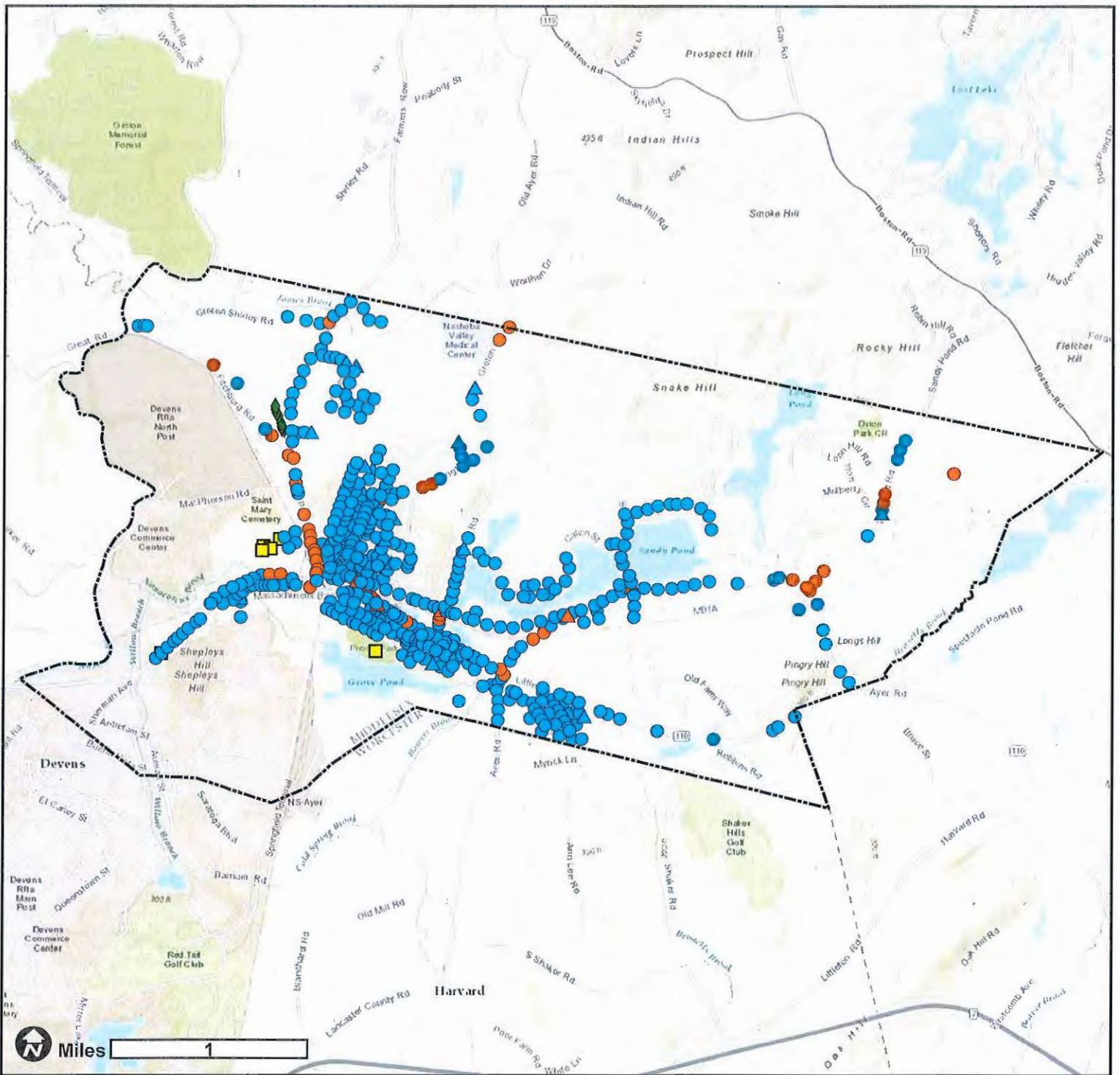
(ix) **Certificates of insurance** reasonably acceptable to Lessor evidencing the aforesaid insurance shall be delivered to Lessor on the Effective Date for the insurance in clauses (i)-(iii), and prior to the Construction Commencement Date for all other insurance listed above. The certificates of insurance and each insurance policy shall require that the insurance coverage shall not be cancelled until at least thirty (30) days' prior written notice has been given to Lessor, except that where the cancellation is a result of the non-payment of a premium by the insured, a ten days' prior written notice to Lessor is acceptable. At least fifteen (15) days prior to the expiration of any policy, Lessee shall furnish Lessor with certificates of insurance evidencing the renewal policy.



EXHIBIT D

PROPERTY DEED AND ASSESSOR'S MAP

See attached.



# Town of Ayer

## LED Street Light Design - Fixture Overview

### Proposed Fixture

- 14W Type A (444 Fixtures)
- ▲ 14W Type D (22 Fixtures)
- 71W Type A (41 Fixtures)
- ▲ 71W Type D (5 Fixtures)
- ◆ 27W CBright GKS28PLUS (8 Fixtures)
- 85W ILP Flood (7 Fixtures)
- 120W ILP Flood (1 Fixtures)

Office of the Ayer Board of Selectmen  
Office of the Ayer Town Administrator



Town of Ayer | Ayer Town Hall | 1 Main Street | Ayer, MA 01432 | 978-772-8220 | Fax 978-772-3017 | www.ayer.ma.us

MEMORANDUM

DATE: August 4, 2017

TO: Ayer Board of Selectmen

FROM: Robert A. Pontbriand  
Town Administrator

SUBJECT: Town Administrator's Report for the August 8, 2017 BOS Meeting

Dear Honorable Selectmen,

I am pleased to transmit to you the following Town Administrator's Report for your August 8, 2017 meeting. If you have any questions prior to the meeting, please do not hesitate to contact me directly. Thank you.

Administrative Update:

I will offer a brief administrative update on the various activities, projects, and actions of the Administration since the last BOS meeting on July 18, 2017.

Appointment of Administrative Coordinator:

I am pleased to recommend to the Board of Selectmen, Ms. Heather Hampson for appointment as the Town's Administrative Coordinator. Attached for the Board's review are Ms. Hampson's credentials. The Town advertised for the position and received over 30 applicants. Three finalists were interviewed by the Town Administrator, Building Commissioner, and Assistant to the Town Administrator. Ms. Hampson was by far the most qualified applicant and received very positive reviews from her professional references including the Town of Lancaster. (See Attached)

Opening of Special Fall Town Meeting Warrant:

The Board is respectfully requested to officially open the Special Fall Town Meeting Warrant for the Special Fall Town Meeting to take place on Monday, October 23, 2017 at 7pm in the auditorium of the Ayer Shirley Regional High School. The deadline for Citizens Petitions to the Town Clerk will be on Friday, October 6, 2017 at 12pm (noon). The deadline for all other warrant articles will also be Friday, October 6, 2017 at 12pm (noon).

Retail Marijuana Update:

Please see the attached memorandum from Town Counsel regarding retail marijuana. Specifically, it is recommended that the Board discuss and decide upon which type of moratorium warrant article they would like to put forth for Town Meeting consideration on October 23, 2017. (See Attached)

Proposed Town Government Reorganization Discussion:

At the recommendation of the Board at the July 18, 2017 Board Meeting, there will be a discussion on the proposed Town Government Reorganization at the August 8, 2017 Board Meeting. The Town's Finance Team (Town Administrator; Town Clerk/Tax Collector/Treasurer; Finance Manager; Benefits/Payroll Manager; and Assistant to the Town Administrator) have been invited to participate in this discussion with the BOS as we have been discussing these (issues) as a Finance Team for some time. Thank you.

Attachment(s).



*The Leader in Public Sector Law*

# THE REGULATION AND TAXATION OF MARIJUANA ACT

*A GUIDE TO THE NEW LAW LEGALIZING RECREATIONAL USE OF MARIJUANA*

**\*\*REVISED JANUARY 2017\*\***

On November 8, 2016, Massachusetts voters approved Question 4 legalizing the recreational use of marijuana (Chapter 334 of the Acts of 2016). Implementation of the Act is generating significant questions at state and local levels. The Act contains inconsistencies and outright contradictions. In particular, questions and concerns have been raised regarding the timeline for implementation, enforcement, local control, regulation of marijuana products produced by personal growers, amount of the tax, and additional matters. It is not certain whether or when the General Court may address these issues. The legislature has already acted to amend the deadlines for implementation of the law, as shown below. This new law, Chapter 351 of the Acts of 2016, was signed by the Governor on December 30, 2016. Responding to numerous questions from local officials, we have summarized the Act's provisions regarding the implementation timeline, personal use of marijuana, licensing of recreational marijuana establishments, local control mechanisms, and employment implications.

## CURRENT TIMELINE

<p><b>DECEMBER 15, 2016</b></p> <p>Effective Date of Law/ Personal Recreational Growing and Use Allowed</p>	<p>"Personal use" of marijuana is now legal for a person at least 21 years old. General Laws c. 94G, §7 provides that individuals, but not businesses, will be permitted to engage in a range of activities as outlined below.</p>
<p><b>MARCH 15, 2018</b></p> <p>Deadline for CCC to Adopt "Initial Regulations"</p>	<p>The Act creates a three-member Cannabis Control Commission ("CCC") to be appointed by and under the jurisdiction of the State Treasurer. The CCC will regulate and issue licenses for recreational marijuana establishments, but not for medical marijuana establishments, regulated by the Department of Public Health.</p>
<p><b>APRIL 1, 2018</b></p> <p>Deadline for CCC to Begin Accepting Specific Licenses</p>	<p>Initial applicants: only businesses with medical marijuana experience are eligible, for a limited number of licenses. The filing of certain applications is staged over the course of the ensuing two years.</p>
<p><b>JULY 1, 2018</b></p> <p>Deadline for Final Regulations, or "Default"</p>	<p>If the CCC has <u>not</u> adopted regulations, "each medical marijuana treatment center" may begin to "possess, cultivate, or otherwise obtain marijuana and marijuana products and may deliver, sell or otherwise transfer" to anyone over the age of 21.</p> <p>If regulations <u>are</u> timely adopted, the CCC will issue licenses within 90 days after applications are received on or after April 1, 2018, to qualified establishments.</p>

## PERSONAL USE OF MARIJUANA

- The Act authorizes persons 21 years of age or older to possess, use, purchase, process or manufacture one ounce or less of marijuana, of which not more than five grams can be in the form of marijuana concentrate.
- Within a person's "primary residence", a person may possess up to 10 ounces of marijuana and any marijuana produced on the premises for personal use by not more than six marijuana plants. If there is more than one grower at the residence, there may be up to 12 plants cultivated on the premises.
- A person may give away or transfer without "remuneration" to a person age 21 years or older up to one ounce of marijuana, of which no more than five grams may be in the form of marijuana concentrate, provided that such transfer is not advertised or promoted to the "public".
- A person 21 years of age or older may also possess or manufacture marijuana accessories or sell such accessories to a person 21 years of age or older.
- Local regulations - although personal possession and use is now legal, consumption is still subject to certain restrictions pursuant to G.L. c. 94G, §§ 2 and 13.

## LOCAL CONTROL — REGULATION, PROHIBITION

The Act defines a "marijuana establishment" to include, "a marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of marijuana-related business", and authorizes certain types of "local control".

### Ordinances and Bylaws Regulating Time, Place and Manner

The Act provides that municipalities may adopt ordinances or bylaws regulating the time, place and manner of operations of marijuana establishments, provided that such ordinances or bylaws are not "unreasonably impracticable" and do not otherwise conflict with the Act. Standard practices for adoption of ordinances or bylaws will apply.

### Further Regulation - Bylaws and Ordinances/Local Ballot Questions

The Act also authorizes imposition by "ordinance or bylaw by a vote of the voters of that city or town" of additional limitations on recreational marijuana establishments. The use of the phrase "by a vote of the voters of that city or town" typically requires a vote at an election, whereas the adoption of an ordinance or bylaw occurs by vote of the local legislative body (city or town council or town meeting). In our opinion, given this reference to voters, rules of statutory construction suggest that any attempt to approve an ordinance or bylaw, requires approval by the voters of the municipality at an election.

The topics that may be regulated under this section are as follows:

- prohibiting the operation of one or more types of marijuana establishments within the municipality;
- limiting the number of marijuana retailers to fewer than 20 per cent of the number of licenses issued within the municipality for the retail sale of alcoholic beverages not to be drunk on the premises where sold under chapter 138 of the General Laws; or



- limiting the number of any type of marijuana establishment to fewer than the number of medical marijuana treatment centers registered to engage in the same type of activity in the town.

The reference to “one or more types of marijuana establishments”, in our opinion, can be read to allow a municipality to ban marijuana establishments within its borders. However, this language is subject to interpretation, and may be addressed in the CCC regulations.

Under the laws generally governing elections, no question may appear on the ballot unless specifically authorized by law. While the form of the question is typically included in the authorizing law, the Act does not do so. For your information, pursuant to G.L. c.54, §42C, the Board of Selectmen must vote to put the question on the ballot and provide notice to the Town Clerk no less than 35 days prior to the date of the election.

### **Petition for Question on State Ballot to Permit Marijuana “Cafés”**

The Act provides that municipalities may, upon petition of not fewer than 10 percent of the number of the voters of the city or town voting at the state election preceding the filing of the petition, present to the voters of the city or town at the next state election the question of whether it will allow the consumption of marijuana and marijuana products on the premises where they are sold (i.e., so-called marijuana “cafés”). There is no timeline provided in the law for this type of petition, although it is reasonable to anticipate that any such request must be filed with the Secretary of the Commonwealth no later than the first Wednesday in August.

### **Regulation Prohibited or Strictly Limited**

A municipality may not adopt an ordinance or bylaw prohibiting the transportation of marijuana or marijuana products or making such transportation “unreasonably impracticable”.

Similarly, a municipality may not adopt an ordinance or bylaw prohibiting an establishment that “cultivates, manufactures or sells marijuana products in any area in which a medical marijuana treatment center is registered to engage in the same type of activity”. [Emphasis added]. The Act contains no definition of “area”.

The Act provides that no agreement between a municipality and a marijuana establishment may contain a payment that is not “directly proportional and reasonably related” to the costs imposed on the municipality by the operation of the recreational marijuana establishment.

### **Zoning Moratoria**

Municipalities have asked about the ability to adopt a zoning bylaw or ordinance establishing a moratorium on the locating of recreational marijuana establishments to allow time to study the issue and develop appropriate bylaws and ordinances. We expect the Attorney General will likely approve a moratorium for one year (for example, through June 30, 2018), consistent with those approved for medical marijuana and other moratoria. With the recent extension of the deadline in the CCC’s regulation to March 15, 2018, the Attorney General might approve extensions to the moratorium due to expire in Spring of 2018. We expect to have clearer guidance on this in the future. For municipalities with registered medical marijuana facilities, however, a moratorium may not be effective in preventing a recreational marijuana establishment “in any area” in which a medical marijuana treatment center is registered to engage in the “same type of activity.”



Now that the legislature has delayed implementation for six months, there is ample time for municipalities to determine the timing for any local action. Discussions might include whether or not to adopt ordinances or bylaws regulating time, place and manner issues, including moratoria, or to place questions before the voters relative to limitations on the type or number of recreational marijuana establishments that may be located in the municipality. Municipalities wishing to adopt ordinances or bylaws should have these in place before applications are filed on April 1, 2018.

## Marijuana Related Uses Not “Agriculture”

Newly enacted Chapter 351 of the Acts of 2016 includes an amendment to the Zoning Act, G.L. c.40A, §3. The new language states that the “growing, cultivation, distribution or dispensation of marijuana” does not qualify for the agricultural exemption under the Zoning Act.

## LOCAL OPTION TAXES

Question 4 also includes a new Chapter 64N of the General Laws setting tax rates for the sale of recreational marijuana products. Section 3 allows cities and towns to impose a local sales tax of up to 2%. In our opinion, this will require approval by the municipality’s legislative body.

## EMPLOYMENT ISSUES

The new law may also have significant implications for public employers. The relevant portion of the law provides, “This chapter shall not require an employer to permit or accommodate conduct otherwise allowed by this chapter in the workplace and shall not affect the authority of employers to enact and enforce workplace policies restricting the consumption of marijuana by employees.”

Thus, despite the legalization in Massachusetts of the personal use of marijuana, public employers may continue to prohibit their employees from using or possessing marijuana in the workplace or in public buildings and from working while impaired by marijuana. Drug and alcohol testing and related policies should be reviewed to ensure that such policies will continue to be consistent with the public entity’s desired treatment of marijuana following the change in the law. In some cases, policies may need to be updated or clarified to account for the change in the law.

Be further aware, however, that federal law prohibiting the use of marijuana by employees who possess firearms, such as police officers, and those required to hold a Commercial Driver’s License, will continue to be in full force and effect notwithstanding the change in Massachusetts law. We are aware that some police chiefs are considering issuing a general reminder to all law enforcement personnel that marijuana is still a controlled substance for purposes of federal law and that the use or possession of marijuana is still prohibited.

## FURTHER DEVELOPMENTS

We will continue to monitor developments in the law, including possible amendments by the General Court and guidance issued by the offices of the State Treasurer, Attorney General, or Secretary of the Commonwealth’s Elections Division.

In the meantime, if you have any questions concerning regulation of recreational marijuana, please contact Attorneys Joel Bard ([jbard@k-plaw.com](mailto:jbard@k-plaw.com)) or Katherine Laughman ([klaughman@k-plaw.com](mailto:klaughman@k-plaw.com)) at 617-556-0007. Members of our Labor and Employment Practice Group are also available to assist with employment-related questions.



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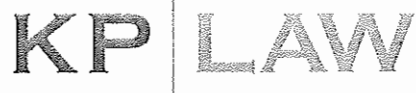
## **MODEL RECREATIONAL MARIJUANA ESTABLISHMENT BALLOT QUESTIONS**

### **Banning all types of marijuana establishments:**

Shall this Town prohibit the operation of all types of marijuana establishments as defined in G.L. c.94G, §1, including marijuana cultivators, marijuana testing facilities, marijuana product manufacturers, marijuana retailers or any other type of licensed marijuana-related businesses, within the Town of \_\_\_\_\_?

### **Banning one type of marijuana establishment (retail):**

Shall this Town prohibit the operation of marijuana retailers, as that term is defined in G.L. c.94G, §1, within the Town of \_\_\_\_\_?



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## **MODEL RECREATIONAL MARIJUANA ESTABLISHMENT BAN WARRANT ARTICLE**

To see if the Town will vote to amend the Town's Zoning Bylaw by adding a new Section \_\_\_\_\_, **MARIJUANA ESTABLISHMENTS**, that would provide as follows, and further to amend the Table of Contents to add Section \_\_\_\_, "Marijuana Establishments:"

**Section \_\_\_\_\_**

Consistent with G.L. c.94G, § 3(a)(2), all types of marijuana establishments as defined in G.L. c.94G, §1(j), to including marijuana cultivators, marijuana testing facilities, marijuana product manufacturers, marijuana retailers or any other types of licensed marijuana-related businesses, shall be prohibited within the Town of \_\_\_\_\_.

This Section shall be effective upon passage by the voters at a Town Election.

Or take any action relative thereto.



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## MODEL MORATORIUM WARRANT ARTICLE

To see if the Town will vote to amend the Town’s Zoning Bylaw by adding a new Section \_\_\_\_\_, **TEMPORARY MORATORIUM ON RECREATIONAL MARIJUANA ESTABLISHMENTS**, that would provide as follows, and further to amend the Table of Contents to add Section \_\_\_\_, “Temporary Moratorium on Recreational Marijuana Establishments:”

**Section \_\_\_\_\_ Purpose**

On November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, processing, distribution, possession and use of marijuana for recreational purposes (new G.L. c. 94G, Regulation of the Use and Distribution of Marijuana Not Medically Prescribed). The law, which allows certain personal use and possession of marijuana, took effect on December 15, 2016 and (as amended on December 30, 2016; Chapter 351 of the Acts of 2016) requires a Cannabis Control Commission to issue regulations regarding the licensing of commercial activities by March 15, 2018 and to begin accepting applications for licenses on April 1, 2018. Currently under the Zoning Bylaw, a non-medical Marijuana Establishment (hereinafter, a “Recreational Marijuana Establishment”), as defined in G.L. c. 94G, §1, is not specifically addressed in the Zoning Bylaw. Regulations to be promulgated by the Cannabis Control Commission may provide guidance on certain aspects of local regulation of Recreational Marijuana Establishments. The regulation of recreational marijuana raises novel legal, planning, and public safety issues, and the Town needs time to study and consider the regulation of Recreational Marijuana Establishments and address such issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of Recreational Marijuana Establishments. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Recreational Marijuana Establishments so as to allow sufficient time to address the effects of such structures and uses in the Town and to enact bylaws in a consistent manner.

**Section \_\_\_\_\_ Definition**

“Recreational Marijuana Establishment” shall mean a “marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.”

**Section \_\_\_\_\_ Temporary Moratorium**

For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for a Recreational Marijuana Establishment and other uses related to recreational marijuana. The moratorium shall be in effect through June 30, 2018 or until such time as the Town adopts Zoning Bylaw amendments that regulate Recreational Marijuana Establishments, whichever occurs earlier. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, and to consider the Cannabis Control Commission regulations regarding Recreational Marijuana Establishments, and shall consider adopting new Zoning Bylaws in response to these new issues.

Or take any action relative thereto.

# MASSACHUSETTS DEVELOPMENT FINANCE AGENCY

## AMENDMENT NO. 3 TO AGREEMENT FOR SERVICES

This Amendment to Agreement for Services (the "Amendment") is made and entered into as of \_\_\_\_ day of \_\_\_\_\_, 2017 by and between the Massachusetts Development Finance Agency ("MassDevelopment" or the "Agency"), a Massachusetts body politic and corporate created and established under Chapter 23G of the Massachusetts General Laws, having its principal place of business at 99 High Street, 11<sup>th</sup> Floor, Boston, MA 02110, and the Town of Ayer, Massachusetts, having a principal place of business at 1 Main Street, Ayer, MA 01432 (the "Town").

WITNESSETH THAT



WHEREAS, the Agency and the Town entered into an Agreement for Services ("the Agreement") dated as of September 1, 2012, a First Amendment dated as of August 11, 2015, and a Second Amendment dated as of August 16, 2016, whereby the Town is providing veterans services to eligible veterans residing in the Devens Regional Enterprise Zone (DREZ); and

WHEREAS, the Agency and the Town wish to amend the Agreement pursuant to the terms of the Amendment,

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and with the intent of being legally bound, the parties hereby agree as follows:

1. The first sentence of Article 7A of the Agreement is hereby deleted in its entirety and replaced with the following language:

"The Term of this Agreement shall be from the effective date of this Agreement to August 31, 2018."

2. All of the terms of the Agreement, as amended pursuant to the terms hereof, and all representations made by the Town in the Agreement, including, without limitation, representations made regarding the payment of state taxes, are hereby restated, ratified and confirmed in their entirety as of the date hereof.

3. This Amendment may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Amendment has been executed by the Agency and the Town and is effective as of the date first written above.

**MASSACHUSETTS DEVELOPMENT  
FINANCE AGENCY**



\_\_\_\_\_  
Approved As To Form  
Agency Counsel

By: \_\_\_\_\_  
Name: Thatcher W. Kezer III  
Title: Senior Vice President, Devens

**TOWN OF AYER**

By: \_\_\_\_\_  
Name: Gary J. Luca  
Title: Chair, Ayer Board of Selectmen

Town of Ayer  
Board of Selectmen  
Ayer Town Hall – 1<sup>st</sup> Floor Meeting Room  
Ayer, MA 01432



*Broadcast and Recorded by APAC*

**Tuesday July 18, 2017**  
**Open Session Meeting Minutes**

Attendance: Christopher R. Hillman, Chair; Jannice L. Livingston, Vice Chair; Gary J. Luca, Clerk  
Also in Attendance: Robert A. Pontbriand, Town Administrator

Call to Order: The meeting was called to order at 7pm by C. Hillman.

**MOTION:** A motion was made by G. Luca and seconded by J. Livingston to approve the meeting agenda. Motion passed 3-0.

There was no public input.

Class I License

**MOTION:** A motion was made by G. Luca and seconded by J. Livingston to approve the Class I License with the following conditions: no hoarding on premises; no exterior storage of debris; and proof of surety bond and application payment fee. Motion Passed 3-0.

Office of Community and Economic Development

Mr. Alan Manoian, Director of Community and Economic Development appeared before the Board regarding the following items:

Release Certificate not to Encumber for 19 Williams Street

**MOTION:** A motion was made by G. Luca and seconded by J. Livingston to approve the release certificate not to encumber for 19 Williams Street as presented/recommended by Mr. Manoian. Motion Passed 3-0.

CDBG Loan Amendment for 3 Union Street

**MOTION:** A motion was made by G. Luca and seconded by J. Livingston to approve the CDBG loan amendment for 3 Union Street as presented/recommended by Mr. Manoian. Motion Passed 3-0.

The Board had a brief discussion with Mr. Manoian about the MBTA fence project across from Town Hall as well as concerns about the conditions at the MBTA Commuter Rail Station and at Willow Road. The Town Administrator advised that the Administration will be meeting with the MBTA regarding these matters and will advise/update the Board accordingly.

Mr. Mark Wetzel, DPW Superintendent appeared before the Board regarding the following items:

Ayer DPW Newsletter and Water Quality Report was presented to the Board and briefly discussed by the Superintendent.

Purchase Order for Valve Maintenance Trailer in the amount of \$64,468.58

**MOTION: A motion was made by G. Luca and seconded by J. Livingston to approve the purchase order for the valve maintenance trailer in the amount of \$64,468.58 for signature by the Chair. Motion passed 3-0.**

Construction Contract for Spectacle Pond Well 2 Replacement in the amount of \$248,800

**MOTION: A motion was made by G. Luca and seconded by J. Livingston to approve the construction contract for Spectacle Pond Well 2 Replacement in the amount of \$248,800. Motion passed 3-0.**

Contract with Wall Trucking for DPW Sludge Hauling in the amount of \$250,000

**MOTION: A motion was made by G. Luca and seconded by J. Livingston to approve the contract in the amount of \$250,000 with Wall Trucking for DPW sludge hauling. Motion passed 3-0.**

Engineering Agreement for West Main Street Bridge

**MOTION: A motion was made by G. Luca and seconded by J. Livingston to approve the engineering agreement for the West Main Street Bridge as presented by the DPW Superintendent. Motion passed 3-0.**

Engineering Agreement for Wastewater Treatment Plant Improvements, Phase I

**MOTION: A motion was made by G. Luca and seconded by J. Livingston to approve the engineering agreement for the Wastewater Treatment Plant Improvement, Phase I. Motion passed 3-0.**

Town Administrator's Report

R. Pontbriand provided the Board with a brief administrative update.

Approval of Town Planner Job Description

R. Pontbriand presented the Town Planner Job Description for approval by the Board and recommended that the position be classified by the Board as a Grade 13 as result of the Town's non-union classification system.

**MOTION: A motion was made by G. Luca and seconded by J. Livingston to approve the job description for Town Planner and classify the position as a Grade 13. Motion passed 3-0.**



New Business/Selectmen's Questions

C. Hillman stated that the Board should discuss and prepare for the Fall Town Meeting to have the Town government reorganized for an appointed Treasurer/Tax Collector; Appointed Town Clerk; and Town Manager form of government.

G. Luca concurred with C. Hillman as did J. Livingston.

R. Pontbriand suggested that the Board further discuss at the August 8, 2017 meeting.

C. Hillman discussed the odor issues from the Nasoya Plant and how the odors have now started up again and needs to be enforced.

C. Hillman asked the DPW Superintendent for an update on the Town owning the Streetlights. Superintendent Wetzel advised that the consultant is preparing the specifications for procurement and that installation could commence as early as the end of August 2017.

C. Hillman asked for an update on the Truck Exclusion of Columbia Street. Superintendent Wetzel advised that the DPW was completing the required Study and would be ready to further discuss with the Board at the August 8, 2017 meeting.

Approval of the June 20, 2017 Meeting Minutes

**MOTION: A motion was made by J. Livingston and seconded by G. Luca to approve the Board's meeting minutes for the June 20, 2017 Board Meeting.**

**MOTION: A motion was made by G. Luca and seconded by J. Livingston to adjourn the meeting. Motion passed 3-0.**

The Board of Selectmen adjourned at 9:15pm.

Minutes recorded and submitted by Robert A. Pontbriand, Town Administrator

Minutes approved by the BOS on: \_\_\_\_\_

\_\_\_\_\_  
Gary J. Luca, Clerk