

SELECTMEN'S MEETING  
Monday, January 26, 2015  
Selectmen Meeting Room  
7:00 PM

**AGENDA**

**PUBLIC COMMENTS**

Public comments are allowed for up to 10 minutes at the beginning of each meeting. Each speaker is limited to 3 minutes for comment. Members of the Board will neither comment nor respond, other than to ask questions of clarification. Speakers are encouraged to notify the Selectmen's Office at 781-698-4580 if they wish to speak during public comment to assist the Chairman in managing meeting times.

**SELECTMAN CONCERNS AND LIAISON REPORTS**

**TOWN MANAGER REPORT**

**ITEMS FOR INDIVIDUAL CONSIDERATION**

1. Grant of Location - Comcast - Meriam Street 7:00 p.m.
2. Working Group of Appropriation Committee and Tax Deferral and Exemption Study Committee Findings (20 min.)
3. Request for Special Town Meeting for School Projects 7:25 PM
4. Discussion of Appointed Committee's Compliance with Open Meeting Law Minutes Posting Requirements 7:40 PM
5. Hartwell Solar Financial Analysis and Project Variant Selection 7:50 PM
6. FY2016 Budget Discussion 8:20 PM
7. Authorize Town Manager to Execute Fairview Local Initiative Project 8:40 PM
8. Approve Weapons Policy 8:45 PM
9. Vote to Sign the 2015 Special Town Meetings and Annual Town Meeting Warrants and Discuss Article Presentations 8:50 PM
10. Selectmen Committee Appointments 900 PM
  1. Historic Districts Commission
  2. Human Rights Committee
  3. Tree Committee

**CONSENT AGENDA**

1. Water and Sewer Commitments and Adjustments 9:05 PM
2. Approve Request for Water and Sewer Deferral 9:05 PM
3. Approve One-Day Liquor - LABB Collaborative 9:05 PM
4. Approve One-Day Liquor License - Sacred Heart 9:05 PM
5. Vote to Set the Bond for the Town Clerk 9:05 pm

**EXECUTIVE SESSION**

**ADJOURN**

# AGENDA ITEM SUMMARY

## LEXINGTON BOARD OF SELECTMEN MEETING

**DATE:**

1/26/2015

**PRESENTER:**

Joe Pato

**ITEM NUMBER:**

I.1

**AGENDA ITEM TITLE:**

Grant of Location - Comcast - Meriam Street

**SUMMARY:**

The Department of Public Works/Engineering has reviewed the petition, plan and orders for a Grant of Location for conduit to be installed, owned and used by Comcast. The work consists of excavating and installing a conduit for underground cable beginning at Utility Pole #65/4 approximately 330 feet northeasterly from Massachusetts Avenue on Meriam Street and continuing southwesterly approximately 190 feet to an existing stubbed conduit from Depot Place. This work is to service multiple tenants at #1833 to #1853 Massachusetts Avenue. Abutters have been notified. Prior to excavation, Comcast will be required to obtain a Street Opening Permit and adhere to any and all conditions imposed. Since this petition appears to be in order, we recommend that approval be granted.

**RECOMMENDATION / SUGGESTED MOTION:**

Motion to approve the petition of Comcast to lay, install and maintain underground conduit on Meriam Street from existing pole to an existing stub at Depot Place approximately 200± feet.


**FOLLOW-UP:**

Engineering Division

**APPROXIMATE TIME ON AGENDA:**

7:00 p.m.

**ATTACHMENTS:**

Description	Type
 Grant of Location - Meriam Street - Comcast	Backup Material

## ORDER FOR LOCATION FOR CONDUITS AND HANHOLES

### Town of Lexington

**WHEREAS, COMCAST of MASSACHUSETTS** has petitioned for permission to construct an underground 4" conduit for service to #1843 Mass Avenue under the public way or ways of the Town thereafter specified, and notice has been given and a hearing held on said petition as provided by law.

It is ordered that **COMCAST of MASSACHUSETTS** be and is hereby granted permission to construct and a location for, such a line of conduit with the necessary wires and cables therein under the following public way or ways of said Town:

**Meriam Street: Beginning at utility pole #65/4, approx. 330 feet northeasterly from Mass Avenue, on Meriam Street and continuing Southwesterly, approx. 190 feet, to an existing stubbed conduit from Depot Place.**

All construction work under this order shall be in accordance with the following conditions:

1. Conduits and necessary wires shall be located as shown on the plan made by **Dewsnap Engineering Associates LLP** and dated: **December 19, 2014** on file with said petition.
2. Said Company shall comply with the requirements of existing by-laws and such as may hereafter be adopted governing the construction and maintenance of the 4 inch conduit.
3. All work shall be done to the satisfaction of the Board of Selectmen or such officer or officers as it may appoint to supervise the work.

1. _____	
2. _____	Board of Selectmen
3. _____	the Town of
4. _____	<b>Lexington</b>
5. _____	

### CERTIFICATE

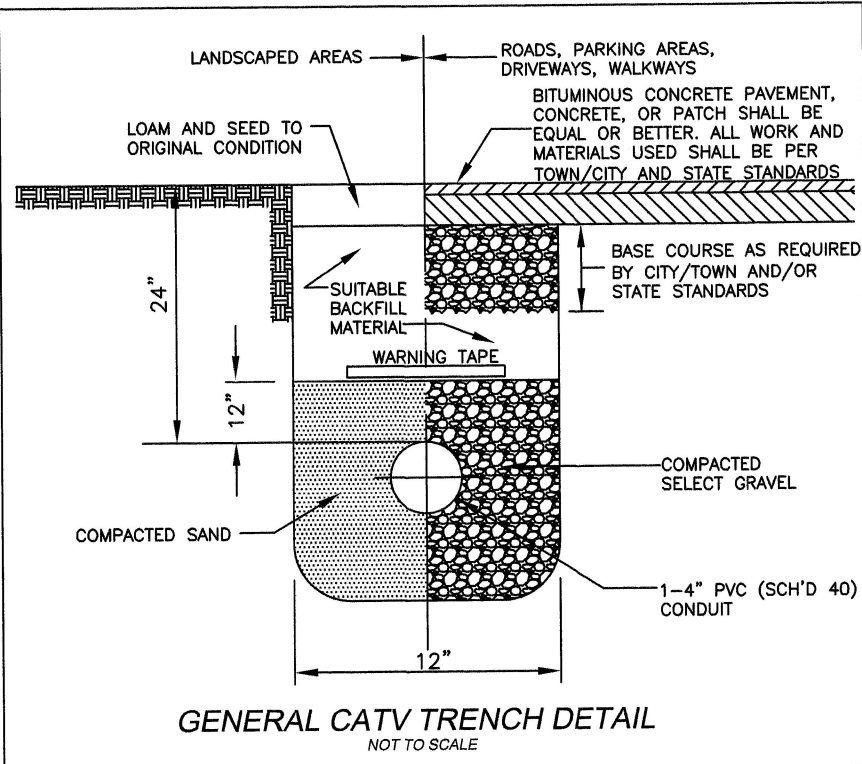
We hereby certify that the foregoing Order was adopted after due notice and a public hearing as prescribed by Section 22 of chapter 166 of the General Laws (Ter. Ed.), and any additions thereto or amendments thereof, to wit:-after written notice of the time and place of the hearing mailed at least seven days prior to the date of the hearing by the Selectmen to all owners of real estate abutting upon that part of the way or ways upon, along or across which the line is to be constructed under said Order, as determined by the last preceding assessment for taxation, and a public hearing held on the \_\_\_\_\_ day of \_\_\_\_\_ 2015 at \_\_\_\_\_ in said Town.

1. _____	
2. _____	Board of Selectmen
3. _____	the Town of
4. _____	<b>Lexington</b>
5. _____	

### Certificate

I hereby certify that the forgoing are true copies of the Order of the board of Selectmen of the Town of **Lexington**, Massachusetts, duly adopted on the \_\_\_\_ day of \_\_\_\_\_, 2015 and recorded with the records of location Orders of said Town, Book\_\_\_\_, Page\_\_\_\_ and of the certificate of notice of hearing thereon required by Section 22 of Chapter 166 of the General Laws (Ter.Ed.) and any additions thereto or amendments thereof, as the same appear of record.

ATTEST: \_\_\_\_\_  
Clerk of the Town of **Lexington**, Massachusetts





## NOTICE TO ABUTTERS

January 5, 2015

In conformity with the requirements of Section 22 of Chapter 166 of the General Laws (Ter. Ed.), you are hereby notified that a public hearing will be held in the Selectmen's Meeting Room, 2nd Floor, Town Office Building, of the Town of Lexington, Massachusetts, on **Monday, January 26th at 7:00 p.m.**, upon the following petition of Comcast for permission to construct and locations for a line of conduits and manholes with the necessary wires and cables therein under the following public way of said Town:

### **Meriam Street:**

Install a conduit for underground cable beginning at Utility Pole #65/4 approximately 330 feet northeasterly from Mass Avenue on Meriam Street and continuing southwesterly approximately 190 feet to an existing stubbed conduit at Depot Place.

By: *Tricia Malatesta*

Engineering Aide

Department of Public Works/Engineering

Please direct inquiries to the Comcast Networks Representative:

[Eugene.Looney@cable.comcast.com](mailto:Eugene.Looney@cable.comcast.com)

Copies to:

Comcast  
55 Concord St.  
N. Reading, MA 01864

QUIGLEY JOSEPH J IV & QUIGLEY  
CLAUDIA J  
3 OAKLAND STREET  
LEXINGTON, MA 02420

PARISH OF THE CH OF REDEEMER  
6 MERIAM ST  
LEXINGTON, MA 02420

DEPOT REALTY TRUST MOHAMMED AK  
P O BOX 724  
WINCHESTER, MA 01890

SACCO ROBERT F TRS/ROBERT F  
SACCO 2012 T SACCO JUDITH L  
TRS/JUDITH L SACCO 2012 T  
15 MERIAM ST  
LEXINGTON, MA 02420

THE GIROUX BUILDING LIMITED PA  
GDB CORPORATION  
2 CREST CIRCLE  
LEXINGTON, MA 02421

TIAMPO JANET M  
1 OAKLAND ST  
LEXINGTON, MA 02420

LEXINGTON HISTORICAL SOCIETY  
13 DEPOT SQ  
LEXINGTON, MA 02420

# **AGENDA ITEM SUMMARY**

## **LEXINGTON BOARD OF SELECTMEN MEETING**

**DATE:**

1/26/2015

**PRESENTER:**

Vicki Blier

**ITEM NUMBER:**

I.2

**AGENDA ITEM TITLE:**

Working Group of Appropriation Committee and Tax Deferral and Exemption Study Committee Findings (20 min.)

**SUMMARY:**

The Working Group will present a status report on its investigation into the residential exemption and on the Sudbury means tested senior citizen property tax exemption.

Information will be sent to you either over the weekend or on Monday.

**RECOMMENDATION / SUGGESTED MOTION:**

No action at this time

**FOLLOW-UP:**

**APPROXIMATE TIME ON AGENDA:**

# **AGENDA ITEM SUMMARY**

## **LEXINGTON BOARD OF SELECTMEN MEETING**

**DATE:**

1/26/2015

**PRESENTER:**

Margaret Coppe/Paul Ash

**ITEM NUMBER:**

I.3

**AGENDA ITEM TITLE:**

Request for Special Town Meeting for School Projects

**SUMMARY:**

Ms. Coppe and Dr. Ash will be at your meeting to request and discuss a Special Town Meeting and articles in order to proceed with school facility projects and the Master Plan.





**RECOMMENDATION / SUGGESTED MOTION:**

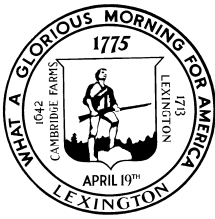
To request from the Board of Selectmen a Special Town Meeting on the first night of 2015 Annual Town Meeting to appropriate funds to engage professional services to begin the design process to address the existing system-wide over-crowding, with a focus on preK, elementary and middle schools, and to respond to the Enrollment Working Group's five year forecast.

**FOLLOW-UP:****APPROXIMATE TIME ON AGENDA:**

7:25 PM

**ATTACHMENTS:**

Description		Type
	School Committee Memo	Cover Memo
	School Timeline and Needs	Backup Material
	Long-Term Overcrowding Options	Backup Material
	SMMA Report on Option 9	Backup Material



# Lexington Public Schools

146 Maple Street ♦ Lexington, Massachusetts 02420

Lexington School Committee

email: [school-com@comet.ci.lexington.ma.us](mailto:school-com@comet.ci.lexington.ma.us)

January 23, 2015

To: Lexington Board of Selectmen

At its January 20, 2015 meeting, the School Committee took an important step forward to ensure that all LPS schools have sufficient high quality educational spaces by the fall of 2018. The School Committee voted unanimously to request that the Board of Selectmen place an article before the upcoming March Special Town Meeting to fund architectural design services to add classrooms and other educational spaces at Bowman, Bridge, Fiske, Harrington, Clarke, Diamond, to the Lexington Children's Place pre-school, and to build a new Hastings School. The estimated cost for all of these projects is approximately \$118 million dollars. Last year, the Town Meeting approved funds to add twelve high quality prefabricated classrooms to the high school for general education and to build new spaces to expand the Intensive Learning Program for students on the autism spectrum from grade 9 to age 22.

We have serious space problems – 8 out of our 9 schools are at capacity or over capacity due to a 2% annual increase in enrollment during the past six years. The scope of this problem is summarized in the report by the architectural firm SMMA (a summary can be found at <http://bit.ly/1yr6GcF>). In order to understand the scope of the problem for the next five years, a citizens' committee, known as the Enrollment Working Group (EWG), conducted a year-long intensive study. Earlier this month, the EWG presented the following enrollment projections to the School Committee.

Grade Group	Method	Enrollment in FY2020	Growth over FY2014
Elementary (K-5)	HDM	3188 ± 267	260 ± 267
Middle School (6-8)	CSM	1830 ± 70	171 ± 70
High School (9-12)	CSM	2290 ± 120	269 ± 120
Total System	HDM	7279 ± 410	671 ± 410

Given the enrollment projections by the EWG and the current lack of space (confirmed by SMMA), a seven-member committee consisting of two School Committee members, one member of the Board of Selectmen, two members from the Permanent Building Committee, the Director of Public Facilities and the Superintendent of Schools met over the past seven months to explore options that would provide the PreK-grade 8 spaces we need in over the next three years. The committee, known as the Ad Hoc School Master Planning Committee (AHSMC), forwarded its recommendation on January 7 to the School Committee. On Tuesday, the School Committee largely accepted the recommendation of the AHSMC with some improvements. Currently, the School Committee is considering the following building projects:

- Bowman – Adding two prefabricated classrooms and one music room by September 2016  
Estimated cost: \$3,100,000
- Bridge – Adding two prefabricated classrooms and one music room by September 2016  
Estimated cost: \$3,680,000
- Fiske – Adding two standard modular classrooms by December 2015. Studying the possibility of adding a permanent brick and mortar addition (scope and date of completion to be studied)

Estimated cost: Standard modulares: \$800,000 capital, \$180,000 operating, total \$980,000, Brick and mortar TBD

- Harrington – Expanding the classroom capacity of the school and adding/expanding core facilities to provide sufficient art, music, cafeteria, and gym spaces. The number of classrooms, scope of the project, and other details will be part of the design phase next year (estimated date of occupancy, fall 2018).

Estimated cost: With pre-K \$24,300,000

- Hastings – Replace the school by the fall of 2018 if no state funding is available, and 2020 if state funding becomes available.

Estimated cost: With MSBA funding \$41,400,000; without MSBA funding \$59,000,000

- Clarke – Add four or five classrooms. Date of completion, September 2017. Note: The architect will study if these spaces should be added to the Diamond project.

Estimated cost: \$4,610,000

- Diamond – Remove the current modular classrooms in the summer of 2016 (where permanent construction will be built), add prefabricated or temporary classrooms in another location to replace the current modular classrooms before September 2016, and build a permanent educational space by 2018.

Estimated cost: \$24,000,000

- Lexington Children's Place Pre-school – Expand the size of the current pre-school. The expanded pre-school could be attached to Harrington or the new Hastings School, or could be a stand-alone building (this project could be completed by the fall of 2017 or 2018, depending on the type and location of the pre-school).

*Please note that the above projects are likely to be changed once the design process begins. The design process will allow input from all LPS staff, Lexington residents, and professionals hired to guide the process.*

While we still have major steps ahead (getting design funds, designing the spaces we need, obtaining construction dollars, and getting voter approval), a major milestone was reached with the vote on January 20, 2015. The School Committee unanimously agreed to this course of action and requests the Board of Selectmen place an article before the March Special Town Meeting to start the design process.

For the Lexington School Committee

Margaret Coppe

Chair

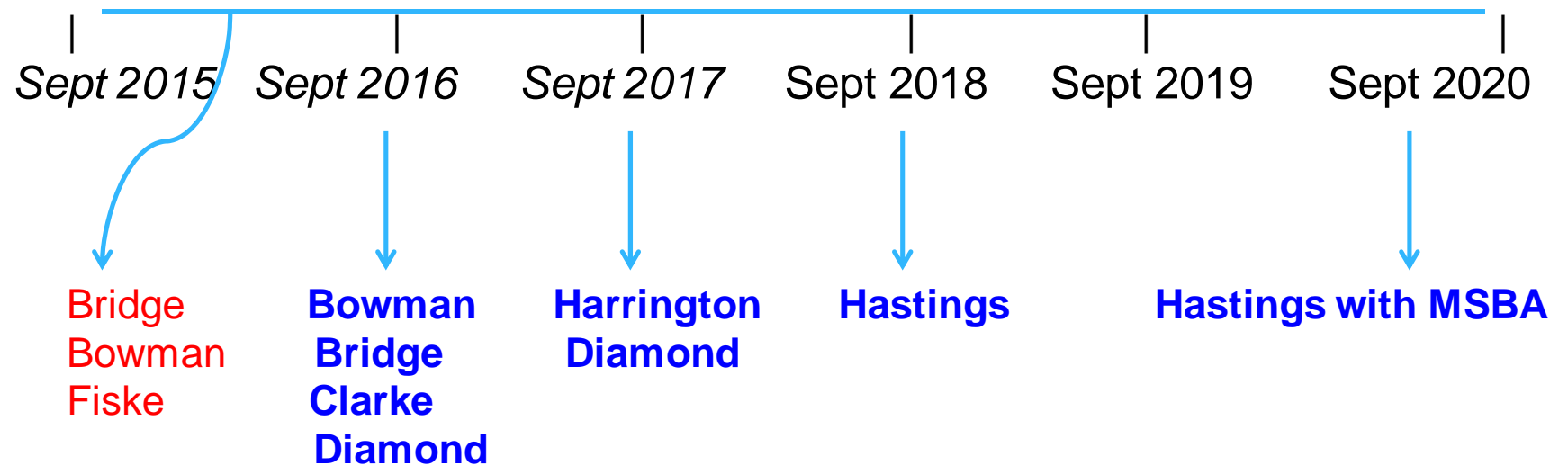
Lexington School Committee

# Timeline and Needs

**Immediate**  
**(51+ students)\***

**Short-term**

**Long-term**  
**(671+- 410 students)^**



\* = LPS Student Enrollment Oct 1, 2014

^ = Enrollment Working Group Dec 2014

## Long-term Overcrowding Options

School	Current # CR	Overarching District Solution	Proposed Size	# CR Gained	Construction Timeline	Cost	AdhSMP
Pre-K		Meet Program needs			32 mo	Harr or Hast	✓
Bowman	26	A) Add 3 yr capacity	A) Temp	A) 2	A) 8 mo	A) \$0.7	✓ B
		B) Add 20 yr capacity	B) 28	B) 2+ music	B) 14 mo	B) \$3.1	
Bridge	26	A) Add 3 yr capacity	A) Temp	A) 2	B) 8 mo	A) \$0.7	✓ B
		B) Add 20 yr capacity	B) 28	B) 2+ music	B) 14 mo	5	
						B) \$3.7	
Estabrook	27	Use to full capacity	27				
Fiske	22	A) Add 3 yr capacity	A) Temp	B) 2	A) 8 mo	A) \$1.0	
		B) Add 50 yr capacity	B) 27	C) 5+	B) 30 mo	B) \$13.0	
Harrington	21	Best buildable site & adds 50 yr capacity	27	6+	30 mo	\$24.3	✓
Hastings	21	District Equity & adds 50 yr capacity	27-30	6-9+	32-60 mo	\$59.0	✓
Clarke		Adds 20 yr capacity		4+ SPED	14 mo	\$4.6	✓
Diamond		Adds 50 yr capacity		16+	30 mo	\$22.9	✓
LHS		Boiler				\$10.8	

CR = general educational classrooms excluding art, music, library, gym

+ = includes additional non- general education space that depending on school may include small work space, bathrooms, cafeteria, music/art/gym

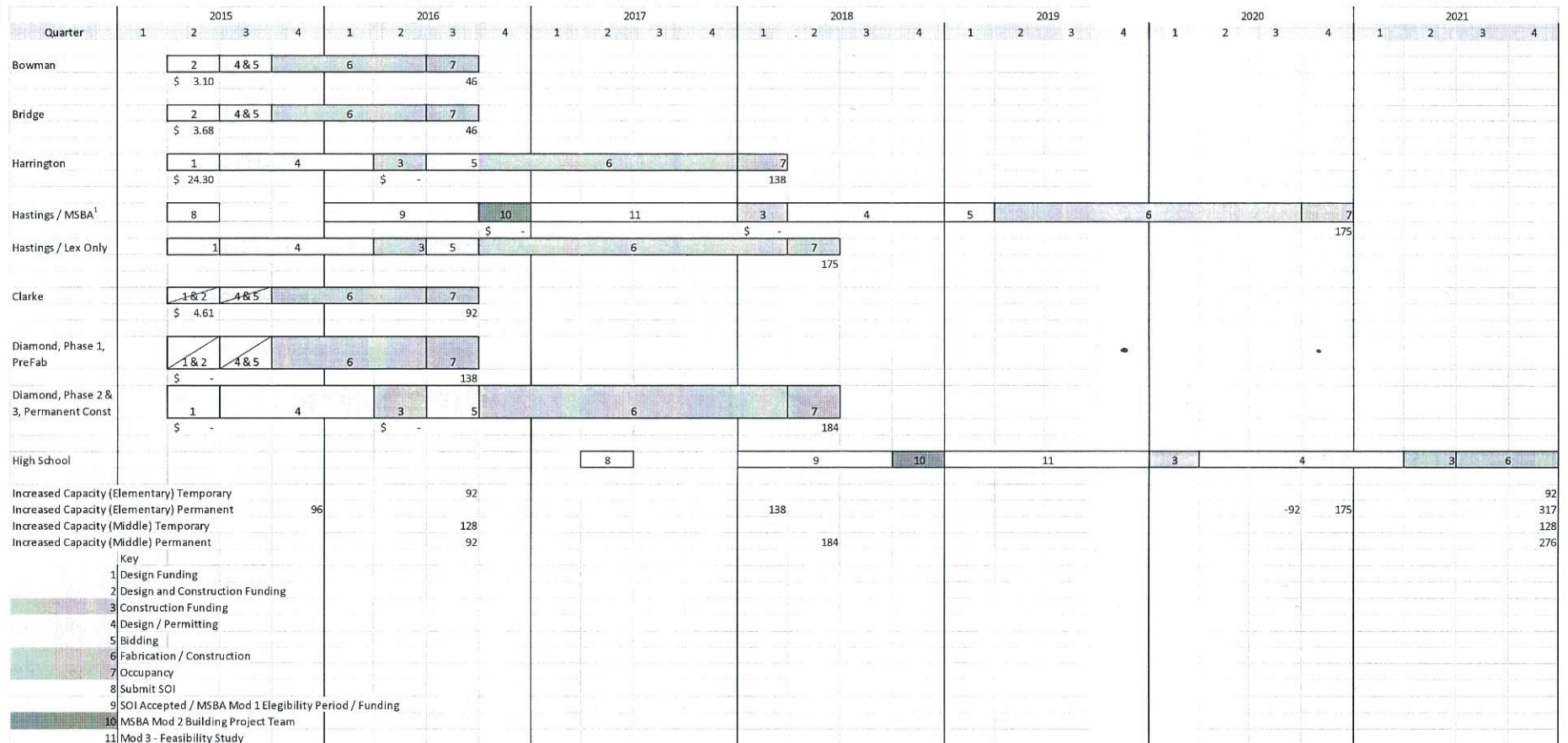
## SCHEME 9 COMPONENTS

• Bowman Elementary	\$ 3,100,000
• Bridge Elementary	\$ 3,680,000
• Harrington Elementary	\$ 24,300,000
• Hastings Elementary	\$ 59,000,000*
• Clarke Middle	\$ 4,610,000
• Diamond Middle	\$ <u>24,000,000</u>
Total	\$118,690,000

\* without MSBA reimbursement



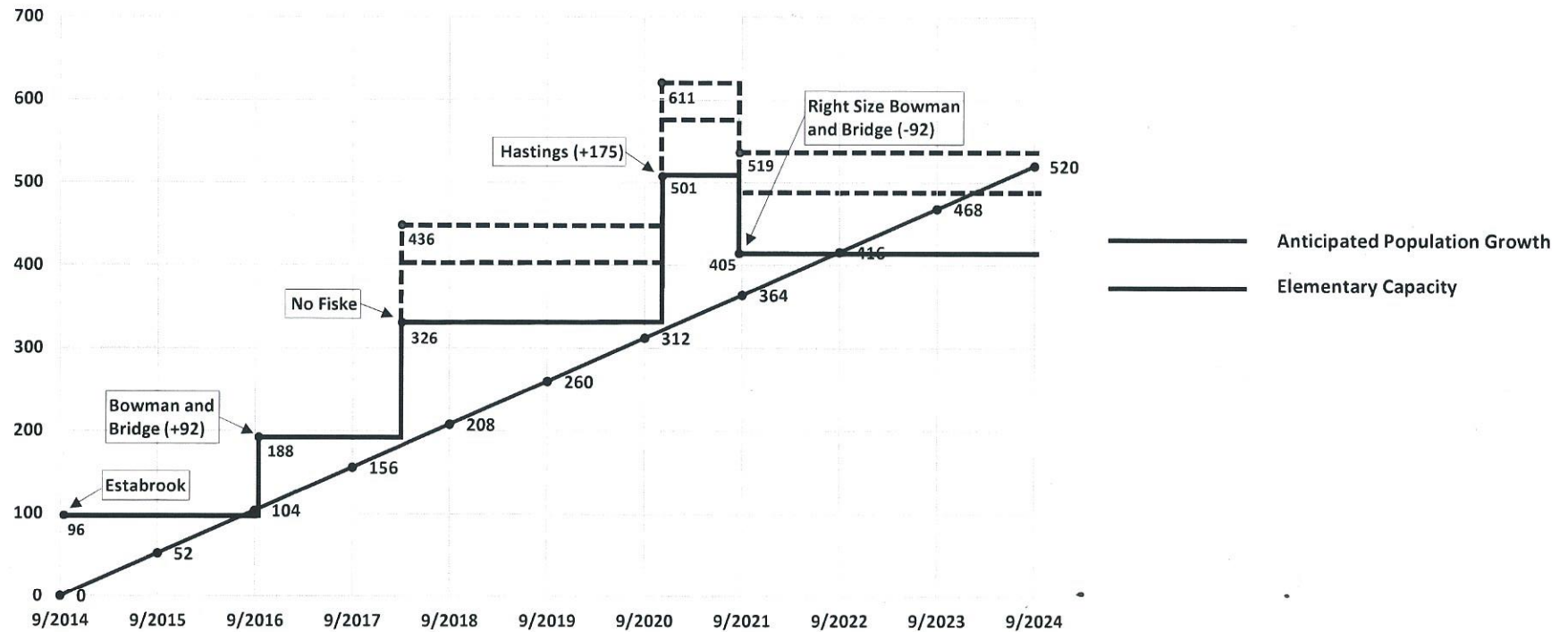
# WHAT IF'S FUNDING / DESIGN / CONSTRUCTION SCHEDULE



Ad Hoc School Master Plan Committee  
Lexington Public Schools

SMMA

# ELEMENTARY SCHOOLS – GROWTH VS. CAPACITY (NO FISKE INCLUDED)



# **AGENDA ITEM SUMMARY**

## **LEXINGTON BOARD OF SELECTMEN MEETING**

**DATE:**

1/26/2015

**PRESENTER:**

Joe Pato

**ITEM NUMBER:**

I.4

**AGENDA ITEM TITLE:**

Discussion of Appointed Committee's Compliance with Open Meeting Law Minutes Posting Requirements

**SUMMARY:**

Ethan Handwerker requested time on the Selectmen's agenda to discuss OML issues.

Review status of recent open meeting law (OML) complaints and discuss the adequacy of OML compliance by appointed boards and committees.

**RECOMMENDATION / SUGGESTED MOTION:**

**FOLLOW-UP:**

Selectmen's Office

**APPROXIMATE TIME ON AGENDA:**

7:40 PM

# **AGENDA ITEM SUMMARY**

## **LEXINGTON BOARD OF SELECTMEN MEETING**

**DATE:**      **PRESENTER:**      **ITEM NUMBER:**

1/26/2015      Mark Sandeen, Sustainable Lexington Committee      I.5

**AGENDA ITEM TITLE:**

Hartwell Solar Financial Analysis and Project Variant Selection

**SUMMARY:**

Mark Sandeen and Dan Voss of the solar task force will present revised recommendations including a financial analysis for two variations of the proposed solar array at the Hartwell Avenue facility. Selection of the preferred variant will allow the vendor to proceed with developing an Energy Management Agreement for the project.

The Board will be asked to determine if it wants to:

1. select the preferred project variant
2. authorize the Town Manager to negotiate an Energy Management Agreement for the project

**RECOMMENDATION / SUGGESTED MOTION:**

Move to proceed with project variant \_\_\_\_\_ and to authorize the Town Manager to negotiate an Energy Management Agreement for the project.

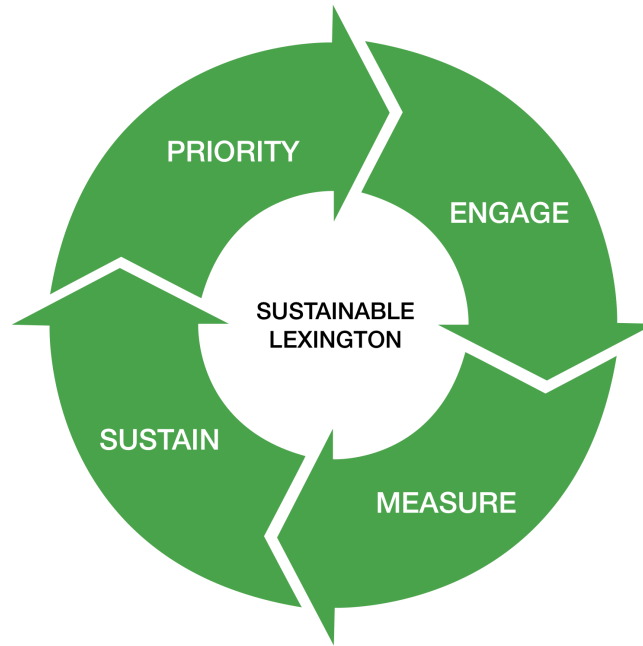
**FOLLOW-UP:**

**APPROXIMATE TIME ON AGENDA:**

7:50 PM

**ATTACHMENTS:**

Description	Type
 Solar Update Presentation	Presentation



# Solar Task Force Update

## Board of Selectmen Review

January 26, 2015

# ***The Hartwell Project – Status***

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- Since we last met on December 01
  - ✓ Finalized and submitted the Interconnection.
  - ✓ Refined design of 1.75MW and 3.5MW options (ground + canopy).
  - ✓ Identified options to entirely offset impact on composting for 1.75MW design and largely offset impact from 3.5MW design.
  - ✓ Developed a “Net Benefit” model – taking into account residual lost revenue from composting + cost of associated site works.
  - ✓ Engaged with Lexington BOH, Conservation Committee, Planning Dept, Development Review Team and Legal – moving into final financial review.
  - ✓ Advanced the Power Purchase Agreement with Solar City.

**→ Today – Provide update on the Economic Analysis and request a return visit in early Feb to present a “reviewed” Financial Case for each option. In next meeting, targeting a decision on system size and approval for Town Manager to complete EMSA negotiation.**



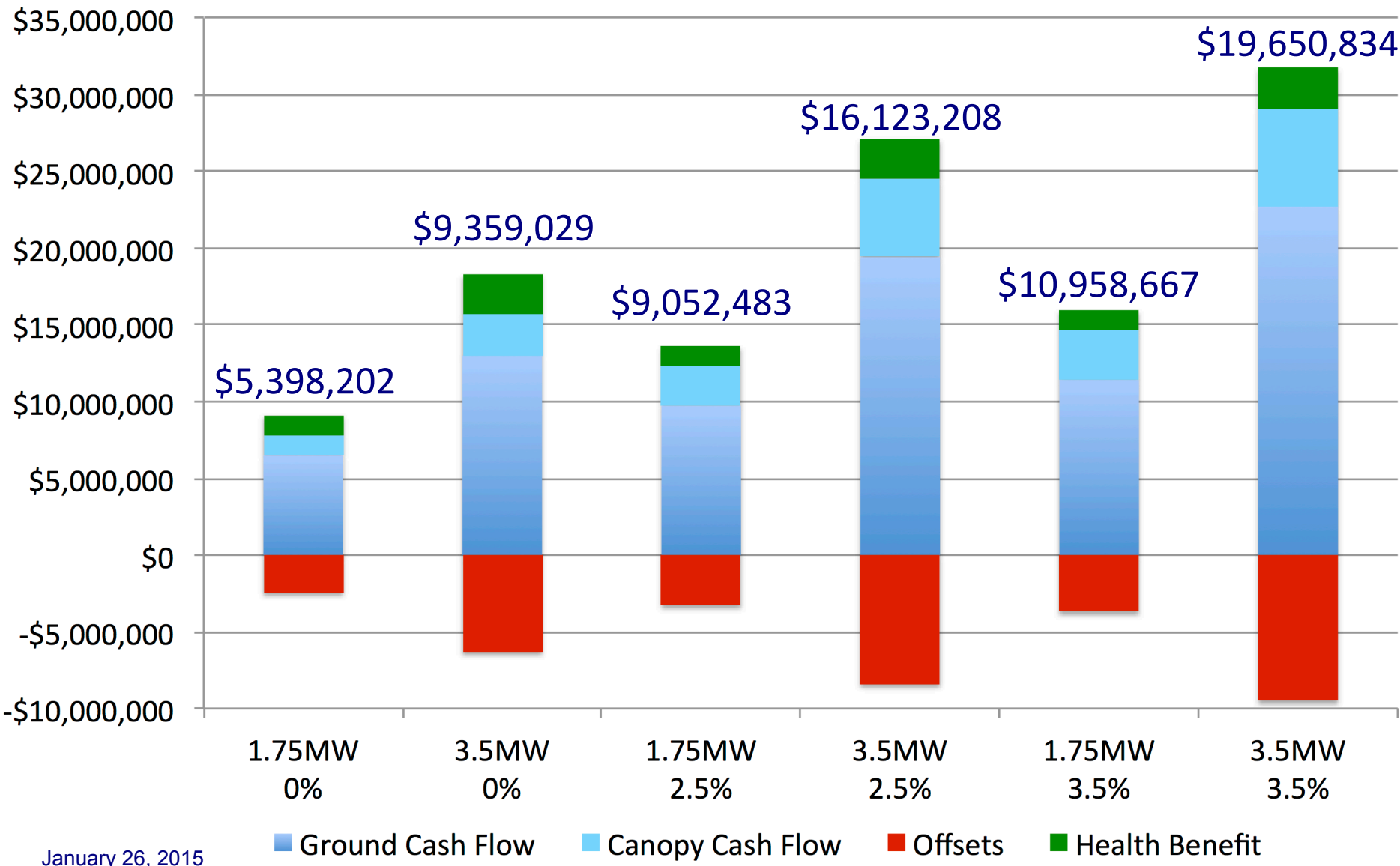
# *Summary of Options*

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- Option 1: 1.25MW Ground mount + (up to) 1MW canopy
  - Can be installed with little or no impact on existing operations.
  - With addition of windrow turner (lease / buy) composting capacity would be at (above) current levels.
  - Final scrub of “site prep” needs to be completed.
- Option 2: 2.5MW Ground mount + (up to) 1MW canopy
  - Significant increase in economic value.
  - Will require material adjustment to current operations / traffic flow.
  - With addition of windrow turner composting capacity would still be impacted – but to a far lesser extent than in past analysis.
  - Some “up front” site prep work would be needed to move current stockpiles.
- Under both scenarios, site prep work (if needed) could be included in PPA price – the following cases include site prep costs.

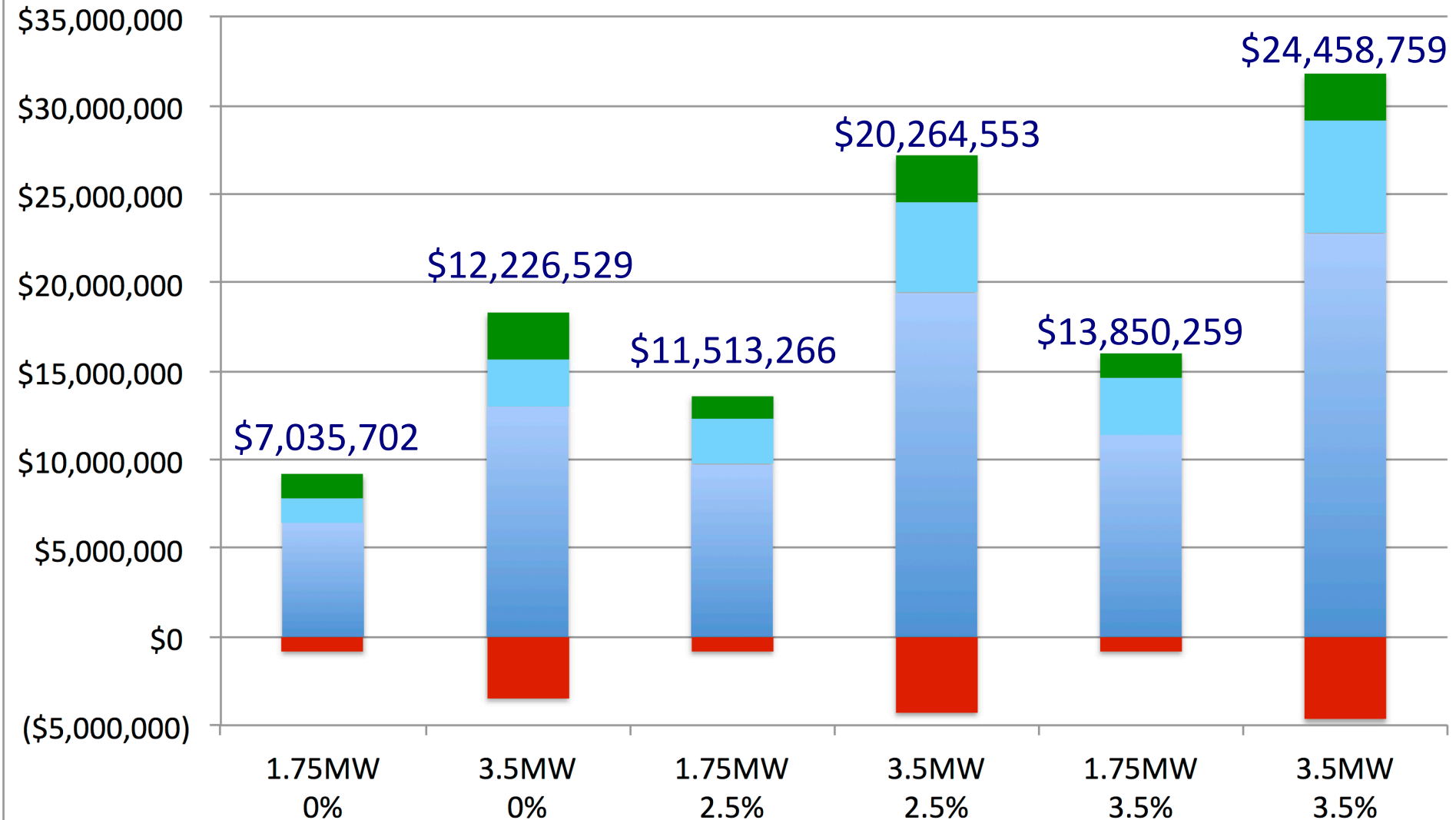


# Ground & Canopy Solar Net Benefit without Wind Row Turner





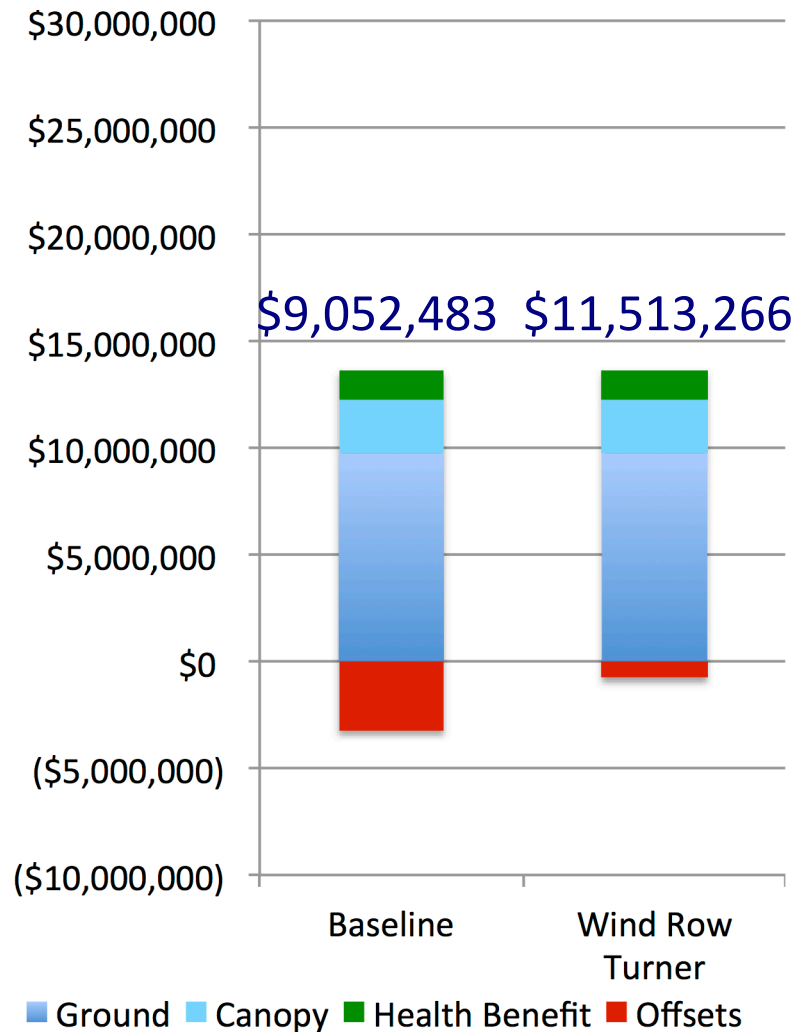
# Ground & Canopy Solar Net Benefit with Wind Row Turner



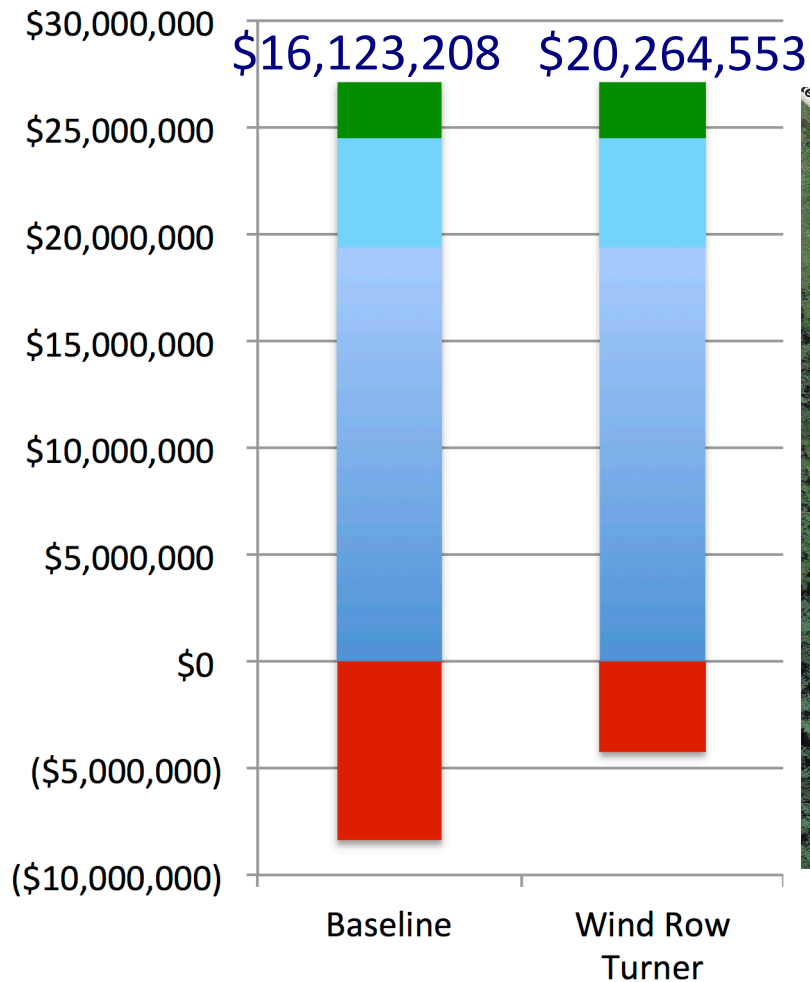
January 26, 2015

Ground Cash Flow   Canopy Cash Flow   Offsets   Health Benefit

# 1.75 MW Solar – Potential \$11.5M



# 3.5 MW Solar – Potential \$20.2M



■ Ground ■ Canopy ■ Health Benefit ■ Offsets



# ***Next Steps / Request***

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- Recommended Next Steps:
  - Close out assessment of site prep / operational impacts under the 3.5 MW case.
  - Engage Town Finance, The Appropriation Committee and Capital Expenditure Committee on financial review of the 2 economic cases.
  - Advance EMSA agreement negotiation and provide Draft for Review to Town Manager.
- BOS Request:
  - Consent to continue forward with the analysis of the two proposals.
  - Permission to come back in early Feb with firmed / reviewed numbers for presentation of recommended project scope/design.



# **AGENDA ITEM SUMMARY**

## **LEXINGTON BOARD OF SELECTMEN MEETING**

**DATE:**                      **PRESENTER:**                                      **ITEM NUMBER:**

1/26/2015                  Carl F. Valente, Town Manager                                      I.6

**AGENDA ITEM TITLE:**

FY2016 Budget Discussion

**SUMMARY:**

Selectmen will continue their discussion of the FY2016 Preliminary Budget and Financing Plan (White Book).

Discussion items include:

1. Health Insurance Budget, in light of GIC projected premium increase;
2. Fire Station Design/Site Evaluation, Capital Request - \$242,000
3. (New) Wind-Row Turner for Compost Facility
4. Exempt Debt Service Mitigation - \$215,000
5. Community Center Preservation Restriction Endowment
6. Sidewalk Improvements, Additions and Design
7. Adjust Ambulance Fees to Support Increase in Medic 2 Hours

**RECOMMENDATION / SUGGESTED MOTION:**

NA

**FOLLOW-UP:**

Town Manager's Office and Finance will make any changes approved by the Selectmen, for the final recommended budget (Brown Book)

**APPROXIMATE TIME ON AGENDA:**

8:20 PM

# **AGENDA ITEM SUMMARY**

## **LEXINGTON BOARD OF SELECTMEN MEETING**

**DATE:**

1/26/2015

**PRESENTER:**

Carl F. Valente, Town Manager

**ITEM NUMBER:**

I.7

**AGENDA ITEM TITLE:**

Authorize Town Manager to Execute Fairview Local Initiative Project

**SUMMARY:**

The Regulatory and Operating Agreement document for the LexHab affordable housing project at 11 Fairview Avenue is ready for signature. This document will then sent to the Mass. Department of Housing and Community Development (DHCD). DHCD also requires a copy of the Selectmen's Minutes authorizing the Town Manager to sign the documents on behalf of the Town.

**RECOMMENDATION / SUGGESTED MOTION:**

Move to authorize the Town Manager to sign, on behalf of the Town, the Regulatory and Use Agreement for the Local Initiative Program project at 11 Fairview Avenue.

**FOLLOW-UP:**

Planning Department will forward documents to DHCD.

**APPROXIMATE TIME ON AGENDA:**

8:40 PM

**ATTACHMENTS:**

Description

Type

☐ Regulatory and Use Agreement

Backup Material

**REGULATORY AND USE AGREEMENT**  
**[Comprehensive Permit Rental]**

**LOCAL INITIATIVE PROGRAM**

This Regulatory and Use Agreement (this "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and among the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development ("DHCD") pursuant to G.L. c.23B §1 as amended by Chapter 19 of the Acts of 2007, the City/Town of Lexington (the "Municipality"), and the Lexington Housing Assistance Board, Inc. an independently chartered non-profit corporation, having a mailing address at 1620 Massachusetts Ave., Suite 4, Lexington, MA 02420, and its successors and assigns ("Developer").

**RECITALS**

WHEREAS, the Developer is constructing a housing development known as "Fairview" at an approximately .578 -acre site located at 11 Fairview Avenue in the Municipality, more particularly described in Exhibit A attached hereto and made a part hereof (the "Development"); and

WHEREAS, DHCD has promulgated Regulations at 760 CMR 56.00 (as may be amended from time to time, the "Regulations") relating to the issuance of comprehensive permits under Chapter 40B, Sections 20-23, of the Massachusetts General Laws (as may be amended from time to time, the "Act") and pursuant thereto has issued its Comprehensive Permit Guidelines (the "Guidelines" and, collectively with the Regulations and the Act, the "Comprehensive Permit Rules"); and

WHEREAS, pursuant to the Act and the final report of the Special Legislative Commission Relative to Low and Moderate Income Housing Provisions issued in April 1989, regulations have been promulgated at the Regulations which establish the Local Initiative Program ("LIP"); and

WHEREAS, DHCD acts as Subsidizing Agency for the Development pursuant to the Comprehensive Permit Rules; and

WHEREAS, said Board of Appeals issued a comprehensive permit for the Development by decision filed with the Municipality's Town Clerk on October 27, 2014 which was recorded in the Middlesex South Registry of Deeds (the "Registry") in Book 64547, Page 22 ("the Comprehensive Permit"); and

WHEREAS, pursuant to the Comprehensive Permit and the requirements of the Comprehensive Permit Rules, the Development is to consist of a total of 4 rental units, of which twenty five percent (25%) (i.e. 1 unit) (the "Affordable Unit") will be rented to Low or Moderate Income Persons and Families (as defined herein) at rentals specified in this Agreement and will be subject to this Agreement; and



WHEREAS, DHCD has adopted the *Preparation of Cost Certification for 40B Rental Developments: Inter-Agency 40B Rental Cost Certification Guidance for Owners, Certified Public Accountants and Municipalities* (the "Cost Certification Guidance"), which shall govern the cost certification and limited dividend requirements for the Development pursuant to the Comprehensive Permit Rules; and

WHEREAS, the parties intend that this Agreement shall serve as a "Use Restriction" as defined in and required by Section 56.05(13) of the Regulations; and

WHEREAS, the parties recognize that Affirmative Fair Marketing (as defined herein) is an important precondition for rental of Affordable Units and that local preference cannot be granted in a manner which results in a violation of applicable fair housing laws, regulations and subsidy programs; and.

WHEREAS, the parties recognize that the Municipality has an interest in preserving affordability of the Affordable Units and may offer valuable services in administration, monitoring and enforcement.

NOW, THEREFORE, in consideration of the agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DHCD, the Municipality and the Developer hereby agree as follows:

#### DEFINITIONS

1. In addition to terms defined elsewhere in this Agreement, the following terms as used in this Agreement shall have the meanings set forth below:

Accountant's Annual Determination shall have the meaning given such term in Section 7(f) hereof.

Accumulated Distribution Amounts shall have the meaning given such term in Section 7(c) hereof.

Accumulated and Unpaid Distribution Amounts shall have the meaning given such term in Section 7(c) hereof.

Act shall have the meaning given such term in the Recitals hereof.

Affirmative Fair Housing Marketing Plan shall mean the Affirmative Fair Housing Marketing Plan prepared by the Developer in accordance with the Guidelines and approved by DHCD, as further set forth in Section 3.

Affordable Units shall have the meaning set forth in the Recitals above.

Allowable Development Costs shall have the meaning given such term in Section 21 hereof.



Annual Excess Revenues shall have the meaning given such term in Section 7(e) hereof.

Annual Income shall be determined in the manner set forth in 24 C.F.R. 5609 (or any successor regulations).

Area shall mean the Boston Metropolitan Statistical Area (MSA)/County/HMFA as designated by the Department of Housing and Urban Development ("HUD").

Area Median Income ("AMI") shall mean the median gross income for the Area, as determined from time to time by HUD. For purposes of determining whether Adjusted Family Income qualifies a tenant for treatment as a Low or Moderate Income Tenant, the Area Median Income shall be adjusted for family size.

Comprehensive Permit shall have the meaning given such term in the Recitals hereof.

Comprehensive Permit Rules shall have the meaning given such term in the Recitals hereof.

Construction Lender shall mean the lender(s) making the Construction Loan, and its successors and assigns.

Construction Loan shall mean the loan to the Developer for the construction of the Development, if any.

Construction Mortgage shall mean the mortgage from the Developer securing the Construction Loan, if any.

Cost Certification shall have the meaning given such term in Section 21 hereof.

Current Distribution Amounts shall have the meaning given such term in Section 7(c) hereof.

Developer's Equity shall be calculated according to the formulas outlined in Attachment C of the Cost Certification Guidance, using the Cost Method until the Cost Certification process is complete, and either the Cost Method or the Value Method, whichever results in the greater amount, thereafter. Developer's Equity shall be retroactively applied to the period from the start date (commencement of construction of the Development as evidenced by issuance of the first building permit) until Substantial Completion (the "Construction Period"). For the Construction Period, Developer's Equity shall mean the average of costs expended by the Developer on the Development during the period in question, based on a review of Developer's financial reports by an independent accounting firm. By way of example only, if on the first day of construction the Developer's costs are \$10,000,000 (all attributable to land acquisition costs), and one year later the Developer's costs are \$20,000,000 (half attributable to land acquisition costs, half attributable to construction costs), then the Developer's Equity for that year of construction would be the average of those two amounts of \$15,000,000. The Developer's Equity for the construction period shall be appropriately prorated for any partial year during such period.

Developer Parties shall have the meaning given such term in Section 7(b) hereof.

Development shall have the meaning given such term in the Recitals hereof.

Development Revenues shall have the meaning given such term in Section 7(b) hereof..

Distribution Payments shall have the meaning given such term in Section 7(b) hereof.

Event of Default shall mean a default in the observance of any covenant under this Agreement existing after the expiration of any applicable notice and cure periods.

Excess Revenues Account shall mean the account established under Section 7(e) hereof.

Family shall have the same meaning as set forth in 24 C.F.R. §5.403 (or any successor regulations).

Guidelines shall have the meaning given such term in the Recitals hereof.

Housing Subsidy Program shall mean any other state or federal housing subsidy program providing rental or other subsidy to the Development.

HUD shall mean the United States Department of Housing and Urban Development.

Lender shall mean the Construction Lender and/or the Permanent Lender.

Low or Moderate Income Persons or Families shall mean persons or Families whose Annual Incomes do not exceed eighty percent (80%) of the Median Income for the Area, and shall also mean persons or Families meeting such lower income requirements as may be required under the Comprehensive Permit.

Low or Moderate Income Tenants shall mean Low or Moderate Income Persons or Families who occupy the Affordable Units.

Maximum Annual Distributable Amounts shall have the meaning given such term in Section 7(c) hereof.

Mortgage shall mean the Construction Mortgage and/or the Permanent Mortgage, if any.

Permanent Lender shall mean the lender(s) making the Permanent Loan to the Developer, and its successors and assigns, if any.

Permanent Loan shall mean the Permanent Loan which may be made or committed to be made by the Permanent Lender to the Developer after completion of construction of the Development, which will replace the Construction Loan, or any subsequent refinancing thereof, if any.

Permanent Mortgage shall mean the mortgage from the Developer to the Permanent Lender securing the Permanent Loan, if any.

Regulations shall have the meaning given such term in the Recitals hereof.

Related Person: shall mean a person whose relationship to such other person is such that (i) the relationship between such persons would result in a disallowance of losses under Section 267 or 707(b) of the Code, or (ii) such persons are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein).

Substantial Completion shall have the meaning given such term in Section 21 hereof.

Surety shall have the meaning given such term in Section 22 hereof.

Tenant Selection Plan shall mean the Tenant Selection Plan, prepared by the Developer in accordance with the Guidelines and approved by DHCD, with such changes thereto provided that any substantive changes have been approved by the DHCD.

Term shall have the meaning set forth in Section 24 hereof.

## CONSTRUCTION OBLIGATIONS

2. (a) The Developer agrees to construct the Development in accordance with plans and specifications approved by the Municipality (the "Plans and Specifications") and in accordance with all on-site and off-site construction, design and land use conditions of the Comprehensive Permit. All Affordable Units to be constructed as part of the Development must be similar in exterior appearance to other units in the Development and shall be evenly dispersed throughout the Development. In addition, all Affordable Units must contain complete living facilities including but not limited to a stove, kitchen cabinets, plumbing fixtures, and sanitary facilities, all as more fully shown in the Plans and Specifications. Materials used for the interiors of the Affordable Units must be of good quality. The Development must fully comply with the State Building Code and with all applicable state and federal building, environmental, health, safety and other laws, rules, and regulations, including without limitation all applicable federal and state laws, rules and regulations relating to the operation of adaptable and accessible housing for the handicapped. Except to the extent that the Development is exempted from such compliance by the Comprehensive Permit, the Development must also comply with all applicable local codes, ordinances and by-laws.

(b) The Developer shall provide to the Municipality evidence that the final plans and specifications for the Development comply with the requirements of the Comprehensive Permit and that the Development was built substantially in accordance with such plans and specifications.

(c) Unless the same shall be modified by a change to the Comprehensive Permit approved by the Board of Appeals for the Municipality, the bedroom mix for the Development shall be as follows:

\_\_\_\_\_ of the Affordable Units shall be one bedroom units;  
1 of the Affordable Units shall be two bedroom units; and

\_\_\_\_\_ of the Affordable Units shall be three bedroom units.

All Affordable Units to be occupied by families must contain two or more bedrooms. Affordable Units must have the following minimum areas:

one bedroom units - 700 square feet  
two bedroom units - 900 square feet  
three bedroom units - 1200 square feet

### **USE RESTRICTION/RENTALS AND RENTS**

3. (a) The Developer shall rent the Affordable Units during the Term hereof to Low or Moderate Income Persons or Families upon the terms and conditions set forth in the Comprehensive Permit and this Agreement. In fulfilling the foregoing requirement, Developer will accept referrals of tenants from the Public Housing Authority in the Municipality, and will not unreasonably refuse occupancy to any prospective tenants so referred who otherwise meet the requirements of the Tenant Selection Plan. The foregoing provisions shall not relieve Developer of any obligations it may have under the provisions of other documents and instruments it has entered with respect to any applicable Housing Subsidy Program; provided, however, DHCD shall have no obligation hereunder, expressed or implied, to monitor or enforce the applicable requirements of any such Housing Subsidy Programs.

(b) The annual rental expense for each Affordable Unit (equal to the gross rent plus allowances for all tenant-paid utilities, including tenant-paid heat, hot water and electricity) shall not exceed thirty percent (30%) of eighty percent (80%) of AMI, adjusted for household size, assuming that household size shall be equal to the number of bedrooms in the Affordable Unit plus one. If rentals of the Affordable Units are subsidized under any Housing Subsidy Program, then the rent applicable to the Affordable Units may be limited to that permitted by such Housing Subsidy Program, provided that the tenant's share of rent does not exceed the maximum annual rental expense as provided in this Agreement.

(c) If, after initial occupancy, the income of a tenant of an Affordable Unit increases and, as a result of such increase, exceeds the maximum income permitted hereunder for such a tenant, the Developer shall not be in default hereunder so long as either (i) the tenant income does not exceed one hundred forty percent (140%) of the maximum income permitted or (ii) the Developer rents the next available unit at the Development as an Affordable Unit in conformance with Section 3(a) of this Agreement, or otherwise demonstrates compliance with Section 3(a) of this Agreement.

(d) If, after initial occupancy, the income of a tenant in an Affordable Unit increases, and as a result of such increase, exceeds one hundred forty percent (140%) of the maximum income permitted hereunder for such a tenant, at the expiration of the applicable lease term, the rent restrictions shall no longer apply to such tenant.

(e) Rentals for the Affordable Units shall be initially established as shown on the Rental Schedule attached as Appendix A hereto, subject to change from time to time (if necessary to reflect any changes in AMI) in accordance with the terms and provisions of this Agreement and any applicable Housing Subsidy Program. Thereafter, the Developer shall annually submit to the Municipality and DHCD a proposed schedule of monthly rents and utility allowances for all Affordable Units in the Development. It is understood that such review rights shall be with respect to the maximum rents for all the Affordable Units, and not with respect to the rents that may be paid by individual tenants in any given unit. Rents for the Affordable Units shall not be increased above such maximum monthly rents without DHCD's prior approval of either (i) a specific request by the Developer for a rent increase; or (ii) the next annual schedule of rents and allowances as set forth in the preceding sentence. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least 30 days' prior written notice by the Developer to all affected tenants. If the Municipality and DHCD fail to respond to a submission of the proposed schedule of rents for the Affordable Units as set forth above within thirty (30) days of the Municipality's and DHCD's receipt thereof, the Municipality and DHCD shall be deemed to have approved the submission.

(f) Developer shall obtain income certifications satisfactory in form and manner to DHCD at least annually for all Low or Moderate-Income Tenants. Said income certifications shall be kept by the management agent for the Development and made available to DHCD and the Municipality upon request.

(g) Throughout the term of this Agreement, the Municipality shall annually certify in writing to DHCD that each of the Affordable Units continues to be an Affordable Unit as provided in Section 2(c), above; and that the Development and the Affordable Units have been maintained in a manner consistent with the Comprehensive Permit and this Agreement.

(h) Prior to marketing or otherwise making available for rental any of the units in the Development, the Developer shall submit an Affirmative Fair Housing Marketing Plan (also known as an "AFHM Plan") for DHCD's approval. At a minimum the AFHM Plan shall meet the requirements of the Guidelines, as the same may be amended from time to time to comply with the requirements of fair housing laws. The AFHM Plan, upon approval by DHCD, shall become a part of this Agreement and shall have the same force and effect as if set out in full in this Agreement. At the option of the Municipality, and provided that the AFHM Plan demonstrates (i) the need for the local preference (e.g., a disproportionately low rental or ownership affordable housing stock relative to need in comparison to the regional area), and (ii) that the proposed local preference will not have a disparate impact on protected classes, the AFHM Plan may also include a preference for local residents for up to seventy percent (70%) of the Affordable Units, subject to all provisions of the Regulations and Guidelines. When submitted to DHCD for approval, the AFHM Plan should be accompanied by a letter from the Chief Executive Officer of the Municipality (as that term is defined in the Regulations) which states that the tenant selection and local preference (if any) aspects of the AFHM Plan have been approved by the Municipality and which states that the Municipality will perform any aspects of the AFHM Plan which are set forth as responsibilities of the Municipality in the AFHM Plan. If

the Chief Executive Office of the Municipality fails to approve the tenant selection and local preference (if any) aspects of the AFHM Plan for the Affordable Units above within thirty (30) days of the Municipality's receipt thereof, the Municipality shall be deemed to have approved those aspects of the AFHM Plan. In addition, if the Development is located in the Boston MSA/HMFA/County, Developer must list all Affordable Units with the Boston Fair Housing Commission's MetroList (Metropolitan Housing Opportunity Clearing Center). The Developer agrees to maintain for at least five years following the initial lease-up of the Development a record of all newspaper ads, outreach letters, translations, leaflets, and any other outreach efforts as described in the AFHM Plan as approved by DHCD which may be inspected at any time by DHCD.

(i) The AFHM Plan shall designate entities to implement the plan who are qualified to perform their duties. DHCD may require that another entity be found if DHCD finds that the entity designated by the Developer is not qualified. Moreover, DHCD may require the removal of an entity responsible for a duty under the AFHM Plan if that entity does not meet its obligations under the AFHM Plan.

(j) The restrictions contained herein are intended to be construed as an affordable housing restriction as defined in Section 31 of Chapter 184 of Massachusetts General Laws which has the benefit of Section 32 of said Chapter 184, such that the restrictions contained herein shall not be limited in duration by any rule or operation of law but rather shall run for the Term hereof. In addition, this Agreement is intended to be superior to the lien of any mortgage on the Development and survive any foreclosure or exercise of any remedies thereunder and the Developer agrees to obtain any prior lienholder consent with respect thereto as DHCD shall require.

#### **TENANT SELECTION AND OCCUPANCY**

4. Developer shall use its good faith efforts during the Term of this Agreement to maintain all the Affordable Units within the Development at full occupancy as set forth in Section 2 hereof. In marketing and renting the Affordable Units, the Developer shall comply with the Tenant Selection Plan and Affirmative Fair Housing Marketing Plan which are incorporated herein by reference with the same force and effect as if set out in this Agreement.

5. Occupancy agreements for Affordable Units shall meet the requirements of the Comprehensive Permit Rules, this Agreement, and the Local Initiative Program. The Developer shall enter into a lease with each tenant for a minimum term of one year. The lease shall contain clauses, among others, wherein each resident of such Affordable Unit:

(a) certifies the accuracy of the statements made in the application and income survey;

(b) agrees that the family income, family composition and other eligibility requirements, shall be deemed substantial and material obligations of his or her occupancy; that he or she will comply promptly with all requests for information with respect thereto from Developer, the Municipality, or DHCD; and that his or her failure or refusal to comply with a

request for information with respect thereto shall be deemed a violation of a substantial obligation of his or her occupancy; and

(c) agrees that at such time as Developer, the Municipality, or DHCD may direct, but at least annually, he or she will furnish to Developer certification of then current family income, with such documentation as the Municipality or DHCD shall reasonably require; and agrees to such charges as the Municipality or DHCD has previously approved for any facilities and/or services which may be furnished by Developer or others to such resident upon his or her request, in addition to the facilities included in the rentals, as amended from time to time pursuant to Section 3 above.

6. Omitted

### LIMITED DIVIDENDS

7. (a) The Developer covenants and agrees that Distribution Payments made in any fiscal year of the Development shall not exceed the Maximum Annual Distributable Amounts for such fiscal year. No Distribution Payments may be made if an Event of Default has occurred, which shall include but not be limited to failure to maintain the Development in good physical condition in accordance with Section 8 hereof.

(b) For the purposes hereof, the term "Distribution Payments" shall mean all amounts paid from revenues, income and other receipts of the Development, not including any amounts payable in respect of capital contributions paid by any members or partners of the Developer or any loan proceeds payable to the Developer (herein called "Development Revenues") which are paid to any partner, manager, member or any other Related Person of the Developer (collectively, the "Developer Parties") as profit, income, or fees or other expenses which are unrelated to the operation of the Development or which are in excess of fees and expenses which would be incurred from persons providing similar services who are not Developer Parties and provide such services on an arms-length basis.

(c) For the purposes hereof, the "Maximum Annual Distributable Amounts" for any particular fiscal year shall be defined and determined as follows: the sum of

(i) an amount equal to ten percent (10%) of the "Developer's Equity" for such fiscal year, subject to adjustment as provided in (d) below (the "Current Distribution Amounts"); plus

(ii) the amount of all Accumulated and Unpaid Distributions calculated as of the first day of such fiscal year.

In no event shall the total Maximum Annual Distributable Amounts actually distributed for any given year exceed total funds available for distribution after all current and owed-to-date expenses have been paid and reserves, then due and owing, have been funded

"Accumulated and Unpaid Distribution Amounts" shall be the aggregate of the Current Distribution Amounts calculated for all prior fiscal years less the Distribution Payments ("Accumulated Distribution Amounts") calculated for each such fiscal year together with simple interest ("Accrued Interest") resulting from such calculation in all prior years computed at five percent (5%) per annum. For the purposes of this calculation, it is assumed any amounts available for distribution in any year shall be fully disbursed.

(d) When using the Value-Based Approach, the Developer's Equity may be adjusted not more than once in any five year period with the first five - year period commencing with the first fiscal year of the Development. Any adjustments shall be made only upon the written request of the Developer and, unless the Developer is otherwise directed by DHCD, shall be based upon an appraisal commissioned by (and naming as a client) DHCD and prepared by an independent and qualified appraiser prequalified by, and randomly assigned to the Development by, DHCD. The appraiser shall submit a Self-Contained Appraisal Report to DHCD in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The costs of such appraisal shall be borne by the Developer. Such appraisal shall be based on the so-called 'investment value' methodology, using assumptions subject to the reasonable approval of DHCD.

Upon completion of an appraisal as provided above, the Developer's Equity shall be adjusted to equal the appraised value of the Development as determined by the appraisal less the unpaid principal amount of the sum of secured debt on the Development plus public equity, whether structured as a grant or loan determined as of the date of the appraisal. Such new Developer's Equity shall be the Developer's Equity commencing with the first day of the month following the date of such appraisal and stay in effect until a subsequent adjustment.

(e) If at the end of any fiscal year, any Development Revenues for such fiscal year shall remain and are in excess of the Maximum Annual Distributable Amounts for such fiscal year, such amount (the "Annual Excess Revenues"), other than those which may be required by any Lender to remain at the Development as a reserve to pay the expenses of the Development, shall be deposited in an escrow account with the Lender (or if the Loan is paid off, in an escrow account to be established to the satisfaction of DHCD) designated as the "Excess Revenues Account." No distributions may be made to the Developer from the Excess Revenues Account except those permitted pursuant to this Section (e) with the prior written consent of DHCD. .

Upon Developer's request, amounts may also be withdrawn from the Excess Revenues Account during the Term hereof and applied for the following purposes: (i) payment of or adequate reserve for all sums due or currently required to be paid under the terms of the Mortgage; (ii) payment of or adequate reserve for all reasonable and necessary operating expenses of the Development as reasonably determined by the Developer; (iii) deposit of all amounts as may be deposited in a reserve fund for capital replacements reasonably determined by the Developer to be sufficient to meet anticipated capital needs of the Development (the "Replacement Reserve") which may be held by a lending institution reasonably acceptable to



DHCD and which reserves may be used for capital expenditures for the Development reasonably determined to be necessary by the Developer; (iv) payments of operating expense loans made by the partners, managers or members of Developer for Development expenses, provided that Developer shall have obtained prior written approval for such loans from the applicable Lender (or, if there is no mortgage, or after discharge of the Mortgage, from the DHCD) and shall have supplied the applicable Lender (or DHCD) with such evidence as the applicable Lender (or DHCD, as applicable) may reasonably request as to the application of the proceeds of such operating expense loans to Development; or (v) for any other purposes, subject to a determination by the Lender (or, if there is no Mortgage, or the Mortgage is discharged during the Term of this Agreement, the reasonable determination by DHCD) that the expenditure is necessary to address the Development's physical or financial needs and that no other Development reserve funds are available to address such needs. Notwithstanding the foregoing, payment of the items set forth in clauses (i), (ii), (iii) and (v) above by the Developer shall be subject to the prior written approval of DHCD, which approval shall not be unreasonably withheld or delayed; it being agreed by DHCD that if the Developer can demonstrate that its proposed operating expenditures, capital expenditures and reserves are substantially consistent with those made for comparable developments in the Commonwealth of Massachusetts, DHCD shall approve such request. Further, in no event shall such review or approval be required by DHCD to the extent any such capital expenditures or reserves are mandated by Lender.

Further, DHCD agrees that it shall not unreasonably withhold or delay its consent to release of any amounts held in the Excess Revenues Account, upon the written request of the Developer that:

- (i) provide a direct and material benefit to Low or Moderate Tenants; or
- (ii) reduce rentals to Low or Moderate Tenants.

In the event that DHCD's approval is requested pursuant to this Section 7(e) for expenditures out of the Excess Revenues Account, and DHCD fails to respond within thirty (30) days of DHCD receipt thereof, then DHCD shall be deemed to have approved the request, and DHCD shall have no further rights to object to, or place conditions upon, the same.

In any event, cash available for distribution in any year in excess of 20% of Developer's Equity, subject to payment of Accumulated and Unpaid Distributions, shall be distributed to the Municipality within fifteen (15) business days of notice and demand given by DHCD as provided herein, or as otherwise directed by DHCD. Upon the expiration of the "Limited Dividend Term" as that term is defined in Section 24(b) hereof, any balance remaining in the Excess Revenues Account shall be contributed by the Developer to the Replacement Reserve held for the Development if deemed necessary by DHCD, and otherwise shall be paid to the Developer. .

(f) The Developer shall provide DHCD for each fiscal year with a copy of its audited financial statements, and provide the DHCD with a certificate from the independent certified public accountant (the "CPA") who prepared such reports which certifies as to their

determination (the "Accountant's Annual Determination") of the following for such fiscal year, based on the terms and conditions hereof:

- (i) Accumulated Distribution Amounts;
- (ii) Current Distribution Amounts;
- (iii) Maximum Annual Distributable Amounts;
- (iv) Annual Excess Revenues;
- (v) Accumulated and Unpaid Distribution Amounts (including a calculation of Accumulated Distribution Amounts and Accrued Interest); and
- (vi) Development Revenues.

Such Accountant's Annual Determination shall be accompanied by a form completed by the CPA and by a Certificate of Developer in forms as reasonably required by DHCD certifying under penalties of perjury as to the matters such as, without limitation, the fact that (i) the Developer has made available all necessary financial records and related data to the CPA who made such Accountant's Annual Determination, (ii) there are no material transactions related to the Development that have not been properly recorded in the accounting records underlying the Accountant's Annual Determination, (iii) the Developer has no knowledge of any fraud or suspected fraud affecting the entity involving management, subcontractors, employees who have significant roles in internal control, or others where the fraud could have a material effect on the Accountant's Annual Determination and has no knowledge of any allegations of fraud or suspected fraud affecting the Developer or the Development received in communications from employees, former employees, subcontractors, regulators, or others, and (iv) the Developer has reviewed the information presented in the Accountant's Annual Determination and believes that such determination is an appropriate representation of the Development.

(g) DHCD shall have sixty (60) days after the delivery of the Accountant's Annual Determination to accept it, to make its objections in writing to the Developer and the Developer's CPA, or to request from the Developer and/or CPA additional information regarding it. If DHCD does not object to it or request additional information with respect to it, it shall have been deemed accepted by the DHCD. If DHCD shall request additional information, then the Developer shall provide DHCD with such additional information as promptly as possible and DHCD shall have an additional thirty (30) days thereafter to review such information and either accept or raise objections to such Accountant's Annual Determination. If no such objections are made within such thirty day (30) period, the Accountant's Annual Determination shall be deemed accepted by DHCD. Prior to acceptance of the Accountant's Annual Determination, DHCD shall deliver a copy of the Accountant's Annual Determination to the Municipality with DHCD's determination of the Developer's compliance with the Comprehensive Permit Rules. The Municipality shall have the option of evaluating the report for accuracy (e.g., absence of material errors), applying the same standards as set forth herein, for a period of 30 days after receipt. Such thirty (30) day period may be extended upon the written request of the

Municipality to DHCD, which request shall not be unreasonably withheld. DHCD will reasonably review any inaccuracies identified by the Municipality during this period and shall thereafter either accept or raise objections to the Accountant's Annual Determination as provided above.

To the extent that DHCD shall raise any objections to such Accountant's Annual Determination as provided above, then the Developer and DHCD shall consult in good faith and seek to resolve such objections within an additional thirty (30) day period. If any objections are not resolved during such period, then DHCD may enforce the provisions under this Section by the exercise of any remedies it may have under this Agreement.

(h) If upon the approval of an Accountant's Annual Determination as provided above, such Accountant's Annual Determination shall show that the Distribution Payments for such fiscal year shall be in excess of the Maximum Annual Distributable Amounts for such fiscal year, then upon thirty (30) days written notice from DHCD, the Developer shall cause such excess to be deposited in the Excess Revenue Account from sources other than Development Revenues to the extent not otherwise required by Lender to remain with the Development as provided in subsection (e) above.

If such Accountant's Annual Determination as approved shall show that there are Annual Excess Revenues for such fiscal year which have not been distributed, such amounts shall be applied as provided in subsection (e) above within thirty (30) days after the approval of the Accountant's Annual Determination as set forth in subsection (g) above.

(i) Notwithstanding anything to the contrary contained in this Agreement, a distribution resulting from the proceeds of a sale or refinancing of the Development shall not be regulated by this Agreement. A sale or refinancing shall not result in a new evaluation of Developer's Equity.

(j) Payment of fees and profits from capital sources for the initial development of the Development to the Developer and/or the Developer's related party consultants, partners and legal or beneficial owners of the Development shall (unless otherwise limited by DHCD) be limited to no more than that amount resulting from the calculation in Attachment B, Step 3 ("Calculation of Maximum Allowable 40B Developer Fee and Overhead") of the Cost Certification Guidance (the "Maximum Allowable Developer Fee"). The Maximum Allowable Developer Fee shall not include fees or profits paid to any other party, whether or not related to the Developer, to the extent the same are arm's length and commercially reasonable in light of the size and complexity of the Development. The Developer shall comply with the requirements of Section 21 below regarding Cost Certification In accordance with the requirements of 760 CMR 56.04(8) (e), in the event that DHCD determines, following examination of the Cost Certification submitted by the Developer pursuant to Section 21 below, that amounts were paid or distributed by the Developer in excess of the above limitations (the "Excess Distributions"), the Developer shall pay over in full such Excess Distributions to the Municipality within fifteen (15) business days of notice and demand given by DHCD as provided herein.

## **MANAGEMENT OF THE DEVELOPMENT**

8. Developer shall maintain the Development in good physical condition in accordance with DHCD's requirements and standards and the requirements and standards of the Lender ordinary wear and tear and casualty excepted. Developer shall provide for the management of the Development in a manner that is consistent with accepted practices and industry standards for the management of multi-family market rate rental housing. Notwithstanding the foregoing, DHCD shall have no obligation hereunder, expressed or implied, to monitor or enforce any such standards or requirements and, further, DHCD has not reviewed nor approved the Plans and Specifications for compliance with federal, state or local codes or other laws.

### **CHANGE IN COMPOSITION OF DEVELOPER ENTITY; RESTRICTIONS ON TRANSFERS**

9. (a) Except for rental of Units to Low or Moderate Income Persons or Families as permitted by the terms of this Agreement, the Developer will not sell, transfer, lease, exchange, or mortgage the Project or any portion thereof or interest therein without the prior written consent of DHCD and the Municipality. If DHCD and the Municipality grant such consent, the Developer agrees to secure from the transferee a written agreement stating that the transferee will assume in full the Borrower's obligations and duties under this Agreement.

(b) The Developer shall provide DHCD and the Municipality with thirty (30) days' prior written notice of the following:

(i) any change, substitution or withdrawal of any general partner, manager, or agent of Developer; or

(ii) the conveyance, assignment, transfer, or relinquishment of a majority of the Beneficial Interests (herein defined) in Developer (except for such a conveyance, assignment, transfer or relinquishment among holders of Beneficial Interests as of the date of this Agreement).

For purposes hereof, the term "Beneficial Interest" shall mean: (i) with respect to a partnership, any limited partnership interests or other rights to receive income, losses, or a return on equity contributions made to such partnership; (ii) with respect to a limited liability company, any interests as a member of such company or other rights to receive income, losses, or a return on equity contributions made to such company; or (iii) with respect to a company or corporation, any interests as an officer, board member or stockholder of such company or corporation to receive income, losses, or a return on equity contributions made to such company or corporation.

10. Omitted.

## **BOOKS AND RECORDS**

11. All records, accounts, books, tenant lists, applications, waiting lists, documents, and contracts relating to the Developer's compliance with the requirements of this Agreement shall at all times be kept separate and identifiable from any other business of Developer which is unrelated to the Development, and shall be maintained, as required by applicable regulations and/or guidelines issued by DHCD from time to time, in a reasonable condition for proper audit and subject to examination during business hours by representatives of DHCD or the Municipality. Failure to keep such books and accounts and/or make them available to the DHCD or the Municipality will be an Event of Default hereunder if such failure is not cured to the satisfaction of the DHCD within thirty (30) days after the giving of notice to the Developer.

12. Within ninety (90) days following the end of each fiscal year of the Development, Developer shall furnish DHCD with a complete annual financial report for the Development based upon an examination of the books and records of Developer containing a detailed, itemized statement of all income and expenditures, prepared and certified by a certified public accountant in accordance with the reasonable requirements of DHCD which include: (i) financial statements submitted in a format acceptable to DHCD; (ii) the financial report on an accrual basis and in conformity with generally accepted accounting principles applied on a consistent basis; and (iii) amounts available for distribution under Section 7 above. A duly authorized agent of Developer must approve such submission in writing. The provisions of this paragraph may be waived or modified by DHCD.

## **FINANCIAL STATEMENTS AND OCCUPANCY REPORTS**

13. At the request of DHCD or the Municipality, Developer shall furnish financial statements and occupancy reports and shall give specific answers to questions upon which information is reasonably desired from time to time relative to the ownership and operation of the Development as it pertains to the Developer's compliance with the requirements of this Agreement.

## **NO CHANGE OF DEVELOPMENT'S USE**

14. Except to the extent permitted in connection with a change to the Comprehensive Permit approved in accordance with the Regulations or as set forth in Section 28 below, Developer shall not, without prior written approval of DHCD and the Municipality and an amendment to the Agreement, change the type or number of Affordable Units. Developer shall not permit the use of the dwelling accommodations of the Development for any purpose except residences and any other use permitted by the Comprehensive Permit.

## **NO DISCRIMINATION**

15. (a) There shall be no discrimination upon the basis of race, color, creed, religious creed, national origin, sex, sexual orientation, age, ancestry, handicap, or marital status or any other basis prohibited by law in the lease, use, or occupancy of the Development (provided that if the Development qualifies as elderly housing under applicable state and federal law, occupancy may be restricted to the elderly in accordance with said laws) or in connection with the employment or application for employment of persons for the operation and management of the Development.

(b) There shall be full compliance with the provisions of all state or local laws prohibiting discrimination in housing on the basis of race, creed, color, religion, disability, sex, sexual orientation, national origin, age, familial status, or any other basis prohibited by law and providing for nondiscrimination and equal opportunity in housing, including without limitation in the implementation of any local preference established under the Comprehensive Permit. Failure or refusal to comply with any such provisions shall be a proper basis for the Municipality or DHCD to take any corrective action it may deem necessary.

## **DEFAULTS; REMEDIES**

16. (a) If any default, violation, or breach of any provision of this Agreement by the Developer is not cured to the satisfaction of the DHCD within thirty (30) days after the giving of notice to the Developer as provided herein, then at DHCD's option, and without further notice, the DHCD may either terminate this Agreement, or DHCD may apply to any state or federal court for specific performance of this Agreement, or DHCD may exercise any other remedy at law or in equity or take any other action as may be necessary or desirable to correct noncompliance with this Agreement. If any default, violation, or breach of any provision of this Agreement by the Municipality is not cured to the satisfaction of DHCD within thirty (30) days after the giving of notice to the Municipality as provided herein, then DHCD may either terminate this Agreement or may apply to any state or federal court for specific performance of this Agreement, or may exercise any other remedy at law or in equity or take any other action as may be necessary to correct noncompliance with this Agreement. The thirty (30) day cure periods set forth in this paragraph shall be extended for such period of time as may be necessary to cure such a default so long as the Developer or the Municipality, as the case may be, is diligently prosecuting such a cure.

(b) If DHCD elects to terminate this Agreement as the result of an uncured breach, violation, or default hereof, then whether the Affordable Units continue to be included in the Subsidized Housing Inventory maintained by DHCD for purposes of the Act shall from the date of such termination be determined solely by DHCD according to the rules and regulations then in effect.

(c) In the event DHCD brings an action to enforce this Restriction and prevails in any such action, DHCD shall be entitled to recover from the Developer all of DHCD's reasonable costs of an action for such enforcement of this Restriction, including reasonable attorneys' fees.

(d) The Developer hereby grants to DHCD or its designee the right to enter upon the Development for the purpose of enforcing the terms of this Agreement or to prevent, remedy or abate any violation of this Agreement.

#### **MONITORING AGENT; FEES; SUCCESSOR SUBSIDIZING AGENCY**

17. DHCD intends to monitor the Developer's compliance with the requirements of this Agreement. The Developer hereby agrees to pay DHCD fees for its services hereunder, as set forth on Appendix B hereto, initially in the amounts and on the dates therein provided, and hereby grants to DHCD a security interest in Development Revenues as security for the payment of such fees subject to the lien of the Mortgage and this Agreement shall constitute a security interest with respect thereto.

18. DHCD shall have the right to engage a third party (the "Monitoring Agent") to monitor compliance with all or a portion of the ongoing requirements of this Agreement. In carrying out its obligations as a Monitoring Agent, the third party shall apply and adhere to the standards and policies of DHCD related to the administrative responsibilities of Subsidizing Agencies. DHCD shall notify the Developer and the Municipality in the event DHCD engages a Monitoring Agent, and in such event (i) as partial compensation for providing these services, the Developer hereby agrees to pay to the Monitoring Agent an annual monitoring fee in an amount reasonably determined by DHCD, payable within thirty (30) days of the end of each fiscal year of the Developer during the Limited Dividend Term as defined in Section 24(b) below, but not in excess of the amounts as shown on Appendix D hereto and any fees payable under Section 17 hereof shall be net of such fees payable to a Monitoring Agent; and (ii) the Developer hereby agrees that the Monitoring Agent shall have the same rights, and be owed the same duties, as DHCD under this Agreement, and shall act on behalf of DHCD hereunder, to the extent that DHCD delegates its rights and duties by written agreement with the Monitoring Agent.

19. The Municipality shall have the right to engage a third party (the "Affordability Monitoring Agent") to monitor compliance with all or a portion of the ongoing affordability requirements of this Agreement which Municipality is responsible for overseeing hereunder. In carrying out its obligations as an Affordability Monitoring Agent, the third party shall apply and adhere to the standards and policies of DHCD related to the administrative responsibilities of Subsidizing Agencies. The Municipality shall notify the Developer and DHCD in the event the Municipality engages an Affordability Monitoring Agent, and in such event (i) as partial compensation for providing these services, the Developer hereby agrees to pay to the Affordability Monitoring Agent an annual monitoring fee in an amount reasonably agreed upon by the Municipality and the Developer, payable within thirty (30) days of the end of each fiscal year of the Developer; and (ii) the Developer hereby agrees that the Affordability Monitoring Agent shall have the same rights, and be owed the same duties, as the Municipality under this Agreement, and shall act on behalf of the Municipality hereunder, to the extent that the Municipality delegates its rights and duties by written agreement with the Affordability Monitoring Agent.

## CONSTRUCTION AND FINAL COST CERTIFICATION

20. The Developer shall provide to the Municipality evidence that the final plans and specifications for the Development comply with the requirements of the Comprehensive Permit and that the Development was built substantially in accordance with such plans and specifications.

21. Upon Substantial Completion, the Developer shall provide the Municipality with a certificate of the architect for the Development in the form of a "Certificate of Substantial Completion" (AIA Form G704) or such other form of completion certificate acceptable to the Municipality.

In addition, within ninety (90) days after Substantial Completion, the Developer shall provide DHCD with its Cost Certification for the Development.

As used herein, the term "Substantial Completion" shall mean the time when the construction of the Development is sufficiently complete so that all of the units may be occupied and amenities may be used for their intended purpose, except for designated punch list items and seasonal work which does not interfere with the residential use of the Development.

For the purposes hereof the term "Cost Certification" shall mean the determination by the DHCD of the aggregate amount of all Development Costs as a result of its review and approval of: (i) an itemized statement of Total Development Costs together with a statement of gross income from the Development received by the Developer to date in the format provided in the Cost Certification Guidance (the "Cost Examination"). The Cost Certification must be examined in accordance with the attestation standards of the American Institute of Certified Public Accountants (AICPA) by an independent certified public accountant (CPA) and (ii) an owner's and/or general contractor's certificate, as provided in the Cost Certification Guidance, executed by the Developer and/or general contractor under penalties of perjury, which identifies the amount of the Construction Contract, the amount of any approved Change Orders, including a listing of such Change Orders, and any amounts due to subcontractors and/or suppliers. "Allowable Development Costs" shall mean any hard costs or soft costs paid or incurred with respect to Development as determined by and in accordance with the Guidelines.

Prior to acceptance of the Cost Certification, DHCD shall deliver a copy of the Cost Certification to the Municipality with DHCD's determination of the Developer's compliance with the Comprehensive Permit Rules. The Municipality shall have the option of evaluating the report for accuracy (e.g., absence of material errors), applying the same standards as set forth herein, for a period of 30 days after receipt. Such thirty (30) day period may be extended upon the written request of the Municipality to DHCD, which request shall not be unreasonably withheld. DHCD will reasonably review any inaccuracies identified by the Municipality during this period and shall thereafter either accept or raise objections to the Cost Certification as provided in Section (g) above.

22. In order to ensure that the Developer shall complete the Cost Certification as required by Section 21 hereof, the Developer has provided DHCD herewith adequate financial surety (the "Surety") provided through a letter of credit, bond or cash payment in the amounts and in



accordance with the Comprehensive Permit Rules and in a form approved by DHCD. If DHCD shall determine that the Developer has failed in its obligation to provide Cost Certification as described above, DHCD may draw on such Surety in order to pay the costs of completing Cost Certification.

23. Omitted.

### TERM

24. (a) This Agreement shall bind, and the benefits shall inure to, respectively, Developer and its successors and assigns, and DHCD and its successors and assigns and the Municipality and its successors and assigns, in perpetuity, except as provided in Section 24(b) below, (the "Term"). Upon expiration of the Term, this Agreement and the rights and obligations of the parties hereunder shall automatically terminate without the need of any party executing any additional document.

(b) Notwithstanding subsection (a) above, the provisions of Section 7 (a) – (i) herein ("Limited Dividends") shall bind, and the benefits shall inure to, respectively, Developer and its successors and assigns, and DHCD and its successors and assigns, and the Municipality and its successors and assigns until the date which is fifteen (15) years from the date of this Agreement (the "Limited Dividend Term").

### SENIOR LENDER FORECLOSURE

25. (a) Notwithstanding anything herein to the contrary, but subject to the provisions of this Section, if the holder of record of a first mortgage granted to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional or governmental lender shall acquire the Development by reason of foreclosure or similar remedial action under the provisions of such mortgage or upon conveyance of the Development in lieu of foreclosure, and provided that the holder of such mortgage has given the Municipality and DHCD not less than sixty (60) days' prior written notice of its intention to foreclose upon its mortgage or to accept a conveyance of the Development in lieu of foreclosure to attempt to structure a workout or other arrangement to avoid such foreclosure, conveyance in lieu of foreclosure, or similar remedial action and the Municipality or DHCD has failed within such sixty (60) days to locate a purchaser for the Development who is capable of operating the Development for the uses permitted under this Agreement and who is reasonably acceptable to such mortgage holder, then except as provided below, the rights and restrictions herein contained shall not apply to such mortgage holder upon such acquisition of the Development or to any purchaser of the Development from such mortgage holder, and such Development shall, subject to Paragraph (b) below, thereafter be free from all such rights and restrictions. Notwithstanding the foregoing, the rights and restrictions contained herein shall terminate only to the extent it is financially infeasible to maintain the level of affordability required by this Agreement or some lesser level of affordability (i.e., fewer Affordables or Affordable Units affordable to persons or families with higher annual incomes than those required by this Agreement. "Financially infeasible" shall mean (i) with respect to the operation of the Development, that the rent and other income from the Development is, or is reasonably projected to be, less than the reasonable expenses required (or reasonably projected to

be required) to maintain and operate the Development and (ii) with respect to a sale of the Development, that the restrictions would prevent (or be reasonably projected to prevent) the senior mortgage holder from recovering all amounts due and owing with respect to its financing of the Development, including without limitation, principal, interest, charges, costs, expenses, late fees and prepayment premiums. Financial infeasibility shall be determined by the senior mortgage holder in its reasonable discretion after consultation with the Municipality and DHCD. The senior mortgage holder shall notify the Municipality and DHCD of the extent to which the rights and restrictions contained herein shall be terminated and the Developer agrees to execute any documents required to modify this Agreement to conform to the senior mortgage holder's determination. The Developer hereby irrevocably appoints any senior mortgage holder and each of the Municipality and DHCD, its true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any such documents on behalf of the Developer should the Developer fail or refuse to do so.

(b) The rights and restrictions contained herein shall not lapse if the Development is acquired through foreclosure or deed in lieu of foreclosure by (i) Developer, (ii) any person with a direct or indirect financial interest in Developer, (iii) any person related to a person described in clause (ii) by blood, adoption or marriage, (iv) any person who is or at any time was a business associate of a person described in clause (ii), and (v) any entity in which any of the foregoing have a direct or indirect financial interest (each a "Related Party"). Furthermore, if the Development is subsequently acquired by a Related Party during the period in which this Agreement would have remained in effect but for the provisions of this Section, this Agreement shall be revived and shall apply to the Development as though it had never lapsed.

(c) In the event such holder conducts a foreclosure or other proceeding enforcing its rights under such mortgage and the Development is sold for a price in excess of the sum of the outstanding principal balances of all notes secured by mortgages of the Development plus all future advances, accrued interest and all reasonable costs and expenses which the holders thereof are entitled to recover pursuant to the terms of such mortgages, such excess shall be paid to the Municipality (on behalf of DHCD) in consideration of the loss of the value and benefit of the rights and restrictions herein contained and released by the Municipality pursuant to this Section in connection with such proceeding (provided, that in the event that such excess shall be so paid to the Municipality by such holder, the Municipality shall thereafter indemnify such holder against loss or damage to such holder resulting from any claim made by the mortgagor of such mortgage to the extent that such claim is based upon payment of such excess by such holder to the Municipality in accordance herewith, provided that such holder shall give the Municipality prompt notice of any such claim and shall not object to intervention by the Municipality in any proceeding relating thereto). To the extent the Developer possesses any interest in any amount which would otherwise be payable to the Municipality under this paragraph, to the full extent permissible by law, the Developer hereby assigns its interest in such amount to said holder for payment to the Municipality.

(d) The Developer acknowledges that any termination or this Agreement shall not affect the validity or enforceability of the Comprehensive Permit or the obligations of the Developer to comply with the provisions thereof.

## INDEMNIFICATION/LIMITATION ON LIABILITY

26. The Developer, for itself and its successors and assigns, agrees to indemnify and hold harmless DHCD and the Municipality against all damages, costs and liabilities, including reasonable attorney's fees, asserted against DHCD or the Municipality by reason of its relationship to the Development under this Agreement to the extent the same is attributable to the acts or omissions of the Developer and does not involve the negligent acts or omissions of DHCD or the Municipality.

27. DHCD and the Municipality shall not be held liable for any action taken or omitted under this Agreement so long as they shall have acted in good faith and without gross negligence.

28. Notwithstanding anything in this Agreement to the contrary, upon the occurrence of any breach or default by the Developer hereunder, DHCD will look solely to the Developer's Sponsor's interest in the Development for the satisfaction of any judgment against the Developer or for the performance of any obligation of the Developer hereunder. Further, no officer, partner, manager, member, agent or employee shall have any personal liability hereunder.

## CASUALTY

29. Subject to the rights of the Lender, Developer agrees that if the Development, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Developer shall have the right, but not the obligation, to repair and restore the Development to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Development in accordance with the terms of this Agreement. Notwithstanding the foregoing, in the event of a casualty in which some but not all of the buildings in the Development are destroyed, if such destroyed buildings are not restored by Developer, Developer shall be required to maintain the same percentage of Affordable Units of the total number of units in the Development.

## DEVELOPER'S REPRESENTATIONS AND WARRANTIES

30. The Developer hereby represents and warrants as follows:

(a) The Developer (i) is an independently chartered non-profit corporation, qualified to transact business under, the laws of the Commonwealth of Massachusetts, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Agreement.

(b) The execution and performance of this Agreement by the Developer (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Developer is a party or by which it or the Development is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Developer will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Development free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, and any other documents executed in connection with the Construction Loan, or other encumbrances permitted by DHCD).

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Developer, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.

### **MISCELLANEOUS CONTRACT PROVISIONS**

31. This Agreement may not be modified or amended except with the written consent of DHCD or its successors and assigns, the Municipality or its successor and assigns, and Developer or its successors and assigns.

32. Developer warrants that it has not, and will not, execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

33. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

34. Any titles or captions contained in this Agreement are for reference only and shall not be deemed a part of this Agreement or play any role in the construction or interpretation hereof.

35. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

36. The terms and conditions of this Agreement have been freely accepted by the parties. The provisions and restrictions contained herein exist to further the mutual purposes and goals of DHCD, the Municipality and the Developer set forth herein to create and preserve access to land and to decent and affordable rental housing opportunities for eligible families who are often denied such opportunities for lack of financial resources.

## NOTICES

37. Any notice or other communication in connection with this Agreement shall be in writing and (i) deposited in the United States mail, postage prepaid, by registered or certified mail, or (ii) hand delivered by any commercially recognized courier service or overnight delivery service, such as Federal Express, or (iii) sent by facsimile transmission if a fax number is designated below, addressed as follows:

If to the Developer:

Lexington Housing Assistance Board, Inc.  
1620 Massachusetts Ave., Suite 4  
Lexington, MA 02420  
Attention: President  
Fax: \_\_\_\_\_

If to DHCD:

Department of Housing and Community Development  
100 Cambridge St., Suite 300  
Boston, MA 02114  
Attention: Director of Local Initiative Program  
Fax: 617-573-1330

If to the Municipality:

Lexington Planning Department  
1625 Mass Ave.  
Lexington, MA 02420  
Attention: Director of Planning  
Fax: \_\_\_\_\_

Any such addressee may change its address for such notices to any other address in the United States as such addressee shall have specified by written notice given as set forth above.

A notice shall be deemed to have been given, delivered and received upon the earliest of: (i) if sent by certified or registered mail, on the date of actual receipt (or tender of delivery and refusal thereof) as evidenced by the return receipt; or (ii) if hand delivered by such courier or overnight delivery service, when so delivered or tendered for delivery during customary business hours on a business day at the specified address; or (iii) if facsimile transmission is a permitted means of giving notice, upon receipt as evidenced by confirmation. Notice shall not be deemed to be defective with respect to the recipient thereof for failure of receipt by any other party.

## **RECORDING**

38. Upon execution, the Developer shall immediately cause this Agreement and any amendments hereto to be recorded or filed with the Registry, and the Developer shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Developer shall immediately transmit to DHCD and the Municipality evidence of such recording or filing including the date and instrument, book and page or registration number of the Agreement.

## **GOVERNING LAW**

39. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Agreement must be in writing and executed by all of the parties hereto. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions hereof.

## **DELEGATION BY DHCD**

40. DHCD may delegate its compliance and enforcement obligations under this Agreement to a third party, if the third party meets standards established by DHCD, by providing written notice of such delegation to the Developer and the Municipality. In carrying out the compliance and enforcement obligations of DHCD under this Agreement, such third party shall apply and adhere to the pertinent standards of DHCD.

**[Remainder of page intentionally left blank.]**

# **AGENDA ITEM SUMMARY**

## **LEXINGTON BOARD OF SELECTMEN MEETING**

**DATE:**

1/26/2015

**PRESENTER:**

Joe Pato

**ITEM NUMBER:**

I.8

**AGENDA ITEM TITLE:**

Approve Weapons Policy

**SUMMARY:**

You are being asked to approve the attached proposed Weapons Policy. The proposed policy has been reviewed by the Policy Manual Committee and staff.

**RECOMMENDATION / SUGGESTED MOTION:**

Motion to approve the Weapons Policy as presented.

**FOLLOW-UP:**

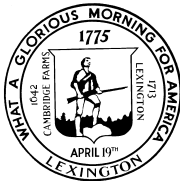
Selectmen's Office

**APPROXIMATE TIME ON AGENDA:**

8:45 PM

**ATTACHMENTS:**

Description	Type
<input type="checkbox"/> Proposed Weapons Policy	Backup Material



## **Town of Lexington Administrative Directive #22 Weapons Policy**

**Created: 05/27/2014**

**Revised:**

**Replaces:**

**Effective:**

**Approved by:**

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**Carl F. Valente, Town Manager**

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**Joseph N. Pato, Chairman  
Board of Selectmen**

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*This policy is applicable to all employees of the Town of Lexington.  
For those employees covered by Collective Bargaining Agreements, the provisions of the CBA,  
which are subject to negotiation prevail over the language in this policy (i.e. discipline).  
Any changes made to this policy that apply to sections that are subject to collective bargaining,  
will be sent to the appropriate union prior to implementation.*

*For sworn police officers and special sworn police officers, department policies, procedures and  
guidelines supersede this policy.*

### **A. POLICY**

The Town of Lexington is committed to providing a safe work environment for its employees. This policy is being implemented, effective immediately, in furtherance of that commitment. This policy shall therefore prohibit Town employees from carrying, possessing, or using firearms and other dangerous weapons (as defined in Section B, Part 2) during working hours, or while in the course of employment, except as expressly permitted by this policy.

### **B. DEFINITIONS**

1. For the purposes of this policy, a “firearm” shall mean any handgun, rifle, shotgun, smoothbore, or other similar device, including paintball guns, antique weapons, BB and/or pellet handguns or rifles, whether loaded or unloaded, from which a shot, bullet, pellet, or other projectile can be discharged by any means.
2. The term “dangerous weapons” shall include those instruments identified under Massachusetts General Laws Chapter 269, Section 10b, as may be amended from time to time (see Attachment A).



3. For the purposes of this policy, “employees” shall include persons performing services for or holding an office, position, or employment with the Town of Lexington, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation on a full, regular, part-time, intermittent or consultant basis, including members of volunteer boards and committees.
4. “Possession” shall include possession, carrying, storage or use of firearms or other dangerous weapons, as herein defined, upon Town property or in a Town vehicle, or a private vehicle if used in the course of employment duties, exclusive of use for commuting purposes.

### **C. PROHIBITED CONDUCT**

1. No Town employee shall carry, possess, or use during working hours or while in the course of employment, a firearm or other dangerous weapon as herein defined, except as specifically outlined below under "Exemptions".
2. The prohibitions of this policy apply notwithstanding any licenses to carry firearms, firearm identification cards, or similar permits or licenses that employees may possess.

### **D. EXEMPTIONS**

1. Even when a non-police officer employee is duly licensed in Massachusetts to carry firearms, only the Town Manager, with concurrence of the Police Chief, may specifically authorize said employee to carry, possess, or use during working hours or while in the course of employment, a firearm as herein defined.
2. The Town Manager will only authorize an employee to carry, possess, or use during working hours or while in the course of employment, a firearm, as herein defined if, in the Town Manager’s sole discretion, he or she believes that doing so is necessary for the employee to perform the functions of the employee’s position with the Town.
3. This policy is not intended to prohibit the possession of equipment or tools necessary for employees to perform the essential job functions of their position, as determined by their Department head.

### **E. PROCEDURE FOR REPORTING VIOLATIONS**

1. All employees share in the responsibility and reap the benefits of fostering a safe workplace. Therefore, any employee who believes that this policy may have been violated is encouraged to report that belief to his/her department head or the department head's designee immediately.
2. Any manager who receives a report of, or personally observes a possible policy violation must immediately contact the Director of Human Resources or Deputy Town Manager.

3. The Human Resources Department will assess and investigate the incident and recommend appropriate action to the Town Manager.

Employees are reminded that lockers at work, even locked with a personal lock, remain Town property and may be searched without notice.

#### **F. SANCTIONS**

An employee who violates this policy may be subject to discipline, up to and including termination.

The Town Manager reserves the right to amend, revoke, suspend, terminate, or alter any or all parts of this policy at any time without prior notice. Employees are advised that certain violations of this policy may also constitute a violation of state or federal law.

**Attachment A**  
**Massachusetts General Laws – Chapter 269, Section 10b**

(b) Whoever, except as provided by law, carries on his person, or carries on his person or under his control in a vehicle, any stiletto, dagger or a device or case which enables a knife with a locking blade to be drawn at a locked position, any ballistic knife, or any knife with a detachable blade capable of being propelled by any mechanism, dirk knife, any knife having a double-edged blade, or a switch knife, or any knife having an automatic spring release device by which the blade is released from the handle, having a blade of over one and one-half inches, or a slung shot, blowgun, blackjack, metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic knuckles, nunchaku, zoobow, also known as klackers or kung fu sticks, or any similar weapon consisting of two sticks of wood, plastic or metal connected at one end by a length of rope, chain, wire or leather, a shuriken or any similar pointed starlike object intended to injure a person when thrown, or any armband, made with leather which has metallic spikes, points or studs or any similar device made from any other substance or a cestus or similar material weighted with metal or other substance and worn on the hand, or a manrikigusari or similar length of chain having weighted ends; or whoever, when arrested upon a warrant for an alleged crime, or when arrested while committing a breach or disturbance of the public peace, is armed with or has on his person, or has on his person or under his control in a vehicle, a billy or other dangerous weapon other than those herein mentioned and those mentioned in paragraph (a), shall be punished by imprisonment for not less than two and one-half years nor more than five years in the state prison, or for not less than six months nor more than two and one-half years in a jail or house of correction, except that, if the court finds that the defendant has not been previously convicted of a felony, he may be punished by a fine of not more than fifty dollars or by imprisonment for not more than two and one-half years in a jail or house of correction.



## Town of Lexington Acknowledgement of Receipt of Administrative Directive #22 Weapons Policy

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

Department: \_\_\_\_\_

Division: \_\_\_\_\_

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

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This form acknowledges that I have received and reviewed a copy of the Town of Lexington's Administrative Directive #22, Weapons Policy, and that this signature sheet will be placed in my personnel file in the Town Manager's Office.

I understand that I will be held responsible for complying with the provisions of these guidelines and understand that any actions which are found to violate the terms of this policy may result in disciplinary action\*, up to and including termination of employment.

Employee's Signature : \_\_\_\_\_ Date: \_\_\_\_\_

*\* This policy is applicable to all employees of the Town of Lexington.*

*For those employees covered by Collective Bargaining Agreements, the provisions of the CBA, which are subject to negotiation prevail over the language in this policy (i.e. discipline).*

*Any changes made to this policy that apply to sections that are subject to collective bargaining, will be sent to the appropriate union prior to implementation.*

*For sworn police officers and special sworn police officers, department policies, procedures and guidelines supersede this policy.*

# **AGENDA ITEM SUMMARY**

## **LEXINGTON BOARD OF SELECTMEN MEETING**

**DATE:**

1/26/2015

**PRESENTER:**

Joe Pato

**ITEM NUMBER:**

I.9

**AGENDA ITEM TITLE:**

Vote to Sign the 2015 Special Town Meetings and Annual Town Meeting Warrants and Discuss Article Presentations

**SUMMARY:**

Attached is a draft warrant, which will most likely not be ready for you to sign on Monday.

You will also discuss what articles you would like to have presentations on.

**RECOMMENDATION / SUGGESTED MOTION:****FOLLOW-UP:**

Selectmen's Office

**APPROXIMATE TIME ON AGENDA:**

8:50 PM

**ATTACHMENTS:**

Description

Type

☐ Draft Table of Contents and Warrant

Cover Memo

# **AGENDA ITEM SUMMARY**

## **LEXINGTON BOARD OF SELECTMEN MEETING**

**DATE:**

1/26/2015

**PRESENTER:**

Joe Pato

**ITEM NUMBER:**

I.10

**AGENDA ITEM TITLE:**

Selectmen Committee Appointments

**SUMMARY:**

I am hoping to receive a nomination letter from the Arts & Crafts Society to appoint Nancy Shepard as their representative on the Historic Districts as an Associate Member. If I don't receive the letter we will put this off until the next meeting.

Albert Zabin and Bhumip Khasnabish are interested in being reappointed to the Human Rights Committee.

The Tree Committee has requested that Nancy Sofen be appointed to fill the unexpired term of Nel Walker.

**RECOMMENDATION / SUGGESTED MOTION:**

Motion to appoint Nancy Shepard to the Historic Districts Commission as an Associate Member representing the Arts and Crafts Society for a term to expire December 31, 2019.

Motion to reappoint Albert Zabin and Bhumip Khasnabish to the Human Rights Committee for a term to expire September 30, 2017.

Motion to appoint Nancy Sofen to the Tree Committee to fill the unexpired term of Nel Walker until September 30, 2015.

**FOLLOW-UP:**

Selectmen's Office

**APPROXIMATE TIME ON AGENDA:**

900 PM

**ATTACHMENTS:**

Description	Type
<input type="checkbox"/> Nomination Letter from Arts & Crafts	Backup Material
<input type="checkbox"/> Application for Nancy Shepard	Backup Material
<input type="checkbox"/> Historic Districts Commission Current Members	Backup Material
<input type="checkbox"/> Human Rights Committee Current Members	Backup Material
<input type="checkbox"/> Application for Nancy Sofen	Backup Material
<input type="checkbox"/> Tree Committee Current Members	Backup Material



130 Waltham Street, Lexington, MA 02421 781-862-9696 [www.lacsma.org](http://www.lacsma.org)

January 23, 2015

Lynne Pease  
Historic Districts Commission  
Town Offices  
Massachusetts Avenue  
Lexington, MA 02421

Dear Lynne,

Lexington Arts and Crafts Society, Inc. would like to submit the following name as nominee to serve as an Associate Member of the Lexington Historic Districts Commission.

Nancy Shepard  
2 Baskin Rd.  
Lexington, MA 02421  
781-674-9296  
[nshep12@verizon.net](mailto:nshep12@verizon.net)

Please let us know if anything else is needed.

Sincerely,

Tom Whelan, LACS President  
Mary McDonald, LACS Vice-President

# **AGENDA ITEM SUMMARY**

## **LEXINGTON BOARD OF SELECTMEN MEETING**

**DATE:**

1/26/2015

**PRESENTER:**

Joe Pato

**ITEM NUMBER:**

C.1

**AGENDA ITEM TITLE:**

Water and Sewer Commitments and Adjustments

**SUMMARY:**

See attached request to approve water and sewer adjustments.

**RECOMMENDATION / SUGGESTED MOTION:**

Motion to approve the water and sewer adjustments as presented.

**FOLLOW-UP:**

**APPROXIMATE TIME ON AGENDA:**

9:05 PM

**ATTACHMENTS:**

Description	Type
<input type="checkbox"/> Water and Sewer Commitments and Adjustments	Backup Material



# AGENDA ITEM SUMMARY

## LEXINGTON BOARD OF SELECTMEN MEETING

**DATE:**

January 26, 2015

**STAFF:**

William P. Hadley, Director

**ITEM NUMBER:**

Consent

---

**SUBJECT:**

Adjustments of Water and Sewer charges.

---

**EXECUTIVE SUMMARY:**

Adjustment of Water and Sewer charges as recommended by WSAB \$ (30,638.32)

---

**FINANCIAL IMPACT:**

Allows the reconciliation with the General Ledger.

---

**RECOMMENDATION / SUGGESTED MOTION:**

Motion to approve the Water and Sewer and adjustments as noted above.

---

**STAFF FOLLOW-UP:**

Revenue Officer



FY2015  
ADJUSTMENTS TO WATER/ SEWER  
AS RECOMMENDED BY THE WATER AND SEWER ABATEMENT BOARD  
PAGE 1 OF 2

[illegible]



**FY2015**  
**ADJUSTMENTS TO WATER/SEWER**  
**AS RECOMMENDED BY THE WATER AND SEWER ABATEMENT BOARD**

**PAGE 2 OF 2**

ACCOUNT	NBR	STREET	WATER	SEWER	TOTAL	BILL	YEAR
Carried over from Page 1			(\$9,427.86)	(\$21,210.46)	(\$30,638.32)		
			(\$9,427.86)	(\$21,210.46)	(\$30,638.32)		

It is further recommended to waive all accumulated interest on disputed bills for which no abatement is recommended:

ACCOUNT	NBR	STREET				BILL	YEAR
0100032200	8	Anthony Road					
0100032202	8	Anthony Road					

It is the recommendation of the Water and Sewer Abatement Board that the Town Collector be authorized to waive interest that has accrued on the bills included herein, unless stated here otherwise, from the due date of the bill until 30 calendar days after the date of written notification to applicant of the Selectmen's action.

THE SUM SET AGAINST THE ABOVE ACCOUNTS IS HEREBY ADJUSTED.

<b>WATER</b>	<b>SEWER</b>	<b>TOTAL</b>
(\$9,427.86)	(\$21,210.46)	(\$30,638.32)

  
\_\_\_\_\_  
DIRECTOR OF PUBLIC WORKS

\_\_\_\_\_  
BOARD OF SELECTMEN 1/26/15

# **AGENDA ITEM SUMMARY**

## **LEXINGTON BOARD OF SELECTMEN MEETING**

**DATE:**

1/26/2015

**PRESENTER:**

Joe Pato

**ITEM NUMBER:**

C.2

**AGENDA ITEM TITLE:**

Approve Request for Water and Sewer Deferral

**SUMMARY:**

The resident of 41 Fifer Lane has submitted an application for deferral of the FY2015 water and sewer payments.

**RECOMMENDATION / SUGGESTED MOTION:**

Motion to approve deferral of the FY2015 water and sewer payments for 41 Fifer Lane.

**FOLLOW-UP:**

Selectmen's Office

**APPROXIMATE TIME ON AGENDA:**

9:05 PM

**ATTACHMENTS:**

Description	Type
<input type="checkbox"/> Water/Sewer Application-41 Fifer Lane	Backup Material

# **AGENDA ITEM SUMMARY**

## **LEXINGTON BOARD OF SELECTMEN MEETING**

**DATE:**

1/26/2015

**PRESENTER:**

Joe Pato

**ITEM NUMBER:**

C.3

**AGENDA ITEM TITLE:**

Approve One-Day Liquor - LABB Collaborative

**SUMMARY:**

LABBB Collaborative/Steve Eastridge has requested a one-day liquor license for the annual BBQ Festival/Fundraiser on Saturday and Sunday, May 16 and 17, 2015, at the Farmers Market Fairgrounds on Massachusetts Avenue.

**RECOMMENDATION / SUGGESTED MOTION:**

Upon motion duly made and seconded, it was voted to approve a one-day liquor license for LABBB Collaborative to serve beer and cider at a BBQ Festival/Fundraiser on Saturday, May 16, 2015, from 11:00 a.m. to 7:00 p.m. and Sunday, May 17, 2015, from 12:00 noon to 5:00 p.m. at the Farmers Market Fairgrounds on Massachusetts Avenue.

**FOLLOW-UP:**

Selectmen's Office

**APPROXIMATE TIME ON AGENDA:**

9:05 PM

**ATTACHMENTS:**

Description	Type
<input type="checkbox"/> One-Day Liquor License Application	Backup Material
<input type="checkbox"/> BBQ Approval Letter from Town Manager	Backup Material



*Town of Lexington*  
Town Manager's Office

Carl F. Valente, Town Manager  
Linda Crew Vine, Deputy Town Manager

Tel: (781) 698-4540

Fax: (781) 861-2921

December 31, 2014

Mr. Steve Eastridge  
6 Laurence Road  
Woburn, MA 01801

Dear Mr. Eastridge:

Permission is given to Meat at Slim's/LABBB to host the annual Lexington Battle Green BBQ on Saturday and Sunday, May 16 – 17, 2015 on the Farmers' Market grounds. On Saturday, May 16, 2015, your hours are 12:00 p.m. until 8:00 p.m. and on Sunday, May 17, 2015, your hours are 12:00 p.m. until 6:00 p.m. You plan to start set-up on Friday, May 15, 2015 and expect to have everything cleaned-up by 8:00 p.m. on Sunday, May 17, 2015. You expect about 2,500 in total to attend the BBQ over the two-day period. If you plan on serving alcohol, please make sure to be in touch with the Board of Selectmen as soon as possible.

Please be advised that there will be no power or electricity from the Hosmer House due to renovations at the Cary Memorial Building. We also cannot guarantee water usage. I ask that you meet with Captain Manny Ferro and Sergeant Christina Demambro of the Police Department to go over parking details/restrictions and traffic control (781-862-1212). It also is advised that you meet with Dave Pinsonneault, Manager of Operations from the Department of Public Works, to go over the layout of your event and go over any needs you may have from them. Please check-in with the Assistant Fire Chief, John Fleck (781-862-0272 x115), regarding the use and storage of propane and discuss the proper disposal of ashes. Not only will you want to make sure that your vendors receive food permits but that they have fire permits as well. On your application, it is stated that you will be using 20 tables and 200 chairs. We have checked with the Department of Public Facilities and unfortunately, they do not have that amount of seating and tables for you to rent out. They recommend contacting a rental company for your seating needs. Please forward my office a copy of your site map at least a month prior to the BBQ.

Meat at Slim's/LABBB will be responsible for paying any police details. Please make sure to forward my office a copy of your insurance certificate naming the Town of Lexington as additionally insured for the days of your event.

We wish you good luck and good weather for your event.

Very truly yours,

Carl F. Valente  
Town Manager

CFV/cbs

cc: Board of Selectmen, Police Department, Fire Department, Department of Public Works, Department of Public Facilities, Health Department, Building Department, Tourism Committee

1625 MASSACHUSETTS AVENUE • LEXINGTON, MASSACHUSETTS 02420

# **AGENDA ITEM SUMMARY**

## **LEXINGTON BOARD OF SELECTMEN MEETING**

**DATE:**

1/26/2015

**PRESENTER:**

Joe Pato

**ITEM NUMBER:**

C.4

**AGENDA ITEM TITLE:**

Approve One-Day Liquor License - Sacred Heart

**SUMMARY:**

Sacred Heart has requested a one-day liquor license to serve beer and wine at a fundraiser for Honduras for Friday, January 30, 2015

**RECOMMENDATION / SUGGESTED MOTION:**

Motion to approve a one-day liquor license for Sacred Heart to serve beer and wine at a Fundraiser for Honduras on Friday, January 30, 2015, from 5:00 p.m. to 10:30 p.m. at Sacred Heart Parish, 21 Follen Road.


**FOLLOW-UP:**

Selectmen's Office

**APPROXIMATE TIME ON AGENDA:**

9:05 PM

**ATTACHMENTS:**

	Description	Type
	One-Day Liquor Application - Sacred Heart	Backup Material

# AGENDA ITEM SUMMARY

## LEXINGTON BOARD OF SELECTMEN MEETING

**DATE:**

1/26/2015

**PRESENTER:**

Joe Pato

**ITEM NUMBER:**

C.5

**AGENDA ITEM TITLE:**

Vote to Set the Bond for the Town Clerk

**SUMMARY:**

The Selectmen need to vote to set the Bond for the new Town Clerk, Nathalie Rice.

**RECOMMENDATION / SUGGESTED MOTION:**

Motion to set the bond for the Town Clerk at \$85,000.

**FOLLOW-UP:**

Selectmen's Office

**APPROXIMATE TIME ON AGENDA:**

9:05 pm

**ATTACHMENTS:**

Description		Type
	Town Clerk Bond	Backup Material



# LOCAL OFFICIAL BOND

Bond No. 62264590

Effective Date: December 15th, 2014

KNOW ALL MEN BY THESE PRESENTS, That we, \_\_\_\_\_

Nathalie Rice

of Lincoln in the County of Middlesex and the Commonwealth of Massachusetts, as Principal, and WESTERN SURETY COMPANY, a corporation duly organized and existing under the laws of the State of South Dakota and licensed to conduct business in said Commonwealth of Massachusetts, as Surety, are held and firmly bound unto the Town (~~City~~) of

Lexington in said Commonwealth of Massachusetts in the sum of

Eighty Five Thousand and 00/100 DOLLARS (\$ 85,000.00 ), for the payment of which, well and truly made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

## THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the said Principal was on the 15th day of December, 2014, duly

Appointed to the office of City Clerk  
(elected or appointed)

in and for the said Town (~~City~~): Town of Lexington

AND WHEREAS, it is provided by law that such an official shall give bond annually for the faithful performance of his duties:

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall from and after the date hereof faithfully perform all the duties of his said office, as required by law, during the period of twelve months from the date hereof or until he is relieved from office by the qualification of a successor or files a subsequent annual bond, then this obligation shall be void; otherwise, it shall remain in full force and effect.

This bond is nevertheless executed with the express understanding that upon the filing by said Principal of a subsequent annual bond as required by the statutes, this bond shall be held and remain in force to cover any failure of said Principal to faithfully perform the duties of his office between the date hereof and the effective date of said subsequent bond, but shall not apply to or cover any failure to faithfully perform the duties of his office occurring after the effective date of such subsequent annual bond.

IN WITNESS WHEREOF, the said Principal has hereunto set his hand and seal, and the said Surety has affixed its corporate seal and caused these presents to be signed in its behalf by its duly authorized attorney-in-fact (officer) this 12th day of January, 2015.

## SIGNED IN THE PRESENCE OF

\_\_\_\_\_  
Witness to Principal ✓

\_\_\_\_\_  
Principal (L.S.) ✓

WESTERN SURETY COMPANY

By \_\_\_\_\_  
Attorney-in-Fact (Officer)

\_\_\_\_\_  
Witness to Surety

Countersigned

By \_\_\_\_\_  
Resident Agent



THE COMMONWEALTH OF MASSACHUSETTS

Town (City) of \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_

This is to certify that the above-named Principal was duly elected (appointed) to the office of \_\_\_\_\_ in and for the Town (City) of \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_, to a term expiring on \_\_\_\_\_, \_\_\_\_\_, or until his successor is duly qualified, whichever is later.

By \_\_\_\_\_  
Town (City) Clerk

Seal

THE COMMONWEALTH OF MASSACHUSETTS

Town (City) of \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_

This is to certify that the board of selectmen (mayor and aldermen) has fixed the sum of the foregoing bond at the amount shown therein.

\_\_\_\_\_  
By \_\_\_\_\_  
Authorized Representative

# Western Surety Company

## POWER OF ATTORNEY

### KNOW ALL MEN BY THESE PRESENTS:

That WESTERN SURETY COMPANY, a corporation organized and existing under the laws of the State of South Dakota, and authorized and licensed to do business in the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the United States of America, does hereby make, constitute and appoint

Christopher F Schenck of Boston,  
State of Massachusetts, with limited authority, its true and lawful Attorney-in-Fact, will full power and authority hereby conferred to sign, execute, acknowledge and deliver for and on its behalf as Surety and as its act and deed, the following bond:

One City Clerk Town of Lexington

bond with bond number 62264590

for Nathalie Rice

as Principal in the penalty amount not to exceed: \$ 85,000.00.

Western Surety Company further certifies that the following is a true and exact copy of Section 7 of the by-laws of Western Surety Company duly adopted and now in force, to-wit:

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys-in-Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

In Witness Whereof, the said WESTERN SURETY COMPANY has caused these presents to be executed by its  
Vice President with the corporate seal affixed this 12th day of January,  
2015.

ATTEST

A. Vietor  
A. Vietor, Assistant Secretary

WESTERN SURETY COMPANY  
By Paul T. Bruflat  
Paul T. Bruflat, Vice President

STATE OF SOUTH DAKOTA }  
COUNTY OF MINNEHAHA } ss

On this 12th day of January, 2015, before me, a Notary Public, personally appeared  
Paul T. Bruflat and A. Vietor

who, being by me duly sworn, acknowledged that they signed the above Power of Attorney as Vice President  
and Assistant Secretary, respectively, of the said WESTERN SURETY COMPANY, and acknowledged said instrument to be the voluntary act and deed of said Corporation.



My Commission Expires August 11, 2016

S. Petrik  
Notary Public