

TOWN OF NEEDHAM
MASSACHUSETTS



500 Dedham Avenue
Needham, MA 02492

PLANNING BOARD

APPLICATION TO AMEND SITE PLAN REVIEW SPECIAL PERMIT

APPLICATION NO. 2009-06 (APRIL 25, 2017)

Project Determination: (circle one) Major Project Minor Project

This application must be completed, signed, and submitted with the filing fee by the applicant or his representative in accordance with the Planning Board's Rules as adopted under its jurisdiction as a Special Permit Granting Authority. Section 7.4 of the By-Laws.

Location of Property: Garrity's Way and part of Town Common, 1471 Great Plain Avenue, Needham, MA 02492

Applicant's' names, addresses, phone numbers:

Needham Farmers Markert, Inc. ("NFM"), 227 Eliot Street, Ashland, MA, 01721; 781.241.2037

Applicants are: Owner Tenant
 Agent/Attorney x Purchaser

Property Owners' Names, Addresses, Telephone Numbers:

Town of Needham, 1471 Highland Avenue, Needham, MA 02492, tel. 781.455.7500

Characteristics of Property: Lot Area 59,221 sq. ft. Present Use: Driveway & parking, Town Common
 Map # 51 Parcel #1
 Zoning District: Center Business

Description of Project for Site Plan Review under Section 7.4 of the Zoning By-Law:

1. NFM will be located on a small portion of the Town Common and Garrity's Way.
2. NFM will be open on Sundays, June 16, 2024 to October 27, 2024 inclusive from 11 a.m. to 3 p.m. Setup is 9 a.m. to 11 a.m. and breakdown is 3 p.m. to 4 p.m.

3. NFM will have a maximum of seventeen (17) food vendors per market.
4. NFM will have a maximum of four (4) artists per market.
5. The Special Permit will be indefinite for NFM's future use of the Site and will incorporate License Agreements for renewals.

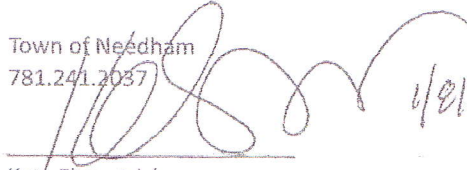
Signature of Applicant (or representative)

Needham Farmers Market


 Jeffrey Friedman, President
 781.241.2037

4/8/24

Town of Needham
 781.241.2037


 Kate Fitzpatrick
 Town Manager

4/8/24

SUMMARY OF PLANNING BOARD ACTION

Received by Planning Board _____ Date _____
 Hearing Date _____ Parties of Interest Notified of Public Hearing _____
 Decision Required by _____ Decision/Notices of Decision sent _____
 Granted _____
 Denied _____ Fee Paid _____ Fee Waived _____
 Withdrawn _____ NOTE: Reports on Minor Projects must be issues within 35 days of filing date

License Agreement
Between
Needham Farmers Market, Inc.
and
The Town of Needham

This License Agreement is made this 10th day of January 2024, by and between the Needham Farmers Market, Inc., a not for profit corporation, with its principal place of business at 227 Eliot Street, Ashland MA 01721 (LICENSEE), and the Town of Needham, Massachusetts, a municipal corporation with its usual place of business at 1471 Highland Ave., Needham, MA 02492 (LICENSOR) (collectively, the "Parties").

1. USES

a. In consideration of the full and faithful performance by LICENSEE of all covenants and agreements contained herein and subject to the following terms and conditions, the LICENSOR grants to LICENSEE and LICENSEE takes from the LICENSOR the nonexclusive right to use the Needham Town Common, a Town of Needham Facility, (the "Licensed Area") bounded by Great Plain Avenue, Chapel St, Garrity Way, and Highland Avenue, for the purpose of operating a farmers market (the "Market") for four (4) hours every Sunday, opening at 11:00 a.m. and closing at 3:00 p.m., from June 16th, 2024 through October 27th, 2024. The LICENSEE will be further allowed up to three (3) hours before opening to allow its vendors to set up and up to two (2) hours after closing to break down and clean up.

b. A maximum of seventeen (17) vendors will use booths, tables, canopies or other temporary structures on the Licensed Area. In addition to the vendors there shall be allowed up to five (5) tables, booths or canopies for the Needham Community Farm and/or other Needham-based not for profit organizations, artists, artisans, musicians and the LICENSEE which are to be located solely in the Licensed Area.

c. All trash and waste will be confined to the Licensed Area, and the LICENSEE will be responsible for its removal and cleaning of the Licensed Area before the end of the breakdown time.

d. LICENSEE is responsible to see that the physical layout of the Market is kept within the Licensed Area.

e. LICENSEE will ensure that no public vehicular access to the Licensed Area is allowed during Market hours.

f. LICENSEE is responsible to see that the Licensed Area is used in a lawful manner and in compliance with all laws, by-laws, rules, regulations, permit requirements, orders and directives of any government official, agency or entity of competent jurisdiction.

g. LICENSEE will not engage in or allow any of its vendors or invitees to engage in any unlawful or dangerous activities that may cause personal injury or physical damage to the Licensed Area.

h. LICENSEE agrees to suspend Market activities in the event that the LICENSOR requires use of the Licensed Area. The LICENSOR will endeavor to provide as much prior notice as possible to the LICENSEE. Except in extraordinary circumstances, the LICENSOR will provide the LICENSEE two weeks' notice of the need for Market activity suspension. The LICENSOR will work with the LICENSEE to attempt to locate an alternative site for the Market during any period of such suspension.

2. PLANS

The Licensee's Market Layout Plan for the Licensed Area is attached as Exhibit "A".

3. TERM OF AGREEMENT

The term of this License Agreement shall be June 16th, 2024, through October 27th, 2024.

4. FEE

LICENSEE shall pay the LICENSOR the sum of \$25.00 per market day, for each day, payable in advance. LICENSEE shall make payments to LICENSOR via check made out to "TOWN OF NEEDHAM" by hand-delivery or registered mail to "TOWN OF NEEDHAM, 1471 HIGHLAND AVENUE, NEEDHAM, MASSACHUSETTS 02492". LICENSOR reserves the right to terminate this License Agreement if LICENSEE'S payment becomes more than five (5) days overdue.

5. TERMINATION

In addition to the LICENSOR'S right in Paragraph 4 above to terminate for cause, either Party may terminate this License Agreement without cause, effective at the end of each month, upon 30 days written notice to the other Party of its intention and election to terminate.

6. MAINTENANCE

It is agreed the LICENSOR will patch, plow and sweep the Licensed Area as needed and at reasonable times. The LICENSEE shall not permit the Licensed Area to be overloaded, damaged, stripped or defaced, nor suffer any waste. The LICENSEE shall not allow any holes to be made in the Licensed Area.

7. OWNERSHIP OF PROPERTY

It is agreed that the Licensed Area is and shall remain the property of the LICENSOR and the LICENSEE shall not make any improvements on, alter or remove any part of the Licensed Area without the LICENSOR'S express prior written consent.

8. CONDITION OF LICENSED AREA

LICENSEE acknowledges that: a) it has inspected the Licensed Area; b) the Licensed Area shall be available under this License Agreement to LICENSEE and its vendors in an "as is" condition; and c) the LICENSOR makes no representations or warranties as to the condition of the Licensed Area.

9. RISK OF LOSS

LICENSEE agrees to use the Licensed Area at its sole risk. All merchandise, property and effects of the LICENSEE, its vendors, and of all persons claiming by, through or under LICENSEE, which may be on the Licensed Area during the Term of this License

Agreement shall be at the sole risk and hazard of the LICENSEE, its vendors, or its invitees. LICENSEE further agrees that the LICENSOR shall not be responsible or liable to LICENSEE, its vendors, or to those claiming by, through or under LICENSEE, for any loss or damage resulting to LICENSEE, its vendors, or those claiming by, through or under LICENSEE or its or their property, that may be occasioned by or through the acts or omissions of persons for whose conduct the LICENSOR is not responsible. The LICENSEE shall be responsible for any damage done to the Licensed Area resulting from the activities allowed by this License Agreement.

10. INSURANCE

LICENSEE and its vendors shall, at their own expense, obtain and maintain general liability and motor vehicle liability insurance policies protecting the LICENSOR and shall have the LICENSOR as an additional named insured on the policies. General liability coverage shall be in the amount of at least \$1,000,000 per occurrence, and \$2,000,000 aggregate for bodily injury liability and property damage liability. Motor vehicle coverage shall include coverage for owned, hired and non-owned vehicles and shall be in the amount of at least \$1,000,000 single limit. The LICENSEE shall provide the LICENSOR with a copy of aforementioned insurance policies by hand-delivery or registered mail to "TOWN OF NEEDHAM, 1471 HIGHLAND AVENUE, NEEDHAM, MASSACHUSETTS 02492" prior to commencing operations on June 16th, 2024.

11. INDEMNIFICATION

LICENSEE shall pay, protect, indemnify and save harmless the LICENSOR from and against all liabilities, losses, damages, costs, expenses (including reasonable attorneys' expenses and fees), causes of action, suits, claims, demands or judgments of any nature whatsoever that may be imposed upon or incurred by or asserted against the LICENSOR by reason of any of the following acts occurring or arising during the term of this License Agreement:

- a. Any accident, injury to, or death of any person or damage to property occurring on the Licensed Area or any part thereof in which the negligence of LICENSEE, its employees, any of its employees, vendors or any person acting under color of this license is a causative factor and in which the negligence of the LICENSOR, its employees and agents is not a causative factor; or
- b. Any failure by LICENSEE, its vendors, its employees, or anyone acting under color of this License Agreement to perform or comply with any of the terms hereof or any contracts, agreement, or restrictions, statutes, laws, ordinances or regulations affecting the Licensed Area or any part thereof or the ownership, occupancy or use thereof.

The LICENSEE shall notify the LICENSOR of any accident, injury to, or death of any person or damage to property occurring on the Licensed Area during a period of Licensed Use within three business days of said accident, injury, death, or damage in writing by hand-delivery or registered mail to "TOWN OF NEEDHAM, 1471 HIGHLAND AVENUE, NEEDHAM, MASSACHUSETTS 02492".

12. NON-ASSIGNABLE

LICENSEE shall not assign this License Agreement or any rights hereunder without the prior written consent of the LICENSOR.

13. LICENSE ONLY

LICENSEE acknowledges that this is a License Agreement and the rights to use of the licensed area hereunder shall be deemed to be a license only and shall not be construed to be a lease, joint venture, partnership or as evidencing any relationship between LICENSEE and the LICENSOR other than as LICENSEE and LICENSOR. No interest in real property is hereby conveyed by the LICENSOR to the LICENSEE.

14. ENTIRE AGREEMENT

This document, inclusive of Attachment A, forms the entire agreement between the Parties and supersedes all prior arrangements and understandings. Any amendment or modification to this License Agreement must be in writing and signed by an official with the authority to bind the LICENSOR.

15. GOVERNING LAW

This License Agreement and performance hereunder are governed in all respects by the laws of the Commonwealth of Massachusetts and all other applicable by-laws and administrative rules, regulations and orders.

16. CONSENT TO VENUE

The Parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the Dedham District Court located in the County of Norfolk, State of Massachusetts, subject to the Transfer rules of the Norfolk Superior Court. The aforementioned choice of venue is intended by the Parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the Parties with respect to or arising out of this Agreement in any court or forum other than that specified in this paragraph. It is further agreed that the Parties to this Agreement hereby waive their rights to a jury trial.

17. SEVERABILITY

If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, such term or condition shall be stricken, and the legality and enforceability of the remaining terms and conditions shall remain in full force and effect.

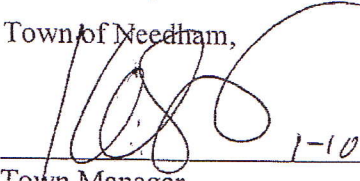
18. EXECUTION IN DUPLICATE

This Agreement may be executed in duplicate, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument which shall represent the agreement of the Parties.

IN WITNESS WHEREOF the Parties hereto have executed two copies of this License Agreement as of the date first above written.

LICENSOR,

Town of Needham,


1-10-24
Town Manager

LICENSEE,

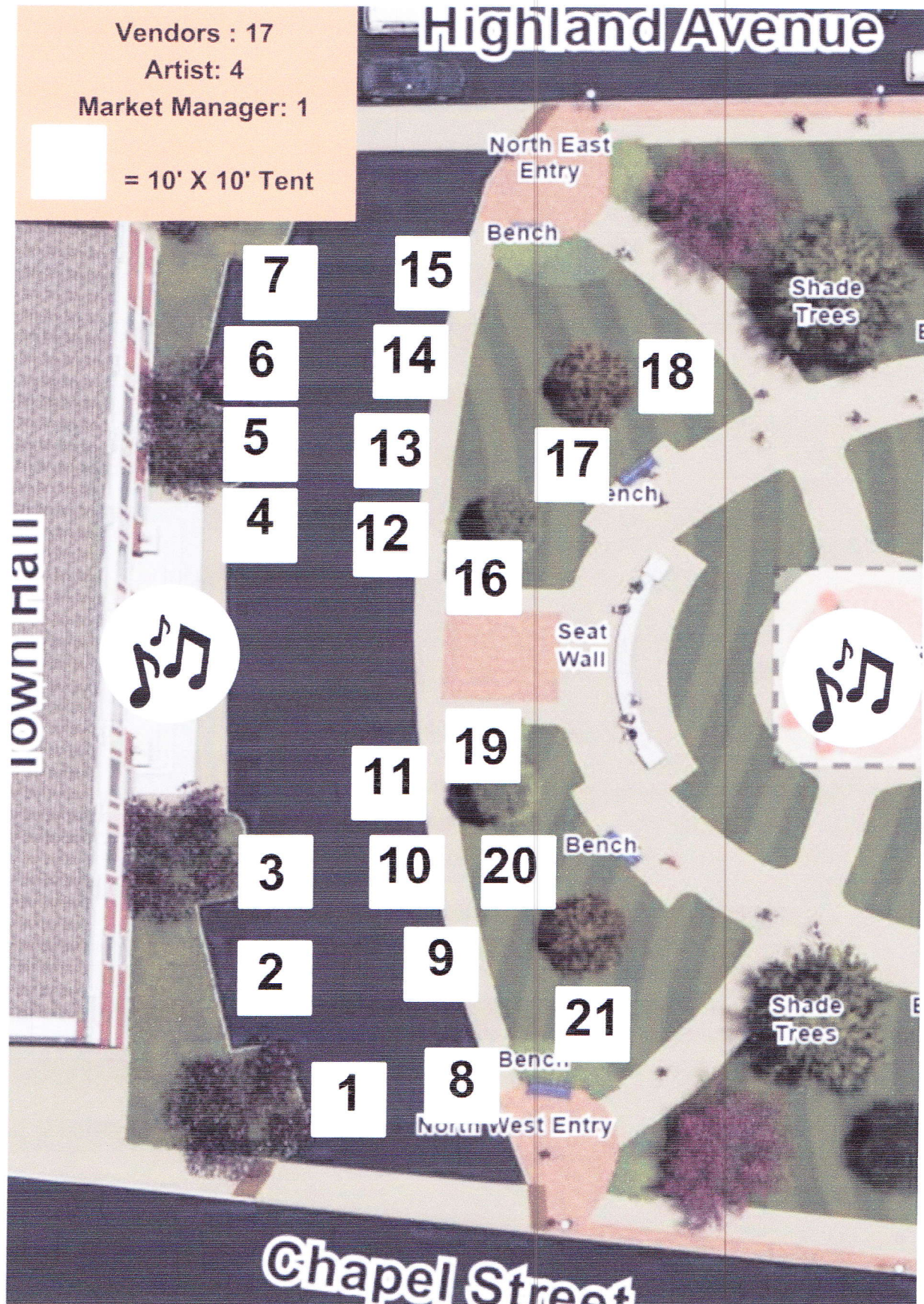
Needham Farmers Market, Inc.

 1/10/24
By: President

Needham Farmers Market Layout 2024

Layout is approximate and subject to refinement.

V.02



January 12, 2024

Needham Planning Board
500 Dedham Avenue
PSAB Bldg.
Needham, MA 02492

Re: Application for Site Plan Review Permit by Needham Farmers Market

This letter is in support of the Application for Petitioner Needham Farmers Market, Inc. ("NFM" or the "Market") for Site plan review, which amends Special Permit Decision (Application No. 2009-06) dated April 25, 2017, May 1, 2018, May 20, 2020, and March 2, 2021. NFM will operate for its 13th season on a small portion of the Town Common and Garrity's Way (the "Site") for 2024 and thereafter proposes to incorporate subsequent License Agreements for renewals. See attached "Needham Farmers Market Layout 2024" (Exhibit "A"). NFM's new License Agreement with the Town of Needham, dated January 10, 2024, to use the Site is filed herewith and is consistent with this Application.

NFM operated on the Town Common and Garrity's Way from 2017-21 until the Town began renovating the Town Common from 2022-23. Now that the renovation is completed, NFM is applying to return to and use the Site that it operated under previous Special Permits and License Agreements.

NFM is a 501c3 nonprofit corporation and civic organization. It is Needham based with the purpose of promoting healthy food, fresh and local, and healthy lifestyle with advancing community values. The Needham Board of Health and the Needham Public Health Division support the Market's functions.

Prior to renovation of the Town Common in 2022-23 when NFM operated on Greene's Field, NFM was located on the Town Common and Garrity's Way for five years, 2017 -21. NFM has operated for a total of 10 years on Town land to date, pursuant to License Agreements with the Town, including the Eaton Square Municipal Lot during 2014-16. At its inception, NFM operated on the front lawn of First Parish in Needham Unitarian Universalist for two years, 2012-13. Since its inception to date, NFM and its vendors have never damaged any property and never caused or been involved with injuries to any person.

The Application addresses the following relief:

1. Needham Farmers Market Site Plan Special Permit with Town of Needham, pursuant to Zoning By-Law Section 7.4 and Article 2 of the Planning Board Rules.
2. Special Permit pursuant Section 3.2.1 of the Zoning By-Law to operate a farmers market.
3. Special Permit pursuant to Section 5.1.

NFM is applying to make the following changes and amendments to the earlier Special Permits (2017-22) for use of the Site:

1. In 2024, NFM will be open from June 16th to October 27th, inclusive.
2. NFM's hours of operation to the public are 11 a.m. to 3 p.m. Setup of the Market is 9 a.m. to 11 a.m. and breakdown is 3 p.m. to 4 p.m.
3. NFM will have a maximum of seventeen (17) food vendors per market.
4. NFM will have a maximum of four (4) artists per market.

5. NFM will have a Market Manager and a Community Table.
6. At least seventy-five percent (75%) of all vendors shall sell fresh produce and other food products from booths, tables, or other temporary structures, as previously required at Greene's Field in 2022-23.

NFM requests that the Special Permit be indefinite and incorporate License Agreements for its renewal to use the Site. For the last 10 years, NFM has annually applied for a Special Permit based on a License Agreement with the Town. This is a repetitious and inefficient use of the Town's resources, which is time consuming and expensive for NFM, the Planning Board, the Department Planning and Community Development, the Town Manager's Office, and other Town Departments that are involved.

About a month ago, NFM proposed to the Town a three year License Agreement for use of the Site to avoid this repetitious process stated above. At a recent meeting to discuss NFM's proposal, Shane Mark, Needham's Assistant Director of Public Works, stated that he would only agree a one year License Agreement with NFM for annual use of the Site, and not for three years. An indefinite Special Permit for NFM's future use of the same Site that incorporate future License Agreements with the Town for renewals, will achieve the same important goals and administrative savings described above.

NFM requests waiver of the Application fee as being fair and equitable, where NFM is returning to the same Site used before for five years prior to the two year renovation of the Town Common. The Planning Board has previously waived the \$1,000 Application fee. NFM has limited financial resources and will incur considerable expenses to apply for the Special Permit.

Sincerely,



Jeffrey M. Friedman

President, Needham Farmers Market

Needham Farmers Market Layout 2024

Layout is approximate and subject to refinement.

V.02

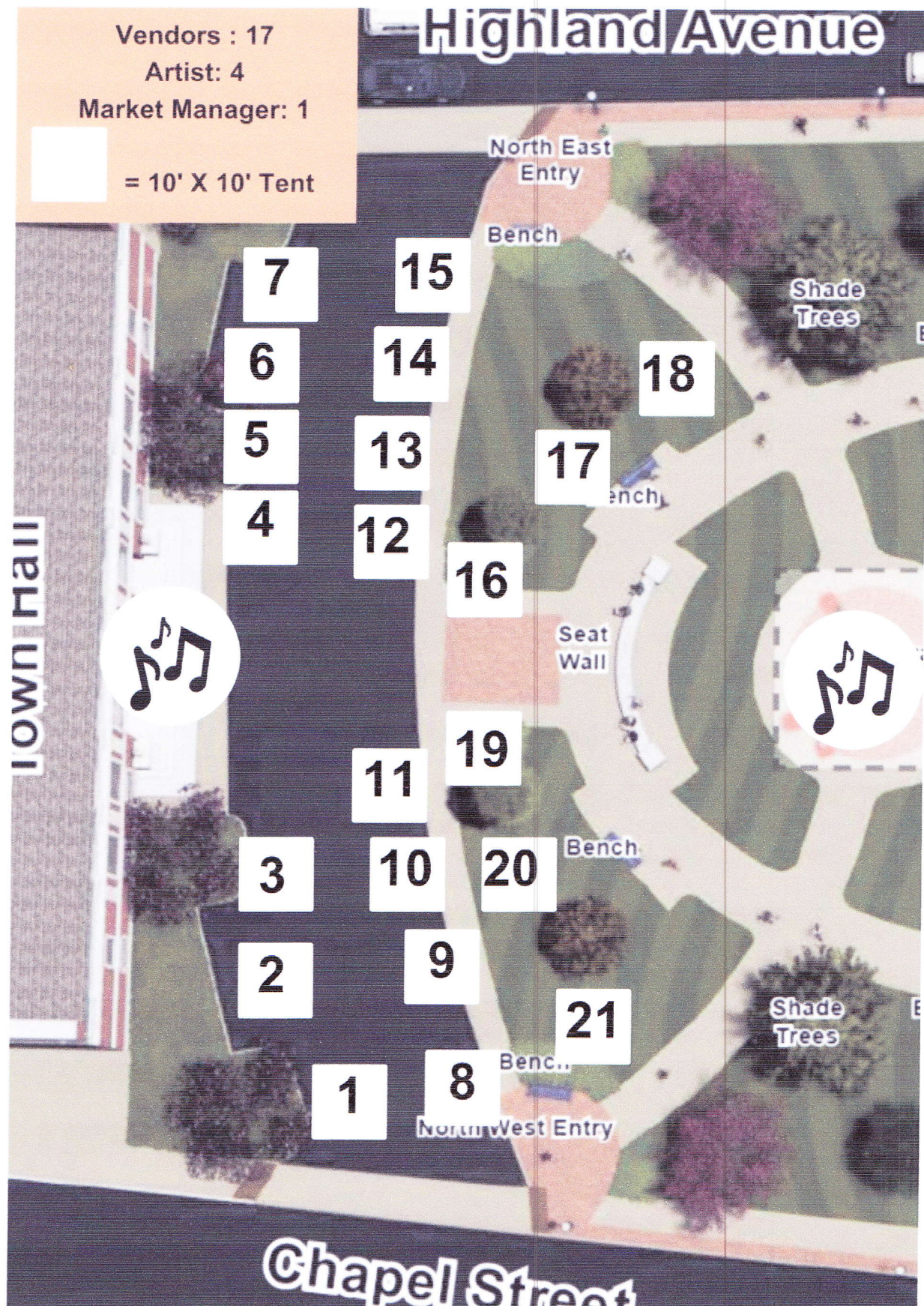


EXHIBIT "A"

January 12, 2024

Needham Planning Board
500 Dedham Avenue
PSAB Bldg.
Needham, MA 02492

Re: Application for Site Plan Review Special Permit by Needham Farmers Market

Dear Planning Board Members:

The purpose of this letter is to provide the Planning Board with additional information for the Application by Needham Farmers Market ("NFM" or the "Market") for a Special Permit to operate on a small portion of the Town Common and Garrity's Way, the (the "Site"), in 2024 and thereafter under NFM's License Agreements with the Town. This letter conforms to the review criteria for site plan review, as set forth in Section 7.4.6 of the Zoning By-Law.

The Market will be open on Sundays, June 16th through October 27, 2024 from 11 a.m. to 3 p.m. Setup of the Market is 9 a.m. to 11 a.m. and breakdown is 3 p.m. to 4 p.m. NFM has signed a License Agreement with the Town for use of the Site (dated January 10, 2024), filed herewith.

I. Site Plan Review Criteria.

The following are the criteria for site plan review process pursuant to Section 7.4.6 of the Zoning By-Law, and the description of how the Application meets those criteria.

a) "Protection of adjoining premises against seriously detrimental uses by provision for surface water drainage, sound and sight suffers and preservation of views, light and air."

NFM will not cause any detrimental uses when it operates on the Site on Sunday afternoons. It did not create any detriments when it operated on the Site for five previous years, 2017-21. The public may travel to the Market by auto, bicycle or by foot.

The Market will not cause any water drainage issues, and it will have no effect on views and air.

NFM will have free, live musical entertainment from individuals or a small group, e.g. flute, fiddle, guitar. Sound volume from musicians playing at the site will be reasonable, and not loud or disruptive to any businesses or houses of worship. There are no residential areas near the Site. First Parish in Needham Unitarian Universalist, located at 23 Dedham Avenue, is over 100 yards away. NFM's musicians performed on First Parish's front lawn for two years, 2012-13, and NFM's live music did not disrupt its Sunday services during that time period with no complaints from anyone about sound levels. I have been a member of First Parish during that time period and now.

b). "Convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, with other regulations for the handicapped, minors and the elderly."

During the operation of the Market, parking for the vehicles of shoppers will be at the Dedham Avenue, Chestnut St./Lincoln St., Chapel St., and the Eaton Square Municipal Lots. These are all within five

minutes walking distance from the Market. The vendors will park at the Chapel Street or Chestnut St./Lincoln St. lots. Any additional traffic due to the Market on surrounding streets during Sunday afternoons will be marginally increased, with no traffic congestion. There were no traffic or parking problems when NFM was previously located at the Site during the period 2017-21.

Safety of pedestrians and of vehicular movement have been a continuing and paramount concern of previously during its 12 years of operation, and this will continue for 2024. NFM's Market Manager prevents accidents from occurring with safety practices and procedures.

c) "Adequacy of the arrangement of parking and loading spaces in relation to the proposed used of the premises."

Since the total area of the Site in use by NFM is 7,154 square feet, the parking demand is 21 parking spaces ($7154/1000 \times 3 = 21$). The parking demand is based on a formula used in Special Permit applications and Decisions.

NFM will be open on Sunday afternoons from 11 a.m. to 3 p.m. Four municipal parking lots near the site are more than adequate for the parking needs of vendors and shoppers at the Market. The Dedham Avenue Lot has 87 parking spaces, the Chestnut St./Lincoln St. Lot has 231 parking spaces, the Chapel St. Lot has 127 parking spaces, and the Eaton Square Lot has 126 parking spaces.

d) "Adequacy of the methods of disposal of refuse and other wastes resulting from the uses permitted on the site."

All trash and waste on the Site will be confined and removed by NFM and its vendors, as required by the License Agreement. Vendors will be able to use the bathrooms at Bagels Best, Walgreens, CVS, or the YMCA. The waste water system for these businesses is connected to the municipal sewer system.

e) "Relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of this By-Law."

Any canopies, tables and equipment brought to the Site by NFM, vendors, and artists will be removed by them after NFM closes. NFM will not permit the Site area to be overloaded, damaged, stripped or defaced, or suffer any waste. NFM will not make any holes in the Site. NFM, its vendors, and artists will carefully protect from damage the bushes, trees, grass, and other plantings on or near the Town Common and Garrity's Way. During NFM's use of Town land for the last 10 years, no detrimental actions to property occurred.

f) Mitigation or adverse impacts on the Town's resources including the effect on the Town's water supply and distribution system sewer collection and treatment, fire protection, and streets."

NFM's use of the Site will not have any adverse impact on the Town's resources, including the Town's water supply and distribution system, sewer collection and treatment, fire protection and streets.

Conclusion.

Needham Farmers Market is an important community event. It will continue to be a source of fresh and locally grown, baked, and prepared food for Needham residents and nonresidents (adults, children, and seniors) on the Site. The Market is also an important opportunity for Needham residents to meet friends and neighbors, which is a source of positive community values for Needham. Needham residents, retail businesses and restaurants will benefit from the central location of the Market. Needham's Select Board, Town Manager, Board of Health, and Public Health Division all support NFM and many of their members attend the Market. For NFM's previous 12 seasons, Needham High School students have volunteered at NFM, which fulfilled their Community Service requirements at NHS.

Needham musicians will entertain shoppers, including young children, including Needham's own Plugged In Teen Band Program. As in past years, adults and children sometimes dance to the music, all having fun and a positive experience at the Market. Artists and artisans will display their art work. During the prior 12 years that NFM has been in operation (10 years on Town land), many nonprofits, including the YMCA, Needham Community Council, the Needham Public Library, BID-Needham Hospital, and other community nonprofits have had the opportunity to meet the public at NFM's Community Table without paying any fee for its use. NFM hosted the Indian Community of Needham (ICON) on August 15, 2021, at the request of the Town Manager, in the celebration of India Independence Day. This was a Town community event. NFM helps other nonprofits and community organizations as well.

NFM has been an active member of the Charles River Regional Chamber and its Needham Business Alliance and of the previous Needham Business Association for a total of 12 years. In fall of 2023, as in prior years, NFM participated in the Chamber's Harvest Fair, which is a community event attended by many Needham residents.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeffrey M. Friedman", written in a cursive style.

Jeffrey M Friedman

President, Needham Farmers Market