

July 20, 2020
Selectboard Executive Session
Meeting held via Zoom
7:41 PM

Executive Session in accordance with Mass. G.L. c. 30A §21(a)(6) to consider the purchase of real property: Map 17 Lot 13A, votes may be taken

Documents and Exhibits:

- Letter from Urban Grown, Inc. dated June 18, 2020
- Option Agreement dated July 20, 2020

Present: Selectboard: Richard Kuklewicz, Christopher Boutwell, Michael Nelson; Town Administrator Steve Ellis; Executive Assistant Wendy Bogusz

Ellis:

- Property located in the Industrial Park, 5.180± acres, Map 17, Lot 13A
- Purchase price: \$100,000
- Premises will be for a cannabis cultivation business and wholesale distribution center and to construct a 10,000 square foot greenhouse cultivation facility
- Urban Grown Inc. is a locally-owned Mass. Corporation founded by UMASS Professor of Agronomy and Associate Dean of the Strockbridge School of Agriculture, Dr. Stephen Hebert and his son Michael. The lead investors/shareholders include Josh Goldman, Michael Cohen, Founder of LightLife Foods, and Bernie Smiarowski of Smiarowski Farm
- Project to be fully developed over a 3 year period.
- They expect to create approximately 25 new full time jobs, with attractive compensation and benefits.
- The project will comply with stringent security requirements and will be limited to wholesale distribution with minimal impact on traffic or public safety.
- Urban Grown will enter opposite Mayhew Steel
- There will be very little signage, they want it to be low key
- It will be a high tech green house; butler type steel building with technology in the roof
- The facility is in compliance with by laws. Proper distance from the Tech School

Kuklewicz asked that Urban Grown, Inc. touch base with the Tech School and Ja'Duke letting them know the plans

Ellis:

- They want to get going ASAP and hope to be done by end of calendar year if possible.
- They have to wait for our process before they can apply to the CDC
- We will talk about the host agreement and letter of support at a later date

Boutwell makes the motion to execute the option agreement for a parcel of land located at the Montague Industrial Park containing approximately 5.180± acres, Map 17, Lot 13A; Purchase price \$100,000. Seconded by Nelson, approved unanimously. Boutwell – Aye, Nelson – Aye, Kuklewicz – Aye

Boutwell makes the motion to adjourn the executive session at 7:52 PM. Seconded by Nelson, approved unanimously. Boutwell – Aye, Nelson – Aye, Kuklewicz – Aye

Boutwell makes the motion to adjourn the Selectboard Meeting at 7:52 PM. Seconded by Nelson, approved unanimously. Boutwell – Aye, Nelson – Aye, Kuklewicz – Aye

Approved:

☒ Boutwell

☒ Kuklewicz

☒ Nelson

Release to the Public:

☒ Yes

☐ Not Yet

11/30/20 Date

Date Released to the Public: 12/1/20

Urban Grown Inc.
55 Depot Rd
Hatfield, MA 01038

June 18, 2020

The Select Board
Town of Montague
1 Avenue A
Turners Falls, MA 01376

Transmitted via electronic Mail

Re: Confidential Offer to Purchase 4 Acre Parcel on Industrial Boulevard - Map 17 Lot 13A.

Honorable Select Board,

Urban Grown, Inc ("UGI") is hereby offering to purchase the 4 Acre Parcel on Industrial Boulevard in the Airport Industrial Park (Map 17 Lot 13A) for \$25,000/usable acre. We further propose to enter into a 180 day option agreement to purchase the property, subject to the successful completion of the permitting needed to begin construction. Our goal is to complete the outstanding permitting as quickly as possible; ideally allowing us to close on this transaction within 90 days.

Background on UGI - UGI is a locally-owned Massachusetts corporation founded by UMASS Professor of Agronomy and Associate Dean of the Stockbridge School of Agriculture, Dr. Stephen Hebert and his son Michael. The company's lead investors/shareholders include myself, Michael Cohen, Founder of LightLife Foods, and Bernie Smiarowski of Smiarowski Farm – individuals with long histories of successful business operations in Montague.

UGI possesses a valid Massachusetts cannabis cultivation license from the Mass CCC. We plan to undertake the staged development of a 50,000 Sq. Ft. greenhouse cultivation facility using the latest technology; light deprivation shading, Smart Pars LED lighting, CO2 enrichment and automated environmental controls. Stage 1 is anticipated at 13,000 Sq. Ft, with subsequent expansion to fully develop the project over a 3 year period. We expect to create approximately 25 new full time jobs, with attractive compensation and benefits. The project will comply with stringent security requirements and will be limited to wholesale distribution with minimal impact on traffic or public safety.

We sincerely appreciate your consideration of our offer and look forward to working with you over the coming months to bring this project to fruition.

Best Regards,

A handwritten signature in blue ink, appearing to read 'Josh Goldman', is written over a horizontal line.

Josh Goldman, Partner

CC. Steve Ellis, Walter Ramsey

OPTION AGREEMENT

THIS OPTION AGREEMENT (this "*Agreement*") is entered into this 20th day of July, 2020, by and between the **Town of Montague** (the "*Town*"), a Massachusetts municipal corporation, having an address of One Avenue A, Turners Falls, Massachusetts 01376, and **Josh Goldman** ("*Optionee*") having an address of 55 Depot Road, Hatfield, Massachusetts 01038.

WHEREAS, the Town is the fee simple owner of a parcel of land located at the Montague Industrial Park, Montague, containing approximately 5.180± acres, Map 17, Lot 13A, and being a portion of the property described in a deed recorded with the Franklin County Registry of Deeds in Book 1502, Page 329 (the "*Premises*");

WHEREAS, Optionee intends to purchase the Premises for a cannabis cultivation business and wholesale distribution center, and to construct thereon a 10,000 square foot greenhouse cultivation facility and upon obtaining additional licensing and project feasibility metrics construct additional greenhouse cultivation facilities and appurtenant buildings estimated to be approximately 50,000 square feet, using the latest technology, in phases, over a 3-year period (the "*Project*");

WHEREAS, Optionee desires to obtain an option to acquire the Premises to enable Optionee to obtain the necessary state and local regulatory and other approvals and the financing required for the development of the Project on the Premises, and to assess the physical condition of the Premises and the legal title thereto;

WHEREAS, the Town desires to grant Optionee an option on the Premises in order to enable Optionee to conduct its due diligence based upon the terms and provisions as hereinafter set forth.

DEFINITIONS. For purposes of this Agreement, the following terms shall have the following meanings:

- (a) "*Execution Date*" shall mean the day upon which the last party to this Agreement shall duly execute this Agreement;
- (b) "*Option Term*" shall mean that period of time commencing on the Execution Date and terminating six (6) months from the Execution Date (the "*Initial Option Term*"), unless sooner terminated in accordance with the terms hereof. Optionee may extend the Option for an additional six (6) months from the Execution Date (the "*Option Extension Term*," together with the Initial Option Term, the "*Option Term*") in the event the Town determines, in its reasonable discretion, that Optionee has proceeded with due diligence and in good faith to obtain all regulatory licenses and other approvals and can demonstrate significant progress to permit the Project.

- (c) “*Option Exercise Date*” shall mean that date, within the Option Term, on which Optionee sends its written notice to the Town, exercising the Option, in compliance herewith.
- (d) “*Option Deadline*” shall mean 4:00 p.m. on the last date of the Initial Option Term, or, in the event the Option Extension Term is exercised, and approved by the Town, to 4:00 p.m. on the last date of the Option Extension Term.
- (e) “*Purchase Price*” for the Premises shall be One Hundred Thousand (\$100,000.00) Dollars.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the parties hereto and for the mutual covenants contained herein, the Town and Optionee hereby agree as follows:

1. GRANT OF OPTION; PRECONDITIONS TO EXERCISE.

(a) Option. The Town hereby grants to Optionee the exclusive right and option to purchase the Premises during the Option Term for consideration of One Hundred Thousand (\$100,000.00) Dollars and on the other terms set forth herein (“*Option*”). The parties acknowledge that before Optionee can exercise the Option, it must have achieved the milestones identified as the Preconditions (defined below). To exercise the Option, Optionee must: (a) notify the Town of the same in writing, which must be received by the Town on or before the Option Deadline, and, simultaneously provide the Property Objections and the Title Objections (the “*Notice of Exercise*”), and (b) obtain the Town’s acceptance thereof, which acceptance shall not be withheld if Optionee has satisfied the Preconditions.

(b) Preconditions. The parties acknowledge and agree that Optionee shall have no obligation to exercise the Option unless and until Optionee has achieved the following milestones (together, the “*Preconditions*”):

- (i) *Permits*: Optionee shall have obtained any and all state and local permits, approvals, and licenses necessary or convenient to construct and operate the Project on the Premises (collectively, the “*Permits*”), and the period of appeal under each of said permits and approvals shall have expired without appeal by a third party or, if appealed, such appeal shall have been successfully resolved in the reasonable determination of Optionee;
- (ii) *Financing*: Optionee shall have obtained firm project financing commitments, including, but not limited to, construction loan commitments, and/or permanent loan commitments from institutional lenders, and/or private entities, in an amount reasonably satisfactory to Optionee to acquire the Premises, and design, construct, and complete the first phase of the Project, being a 10,000 square foot greenhouse cultivation facility (the “*Financing*”). Optionee shall, prior to or simultaneously with the execution and delivery of the deed to the Premises, close on the Project Financing;

- (iii) *Property Objections and Title Objections:* Options shall advise the Town of any Property Objections and/or Title Objections on or before the end of the Initial Option Term, and may elect to terminate this Option, by written notice to the Town, failing which, any said Objections shall be waived; and
- (iv) *Disclosure Statement:* Optionee shall have complied with the disclosure provisions of G.L. c. 7C, §38, and Optionee and the Town agree to diligently pursue full compliance with said statute.
- (c) **Documentation.** The Town's obligation to accept the Notice of Exercise is contingent on Optionee having obtained the Permits and the Financing required hereunder, it being understood by the parties that the Town will convey the Premises once Optionee has demonstrated, to the Town's reasonable satisfaction, that Optionee will be able to commence the Project within four (4) months after the closing. Optionee agrees to provide the Town with documentation relating to the Permits and Financing as the Town may reasonably require in a timely manner (the "*Documentation*").
- (d) **Termination.** In the event that Optionee fails, after using good faith and diligent efforts, to satisfy the Preconditions, Optionee shall have the right to terminate this Agreement, without recourse, by written notice to the Town given prior to the Option Deadline. This Agreement and the Option granted herein shall terminate when Optionee sends a notice of termination to the Town or if Optionee fails to exercise the Option on or before the Option Deadline.

2. COOPERATION; ASSIGNMENT.

- (a) **Permits.** The Town authorizes Optionee and its agents to submit and pursue any and all land use reviews and/or other Permit applications to and with the Town of Montague and other regulatory entities as required, pertaining to the construction of the Project on the Premises and the development and operation of Project. The Town agrees to sign such applications and use good faith efforts to cooperate with Optionee, at Optionee's expense, in the role of property owner but not as an applicant or project developer and will execute such applications as owner only. However, Optionee acknowledges that the Town has no control over and cannot guarantee that Permits required from municipal boards or officers within their statutory or regulatory authority will be granted or fees waived.
- (b) **Assignment.** Optionee shall not assign this Agreement or any of its rights hereunder without prior written consent of the Town, which may be withheld in the Town's sole and absolute discretion, except that Optionee may assign this Agreement to an entity related to the Optionee and/or Urban Grown Inc., a Massachusetts corporation, said entity created by Optionee for the purpose of acquiring title to the Premises and/or obtaining the Financing, with the consent of the Town, which consent shall not be unreasonably withheld.

3. DUE DILIGENCE.

(a) Right of Entry. Optionee shall have until 4:00 pm. on the last day of the Initial Option Term (the "*Inspection Deadline*") to inspect the Premises and satisfy itself as to the condition thereof. The Town hereby grants Optionee and its employees, agents, and contractors the right during the Initial Option Term to enter onto the Premises for the purpose of making surveys, reports, analyses and assessments, including soil testing, provided that Optionee shall not conduct any subsurface tests or otherwise alter the Premises without the Town's prior written consent, including the Town requiring Optionee to obtain liability insurance in amounts and on terms acceptable to the Town. In the event the closing does not take place, Optionee shall promptly restore the Premises to their condition prior to any such disturbance, at Optionee's expense. Optionee shall notify the Town at least three (3) business days in advance of the date that such inspections shall be conducted. In no event shall Optionee bring onto, place, store, release or otherwise dispose of oil, hazardous materials, toxic substances or other materials prohibited or regulated under G.L. c.21E and/or regulations thereunder ("*Hazardous Materials*") on or about the Premises in violation of applicable laws and regulations.

(b) Release. Optionee assumes all risks related to the entry on the Premises, which are made available in their "AS IS" condition. The Town expressly disclaims any and all representations and warranties about the condition of the Premises or the suitability of the Premises for the proposed use. Optionee, for itself and the other Optionee Parties, hereby releases and shall make no claim or demand of loss, cost, or liability from the Town and/or its officers, employees, agents, contractors and others acting by or through the Town (collectively, with the Town, the "*Indemnified Parties*") for any harm or injury to Optionee or its agents, employees, contractors, consultants, invitees and others acting by or through Optionee (collectively, with Optionee, the "*Optionee Parties*") arising out of or relating to the entry thereon and/or the exercise of the rights granted hereunder except to the extent the same is caused by the Town's gross negligence.

(c) Indemnification. Optionee shall defend, indemnify, and hold harmless the Indemnified Parties from and against all costs, losses, liabilities, expenses, claims, allegations, and demands (including fees for attorneys and other professionals), including those for personal injury or property damage, arising out of, caused by, or relating to: (a) the exercise by any of the Optionee Parties of any rights granted by the Town hereunder; or (b) any act or omission of any of the Optionee Parties on or about the Premises; and (c) damage to any property of the Town or third parties adjoining or adjacent to the Premises. Optionee shall use proper care in the performance of its tasks so as not to cause damage to the Premises or any other property. Further, Optionee shall hold harmless, protect, indemnify and defend the Town, and those claiming through the Town, from and against any and all liability, loss, damage, costs, expenses (including, without limitation, reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature in any way suffered, incurred, or paid as a result of any release or threatened release of any Hazardous Material by any of the Optionee Parties and any and all costs and expenses incurred in connection with any cleanup, remediation, removal or restoration work required by any federal, state or local governmental authority because of the presence of any Hazardous Material on or about the Premises to the extent that Optionee caused or

contributed to such environmental occurrence. Notwithstanding the foregoing, Optionee shall not be liable for the mere discovery of any existing condition.

(d) Property Objections. Notwithstanding anything in this Agreement to the contrary, Optionee shall have the right to terminate this Agreement if Optionee is not satisfied with the condition of the Premises (including, without limitation, review of existing site conditions, results of any environmental phase studies, wetlands delineations, traffic studies, geotechnical studies, utility availability surveys, or the presence of any Hazardous Materials, on the Premises) by giving the Town written notice thereof on or before the Inspection Deadline. In the event that Optionee exercises the Option, Optionee shall be deemed to have approved the condition of the Premises as of the Inspection Deadline, and shall have no right to object thereto, unless Optionee includes with the Notice of Exercise any objections it may have regarding the condition of the Premises and provides the Town with results of any tests, inspections, and other due diligence evidencing the same (the "*Property Objections*"). Nothing herein shall prevent Optionee from objecting to any property or environmental condition arising or occurring after the Notice of Exercise that may materially impair the development of the Project on the Premises ("*New Property Matters*").

(e) Title Objections. Optionee shall have until the Inspection Deadline to object or disapprove any matters disclosed by a title examination that are reasonably likely to materially impair the development of the Project on the Premises (the "*Title Objections*"). In the event that Optionee exercises the Option, Optionee shall be deemed to have accepted the Title Objections existing as of the date of the Title Commitment unless Optionee indicates in reasonable detail the nature and reasons for Optionee's Title Objections in the Notice of Exercise. Any title matters not included in the Title Objections shall be deemed to be permitted exceptions. Nothing herein shall prevent Optionee from objecting to any matter affecting the title to the Premises that arises after the date of the Notice of Exercise that may materially impair the development of the Project on the Premises (the "*New Title Matters*").

4. **TERMS OF PURCHASE AND SALE AGREEMENT.**

Within thirty (30) days of the Notice of the Notice of Exercise, the Town and Optionee shall enter into a purchase and sale agreement, failing which, Optionee's rights to acquire the Premises shall terminate. The purchase and sale agreement shall contain, at a minimum, the following terms:

(a) Purchase Price. The consideration for the Premises shall be One Hundred Thousand (\$100,000.00) Dollars.

(b) Closing. The deed shall be delivered and the closing shall occur within sixty (60) days from the Option Exercise Date, at the time and place set forth in the Notice of Exercise or as otherwise mutually agreed to by the parties, which date may be extended by mutual agreement of Optionee and the Town. Time is of the essence.

(c) Possession. Full possession of the Premises is to be delivered to Optionee at the time of the delivery of the deed free of tenants and/or occupants, said Premises to be then

substantially in the same condition in which they now are reasonable use and wear and damage from casualty excepted. Optionee shall have the right to inspect the Premises for compliance with this paragraph prior to delivery of the deed upon reasonable notice to the Town.

(d) Condition of Premises. Optionee acknowledges and agrees that it has been provided sufficient opportunity to inspect the Premises, and that, by delivering the Notice of Exercise, Optionee agrees to acquire the Premises in its "AS IS" condition, WITH ALL FAULTS, IF ANY, AND WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, other than for the New Property Matters and the New Title Matters or other than as expressly set forth in this Agreement. Optionee acknowledges and agrees that neither the Town nor any agents, representatives, or employees of the Town have made any representations or warranties, direct or indirect, oral or written, express or implied, to Optionee or any agents, representatives, or employees of Optionee with respect to the condition of the Premises, its fitness for any particular purpose, or its compliance with any laws, and Optionee is not aware of, and does not rely upon any such representation to any other party. Optionee and the Town acknowledge and agree that Optionee shall have the opportunity to make such inspections of the Premises as it deems necessary or appropriate to ensure that no New Property Matters arise or occur prior to the Closing.

(e) Cure Rights. Notwithstanding the foregoing, in the event Optionee has notified the Town of any Title Objections or Property Objections in a timely manner, or if Optionee notifies the Town of any New Title Matters or New Property Matters, the Town shall use reasonable efforts to attempt to cure such defects in title or Property conditions, in which event the closing shall be extended for sixty (60) days to enable the Town to cure such matters (the "Cure Period"). In no event, however, shall reasonable efforts require the Town to expend more than \$1,000.00 to cure Title Objections or Property Objections, including attorneys' fees. In the event that the Town fails to effectuate such cure within the Cure Period, then this Agreement shall terminate, without recourse to the parties, unless Optionee notifies the Town in writing, within ten (10) days from the expiration of the Cure Period, of its election to waive such objections and matters and its agreement to accept the Premises in their AS-IS condition, without reduction in the purchase price, in which case this Agreement shall continue in full force and effect.

(f) Adjustments. A payment in lieu of taxes shall be paid in accordance with G.L.c.44, §63A, as of the day of the conveyance of the Premises and the net amount thereof shall be added to the purchase price payable by Optionee at the time of delivery of the deed.

(g) Casualty Loss. The Town shall keep the Premises insured until the day of closing as presently insured. In the event that all or a substantial part of the Premises is damaged or destroyed by fire, vandalism or other casualty, Optionee may, at its option, terminate this Agreement. "Substantial part" shall be defined as that portion of the Premises which if damaged or taken by eminent domain would materially and adversely affect the use of the Premises for the purposes set forth herein.

5. MISCELLANEOUS.

(a) Execution by all Parties. This Agreement shall not become effective and binding until fully executed by Optionee and the Town.

(b) Notice. Any notice required or permitted to be given under this Agreement shall be in writing and signed by the party or the party's attorney or agent and shall be deemed properly given upon the earlier of: (i) two (2) business days after deposit with the United States Postal Service, if sent by registered or certified mail, return receipt requested, postage prepaid; (ii) one (1) business day after deposit with an express courier service such as Federal Express; (iii) actual receipt, or (iv) confirmed facsimile transmission (provided such facsimile notice is promptly followed by other acceptable means of sending notice), addressed to the parties at the address set forth above, with a copy to the party's attorney: for notices to the Town, send copy to: Katharine Lord Klein, Esq., KP Law, P.C., 101 Arch Street, Boston, MA 02110, telephone: (617) 556-0007, facsimile: (617) 654-1735, and, for notices to Optionee, send copy to: John J. Stobierski, Esq., Stobierski & Connor, 377 Main Street, Greenfield, MA 01301, telephone: (413) 774-2867, facsimile (413) 774-6551.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

(d) Recordation. Neither this Agreement nor any notice thereof shall be recorded in any Registry of Deeds or filed with any Land Court Department or any Registry of Deeds. Any such recording shall constitute an act or event of default, and in that event all of the rights under this Agreement shall immediately and automatically terminate.

(e) Headings. The headings inserted at the beginning of each paragraph and/or subparagraph are for convenience of reference only and shall not limit or otherwise affect or be used in the construction of any terms or provisions hereof.

(f) Broker. The parties represent to each other that no broker, realtor, person, firm, or corporation is entitled to a fee arising from this Agreement. The party through or from which any brokerage claim arises shall save, defend and hold the other harmless from such claim.

(g) Entire Agreement. This Agreement contains all of the terms, promises, covenants, conditions and representations made or entered into by or between the Town and Optionee and supersedes all prior discussions and agreements whether written or oral between the Town and Optionee with respect to the Option and all other matters contained herein and constitutes the sole and entire agreement among the Town and Optionee with respect thereto. This Agreement may not be modified or amended unless such amendment is set forth in writing and executed by both the Town and Optionee with the formalities hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date set forth above.

TOWN OF MONTAGUE;
By its Selectboard

Richard Kuklewicz, Chairman

Michael Nelson, Vice Chairman

Christopher Boutwell

OPTIONEE



John Goldman