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## AGRICULTURAL PRESERVATION RESTRICTION WITH AFFIRMATIVE COVENANT AND OPTION TO PURCHASE AT AGRICULTURAL VALUE

Brown Spring Farm  
866 Main Street, West Newbury

Dated December 19th, 2019

CHRISTOPHER M. GRANT, being the sole owner, for my successors and assigns ("**Grantor**"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws (M.G.L.), hereby grant, with QUITCLAIM COVENANTS, to ESSEX COUNTY GREENBELT ASSOCIATION, INC., a Massachusetts charitable corporation having its principal office at 82 Eastern Ave., Essex, MA 01929 ("**Primary Grantee**"), and the TOWN OF WEST NEWBURY, a municipality organized under the laws of the Commonwealth of Massachusetts, with its usual place of business located at 381 Main Street, West Newbury, MA 01985, acting by and through its Conservation Commission pursuant to M.G.L. c. 40 sec. 8C ("**Secondary Grantee**," and together with Primary Grantee, the "**Grantees**"), and their respective permitted successors and assigns, for consideration paid of \$403,500.00 (four-hundred three thousand and five-hundred dollars), in perpetuity and exclusively for conservation and agricultural purposes, an **Agricultural Preservation Restriction ("APR")** on a parcel of land located in the Town of West Newbury, Massachusetts, containing approximately 10 acres, located at 866 Main Street, (the "**Premises**"), more particularly described in a plan of land entitled "Agricultural Preservation Restriction Plan" by Donohoe Survey, Inc., dated October 1, 2019 and recorded herewith at the Essex South District Registry of Deeds at Book 475 Plan 32 ("**APR Plan**"). A reduced copy of the APR Plan is attached hereto at Exhibit A. The Grantor covenants that he is vested with good title to the Premises. The Grantor retains all agricultural rights in the Premises except as otherwise limited by the terms and conditions of this APR and not inconsistent with the Purposes (as that term is defined below).

### I. PURPOSES

This Agricultural Preservation Restriction is defined and authorized by Sections 31-33 of M.G.L. Chapter 184 and otherwise by law. By this Agricultural Preservation Restriction, it is the intent of the Grantor and the Grantees to protect in perpetuity the agricultural and forested land, the agricultural use and future viability of the Premises, to promote sustainable management of soil resources in order to facilitate active and economically viable farm use of the Premises now and into the future, to preserve natural resources, and to maintain the rural, scenic character of the Town of West Newbury. The purpose of ensuring that working and productive agricultural lands remain available for production agriculture, affordable and owned by individuals actively engaged in farming will be further advanced by the Option to Purchase at Agricultural Value, as incorporated below. In addition, it is the intent of this APR to

Address of Premises: 866 Main Street, West Newbury

assure that any use or change occurring on the Premises will not materially impair or interfere with its agricultural, conservation and preservation purposes (collectively, “conservation values” or “conservation purposes”).

The APR was acquired, in part, using M.G.L. c. 44B Community Preservation Act funds, and a copy of the Town Meeting Vote authorizing the use of such funds is attached hereto as Exhibit B.

These conservation purposes of this APR further include the following:

- A. Protection of Agricultural Land.** The Premises contains active agricultural land identified by the U.S. Department of Agriculture Natural Resources Conservation Service as having approximately 4.9 acres of soils designated Prime Farmland Soils, and approximately 1.6 acres as Farmland Soils of Statewide Importance. The preservation of these farmland soils, and continued use of the Premises for farming contributes to the continued viability of agriculture in the Town of West Newbury, and ensures that agricultural land and important soil resources will remain available to provide social, educational, economic and ecological services for future generations.
- B. Protection of Scenic Landscape.** The Premises has been a family-run farm since the mid-1800s, thus historically supporting active agricultural and ancillary operations which have maintained and, through the Agricultural Preservation Restriction, will continue to maintain, the scenic, open character of the land, thus contributing to the preservation of West Newbury’s rural, agrarian, and scenic character.
- C. Protection of Surface Waters.** The Premises contains an unnamed tributary to the Merrimack River which lies within an approximately 2-acre area designated as “Aquatic Core Habitat” and “Aquatic Buffer” by the 2010 BioMap2 report by the Massachusetts Natural Heritage and Endangered Species Program.
- D. Furtherance of Government Policy.** Protection of the Premises furthers the Goals identified in the Town of West Newbury’s 2018 Open Space and Recreation Plan to “Preserve the natural and historic ‘rural character’ of West Newbury” by, among other objectives, protecting “properties that epitomize West Newbury’s character, including working farms, scenic vistas, and places of historic and/or architectural significance.” (Goal 1), and to “Protect and manage natural resources areas” (Goal 2) by, among other objectives, protecting surface water resources. The Premises is identified in the Massachusetts Department of Conservation and Recreation’s 1982 Landscape Inventory Report, which identified landscapes that should be protected to conserve natural and cultural resources across the Commonwealth. In addition, this APR furthers the goals of the Massachusetts Local Food Action Plan (2015), specifically creating jobs and economic opportunity in food and farming, protecting the land and water needed to produce food, and increasing the availability of healthy food to all residents.

The significant agricultural, scenic, and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report (“Baseline Report”) prepared by the Primary Grantee with the cooperation of the Secondary Grantee and Grantor, consisting of maps, photographs, and other documents. A copy of the Baseline Report shall be kept on file with all parties to this Agricultural Preservation Restriction and by this reference made a part hereof. The Baseline Report (i) is acknowledged by Grantor and Grantees to be a complete and accurate representation of the condition and values of the Premises as of the effective date of this Agricultural Preservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is

intended serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Agricultural Preservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

## **II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES**

**A. Prohibited Acts and Uses.** Subject to the exceptions set forth herein, the Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

1. Constructing, placing or allowing to remain any temporary (as defined in II.B.2(c)(i)) or permanent building, structure, facility, or improvement, including but not limited to tennis courts, landing strips, mobile homes, swimming pools, commercial or recreational horse riding facility or boarding facility, golf course, golf range, asphalt or concrete pavement, signs, fences, billboards or other advertising displays, antennae, utility poles, towers, solar panels, solar arrays, conduits, lines or other temporary or permanent structures, facilities, or improvements on, above or under the Premises;
2. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
3. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever or the installation of underground storage tanks;
4. Cutting, removing or otherwise destroying native trees, grasses or other vegetation;
5. Planting, broadcasting, placement, disposal, transfer, destruction, composting, dumping, or otherwise preventable introduction of "invasive" plant species or any other nuisance or disease carrying species, as defined in *A Guide to Invasive Plants in Massachusetts* (Somers P. et al. 2006) or as amended or contained in a similar professionally acceptable publication available in the future;
6. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
7. Use, parking or storage of vehicles including cars, trucks, motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility impaired;
8. Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;
9. The use of the Premises for business, residential, commercial or industrial use;

10. The disruption, removal, or destruction of the stone walls on the Premises;
11. Any other use of the Premises or activity which is inconsistent with the purpose of this Agricultural Preservation Restriction or which would impair its conservation values.

**B. Reserved Rights and Exceptions to Prohibited Acts and Uses.** The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not impair the conservation values or purposes of this Agricultural Preservation Restriction.

1. Agricultural Activities. The raising of animals, including but not limited to dairy cattle, beef cattle, poultry, sheep, horses, ponies, mules, goats, and bees, for the purpose of selling such animals or a product derived from such animals in the regular course of business; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals and preparing them or the products derived therefrom for market, as defined in General Laws, Chapter 61A, Section 1, as amended. Also horticultural uses, the raising of fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, flowers, trees, nursery or greenhouse products, and ornamental plants and shrubs for the purpose of selling such products in the regular course of business; or when primarily and directly used in raising forest products under a certified forest management plan, approved by and subject to procedures established by a state forester, designed to improve the quantity and quality of a continuous crop for the purpose of selling these products in the regular course of business; or when primarily, directly used in a related manner which is incidental to those uses and represents a customary and necessary use in raising such products and preparing them for market, as defined in General Laws, Chapter 61A, Section 2, as amended (collectively, "Agricultural Activities"), provided:
  - a. All Agricultural Activities shall be conducted in a manner consistent with generally accepted best management practices as those practices may be identified from time to time by appropriate governmental or educational institutions and in a manner not wasteful of soil resources or detrimental to water quality or the ability of future generations to conduct agriculture on a sustained basis and on a scale which would not threaten the conservation values of the Premises;
  - b. Agricultural Activities involving the active production of more than one (1) acre shall require a farm conservation plan acceptable to the Primary Grantee, such as a USDA Natural Resources Conservation Service (NRCS) Farm Conservation Plan (hereinafter "Farm Plan"), prepared for the Premises, and approved by Primary Grantee and the NRCS Westford Field Office or its successor agency. To request assistance from the NRCS Westford Field Office, Grantor should send a request in writing to the NRCS Westford Field Office, 319 Littleton Road, Westford, MA 01886, or call the district Conservationist at 978-692-1904 and request assistance with a Farm Conservation Plan. The Farm Conservation Plan shall be developed in accordance with best agricultural and conservation practices as recommended by the NRCS or its successor agency, and shall make all reasonable efforts not to materially impair the conservation values of this Agricultural Preservation Restriction, and shall, at a minimum, address the following: (1) establish wetland buffers and/or filter strips to prevent adverse

impacts to the water quality of existing wetlands and waterways; (2) in the event animal husbandry activities are proposed, establish and govern the type and number of each type of animal unit permitted on the Premises, and analyze the pasturage potential of the Premises and establish and govern the cycling of pasturage, and any other measures necessary to ensure the carrying capacity of the Premises is not exceeded in order to protect water quality, prevent soil erosion, and otherwise protect the conservation values of the Premises;

- c. Farm Animals for Personal Use. The keeping, rearing, maintenance, and sheltering of up to four (4) hooved farm animals whose individual weight is greater than 300 pounds (including but not limited to horses or cows), up to eight (8) hooved animals whose individual weight is less than 300 pounds (including but not limited to sheep or goats), and up to twenty-five (25) chickens or other poultry for personal use and enjoyment, shall be permitted without a Farm Conservation Plan provided that the associated keeping, rearing, maintenance, and sheltering activities do not materially harm other stated purposes of the Agricultural Preservation Restriction.

2. Agricultural Structures and Improvements Outside of the Building Envelope (as defined in Section II.B.6). The right to construct and maintain structures and improvements as necessary to conduct Agricultural Activities, provided:

- a. The total footprint (as defined in Section II.B.6.(a)) of all permanent, non-temporary structures (as “temporary” is defined below) that are located outside of the Building Envelope shall not exceed three and a quarter percent (3.25%) of the total area of the Premises in the aggregate.
- b. Grantor must obtain prior written approval from the Primary Grantee for the following improvements, which approval shall be to confirm that proposed structures comply with the size and external design specifications described below:
  - i. *Barn.* The removal, construction, use, maintenance, repair and/or replacement of one (1) barn, including septic system, which shall not have a footprint in excess of two-thousand (2,000) square feet, and which shall have wooden clapboard siding and exterior trim (or other composite wood-like material in appearance appropriate to historic reconstruction);
  - ii. *Farm Stand.* The use, maintenance, repair, removal and/or replacement of the existing farm stand in substantially its present location, including the construction and maintenance of a septic system, provided that: the total footprint of the Farm Stand shall not exceed 1,500 square feet nor shall the farm stand exceed one story in height; a minimum of 50% of the farm products sold at the stand have been grown, produced, or raised on the Premises or on other property farmed by the Grantor, to the extent feasible. If the Farm Stand is rebuilt, the design of the original “4-peaked roof” portion of the current structure, as documented in the Baseline Report, shall be replaced with a structure of externally similar architectural design. The existing parking area may be expanded and/or re-shaped up to a total size of no greater than 6,000 square feet (or as otherwise recommended by

municipal public safety personnel), provided that the parking area shall not be paved with impermeable material;

- c. The following improvements are permitted without prior approval from the Primary Grantee:

- i. *Temporary Structures.* The construction, use, maintenance, repair and/or replacement of temporary structures and improvements directly related to or in support of Agricultural Activities, including, but not limited to, fencing, hayracks, “run-in” shelters or other three-sided shelters, hoop houses (also known as “high tunnels”), and the like. For the purposes of this Agricultural Preservation Restriction, the term “temporary” shall mean any improvement without a foundation that can be constructed or removed without any significant disturbance of the soil;
- ii. *Farm Springs, Wells, and Irrigation Structures.* The right to install, use, maintain, repair and replace wells, including, but not limited to, artesian wells, and associated equipment and utilities for irrigation including, but not limited to, irrigation structures and associated pumps and pipes, and surface and subsurface drainage systems.

3. Agri-tourism. The use of the Premises for “Agri-tourism” activities, which activities shall be defined as ancillary commercial activities and events that support the financial viability of the use of the Premises for Agricultural Activities, which activities shall be limited to farm-based entertainment such as hayrides, pony rides, cornfield mazes, harvest festivals, and the like, and farm-based education such as cooking, preserving or painting classes, and the like, and up to four (4) weddings or similar types of events per year, provided:
- a. Said events shall be incidental and subordinate to the primary use of the Premises for Agricultural Activities, and
  - b. Any Agri-tourism activity requiring a tent, portable toilets, or temporary parking outside of the Farm Stand parking area or the Building Envelope shall require prior written approval of the Primary Grantee, which approval shall be to determine that proposed activity will not materially impair the conservation values of the Premises.
  - c. Educational programs for which the Grantor does not charge a fee shall not be considered Agri-tourism and are not subject to the limitations of this section II.B.3.
4. Vegetation Management. The selective *de minimis* pruning and cutting to prevent, control or remove hazards, disease, insect damage or fire, to control or remove invasive species, to remove woody regeneration, and to preserve or restore the condition of the Premises, including fields, stone walls, farm roads and foot paths, including the right to plant and maintain non-invasive shade, boundary, and windbreak trees and shrubs and other non-invasive vegetation;
5. Forestry. Conducting, or permitting others to conduct, woodland and sound forest management uses of the Premises, including the commercial harvesting of timber and

non-timber forest products including tree cutting, maple sugaring, agroforestry, wildlife habitat and water quality improvement, and other forestry-related activities. All forest product-harvesting and management operations shall be conducted in accordance with applicable law, and shall use, to the extent possible, the recommended guidelines pursuant to the Massachusetts Forestry Best Management Practices Manual (Catanzaro, Fish & Kittredge, 2013) and subsequent versions, and shall not materially harm the conservation values of the Premises; and

- a. *Commercial Harvesting.* Commercial harvesting of trees and wood products is permitted in accordance with a then-current Forest Stewardship Plan which has been approved in advance by the Primary Grantee; the Forest Stewardship Plan shall be prepared by a professional forester licensed to practice forestry in Massachusetts.
  - b. *Harvesting for Personal Use.* The harvesting of trees to provide non-commercial forest products such as firewood or construction material for personal use on the Premises is permitted without prior notice to or approval from the Primary Grantee.
6. Building Envelope. Notwithstanding Section II(A) “Prohibited Acts and Uses” above, and provided the conservation values and purposes of the remaining portion of the Premises as set forth in Section I “Purposes” above are not materially impaired, the Grantor reserves the right to carry on Agricultural Activities and such residential uses as would be permitted under applicable federal, state and local land use and other laws and regulations within that certain portion of the Premises identified as “Building Envelope” on the APR Plan (the “Building Envelope”), as if the Building Envelope constituted a separate legal building lot having sufficient frontage and were not part of the Premises, subject, nevertheless, to the terms of this Section II.B.6 and the general prohibition in Section II.A.8. against the division or subdivision of the Premises. The Building Envelope is and shall remain part of the Premises and shall not be subdivided nor severed from the remainder of the Premises; any attempt at any such division or severance shall be null and void. For the purposes of this Agricultural Preservation Restriction, the term “residential use” shall have the meaning set forth in the zoning bylaws of the Town of West Newbury or any successor bylaws, rules or regulations, as each may be amended from time to time (the “West Newbury Zoning Bylaws”). In addition:
- a. *Farmhouse.* It being acknowledged by the Grantor and the Grantees that as of the date of this APR the current house is uninhabitable, said house and all associated utilities and septic system may be replaced and/or renovated as follows: Any renovation, reconstruction, expansion, repair, maintenance, replacement and/or relocation of the existing three-story farmhouse shown on the Plan (the “Farmhouse”) (i) must be substantially consistent with the external appearance of the Farmhouse as of the date of this Agricultural Preservation Restriction as documented in the Baseline Report, particularly with respect to the following features typical of a cottage-style farmhouse of the late 19<sup>th</sup> century - gabled roof, wooden clapboard siding (or other composite wood-like material in appearance appropriate to historic reconstruction), wooden exterior trim, bay window, and porch, (ii) must substantially retain the location and siting of the existing Farmhouse and shall not result in all or any portion of the Farmhouse being located outside of the Building Envelope, and (iii) must not result in the

aggregate exterior footprint of the Farmhouse exceeding the current footprint of approximately 1,400 square feet by greater than twenty-five percent (25%) nor shall any portion of the Farmhouse (excluding chimney stacks, weathervanes or other non-structural elements) exceed three stories in height. (For the purposes of this Agricultural Preservation Restriction, the term "footprint" shall mean that measurement encompassing the enclosed ground floor area, as measured from the exterior, at the point of contact with the ground, and shall exclude all unenclosed decks, patios and/or porches.);

- b. *Prohibition on Planting of Invasive Vegetation.* Without limiting the generality of Section II.A.11 herein, the planting of invasive vegetation is expressly prohibited within the Building Envelope; and
  - c. *Prior Approval by Primary Grantee.* With respect to any significant renovation, reconstruction, expansion, and/or replacement of the Farmhouse which would affect its exterior facade, Grantor shall obtain the prior written approval of the Primary Grantee, which approval shall not be unreasonably withheld, conditioned and/or delayed, and which approval shall be solely to ensure consistency with this Section II.B.6.
- 7. Wildlife Habitat Improvement. With prior notice to Primary Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and other vegetation.
  - 8. Utilities. The installation, use, maintenance, repair and/or replacement of utility lines (including, but not limited to, power, telephone and water lines) as necessary to service existing or future permitted structures and improvements on the Premises, provided that the surface condition of any portions of the Premises affected by the installation, maintenance, repair and/or replacement of any utility lines shall be restored to substantially the same condition as such portions were in prior to such activity.
  - 9. Passive Recreation. Hiking, horseback riding, cross-country skiing, picnicking, snowshoeing, hunting, wildlife observation, nature study and other passive, non-motorized, and noncommercial outdoor recreational and educational activities consistent with the purposes of this Agricultural Preservation Restriction. Such uses are allowed provided that they do not materially alter the landscape, degrade environmental quality, and that Grantor does not collect any fees in connection with such uses, other than *de minimis* fees reasonably required to offset the direct cost of permitting such uses (such as to offset insurance premiums).
  - 10. Trails. The marking, clearing and maintenance of unpaved footpaths and trails for Passive Recreation; said footpaths and trails are not to exceed four (4) feet in width.
  - 11. Driveway. The use, maintenance, repair and replacement of the existing driveway in substantially its present width and location, provided said driveway shall not be paved with impermeable surface.
  - 12. Signage. The erection, maintenance and replacement of a minimal number of signs with respect to hunting, trespass, trail access, identity and address of the occupants,

sale of farm products, educational or interpretive information, sale of the Premises, the location of boundary lines, the Grantees' interest in the Premises and the protected conservation values.

13. Vehicle use, Storage, and Parking. The use, parking and storage of vehicles, machinery, and other vehicles used for permitted activities, including Agricultural Activities, provided no vehicle use, storage or parking shall be permitted within fifty (50) feet from the unnamed stream on the eastern boundary of the Premises except with prior written approval of the Conservation Commission.
14. Composting & Brush piles. The stockpiling, composting, and burning of stumps, tree and brush limbs, agricultural and similar biodegradable materials originating predominantly from the Premises, provided that no such stockpiling and composting is within fifty (50) feet from the unnamed stream on the eastern boundary of the Premises except with prior written approval of the Conservation Commission.
15. Solar Energy. The installation of solar energy structures for the purpose of providing power for permitted uses and activities on the Premises. Prior written approval of the Primary Grantee is required for ground-mounted solar energy structures located outside of the Building Envelope.
16. Other Activities. Such other non-prohibited activities or uses of the Premises may be permitted with the prior approval of the Primary Grantee provided that the Primary Grantee has made a finding, such finding to be documented in writing and kept on file at the office of the Primary Grantee, that such activities are consistent with the Reserved Rights or, as applicable, are included in an approved Farm Conservation Plan, do not impair the conservation values and purposes of this Agricultural Preservation Restriction, and, where feasible, result in a net gain in conservation value of the Premises.

**C. Permits, Regulations, Laws.** The exercise of any right reserved by Grantor under Section II, Paragraph B shall be in compliance with then-current building, zoning, planning, and conservation regulations, bylaws, or ordinances applicable to the Premises, the Wetlands Protection Act (MGL Chapter 131, Section 40), and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantees or the Commonwealth of Massachusetts takes any position whether such permit should be issued.

**D. Notice and Approval.** Unless other notice and/or approval requirements are expressly set forth in this Agricultural Preservation Restriction (such as in Section IV herein with respect to the Option to Purchase at Agricultural Value), the following default provisions shall govern:

1. Whenever notice to or approval by Grantees is required, Grantor shall notify Primary Grantee in writing, by a method requiring proof of receipt, not less than 30 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Primary Grantee to make an informed judgment as to its consistency with the purposes of this Agricultural Preservation Restriction. Where Primary Grantee's approval is required, Primary Grantee shall grant, condition or withhold approval in writing within 30 days of receipt

of Grantor's request. Primary Grantee's approval shall not be unreasonably withheld and/or conditioned, but shall only be granted upon a showing that the proposed activity shall not impair the purposes of this Agricultural Preservation Restriction.

2. Primary Grantee agrees to use reasonable diligence to respond to Grantor's request within thirty (30) calendar days of notice delivery. Primary Grantee's failure to respond within the 30-day period shall be deemed a denial of the request (hereinafter, "Deemed Denial"). A Deemed Denial is not final or binding on Primary Grantee, and Grantor may submit the same or a similar request for approval.

### **III. AFFIRMATIVE DUTY**

- A. Engaging in Agricultural Activities.** Grantor agrees that it shall have a continuing affirmative duty to exercise such due diligence, care, and commitment as is required or as is appropriate to conduct Agricultural Activities on no less than four (4) acres of Agricultural Lands (which acres need not be contiguous) during any given growing season, unless substantially adverse and persistent marketplace conditions and/or substantially adverse and persistent environmental conditions and/or substantially adverse personal health conditions of the Grantee or his family prevent said activities. For the purposes of this Agricultural Preservation Restriction, "Agricultural Lands" shall mean those areas designated as such on the Agricultural Preservation Restriction Plan.
- B. Maintaining Suitability of Agricultural Lands for Agricultural Activities.** In the event that substantially adverse and persistent marketplace circumstances and/or substantially adverse and persistent environmental conditions and/or substantially adverse personal health conditions of the Grantee or his family prevent Agricultural Activities from being conducted on at least four (4) acres of the Agricultural Lands, or with respect to any portion of the Agricultural Lands temporarily lying fallow, Grantor agrees that it shall have a continuing affirmative duty to maintain the Agricultural Lands in such a manner that they are ready and suitable for the conduct of future Agricultural Activities (e.g., periodic mowing of farm fields and preventing succession to woody vegetation).
- C. Right to Lease or License.** Grantor shall have the right to lease or license the Premises or any portion thereof to third parties in compliance with the terms of this Agricultural Preservation Restriction, provided that (i) any such lease or license shall contain an express reference to this Agricultural Preservation Restriction, (ii) each lessee or licensee shall be provided with a copy of this Agricultural Preservation Restriction and (ii) Grantor shall remain responsible for any and all request for approvals and violations of this Agricultural Preservation Restriction by its lessees and/or licensees.
- D.** In the event that Grantor fails to comply with the terms of the preceding Sections III.A and/or III.B, as applicable, and Grantor is unable to cure such violation due to significant and demonstrable economic hardship, Grantor and Primary Grantee shall cooperate to undertake actions to maintain the Agricultural Lands as suitable for Agricultural Activities, including, but not necessarily limited to, identifying a suitable lessee or licensee to use the Premises for Agricultural Activities.
- E.** In the event that Grantor fails to comply with the terms of the preceding Sections III.A and/or III.B, as applicable, and Grantor is unwilling to cure such violation, then Primary Grantee shall have the right to enter upon the Premises with or without machinery and conduct such activities, including but not limited to periodic mowing of farm fields and preventing

succession to woody vegetation in order to maintain the Agricultural Lands in such a manner that they are ready and suitable for the conduct of present and future Agricultural Activities.

#### **IV. OPTION TO PURCHASE AT AGRICULTURAL VALUE (“OPTION”)**

In connection with any transfer, sale, lease in excess of fifteen (15) years (including renewal terms) and/or any other conveyance of the Premises (including, without limitation, any sale or conveyance of any interest in the Premises by the conveyance or other transfer of, any stock or other ownership and/or beneficial interest in a corporation, limited liability company, partnership, trust or other holding entity holding any interest in the Premises and/or by gift, bequest or inheritance of any interest in the Premises)(in each case, as applicable, a “Transfer”), other than an Exempt Transfer (as defined in Section IV.D herein), Primary Grantee shall have an option to purchase the Premises at its Agricultural Value (as defined in Section IV.F herein) in accordance with the terms and provisions of this Section IV (the “Option”). This Option is an integral part of this APR and constitutes a restriction and a right and interest in real property that runs with the land. This Option shall be perpetual in duration and shall apply even in instances where the proposed Transfer would be made in conjunction with the sale, lease or other conveyance of land other than the Premises, and is given on the following terms and conditions.

- A. Intent.** The Grantor and the Primary Grantee agree that the intent of this Option is to ensure that the Premises will continue in active agricultural production in perpetuity by giving the Primary Grantee the option to ensure that the Premises will transfer at its Agricultural Value to a party with adequate experience and resources to keep the Premises in active commercial agriculture. Grantor and Primary Grantee further agree that the intent of this Option is to ensure that the Premises is kept affordable for economically viable agricultural use and not be converted to non-farm use. The Grantor and the Grantor’s assigns agree to work cooperatively and in good faith with the Primary Grantee to uphold the intent of this Option.
- B. Notice of Intent to Transfer.** Whenever Grantor intends to make a Transfer (including an Exempt Transfer), Grantor shall deliver to Primary Grantee at its principal place of business by certified mail, return receipt requested, a notice of Grantor’s intention to make such Transfer (each, a “Notice of Intent to Transfer”) at least sixty (60) days prior to the proposed Transfer (or, in the event of a bequest or inheritance, within thirty (30) days of the date of death), which notice shall include:
  - 1. A complete written description of the terms of the proposed Transfer and, in the event that Grantor has entered into a bona fide offer relating to the proposed Transfer (each, an “Offer”), a complete duplicate of said Offer, together with such other instruments as may be required to show the bona fides of the Offer; and
  - 2. If Grantor reasonably believes that that the proposed Transfer qualifies as an Exempt Transfer, the Notice of Intent to Transfer shall be accompanied by written documentation satisfactory to the Primary Grantee in the Primary Grantee’s reasonable discretion, either:
    - a. If the Buyer is purported to be a “Qualified Farmer,” as defined in Section IV.D. herein, documents necessary to establish the Buyer as such, including the Buyer’s (and/or any relevant party’s) two most recent federal income tax filings; or
    - b. If the Buyer is purported to be a “family” member, as defined in Section IV.D.

herein, adequate genealogical documentation establishing the required familial relationship.

3. If Buyer is not demonstrably a Qualified Farmer, the Notice of Intent to Transfer shall be accompanied by a written description of the Buyer's training and experience as an agricultural producer and an agricultural business plan for the Premises, including a description of the Agricultural Activities to be conducted or facilitated by Buyer, proposed improvements to the Premises, and a statement of anticipated agricultural income and expenses for the year following Buyer's acquisition of the Premises or, if Buyer has no such training and experience or intention of operating an agricultural business on the Premises, a written statement to that effect.
4. Grantor's current mailing address.

Within ten (10) days of Primary Grantee's receipt of the Notice of Intent to Transfer, Primary Grantee shall have the right to request additional information from Grantor. Grantor shall promptly provide such requested information, and the Notice of Intent to Transfer shall not be deemed to have been delivered to Primary Grantee until all such information has been received by Primary Grantee.

In the event that Primary Grantee concurs that the proposed Transfer is an Exempt Transfer, Primary Grantee shall not be entitled to exercise its rights under the Option and Primary Grantee shall deliver to Grantor a Partial Release pursuant to the terms of Section IV.I herein, which Partial Release shall be recorded in the Essex Southern District Registry of Deeds by Grantor.

Information delivered to Primary Grantee pursuant to this clause shall not be released by Primary Grantee to any person or entity not a party to this Grant, without the prior consent of Grantor.

**D. Exempt Transfers.** The following described Transfers shall not trigger Primary Grantee's rights under this Option (each, an "Exempt Transfer"):

1. Any mortgage, pledge, or other assignment of the Premises to a lender as security for indebtedness, provided, however, that any mortgage, pledge or other assignment must be subordinated as a matter of record, and/or the Primary Grantee's interest under this Option is treated as an interest in real estate such that in the event of foreclosure Primary Grantee is deemed a necessary party defendant in such foreclosure case and has the right to redeem the Premises from the foreclosure action; and
2. Any conveyance by the Grantor to Grantor's family by gift, inheritance, sale or other transfer. For the purposes of this APR, the term "family" includes: (a) any spouse, child, or grandchild of Grantor, together with spouses of such individuals, (b) a corporation, partnership or other entity which is wholly owned and controlled by Grantor and/or the aforementioned individuals, and (c) any estate of Grantor or the aforementioned individuals; and
3. Any conveyance of the Premises to a natural person who presently earns, and has earned for at least the previous two years, at least one-half of his or her annual gross income from the "business of farming," as that term is defined in Regulation 1.175-3

issued under the Internal Revenue Code of 1986 or any successor regulation and who, in connection with the farming operations on the Premises, will continue to earn at least one-half of his or her annual gross income from the “business of farming” (each, a “Qualified Farmer”). Notwithstanding the foregoing, a group of two or more natural persons shall be deemed to be, collectively, a “Qualified Farmer” if one or more of those natural persons meets the definition of “Qualified Farmer” above, and such natural person(s) meeting that definition, individually or collectively, own, or will own at purchase, at least an undivided fifty percent (50%) interest in the Premises. A corporation, partnership, LLC, trust or other entity shall be deemed to be a “Qualified Farmer” if one or more shareholders, partners, member or beneficiaries, as applicable, meets the definition of “Qualified Farmer” above and, such party(ies) meeting that definition, individually or collectively, own at least fifty-one percent (51%) of the applicable entity; and

4. Any lease of greater than 15 years that would otherwise be subject to this Option, provided that the lessee meets the definition of a Qualified Farmer, and any such lease shall expressly provide that, unless otherwise agreed by Primary Grantee, the lease shall terminate and possession shall be delivered free and clear of any rights of the tenant upon a closing of the sale of the Premises following exercise of this Option.

**E. Exercise of Option.** This Option may be exercised by Primary Grantee as follows:

1. Primary Grantee shall deliver to Grantor written notice of Primary Grantee’s intention to exercise the Option (each, a “Notice of Intent to Exercise”) not more than forty-five (45) days following Primary Grantee’s receipt of the Notice of Intent to Transfer; failure by Primary Grantee to provide such notice within such time period shall constitute a waiver of its rights under this Option with respect to the applicable Notice of Intent to Transfer only; and
2. Following Primary Grantee’s delivery of the Notice of Intent to Exercise, Grantor and Primary Grantee shall fix the purchase price for the Premises by establishing a Price Agreement in the manner described in Section IV.F., below.
3. Primary Grantee, at its sole election, shall exercise this Option by giving to Grantor written notice of Primary Grantee’s intention to purchase the Premises pursuant to the Option (each, a “Notice of Intent to Purchase”) not more than thirty (30) days following Grantor’s and Primary Grantee’s establishment of the Price Agreement.
4. Notices required by this Section IV.E. shall be delivered to Grantor by certified mail, return receipt requested, to the address provided by Grantor in the Notice of Intent to Transfer.

**F. Purchase Price.** The Purchase Price shall be determined within seventy-five (75) days of Primary Grantee’s delivery of Notice of Intent to Exercise (or such extended dates as may be otherwise agreed upon by the Primary Grantee and Grantor), which Purchase Price shall be determined as follows (collectively, the “Agricultural Value”):

1. The purchase price of the land only shall be the greater of:
  - a. The full fair market value of all Premises land subject to the Offer (including

the site of any structures) assuming its highest and best use is commercial agricultural production commonly occurring within the market area where the Premises is located on the date of the Offer, as determined by a mutually approved disinterested appraiser selected by Grantor and Primary Grantee. Permanently installed in-ground land improvements, such as in-ground irrigation systems, farm roads, and drainage tiling shall be considered part of the land; or

- b. The value of the land only determined by the appraisal relied upon for the acquisition of the APR (the "Governing Appraisal") as multiplied by the Inflation Rate, plus the contributory value of in-ground improvements, if any, added after the date of the Governing Appraisal. The Inflation Rate shall be equal to 1 (one) plus the fractional increase in the Consumer Price Index for All Urban Consumers, Northeast, published by the Bureau of Labor Statistics, U.S. Department of Labor, or successor Index published by the U.S. Government appropriately correlated to the prior index by a published conversion factor, where indicated, from the date of the Governing Appraisal to the date of the Notice of Intent to Exercise.
2. With respect to any agricultural or minor incidental structures and improvements in existence as of the date of the Offer (other than any permanently installed in-ground land improvements which were factored into the land value pursuant to the provisions of Section IV.F.1.a. herein), then in addition to the foregoing land value, the Purchase Price shall also include the value of all such structures and improvements on the Premises as of the date of the Offer excluding all land (which is included in the Section IV.F.1. valuation, above). The value of the structures and improvements shall be the lesser of:
  - a. The Replacement Cost Approach to valuation, which shall be defined as the cost to replace the structures and improvements with those of comparable size and utility, less accrued depreciation, or
  - b. The fair market value of such structures and improvements, based on their use value for productive agricultural use, using a market comparison approach, with comparable properties recently purchased or leased for agricultural use such as would be permitted under the terms of the APR, and/or such other appraisal methods as such appraiser finds appropriate for determining said value.
3. With respect to any residence in existence as of the date of the Offer, then in addition to the foregoing land and agricultural structures and improvement values, the Purchase Price shall also include the value of the residence and its appurtenant structures and improvements as of the date of the Offer excluding the value of the land upon which these structures sit (which is included in the Section IV.F.1. valuation, above), which value shall be the lesser of:
  - a. The value of the residence and appurtenant structures and improvements determined using the Replacement Cost Approach to valuation, less accrued depreciation, or
  - b. The fair market value of such structures and improvements using a market comparison approach, with comparable properties recently purchased or

leased for agricultural use such as would be permitted under the terms of the APR, and/or such other appraisal methods as such appraiser finds appropriate for determining said value.

4. Appraiser and Appraisal Requirements. Appraiser shall be a mutually approved disinterested appraiser selected by Grantor and Primary Grantee, with the expense of such appraisal divided equally between Grantor and Primary Grantee. Appraiser shall be a duly licensed appraiser with experience in the appraisal of agricultural real estate in the geographic area. The appraisal shall be conducted in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) or successor standard as in effect at such time, and shall take into consideration the permitted and restricted uses set forth in, and the impact on fair market value caused by, the APR and the Option.
  5. Grantor shall have the right to disagree with the first appraisal and commission a second appraisal by a duly licensed appraiser with experience in the appraisal of agricultural real estate, at Grantor's expense, which appraisal shall be in accordance with the requirements of this section F. If the two appraisals differ by less than ten percent (10%), the value for the purposes of determining the Purchase Price shall be the average of the two appraisals. If the two appraisals differ by more than ten percent (10%), then the two appraisers shall together recommend a third duly licensed appraiser with experience in the appraisal of agricultural real estate, who shall appraise the Premises according to the requirements of this section F. The cost of the third appraisal shall be equally borne by Grantor and Primary Grantee. The value of the Premises determined by the third appraiser in such case shall be the Purchase Price.
  6. Grantor and Primary Grantee shall establish the Purchase Price by entering into a written agreement within ten (10) business days of fixing the Purchase Price as provided in this Section IV.F. The passage of said ten business days shall constitute the effective date of establishing the Purchase Price (as applicable, the "Price Agreement")
- G. Entry onto the Protected Property.** After receiving the Notice of Intent to Transfer, and upon reasonable notice to the Grantor, Primary Grantee shall have the right to enter upon the Premises from time to time for the purpose of preparing for the purchase and disposition of the Premises, including, but not limited to, preparing appraisals, conducting soils tests or engineering studies, advertising, showing prospective buyers or assignees, or obtaining other information about the Premises. Primary Grantee's entry onto or testing of the Premises shall be conducted in a manner that minimizes any disturbance to the land and to the use and enjoyment of the Premises by the Grantor or any tenants in possession.
- H. Closing of the Purchase.** If Primary Grantee elects, in its sole discretion, to exercise this Option, the parties shall close on the sale on or before thirty (30) days from the delivery of the Notice of Intent to Purchase, unless otherwise mutually agreed by the parties in writing (as applicable, the "closing date"). The following conditions shall apply to said closing:
1. Grantor shall deliver good, clear, record, marketable and insurable title to Primary Grantee, free of all and all monetary liens (including, but not limited to, mortgages, pending or threatened mechanics' liens, *lis pendens*, judgments and delinquent property taxes or betterments), subject only to (a) matters of record as of the date of

this Grant, (b) customary utility distribution easements, (c) rights of the public to use roads laid out by municipalities, the state or federal government, (d) rights of way and other easements that do not, in the Primary Grantee's opinion, materially impair beneficial use of the Premises; and (e) the terms and conditions of this APR. The state of title to the Premises shall be determined by a title examination paid for by the Primary Grantee.

2. Grantor agrees to use reasonable efforts to deliver title to the Premises as required in Section IV.H.1., above. In the event Grantor is unable to do so, then the Primary Grantee, in its sole discretion, may elect to terminate its exercise of this Option. The Primary Grantee shall have the right, but not the obligation, to elect to accept such title as Grantor can deliver and to pay the purchase price without reduction.
3. Grantor agrees to obtain at his sole expense any and all permits and approvals required under law or regulation for the conveyance of the Premises to Primary Grantee under this Option. The parties shall extend the closing date as necessary to enable Grantor to obtain all such final permits and approvals.
4. Grantor represents to Primary Grantee that Grantor is not aware of any hazardous waste having been dumped or placed upon the Premises. Grantor will update this representation in writing upon the Primary Grantee's delivery of the Notice of Intent to Exercise. Grantor agrees that the Primary Grantee may, at the Primary Grantee's expense, perform any and all tests and/or inspections necessary to confirm these representations. In the event that the Primary Grantee discovers that hazardous wastes have been dumped or placed upon the Premises, the Primary Grantee may, at the Primary Grantee's sole discretion, declare its exercise of this Option to be null and void by means of a written notice delivered to Grantor.
5. The Grantor and the Primary Grantee shall prorate property taxes as of the date of closing.
6. Following the delivery of the Notice of Intent to Exercise and through to the closing date associated with such notice, Grantor shall not physically alter the Premises or the improvements on the Premises or enter into any lease, license, easement or other agreement (whether written or oral) that would affect the Premises following the closing date, except to conduct agricultural activities in the normal course of business and perform routine maintenance and repairs. In the event any structure is substantially destroyed by fire or other casualty, Primary Grantee may elect to (1) proceed to closing and accept the proceeds of any insurance policy Grantor may have with respect to such destruction; or (2) if such insurance proceeds are less than the value of the structure as determined under Section IV.F., above, proceed to closing and accept the proceeds of said insurance policy and reduce the purchase price by the difference between such value and insurance proceeds; or (3) withdraw its election to exercise this Option by written notice delivered to Grantor.
7. The Premises shall be conveyed free of all leases, tenancies, tenants and occupants, unless Primary Grantee otherwise agrees in writing.
8. All personal property, livestock, machinery and equipment not included in the sale shall be removed from the Premises, and all other waste and debris shall be

removed from the Premises prior to closing. Grantor and Primary Grantee will jointly inspect the Premises 24 hours prior to closing.

9. After closing, this Option shall remain in full force and effect with respect to all subsequent conveyances of the Premises, except as identified in Section IV.D., above.

**I. Partial Release of Option.** At the request of Grantor, Primary Grantee shall execute a partial release of its rights under this Option Agreement (each, a “Partial Release”) and record such instrument in the Essex Southern District Registry of Deeds within ten (10) business days of the first to occur of the following events:

1. Primary Grantee’s failure to deliver the Notice of Intent to Exercise within the required time period;
2. Primary Grantee’s failure to deliver the Notice of Intent to Purchase within the required time period; or
3. Primary Grantee’s election to terminate its exercise of this Option based on title defects as provided in Section IV.H.1., hazardous materials as provided in Section IV.H.4., or destruction of structures as provided in Section IV.H.6; or
4. Primary Grantee’s failure to close on its purchase of the Premises on the closing date pursuant to the Notice of Intent to Purchase for any reason other than a Grantor default.

Grantor may proceed to close on the sale to the Buyer on the terms and conditions described in the Notice of Intent to Transfer, within twelve (12) months of the delivery of said Notice to Grantee; provided, however, no such sale shall proceed so long as there are any uncured violations of this APR and this Option shall remain in full force and effect with respect to all subsequent conveyances of the Premises and any interest therein, except as set forth in Section IV.A. above.

**J. Partial Assignment of Option by Primary Grantee.** Primary Grantee may partially assign its rights under this Option, provided:

1. No such assignment shall be made prior to Grantor and Primary Grantee establishing the Price Agreement described in Section IV.F., above;
2. Such assignment shall be in writing, with the assignee undertaking to assume all obligations of Primary Grantee with respect to purchase of the Premises, and a copy of the written assignment shall be delivered to Grantor;
3. The assignee shall, in the sole discretion of the Primary Grantee, be either a Qualified Farmer or a party with adequate experience and resources to keep the Premises in active commercial agriculture; and
4. Any such partial assignment shall pertain only to an exercise of this Option in response to a specific Notice of Intent to Transfer delivered to Primary Grantee. While no consent of Grantor shall be required for such partial assignments, Primary Grantee shall not otherwise assign all of its rights and interests under

this Option (as opposed to an assignment of all of its rights and interests in this Agricultural Preservation Restriction pursuant to the terms of Section VIII.C. and Section XI herein), without the prior written consent of Grantor.

**V. LEGAL RIGHTS AND REMEDIES OF THE GRANTEE**

- A. Legal and Injunctive Relief.** The rights hereby granted shall include the right to enforce this Agricultural Preservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). Grantees shall have the right to seek injunctive relief without the necessity of posting bond. The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantees for the enforcement of this Agricultural Preservation Restriction. Grantees agree to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantees determine there is no ongoing diminution of the conservation values of the Agricultural Preservation Restriction.
- B. Reimbursement of Costs of Enforcement.** Grantor covenants and agrees to reimburse to Grantees all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Agricultural Preservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Agricultural Preservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred.
- C. Boundary Disputes.** In the event of a dispute over the boundaries of the Agricultural Preservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.
- D. Non-Waiver.** Enforcement of the terms of this Agricultural Preservation Restriction shall be at the discretion of Grantees. Any election by the Grantees as to the manner and timing of its right to enforce this Agricultural Preservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.
- E. Disclaimer of Liability.** By acceptance of this Agricultural Preservation Restriction, the Grantees do not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantees or their agents.
- F. Acts Beyond the Grantor's Control.** Nothing contained in this Agricultural Preservation Restriction shall be construed to entitle the Grantees to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and natural earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes.
- G. Actions to Prevent or Remedy Violations.** The Grantees shall have the right to take appropriate actions to prevent, abate, or remedy violations of this Agricultural Preservation Restriction, including violations by non-parties.

## **VI. ACCESS BY THE GRANTEES**

The Grantor hereby grants to the Grantees, or their duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Agricultural Preservation Restriction. The Grantor also grants to the Grantees, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines. The Grantees shall have the right to erect and from time to time replace, at appropriate locations near the boundaries of the Premises, suitable signs identifying the Grantees as the holder of this Agricultural Preservation Restriction.

## **VII. EXTINGUISHMENT**

- A. Release and Grantees' Right to Recover Proportional Value.** This Restriction may only be released, whether in whole or in part according to the provisions of Article 97 of the Amendments to the Massachusetts Constitution. If any change in conditions ever gives rise to the release of the Agricultural Preservation Restriction under applicable law, then Grantees, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph B below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantees shall use their share of the proceeds in a manner consistent with the conservation purposes set forth herein.
- B. Proceeds.** The Grantor and the Grantees agree that the grant of this Agricultural Preservation Restriction gives rise to a property right, immediately vested in the Grantees, with a fair market value that is at least equal to the proportionate value that this Agricultural Preservation Restriction, determined at the time of the conveyance, bears to the value of the unrestricted Premises at that time and represents all land development rights associated with the Premises, except as such rights may have been specifically retained pursuant to this Agricultural Preservation Restriction. Such proportionate value of the Grantees' property right shall remain constant. With respect to any proceeds received by Grantees pursuant to this paragraph, 50.43% of said proceeds shall be allocated to Primary Grantee and 49.57% of such proceeds shall be allocated to Secondary Grantee, which allocation reflects each grantee's contribution towards the purchase price of this APR. Out of its respective share of such proceeds, Primary Grantee and Secondary Grantee each shall be responsible for complying with the terms of any gift, grant, or other funding requirements relating to the funds used by said grantee for the purchase of this APR.
- C. Grantor/Grantees Cooperation Regarding Public Action.** Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantees shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantees shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantees in accordance with Paragraph B above, after complying with the terms of any law, gift, grant, or funding requirements. If a less than a fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantees shall use their share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

## **VIII. DURATION & ASSIGNABILITY**

- A. Running of the Burden.** The burdens of this Agricultural Preservation Restriction shall run with the Premises in perpetuity, and shall be enforceable in perpetuity against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises, by the Grantees, their successors and assigns acting by and through their duly designated officers, directors, employees or agents as holders of this Restriction.
- B. Execution of Instruments.** The Grantees are authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Agricultural Preservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantees their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.
- C. Assignability; Running of the Benefit.** The benefits of this Agricultural Preservation Restriction shall run to the Grantees, shall be deemed to be in gross and shall not be assignable by the Grantees, except the Grantees and their successors and assigns shall have the right to assign all or a portion of its right, title and interest hereunder to a "Qualified Organization" as defined in Section 170(h)(3) of the Internal Revenue Code provided that such assignee shall also be an eligible grantee of a conservation restriction as set forth in Chapter 184, Section 32 of the General Laws of Massachusetts, that such assignee is not an owner of the fee in the Premises, and provided further that, as a condition of such assignment, the assignee is required to hold this Agricultural Preservation Restriction and enforce its terms for conservation purposes and ensure that the purposes of this Agricultural Preservation Restriction continue to be carried out. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **IX. SUBSEQUENT TRANSFERS**

- A. Reference to Agricultural Preservation Restriction in Future Deeds.** The Grantor agrees to incorporate by reference the terms of this Agricultural Preservation Restriction in any deed or other legal instrument which divests any interest in all or a portion of the Premises, including any leasehold interest or option. Failure to do any of the above shall not impair the validity or enforceability of this Agricultural Preservation Restriction.
- B. Termination of Rights and Obligations.** The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Agricultural Preservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

## **X. ESTOPPEL CERTIFICATES**

Upon request by the Grantor, the Grantees shall, within sixty (60) days, execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Agricultural Preservation Restriction.

## **XI. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Agricultural Preservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantees agree that they will not take title to, any part of the Premises without having first assigned this Agricultural Preservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Agricultural Preservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Agricultural Preservation Restriction continues to be enforceable by a non-fee owner.

## **XII. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Agricultural Preservation Restriction would be appropriate, Grantor and Grantees may jointly amend this Agricultural Preservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Agricultural Preservation Restriction or the status of Grantees under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any amendments to this Agricultural Preservation Restriction shall occur only in exceptional circumstances. The Grantees will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Agricultural Preservation Restriction, shall not affect its perpetual duration, shall be approved by the Commissioner of the Massachusetts Department of Agricultural Resources and, if applicable, shall comply with the provisions of Article 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Essex Registry of Deeds.

## **XIII. EFFECTIVE DATE**

This Agricultural Preservation Restriction shall be effective when the Grantor and the Grantees have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in a timely manner in the Southern Essex District Registry of Deeds.

## **XIV. NOTICES**

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by certified mail, return receipt requested, addressed as follows:

To Grantor: Christopher Grant  
136 Southern Ave.  
Essex, MA 01929  
Phone: 978-423-6694

To Grantees: Essex County Greenbelt Association, Inc.  
ATTN: Director of Stewardship  
82 Eastern Ave.  
Essex, MA 01929  
Phone: 978-768-7241

Town of West Newbury  
ATTN: Town Manager with copy to the Conservation Commission c/o  
Conservation Agent  
381 Main Street  
West Newbury, MA 01985  
Phone: 978-363-1100

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

## **XV. GENERAL PROVISIONS**

- A. Controlling Law.** The interpretation and performance of this Agricultural Preservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
- B. Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Agricultural Preservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Agricultural Preservation Restriction and the policy and purposes of Chapter 184, Sections 31, 32, and 33 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Agricultural Preservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. Severability.** If any provision of this Agricultural Preservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Agricultural Preservation Restriction shall not be affected thereby.
- D. Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to this Agricultural Preservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Agricultural Preservation Restriction, all of which are merged herein.

## **XVI. AFFIRMATIVE COVENANTS OF THE GRANTOR**

- A. Payment of Taxes.** The Grantor shall pay before delinquency all taxes, assessments, betterments, liens, fees and charges levied on or assessed against the Premises by any federal, state, or local government authority or other competent authority or entity (collectively "taxes"), and shall furnish the Grantees with satisfactory evidence of payment upon request.
- B. Subordination of Mortgage.** The Grantor shall deliver to Grantees for recording simultaneously with this Agricultural Preservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, equity credit line, refinance, assignment of mortgage, lease, financing statement or any other agreement which gives rise to a security interest affecting the Premises.
- C. Adverse Possession.** The Grantor represents and warrants that to the best of his knowledge no person has occupied or used the Premises without the Grantor's permission or has openly claimed ownership of the Premises as against the Grantor or the Grantor's predecessors in title or has conducted continuous activities or uses on the Premises (such as, but not limited to, logging, camping or similar uses). The Grantor agrees that if any such activity is observed

now or in the future, the Grantor shall immediately notify the Grantees and shall cooperate with the Grantees to notify such persons of their wrongful entry onto the Premises.

## **XVII. MISCELLANEOUS**

- A. Pre-existing Public Rights.** Approval of this Agricultural Preservation Restriction pursuant to Chapter 184, Section 32 of the Massachusetts General Laws by any municipal officials and by the Commissioner of the Massachusetts Department of Agricultural Resources is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Agricultural Preservation Restriction.
- B. Representations of the Primary Grantee.** The Primary Grantee represents that it is a not for profit corporation, that it has a perpetual existence, that it is organized and operated for the purpose of preserving and conserving natural resources, natural habitats, environmentally sensitive areas and for other charitable, scientific and educational purposes, that it has both the necessary funds and commitment to hold this Agricultural Preservation Restriction exclusively for conservation purposes in perpetuity and to enforce its terms, that it is a “Qualified Organization” as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and that it is an eligible donee of a conservation or agricultural preservation restriction as set forth in Chapter 184, Section 32 of the General Laws of Massachusetts, as amended.
- C. Prior Encumbrances.** This Agricultural Preservation Restriction shall be in addition to and not in substitution of any other restrictions or easements of record affecting the Premises.
- D. Signature Pages and Exhibits.** Attached hereto and incorporated herein by reference are the following:

Grantor: Christopher M. Grant  
Grantees: Essex County Greenbelt Association, Inc.  
West Newbury Board of Selectmen  
West Newbury Conservation Commission

Approval of the Commissioner of the Massachusetts Dept. of Agricultural Resources

Exhibit A: Reduced Copy of APR Plan

Exhibit B: Certified Copy of Town Meeting Vote

WITNESS my hand and seal this 19<sup>th</sup> day of December, 2019,

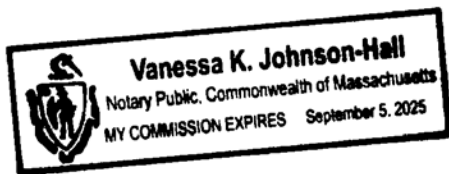
CHRISTOPHER M. GRANT

Christopher M Grant

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss:

On this 3<sup>d</sup> day of December, 2019, before me, the undersigned notary public, personally appeared Christopher M. Grant, and proved to me through satisfactory evidence of identification which was known personally to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



Vanessa K. Johnson-Hall  
Notary Public  
My Commission Expires: 9/5/25

## ACCEPTANCE OF GRANT

This Agricultural Preservation Restriction from Christopher M. Grant was accepted by Essex County Greenbelt Association, Inc. this 19<sup>th</sup> day of December, 2019.

ESSEX COUNTY GREENBELT ASSOCIATION, INC.

By: [Signature]  
Name: Katherine Bowditch  
Title: President  
Hereunto duly authorized

By: [Signature]  
Name: Kent Wosepka  
Title: Treasurer  
Hereunto duly authorized

## COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss:

On this 3<sup>rd</sup> day of December, 2019, before me, the undersigned notary public, personally appeared KATHERINE BOWDITCH, and proved to me through satisfactory evidence of identification which was known personally to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

[Signature]  
Notary Public  
My Commission Expires: 9/5/25



## COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss:

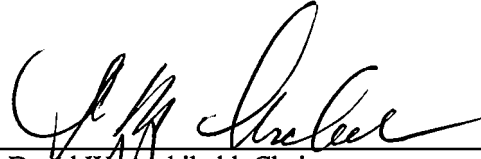
On this 3<sup>rd</sup> day of December, 2019, before me, the undersigned notary public, personally appeared KENT WOSEPKA, and proved to me through satisfactory evidence of identification which was known personally to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

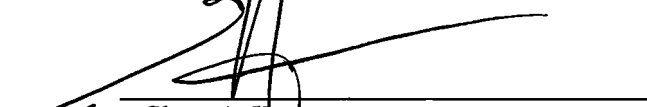
[Signature]  
Notary Public  
My Commission Expires: 9/5/25

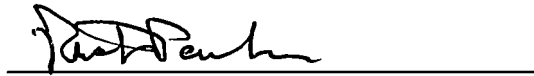


### ACCEPTANCE BY TOWN WEST NEWBURY SELECTMEN

We, the undersigned Board of Selectmen of the Town of West Newbury, Massachusetts, hereby certify that at a public meeting duly held on November 25, 2019 the Selectmen voted to accept the foregoing Agricultural Preservation Restriction from Christopher M. Grant pursuant to M.G.L. Chapter 40 Section 8C and approval pursuant to M.G.L. Chapter 184 Section 32 and in compliance with M.G.L. Chapter 44B, the Community Preservation Act, so-called, and agree to be bound by its terms.

  
David W. Archibald, Chairman

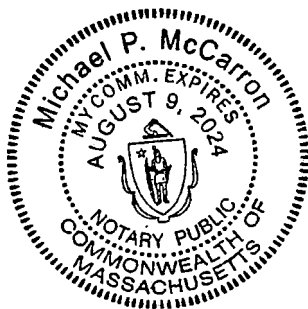
  
Glenn A. Kiemper

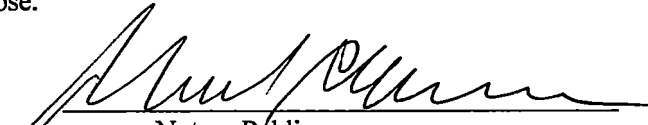
  
Richard Parker

### COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 27 day of November, 2019, before me, the undersigned notary public, personally appeared Richard Parker, proved to me through satisfactory evidence of identification, which was ☐ my personal knowledge of the principal's identity ☐ a Massachusetts driver's license, to be the person whose name is signed on the preceding document, and acknowledged to me that s/he signed it voluntarily for its stated purpose.



  
Notary Public  
My Commission Expires:

8/9/2024

ACCEPTANCE BY TOWN OF WEST NEWBURY CONSERVATION COMMISSION


We, the undersigned, being a majority of the Conservation Commission of the Town of West Newbury, Massachusetts, hereby certify that at a public meeting duly held on November 18, 2019, the Conservation Commission voted to approve and accept the foregoing Agricultural Preservation Restriction from CHRISTOPHER M. GRANT pursuant to M.G.L. Chapter 184 Section 32 and Chapter 40 Section 8(C).

WEST NEWBURY CONSERVATION COMMISSION:

  
N. Dawne Fusco, Chair

Thomas M. Atwood

  
Judith Mizner

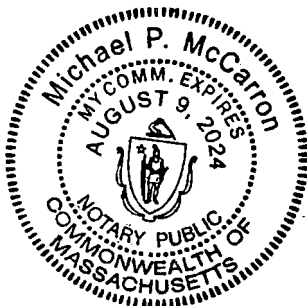
  
Margaret Hawkins


  
Wendy Reed

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 4 day of Dec, 2019, before me, the undersigned notary public, personally appeared N. Dawne Fusco, proved to me through satisfactory evidence of identification, which was ☒ my personal knowledge of the principal's identity ☐ a Massachusetts driver's license, to be the person whose name is signed on the preceding document, and acknowledged to me that s/he signed it voluntarily for its stated purpose.




  
Notary Public Michael P. McCarron  
My Commission Expires: 8/9/2024

**APPROVAL OF COMMISSIONER OF THE DEPARTMENT OF AGRICULTURAL  
RESOURCES  
COMMONWEALTH OF MASSACHUSETTS**

I, John Lebeaux, in my capacity as Commissioner of the Department of Agricultural Resources of the Commonwealth of Massachusetts, in accordance with the requirements of Massachusetts General Law, Chapter 184, Section 32, hereby certify that a certain Agricultural Preservation Restriction with Option to Purchase at Agricultural Value granted by Christopher M. Grant to Essex County Greenbelt Association, Inc., a Massachusetts nonprofit corporation with a principal office in Essex, Massachusetts and to the Town of West Newbury with respect to a certain parcel of land located in West Newbury, Massachusetts, as described therein, is in the public interest and is therefore approved. Said determination and approval is for the purposes of Chapter 184, Section 32 only, and I have made no determination that the Agricultural Preservation Restriction, or any terms or provisions thereof, are or would be acceptable under Chapter 20, Sections 23-26 of the Massachusetts General Laws.

Dated: December 6, 2019

  
\_\_\_\_\_  
JOHN LEBEAUX, Commissioner  
Department of Agricultural Resources

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss:

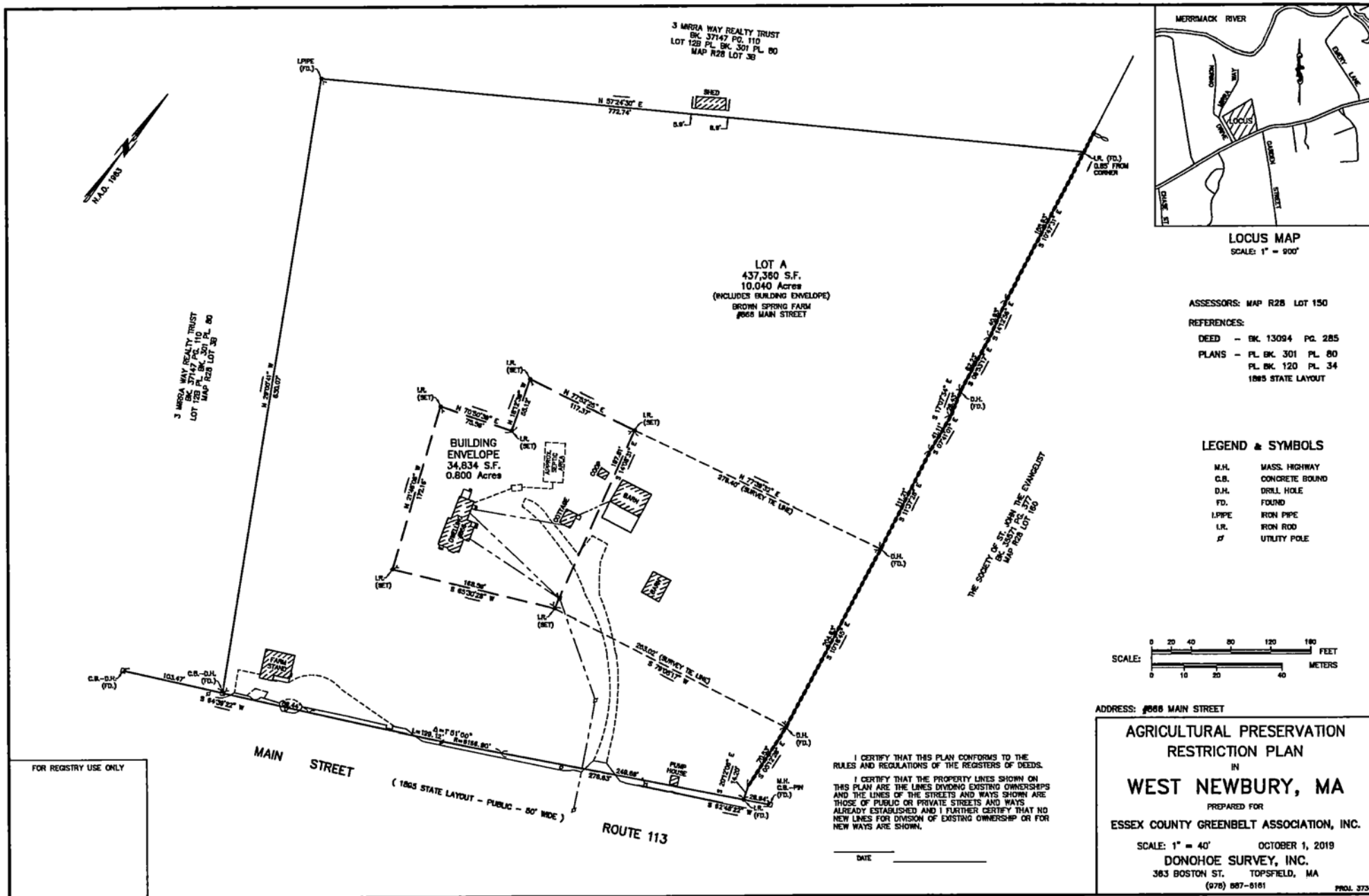
On this 6<sup>th</sup> day of December, 2019, before me, the undersigned Notary Public, personally appeared JOHN LEBEAUX, Commissioner of the Massachusetts Department of Agricultural Resources, who proved to me through satisfactory evidence of identification to be the person whose name is signed above, viz., personal knowledge, and acknowledged to me that he signed it voluntarily for its stated purpose as Commissioner of the Department of Agricultural Resources, as the voluntary act of said Commonwealth.

  
\_\_\_\_\_

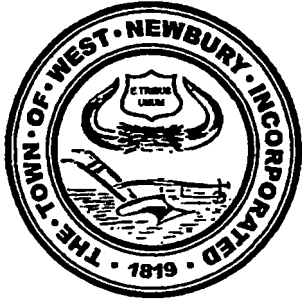
Notary Public  
My Commission Expires:



**EXHIBIT A**  
Reduced Copy of APR Plan of Premises



**EXHIBIT B**  
Certified Copy of Town Meeting Vote



# TOWN OF WEST NEWBURY

Michael P. McCarron  
Town Clerk

381 Main Street  
West Newbury, MA 01985  
978-363-1100 ext. 110  
978-363-1826 (Fax)  
mmccarron@wnewbury.org

November 19, 2019

## RE: Results of April 29, 2019 Special Town Meeting

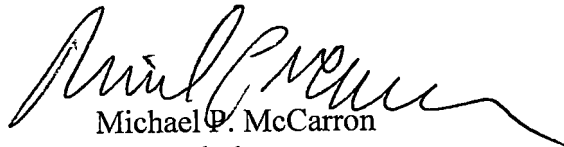
I, Michael P. McCarron, Town Clerk of the Town of West Newbury, hereby certify that the following is a true, accurate and complete extract of the Minutes of the April 29, 2019 Special Town Meeting of the Town of West Newbury concerning Article 4:

**ARTICLE 4.** The Finance Committee recommended approval of this Article.

Open Space Committee Chairperson Patricia Reeser moved to transfer from Community Preservation Act funds, the sum of \$200,000.00 from the Open Space and Recreation Reserve Account for the purchase of an agricultural preservation restriction and/or conservation restriction on a parcel of land known as "Brown Spring Farm," which is comprised of 10 acres, more or less, located at 866 Main Street, West Newbury, Assessors Map R28, Lot 150 and shown as "Lot A" on the plan of land entitled "Plan of Land in West Newbury, Mass. owned by Margaret M. Cooney" dated August 12, 1971 and recorded at Plan Book 120 Plan 34 at the Southern Essex Registry of Deeds. Said agricultural preservation restriction and/or conservation restriction is to be conveyed to the Town of West Newbury and to Essex County Greenbelt Association, Inc.; said purchase to be subject to approval of the agricultural preservation restriction and/or conservation restriction by all involved parties, and that the Board of Selectmen is authorized to execute, acknowledge and deliver all grants, agreements and such other instruments, including but not limited to the agricultural preservation restriction and/or conservation restriction, in accordance with Massachusetts General Laws Chapter 184 or any other applicable statute or regulation, as may be necessary on behalf of the Town of West Newbury to effectuate the purchase of said agricultural preservation restriction and/or conservation restriction.

The Moderator declared that the Motion passed by majority vote.

Attest:

  
Michael P. McCarron  
Town Clerk

