

Mark Pruhenski  
Town Manager

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## TOWN OF GREAT BARRINGTON MASSACHUSETTS

### OFFICE OF THE TOWN MANAGER

Selectboard and Finance Committee Special Joint Meeting and Selectboard Regular Meeting  
via Zoom and in person at 334 Main Street Great Barrington MA  
Order of Agenda for Monday, December 5, 2022, at 5:30 PM

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/84727797185?pwd=NDFRUjFITE12eDN3bE5LaTnBQ0RmZz09>

Webinar ID: 84727797185

Dial-in, audio-only: (929) 205 6099

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's July 16, 2022 Revised Order extending remote participation by all members in any meeting of a public body, this meeting of the Selectboard will be conducted both in-person and via remote participation to the greatest extent possible. Specific information and the general guidelines for remote participation by members of the public and/or parties with a right and/or requirement to attend this meeting can be found on town's website, at [www.townofgb.org](http://www.townofgb.org). For this meeting, members of the public and committee members may attend the meeting in person, or, for those who wish to do so remotely may by following the instructions at the top of this agenda. For those who are not in-person every effort will be made to ensure that the public can adequately access the proceedings in real time, via technological means.

#### 1. CALL TO ORDER SELECTBOARD AND FINANCE COMMITTEE MEETING

- a. FY24 Budget policy
- b. FY24 Budget Season Schedule

#### 2. CITIZEN SPEAK TIME

#### 3. ADJOURNMENT OF JOINT MEETING

#### 1. CALL TO ORDER SELECTBOARD REGULAR MEETING

#### 2. SELECTBOARD'S ANNOUNCEMENTS/STATEMENTS

#### 3. TOWN MANAGER'S REPORT

- a. Housatonic Water Works Update
- b. Short-Term Rental Compliance Update

#### 4. NEW BUSINESS

- a. 2023 Annual Town Meeting and Annual Town Election calendars
- b. Vote to temporarily lift parking time limits for the Holiday Season
- c. Vote to approve and sign documents related to the Agricultural Preservation Restriction of 180-190 North Plain Road

#### 5. CITIZEN SPEAK TIME

- a. *Citizen Speak Time is an opportunity for the Selectboard to listen to residents. Topics of particular concern or importance may be placed on a future agenda for discussion. This time is reserved for town residents only unless otherwise permitted by the chair, and speakers are limited to 3 minutes each.*

#### 6. SELECTBOARD'S TIME

#### 7. MEDIA TIME

## 8. ADJOURNMENT

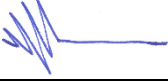
### NEXT SELECTBOARD MEETING

December 19, 2022

January 9, 2023

January 23, 2023

February 13, 2023



**Mark Pruhenski, Town Manager**

*Pursuant to MGL. 7c. 30A sec. 20 (f), after notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium. At the beginning of the meeting, the chair shall inform other attendees of any such recordings. Any member of the public wishing to speak at the meeting must receive permission of the chair. The listings of agenda items are those reasonably anticipated by the chair, which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may be brought up for discussion to the extent permitted by law.*

## **Great Barrington Budget & Financial Policy for Fiscal Year 2024<sup>3</sup>**

### **Budget & Financial Policy**

The Town of Great Barrington will manage municipal finances wisely. This will include planning for adequate funding to:

- 1) Provide and maintain public services and facilities at a level that will ensure public well-being and safety;
- 2) Comply with all State and local by-laws, rules, and regulations; and
- 3) Meet the strategic priorities of the Town.

The budget and financial goals set forth by the Town Selectboard and the Finance Committee in the policy document outline the priorities and objectives of the Town and provide agreed-upon financial guidelines to be used in the preparation and review of the annual budget.

### **STRATEGIC PRIORITIES**

- Ensure public safety.
- Ensure public health.
- Maintain a strong local economy.
- Strive for a high quality of life.
- Seek environmental sustainability.
- Ensure the fiscal stability of the Town.
- Maintain public infrastructure.
- [Support affordable housing](#)
- Follow Great Barrington's Master Plan.

### **FINANCIAL GOALS**

- Maintain adequate financial resources to sustain municipal services in the short and long term.
- Respond to the changes in the economy and meet the priority needs of the Town.
- Provide quality services efficiently and on a cost-effective basis.
- Maintain our top-level bond rating.
- Work to keep the overall tax levy reasonable in consideration of other priorities and goals.<sup>1</sup>

### **FINANCIAL MANAGEMENT POLICY**

#### Revenue

- Services provided may not exceed available resources.
- Process must provide quality estimates of anticipated revenue.
- Process must anticipate any changes in revenue in upcoming years.
- Seek to diversify revenue sources.
- Estimate available resources including state funds, local funds, fees, grants and other sources.
- ~~Estimate available resources including state funds, local funds, fees, grants and other sources.~~

#### Real Estate Tax

- Town should restrict levy to a 2.5% increase over the prior year levy limit adjusted for new construction growth and net debt and capital exclusions, as per Mass General Law.
- Proposed budget to not exceed legal property tax levy. Evaluate estimated tax rate based on level of affordability including average and median income; average and median value of real property and the cost of living.

<sup>1</sup> For further information, see 'Tax Levy Considerations' in Financial Policy Manual, Town of Great Barrington, Prepared by Division of Local Services Technical Assistance Bureau, June 2020, page 2  
<https://www.mass.gov/doc/greatbarrington-ccc-policies-june-2020/download>

### Free Cash and Reserves

- The Town will monitor overall general fund reserves (free cash and stabilization funds) as a percentage of the annual operating budget. The relative percentage and sufficiency of these reserves will be evaluated relative to guidance from the state, historical trends and other factors. ~~The percentage amount will be evaluated relative to guidance from the state, historical trends and other factors.~~
- If the Town generates free cash consistently higher than historical trends and guidance from the state, the Town Manager will closely examine future budget proposals to determine if adjustments are appropriate.

### User Fees

- Establish user fees and other non-property tax revenues to recoup, to the extent possible, the costs of supplying a particular service.
- Review current department fee structures and charges for services periodically ~~periodically~~ annually to determine if they reflect the cost of the service and are also reasonable and affordable fees.

### Debt Management

- Allow no borrowing to fund operational programs
- Debt service payments may not require the elimination of essential Town services
- Ensure that the Town's general obligation debt ratio not exceed 50% of statutory limit (5% of equalized valuation).
- Exempt from Proposition 2½ any long-term capital debt for municipal buildings, WWTP improvements, fire apparatus acquisition, and school facilities improvements.

### Service Delivery

- Manage financial resources through internal controls.
- Establish operation practices that minimize the cost of government and financial risk.
- Provide efficient public services.
- Minimize the cost of administration.
- Identify and measure performance outcomes.
- Review the level of services and standards annually.

## Guidelines for The Budget Preparation Process

- The ~~FY2023~~ Town budget will be estimated in accordance with municipal code and applicable state law. The budget is based on separate funds set forth from anticipated revenues and expenditures for the General Fund and the Enterprise Fund.
- The annual operating budget will contain complete financial statements that show outstanding obligations of the municipality, cash on hand to the credit of each fund, funds received from all sources during the preceding year, funds available from all sources during the ensuing year, revenue estimates to cover expenses in the proposed budget and the estimated tax rate required to fund the proposed budget.

~~For Fiscal Year 2023, the~~ The Selectboard and the Finance Committee agree that the budget preparation and review process shall include the following steps:

1. Review and approve Finance Policy
2. Distribute Budget Books:
  - a. Forecast Revenues.
  - b. Updated Capital Plan.
  - c. Review Department Budgets.

3. Recommended Projects Proposed for CPA Funds.
4. Participate in BHRSD joint budget meeting with Stockbridge and West Stockbridge.
5. Hold Budget Workshop Meetings. Hold Public Hearing.

The Selectboard and the Finance Committee will jointly set the dates for the above budget meetings. ~~For Fiscal Year 2023, the Selectboard and the Finance Committee agree that~~ the following will be done to ensure there is community engagement in the budget process:

- 1) Provide on-line access to budget information.
- 2) Provide printed budget books for the public at the libraries.
- 3) Provide a digital budget book on the Town website.
- 4) Hold open meetings and hearing.

### LOCAL GOVERNMENT SERVICES

- The Town Manager will prepare the budget for review by the Selectboard and the Finance Committee.
- The Town Manager may propose significant reorganizational changes and provide alternative ways to deliver services within the proposed budget.
- Performance objectives and goals will be identified and assessed.
- The Town Manager may propose elimination of services in the budget if it is not needed or cost-effective and/or propose new services as needed.
- Any service reductions shall be noted in the ~~Fiscal 2023~~ budget presentation.
- Salaries and employee insurance contributions shall be set in the Fiscal Year ~~2023~~ budget pursuant to the Town's collective bargaining units and/or those already approved via a negotiated settlement and for non-represented personnel as authorized by the Town Manager.

For any proposed new initiatives, the Town Manager will:

- 1) Explain and justify the new needs(s).
- 2) Identify alternatives to what is being proposed and the pros and cons.
- 3) Identify the cost and benefit of the proposed alternative.
- 4) Identify financing source(s) to pay for new need.
- 5) New need(s) include: any expansion of municipal services necessary; any additional staff and any additional resources needed to meet service needs or expanded service needs.

### TOWN BUDGET FORMAT

~~For Fiscal Year 2023, the~~ ~~The~~ Selectboard and the Finance Committee agree that the following will be done to ensure that the budget information is provided in a format that is clear, accurate and complete.

#### 1. Operating Budget Process:

- The Town Manager ~~to~~ will request that Departments submit proposed budgets with operational plans and reports. Background information will include department goals and objectives, strategic initiatives, summary of activities and level of service.
- The Town Manager ~~to~~ will review methods of operation, program service delivery and expenditure of resources inclusive of manpower allocation to ensure maximum efficiency of the Town.

#### 2. The Budget Book

- The Town Manager ~~to~~ will provide complete **financial statements** in the Budget Book to include:
  - Outstanding obligations **and anticipated new borrowings**.
  - Cash on hand.
  - Funds received from prior year.
  - Sources of funds from prior year.
  - Estimated revenues.
  - Estimated expenses.

- Estimated tax levy.
- Estimated tax rate.
- Estimated user fees for services.
- **The Town Manager will also provide a Capital Budget Report to include:**
  - The Town defines a capital project as having an overall expenditure of \$15,000 and a life expectancy in excess of 3 years.
  - The Town's annual budget will include a capital plan that identifies work to be started within that fiscal year.
  - The budget shall include a five-year Capital Improvement Plan for all Town assets.
  - Each year, the Selectboard and the Finance Committee will review the five-year Capital Improvement Plan to identify the future upcoming needs, review any changes to the schedule, cost estimate or sources of funding.
  - Operational costs associated with any new equipment or infrastructure will be identified.
  - The capital budget report will include the Debt Schedule broken down by department and function and a 10-year history be provided if possible.
  - Identify a funding plan that reflects available State funds, grants, bonds and tax levy dollars to finance each project.

**Enterprise Fund Process:**

- The Town Manager shall prepare a budget for the **Enterprise Fund** that maintains it as a self-supporting fund, without a property tax transfer.
  - The Enterprise Fund budget will include a report on sewer fees and rate structure.

**3. Other Information/Reports**

- If deemed necessary and appropriate for adequate review of the proposed budget, the Finance Committee and/or Selectboard may request that the Town Manager include, if possible, as supplemental materials either in the Budget Book or in a separate report/document presented at a budget meeting or at a separate meeting:
  - Historical Financial ~~Report~~ Information ~~(at least 5 years if available with annual percentage change)~~
    - Estimated Local Receipts ~~(includes Cannabis and hotel/)~~
    - Free Cash sources and uses
    - Tax Levy and Tax Rate
    - Special Articles, individual and totals
    - Aggregated data regarding property tax collections, such as collected/payment plan/delinquencies for last 3-5 years
    - History of various reserve accounts, i.e., stabilization, capital stabilization, “~~excess health insurance~~”. ~~Calculate a percentage of town budget~~
    - Five-year history of long-term and short-term debt
    - Schedule of Authorized but Unissued Debt, including changes from prior years
  - Financial Projections
    - Show 5-year projections of LT debt including approved future borrowings
    - Projected Debt Service payments
  - Summary Report on Expenditures for Employee Medical (current and Retired “OPEB”) and Pension Benefits
    - Five year history and projected (if available)
    - Review funding for future retiree medical benefits (OPEB Trust)
    - Pension Fund summary report
    - What percentage of the obligation is funded



## **FY24 PROPOSED BUDGET MEETING SCHEDULE:**

- **Tuesday February 21<sup>st</sup> 6:00 PM**
  - **Wednesday February 22<sup>nd</sup> 6:00 PM**
  - **Tuesday February 28<sup>th</sup> 6:00 PM**
  - **Wednesday March 1<sup>st</sup> 6:00 PM**
- 
- **Public Hearing: Wednesday March 22<sup>nd</sup> 6:00 PM**

## **2023 Town Meeting/Election Calendar**

Selectboard Open Citizen Petition Time	Tuesday, January 3, 2023
Selectboard Close Citizen Petition Time	Tuesday, February 1, 2023
Nomination Papers Available in Clerk's Office	Tuesday, February 1, 2023
Last Date to obtain nomination papers (5:00 pm)	Monday, March 20, 2023
Last Day to submit nomination papers (5:00 pm)	Tuesday, March 21, 2023
Planning Board to have completed all Public Hearings by this date	Thursday, March 23, 2023
Last Day to Object or Withdraw Nomination	Thursday, April 6, 2023
Selectboard approves final warrant	Monday, April 10, 2023
Last Day to have warrants printed	Wednesday, April 19, 2023
Last Day to register to vote (until 8:00 pm)	Friday, April 21, 2023
Last Date to post Warrant	Monday, April 24, 2023
Town Meeting @ Monument Mountain 6:00 pm	Monday, May 1, 2023
Town Meeting @ Monument Mountain 6:00 pm (Night 2 if needed)	Thursday, May 4, 2023
Town Election 8:00 am- 8:00 pm	Tuesday, May 9, 2023



## EXECUTIVE SUMMARY

**TITLE:** Agricultural Preservation Restriction of North Plain Farm

**BACKGROUND:** Great Barrington voters approved an Agricultural Preservation Restriction of the agricultural land at 180 and 190 North Plain Road, appropriating \$92,000 of FY20 Community Preservation Act funds to assist in the project. Because the Town is contributing funds, the Town becomes a co-holder of the restriction document that preserves the agricultural use. The Selectboard must now sign the appropriate documentation on behalf of the Town.

**FISCAL IMPACT:** The land is already valued to reflect its agricultural use. The CPA funds are already appropriated and held for this purpose. The Town has no obligations as co-holder; the Commonwealth does any enforcement and paperwork that might be required.

**RECOMMENDATION:** The Selectboard vote to sign the Agricultural Preservation Restriction for the North Plain Farm LLC property.

**WRITTEN BY:**



Assistant Town Manager /  
Director of Planning and Community Development

**DATE:** 12/1/22

**APPROVED BY:**



Town Manager

**DATE:** 12/1/22

# THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



## Department of Agricultural Resources

251 Causeway Street, Suite 500, Boston, MA 02114  
617-626-1700 fax: 617-626-1850 www.mass.gov/agr



CHARLES D. BAKER  
Governor

KARYN E. POLITO  
Lt. Governor

BETHANY A. CARD  
Secretary

JOHN LEBEAUX  
Commissioner

December 1, 2022

Christopher Rembold  
Assistant Town Manager  
Director of Planning and  
Community Development  
334 Main Street  
Great Barrington, MA 01230

Dear Christopher,

The APR Program is preparing to close the North Plain Farm, LLC property located on North Plain Road in Great Barrington. The Selectboard will need to sign the APR documents since the Town is a Co-Holder of the restriction. Would you please have members of the **Selectboard sign the document (Page 22-23)** at the Selectboard meeting on December 5, 2022? MDAR can accept a digital copy of the APR document at this time, but a hard copy will need to be mailed to Dorothy Du in our Boston office. Her address is:

Dorothy Du  
Department of Agricultural Resources  
251 Causeway Street, Suite 500  
Boston, MA 02114-2151

We would like to close this project before the end of the calendar year. Thank you for all your assistance and please feel free to contact me or Ron Hall if you have any questions or require additional information.

Thank you,

A handwritten signature in cursive script, appearing to read "Barbara Hopson".

Barbara Hopson  
Department of Agricultural Resources  
138 Memorial Avenue, Suite 42  
West Springfield, MA 01089  
[Barbara.hopson@mass.gov](mailto:Barbara.hopson@mass.gov)  
617-459-8545

Enclosure

**COMMONWEALTH OF MASSACHUSETTS**  
**AGRICULTURAL PRESERVATION RESTRICTION**

North Plain Farm LLC, a Massachusetts Limited Liability Company, of Great Barrington, Berkshire County, Massachusetts (the "Grantor"), its successors in title and assigns in perpetuity, for consideration paid in full of Nine Hundred Twenty Thousand Dollars (\$920,000.00), receipt of which is hereby acknowledged, do hereby grant to the Commonwealth of Massachusetts, acting through the Commissioner of the Department of Agricultural Resources, (the "Grantee" or the "Commissioner") with an address of 251 Causeway Street, Suite 500, Boston, Massachusetts 02114-2151, its successors and assigns, an Agricultural Preservation Restriction in perpetuity (this "Restriction") on approximately 66.8 acres of land and buildings and structures thereon located at North Plain Road in the Municipality of Great Barrington, in Berkshire County, Massachusetts as described in the attached Exhibit A hereof, (the "Premises") in accordance with the following terms and conditions.

The Municipality of Great Barrington with an address of 334 Main Street, Great Barrington, MA. 01230, (the "Co-Holder") for consideration paid towards this Restriction in the sum of Ninty-Two Thousand Dollars (\$92,000.00), shall hold title to this Restriction jointly with the Grantee, pursuant to Massachusetts General Laws ("General Laws"), Chapter 20, Section 23, as amended, and shall have a right of enforcement.

The United States of America ("the United States"), acting by and through the United States Department of Agriculture ("USDA") Natural Resources Conservation Service ("NRCS") on behalf of the Commodity Credit Corporation ("CCC"), facilitated and provided funding and shall have a right of enforcement of the terms and conditions of this Restriction on the Premises, as described in the attached Exhibit A hereof (said 66.8 acres is herein also referred to as the "ACEP-ALE Parcel") in order to protect the public investment under the Agricultural Conservation Easement Program ("ACEP"), Agricultural Land Easement ("ALE") component. This Restriction is acquired with funds provided, in part, by the ACEP, 16 U.S.C. Section 3865 et. seq. and 7 CFR Part 1468 for the purpose of protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses that negatively affect the agricultural uses and conservation values of the ACEP-ALE Parcel. Baseline conditions of

the Premises including the ACEP-ALE Parcel are set forth in a Baseline Documentation Report, a copy of which is maintained in the files of the Grantee. The parties further acknowledge that the Premises including the ACEP-ALE Parcel will be managed for long-term agricultural viability. Even if the Premises consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this Restriction, and the restrictions and covenants of this Restriction will apply to the Premises as a whole.

The Grantor covenants that they are vested with good title to the Premises. Consideration mentioned above has been negotiated and agreed to be based upon the difference between full Fair Market Value and full Fair Market Agricultural Land Value of the Premises. By making such grant, the Grantor grants to the Grantee all non-agricultural rights in the Premises except as otherwise described in Section III (A) hereof. The Grantor retains all agricultural rights in the Premises except as otherwise limited by the terms and conditions of this Restriction and not inconsistent with the Purpose. The terms and conditions of the Restriction run with the land and are binding upon the Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them, any and all of whom must comply with all terms and conditions of this Restriction, including the following:

### I. STATEMENT OF PURPOSE

The purpose of this Restriction is to: perpetually protect the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses that negatively affect the agricultural uses and conservation values of the Premises; encourage sound soil management practices in accordance with generally accepted agricultural practices; preserve natural resources; maintain land in active commercial agricultural use; ensure resale of the Premises at Fair Market Agricultural Value, in order to ensure the availability of farmland in Massachusetts and ensure those entering or currently engaged in commercial agricultural operations are able to acquire agricultural land at a price that is tied to the land's agricultural value; and regulate and control activities and/or uses which may be detrimental to the actual or potential agricultural viability of the Premises, water conservation, soil conservation, or to generally accepted agricultural and/or forestry management practices or which may be wasteful of the natural resources of the Premises. The foregoing purposes of this Restriction are hereinafter collectively referred to as the "Purpose".

### II. DEFINITIONS

When used throughout this Restriction, the words or phrases listed below shall have the following meanings:

**A. ABANDONED:** land that has not been actively utilized for commercial agricultural activities or uses for a period exceeding two years unless the non-utilization is in accordance with generally accepted agricultural practices or resource management needs, that are consistent with the Purpose and terms of this Restriction.

**B. AGRICULTURAL CONSERVATION EASEMENT PROGRAM:** a program of the United States Department of Agriculture ("USDA") authorized pursuant to 16 U.S.C. Section 3865 *et. seq.*, as amended, which provides federal funds to state, tribal, local governments, and other organizations for the conservation of eligible land and natural resources through easements or other interests in land.

**C. AGRICULTURAL USE(S):** the raising of animals, including but not limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees and fur-bearing animals, 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, tobacco, flowers, sod, 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. Agricultural production including the production, processing, and marketing of agricultural crops and livestock compatible with the Purpose are allowed provided these activities are conducted in a manner consistent with the terms of this Restriction.

Notwithstanding the forgoing, Agricultural Use does not include the harvest of sod and nursery stock (such as balled and burlapped or balled and bagged) which involves removal of soil with the roots, unless the average annual soil loss for the crop rotation is less than the soil loss tolerance for the soil in the field from which the sod or nursery stock is removed, as determined by the USDA-NRCS.

**D. BUILDING ENVELOPE(S):** area(s) designated on Exhibit B where any new agricultural Permanent Structures or improvements on the ACEP-ALE Parcel may be located, subject to an approval granted by the procedures outlined in Section III (F).

**E. CONDITION:** including, but not limited to, an easement, restriction, covenant, right, option to purchase at agricultural value plus value of improvements, land exchange, or any other requirement or use prohibition.

**F. DEPARTMENT:** the Department of Agricultural Resources of the Commonwealth of Massachusetts, 251 Causeway Street, Suite 500, Boston, MA 02114-2151.

**G. FAIR MARKET VALUE (“FMV”):** the most probable price that the Premises would bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title to a buyer under conditions whereby: 1) buyer and seller are typically motivated; 2) both parties are well informed or well advised, and acting in what they consider their own best interests; 3) a reasonable time is allowed for exposure in the open market; 4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and 5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

**H. FAIR MARKET AGRICULTURAL VALUE (“FMAV”):** the combined total of the Fair Market Agricultural Land Value (“FMALV”) and the Fair Market Agricultural Business Value (“FMABV”) and the Fair Market Dwelling Value (“FMDV”).

**I. FAIR MARKET AGRICULTURAL BUSINESS VALUE (“FMABV”):** the value based upon the ongoing agricultural business including agricultural buildings, infrastructure, goodwill and other related agricultural business factors. FMABV is relevant only upon the subsequent sale of the Premises and is not applicable at the time of original purchase of this Restriction by the Grantee. The FMABV appraisal includes agricultural business potential and is based upon activities and circumstances existing at the time of the sale of the Premises. The appraisal is not intended to

contemplate speculative business potential that is dependent on management, investment or other prospective activities. FMABV may, when applicable, consider the value of ongoing agricultural business including agricultural buildings, infrastructure, goodwill and other related agricultural business factors on land owned by Grantor, but excluded from this Restriction (“non-Restricted land”), when such business on non-Restricted land is integral to the agricultural business on the Premises.

**J. FAIR MARKET DWELLING VALUE (“FMDV”):** the appraised replacement value of a dwelling(s) on the restricted land.

**K. FAIR MARKET AGRICULTURAL LAND VALUE (“FMALV”):** the value based upon the highest and best use of the land for agricultural purposes, including such considerations as location, types of soil, and climate, but excluding buildings or uses thereof. Permanently installed agricultural improvements, such as in-ground irrigation or drainage systems, are considered part of the land. Agricultural land value is solely the value of the land, which value the landowner retains following the sale of this Restriction to the Grantee. FMALV is applicable at both the time of the Grantee’s purchase of this Restriction and at the time of subsequent sale. The FMALV may rise and fall commensurate with market conditions and/or inflation or other valuation factors such as upkeep of the land, and/or improvements in the condition of the soil or its productivity. It is understood that land improvements may increase the FMALV.

**L. IMPERVIOUS SURFACE:** a material that does not allow water to percolate into the soil on the Premises; including, but not limited to, buildings with and without flooring, paved areas and any other surfaces that are covered by asphalt, concrete, or roofs.

**M. PERMANENT STRUCTURE:** any structure that requires the grading or excavation of soil for footings or foundations or which substantially alters or otherwise affects the soil profile.

**N. TEMPORARY STRUCTURE:** any structure having no footing or foundation, or does not substantially alter or otherwise affect the soil profile.

**O. BONA FIDE PURCHASE AND SALE AGREEMENT:** An agreement duly executed by Grantor and a proposed purchaser of the Premises, which agreement includes, at a minimum, consideration and an expiration date that extends at least one day beyond the option date described in Section III.H.3.c. below.

### **III. TERMS AND CONDITIONS**

#### **A. GRANTOR'S RESERVED RIGHTS AND OBLIGATIONS**

Notwithstanding any provision of this Restriction to the contrary, the Grantor reserves all customary rights and privileges of ownership, including the right of privacy, as well as any other rights not inconsistent with the terms and conditions of this Restriction or with General Laws, Chapter 184, Sections 31 through 33, as amended, and Chapter 20, Sections 23 through 26, as amended, and the rules, regulations and policies thereunder.

The provisions of this Restriction and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Premises, so long as the agricultural operations are consistent with the long-term viability of the Premises, and the Restriction Purpose. No uses will be allowed that violate Federal laws, including Federal drug laws, or that decrease the protection of the Premises for the Purpose of the Restriction, or that decrease the Restriction’s protection of the agricultural use and future viability and related conservation values of the Premises.

The following activities and uses are hereby deemed by the Grantee to be consistent with the Purpose of this Restriction and the ACEP, and are expressly permitted to be carried out on the Premises in a manner that does not impair the agricultural value of the Premises:

1. to repair and replace existing fences, construct new fences as necessary for Agricultural Use on the Premises, and utilize fences to mark boundaries on the Premises;
2. to use snowmobiles on snow on the Premises by the Grantor or others for non-commercial recreational use;
3. to place signs to:
  - a. identify or advertise the Agricultural Use of the Premises,
  - b. advertise agricultural products or services at the Premises, or
  - c. identify the ACEP-ALE Parcel as a participant in ACEP and the Grantee's Agricultural Preservation Restriction Program; and
4. to conduct and participate in non-commercial, undeveloped, and passive recreational and educational activities that do not require infrastructure (Impervious Surfaces), as long as such activities do not adversely impact the soils, future viability, related conservation values and/or Agricultural Use on the Premises.

The Grantor shall continue to be obligated to make payment of all taxes, upkeep and maintain the Premises, and continue to be responsible for all liability arising from personal injury or property damage occurring on the Premises. The Grantor acknowledges that Grantee, and the Co-Holder, if applicable, has neither possessory rights in the Premises, nor any responsibility nor right to control, maintain, or keep up the Premises.

#### **B. AFFIRMATIVE COVENANT**

The Grantor covenants that the Premises shall be maintained in active commercial Agricultural Use, and the Premises shall not be Abandoned. Failure to maintain the Premises in active commercial Agricultural Use shall be a violation of this Restriction.

#### **C. Intentionally Omitted**

#### **D. PROHIBITED USES; ACTS; STRUCTURES**

The Grantor further covenants that the Premises will at all times be held, used and conveyed subject to, and not in violation of, the following restrictions, subject to the exceptions enumerated in Section III (E):

1. No use shall be made of the Premises, and no activity thereon shall be permitted, which is inconsistent with the Purpose of this Restriction or with General Laws, Chapter 184, Sections 31 through 33, as amended, and Chapter 20, Sections 23 through 26, as amended; and the rules, regulations and policies thereunder;
2. No residential dwelling, tennis court, in-ground swimming pool, commercial or recreational horse riding or boarding facility, golf course, golf range, nonagricultural airport landing strip, cell tower, or other such non-agriculturally related Temporary or Permanent Structure(s) shall be constructed or placed or permitted to remain on the Premises;
3. No refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, oil, radio-active or hazardous waste, or other such substance or material whatsoever shall be placed, stored, dumped, or permitted to remain on the Premises, except as required for the use

of the Premises for generally accepted Agricultural Use;

4. No use shall be made of the Premises for:
  - a. Transferring property rights to any property, whether or not adjacent to the Premises;
  - b. Calculating permissible lot yield of the Premises, or of any other property; or
  - c. Any calculations involving development of any other property, whether or not adjacent to the Premises, in any manner whatsoever;
5. Impervious Surfaces will not exceed 2 percent of the total area of the ACEP-ALE Parcel, excluding NRCS-approved conservation practices. This limitation does not include public roads or other roads owned and controlled by parties with superior rights to those rights conveyed to the Grantee by this Restriction. In the event the ACEP-ALE Parcel is subdivided as provided for in Section III (E) (10) the total cumulative Impervious Surface of the subdivided parcels must not exceed the impervious limitation referenced above. The Grantor, with the Grantee's approval, shall allocate the Impervious Surface limit among the subdivided parcels and ensure the impervious surface limitation is clearly defined in each subdivided parcel's recorded instrument;
6. No mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this Restriction or later acquired by Grantor except for limited mining activities if the materials mined are used for agricultural operations on the Premises performed in accordance with Section III (E) (2). Using any surface mining, subsurface mining, or dredging method from the Premises is prohibited; If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Premises at the time this Restriction is executed, and their interests have not been subordinated to this Restriction, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this Restriction. Any mineral leases or other conveyances of minerals entered into or renewed after the date of this Restriction are subordinate to the terms of this Restriction and must incorporate by reference this Restriction;
7. No motorized vehicles may be used on the Premises except as necessary for Agricultural Use, forestry, habitat management, law enforcement and public safety, or other permitted uses of the Premises, provided that no use of motorized vehicles may create impacts that are detrimental to the productivity of the soils on the Premises and the Purpose of this Restriction;
8. No signs may be placed on the Premises, except those explicitly allowed in Section III (A) (3);
9. No water rights may be transferred, encumbered, leased, sold, or otherwise separated from title to the Premises;
10. No grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Premises, except in accordance with generally accepted agricultural practices that are consistent with the Purpose and terms of this Restriction and as allowed in Section III (E) (7), (8) or (9);
11. No establishment of any nonagricultural commercial or industrial uses or facilities, except as allowed by Special Permit under Section III (G);



12. No granting of easements for utilities except as allowed in Section III (E) (4); and
13. No granting of easements for roads.

**E. USES; ACTS; STRUCTURES THAT REQUIRE GRANTEE'S PRIOR WRITTEN APPROVAL**

The following uses, acts or structures (hereinafter “uses” or “activities”) are allowed only with the prior written approval of the Grantee and subject to, but not limited to, the prerequisites described below. Requests for such approvals, and the granting thereof, shall be governed by the procedures set forth in Section III (F) of this Restriction as well any rules, regulations and policies:

1. Except as otherwise permitted in this Section III (E), all new structures and improvements, including the construction or placing of any agricultural Permanent Structures for housing seasonal agricultural employees, must be located within the Building Envelope(s), containing approximately 1.34 total acres and described or shown in Exhibit B which is appended to and made a part of this Restriction.

The identified boundaries and location of the approved Building Envelope(s) may be adjusted only with prior written approval from the Grantee and the Chief of NRCS. The adjusted Building Envelope(s) may not be larger than the approved Building Envelope(s) and must provide equal or greater protection of the Purpose of the Restriction and the Agricultural Use and future viability, and related conservation values of the ACEP-ALE Parcel. Following receipt of written approval to adjust identified Building Envelope(s), the Grantor and Grantee shall amend this Restriction to add an exhibit that describes the subsequently approved boundaries and locations of the Building Envelope(s).

Agricultural structures and utilities to serve approved buildings or structures, including on-farm renewable energy structures allowed under Section III (E) (11), that neither individually nor collectively have an adverse impact on the Purpose of the Restriction, or the Agricultural Use, future viability, or related conservation values of the ACEP-ALE Parcel, may be built outside of the Building Envelope with prior written approval of the Grantee;

2. The excavation, dredging, depositing on, or removal from the Premises of loam, peat, gravel, soil, sand, rock other mineral resources, or natural deposits if the materials mined are used for agricultural operations on the Premises. In the case of this limited mining for materials used for agricultural operations on the Premises, extraction must be limited, localized, and small, with a defined area and acreage approved prior to extraction by the Grantee, not to exceed 6.68 acres and does not harm the Purpose of the Restriction, conservation values or the Agricultural Uses of the Premises;
3. The maintenance or improvement of a septic system, other underground sanitary system, or non-sanitary wastewater management system which exists on the Premises, or the construction of a septic system, other underground sanitary system, or non-sanitary wastewater management system, for the benefit of existing agriculturally related Permanent Structures on the Premises. However, if these systems are proposed with a simultaneous approval request for an agricultural Permanent Structure, the construction of a system may be allowed concurrently;
4. The granting or modification of easements for utilities when the utility will not adversely impact the Agricultural Use, future viability, and related conservation values of the Premises and when the easement benefits the Premises as determined by

the Grantee in consultation with the Chief of NRCS;

5. The widening, improvement, construction or placement of an Impervious Surface driveway, road, parking lot, utility pole, conduit or line in support of a Temporary or Permanent Structure or improvement to the Premises, necessary to carry out agricultural operations or other permitted uses on the Premises. New roads may be constructed if they are approved in advance by Grantee, within Impervious Surface limits, and are necessary to carry out the agricultural operations or other allowed uses on the Premises. Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within Impervious Surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Premises. Said activities must be within the Impervious Surface limit, if it meets the definition of an Impervious Surface;
6. Forest management and timber harvesting activities. These activities may be approved by the Grantee only if the activities are:
  - a. performed in accordance with a written forest management plan, by a licensed professional resource manager, having been prepared and executed in accordance with General Laws, Chapter 132, as amended, except that the forest management plan will not be required for the following allowed noncommercial activities (i) cutting of trees for the construction of allowed utilities, forest access roads, buildings, and structures on the Premises, (ii) cutting of trees for trail clearing, (iii) cutting of trees for domestic use as firewood or for other domestic uses by Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species;
  - b. consistent with the terms of this Restriction; and
  - c. carried out to the extent practicable in accordance with current generally accepted best management practices for the sites, soils, and terrain of the Premises;
7. Dam construction in accordance with a plan approved by the Grantee to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation;
8. Soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the conservation purpose of this Restriction;
9. Erosion and sediment control pursuant to a plan approved by the Grantee;
10. The Premises must not be divided or subdivided into, or separately conveyed as, more than two separate parcels (one divisions allowed). To protect the Purpose of the Restriction, the boundaries of such divisions must be approved in writing by the Grantee and the Chief of NRCS, or the Chief's authorized designee (Chief of NRCS), before any such division, subdivision, or separate conveyance occurs. The Chief of NRCS may only approve the division, subdivision, or separate conveyance of the Premises into separately conveyable farm or ranch parcels when:
  - a. The Grantee requests the Chief of NRCS approval to subdivide the ACEP-ALE Parcel into separate farm parcels, after receiving a request from the

Grantor;

- b. The Grantor certifies to the Chief of NRCS that the requested subdivision is required to keep all parcels in production and viable for Agriculture Use and that any new owners of the subdivided Premises farm or ranch parcels intend to use such parcels for agricultural operations; and
- c. The Chief of NRCS determines that the:
  - i. Parcels resulting from the subdivision of the ACEP-ALE Parcel will meet ACEP land eligibility requirements of 16 U.S.C. Section 3865 *et seq.* as enacted on the date the original parcel was enrolled in ACEP, including the allocation of the impervious surface limitation between the subdivided parcels, and
  - ii. The resulting parcel will not be below the median size of farms in the county or parish as determined by most recent United States Department of Agriculture's National Agricultural Statistical Survey ("NASS").

11. Renewable energy structures for the purpose of generating energy for the agricultural needs of the Premises. Renewable energy structures must be built and maintained within Impervious Surface limits, with minimal impact on the conservation values of the Premises including the ACEP-ALE Parcel and consistent with the Purpose of this Restriction.

#### **F. PROCEDURES FOR OBTAINING THE GRANTEE'S PRIOR WRITTEN APPROVAL**

1. The Grantor shall submit an application to the Grantee, on a form prescribed by the Grantee, prior to undertaking any uses or acts, or undertaking construction of any Structures described in Section III (E). The Grantor shall not secure other applicable permits required by local or state law prior to obtaining approval from the Grantee.
2. Within 90 days of receipt of a completed application, which shall include all information and documentation that may be required by the Grantee, the Grantee shall review the application and may inspect the premises.
3. After receipt of the completed application, the Grantee may approve the application, with or without Conditions, only upon finding that:
  - a. the proposed use, act, or Structure is authorized by this Restriction, General Laws, Chapter 184, Sections 31 through 33, as amended, and Chapter 20, Sections 23 through 26, as amended; and the rules, regulations and policies thereunder; and
  - b. the proposed use, act, or Structure shall not defeat nor derogate from the Purpose of this Restriction, and General Laws, Chapter 184, Sections 31 through 33, as amended, and Chapter 20, Sections 23 through 26, as amended, and the rules, regulations and policies thereunder.
- 4.. If the Grantee approves in whole or in part, with or without Conditions, the Grantor's application, the Grantee shall issue a Certificate of Approval suitable for recording.

#### **G. SPECIAL PERMIT PROCESS**

Commercial non-Agricultural Uses and activities for which the Grantor receives payment,

compensation, or any other type of monetary or non-monetary remuneration, such as temporary or seasonal outdoor activities or events that do not harm the agricultural use, future viability, and related conservation values of the Premises, may be permitted if the Grantor receives a special permit from the Grantee ("Special Permit"). The Grantee, with the approval of the Co-Holder, if any, may grant a Special Permit only if:

1. The Grantor requests a Special Permit by submitting an application on a form prescribed by the Grantee;
2. The Premises is being actively utilized for full-time commercial agriculture;
3. The activity is minor, ancillary and subordinate to the Agricultural Use of the Premises;
4. Such uses and activities are not inconsistent with the Purpose of this Restriction and shall not defeat nor derogate from the Purpose of this Restriction; and
5. The Special Permit is:
  - a. limited to the current Premises owner(s) who applied for and obtained the Special Permit;
  - b. limited to a period no longer than five (5) years, renewable at the discretion of the Grantee for an additional term(s) of no longer than five (5) years, upon reapplication;
  - c. terminated upon transfer of ownership;
  - d. limited to uses and activities that will not impair the agricultural viability of the soil;
  - e. limited to existing structures requiring only minor renovations, such renovations will not prevent the use of the structure for Agricultural Use; and
  - f. limited to uses and activities requiring no new construction.

#### **H. OPTION TO PURCHASE PREMISES AT AGRICULTURAL VALUE**

1. The Grantee shall have an option to purchase the Premises at Fair Market Agricultural Value ("FMAV") in accordance with the provisions of this section ("Option"). This Option has been granted as an integral part of this Restriction, the full consideration for which is set forth above. This Option constitutes a restriction that runs with the land and is binding in the event of a foreclosure of said Premises.
  - a. The intent of this Option is to ensure resale of the Premises at FMAV. Accordingly, the parties hereto agree to a process as follows:
    - i. In the event that the Grantor proposes to sell the Premises and enter into a Bona Fide Purchase and Sale Agreement with a third party for the sale of the Premises, the Grantee, pursuant to 330 CMR 22.10 and subsections 2-4 below, shall have the right to purchase or assign the right to purchase (see subsection 8, below) the Premises from the Grantor at FMAV. Said FMAV shall be determined by:
      - a) an appraisal paid for and obtained by the Grantor conducted by an appraiser with the qualifications outlined in the "Guidelines for Agricultural Appraisals" prepared by the Grantee and as in effect at such time, and the terms pertaining to appraisal set forth therein and within the time frame set forth in said "Guidelines for Agricultural Appraisals" and in accordance with the specifications set forth in said "Guidelines for Agricultural Appraisals." The Grantee shall have the right to

disagree with the appraisal and, at its own expense, obtain its own appraisal. If the two appraisals differ, there shall be a third appraisal, the expense of which shall be equally shared between the Grantee and the Grantor, to determine the FMAV in accordance with the said “Guidelines for Agricultural Appraisers”; or, at the election of the Grantor,

- b) an amount equal to the FMALV of the Premises as determined by the appraisal relied upon for the acquisition of this Restriction (“Governing Appraisal”) which sum shall then be multiplied by the Inflation Rate. The Inflation Rate shall be equal to 1 plus the fractional increase in the Consumer Price Index for all Urban Consumers, Boston, All Items (1982-1984 equals 100) published by the Bureau of Labor Statistics, United States Department of Labor, or successor index published by the United States government appropriately correlated to the prior index by a published conversion factor, where indicated, from date of Governing Appraisal for this Restriction to the date of execution of the Bona Fide Purchase and Sale Agreement.
- b. In the event that the sale price as set forth in the Bona Fide Purchase and Sale Agreement is less than the FMAV determined by the procedures set forth in either i.a) or i.b) above, the Grantee shall have the right, pursuant to 330 CMR 22.10 and subsections 2-4 below, to purchase the Premises from the Grantor, or assign its right to purchase the Premises from the Grantor, for this lesser amount.
- c. In the event of a subdivision, recording of a subdivision plan, partition, or any other division of the Premises, or any portion thereof, into two or more parcels, as approved by the Grantee and the Chief of NRCS in accordance with Section III (E) (10) above, the FMAV shall be determined pursuant to paragraph i.a) above.
2. Prior to submitting a Notice of Intent (as defined in section 3 below) for the sale of the Premises, there shall be a conference between Grantor, Grantee and the third-party purchaser to discuss the requirements of the transfer or sale of the Premises (the “Pre-Sale Conference”). The Pre-Sale Conference shall occur at the Premises or in a manner and time agreed upon by Grantor, Grantee and proposed purchaser. The parties hereto acknowledge that it is the Grantor’s responsibility to disclose to the Purchaser that the Premises is subject to the APR.
3. Upon executing a Bona Fide Purchase and Sale Agreement for the sale of the Premises with a third party purchaser, the Grantor shall provide a Notice of Intent, which shall include, at a minimum, all items listed below:
  - a. The Grantor shall provide, at a minimum, to the Grantee:
    - i. written notice stating the Grantor’s intent to sell the Premises;
    - ii. an offer to sell the Premises to Grantor;
    - iii. a written request for a Waiver of the Option;
    - iv. a true, correct, complete and fully executed copy of the offer to purchase (if any);
    - v. a true, correct, complete and fully executed copy of a Bona Fide Purchase and Sale Agreement, together with any amendments, from a third party to purchase the Premises. If the Bona Fide Purchase and Sale Agreement includes other land not subject to the Restriction, Grantor shall also provide a written apportionment

of values in the Purchase and Sale Agreement as between the Premises and the land/structures not subject to the Restriction;

- vi. a copy of the current deed;
  - vii. any appraisal(s) prepared for the proposed sale;
  - viii. any appraisal prepared for sale at which Owner acquired the Premises;
  - ix. if FMAV was not determined by 1.a.i.a above and/or there are not appraisal(s) prepared for the proposed sale, then Grantor shall provide the FMALV as determined pursuant to 1.a.i.b) above.
- b. The third party purchaser must submit a Farm Business Plan to the Grantor in accordance with 330 CMR 22.10.
  - c. The Notice of Intent shall not be deemed to have been duly provided, and the sixty (60) day period discussed in item d below, shall not begin until and unless the Pre-Sale Conference has been held and until and unless all items listed in section 3.a and 3.b above have been provided: After receipt of the Notice of Intent, Grantee shall be allowed to communicate directly with the Grantor or to seek an additional conference with Grantor and proposed purchaser to clarify any element of the Notice of Intent.
  - d. Upon receipt of the Notice of Intent, Grantee shall review the Notice of Intent to determine whether the proposed sale qualifies for an Automatic Waiver of Right to Purchase or a Discretionary Waiver of Right to Purchase, as set forth in 330 CMR 22.10.

In the event the proposed sale does not qualify for an Automatic Waiver or Discretionary Waiver, Grantee may elect to exercise its Option to Purchase. Grantee shall have sixty days (60) days from receipt of the Notice of Intent to notify the Grantor of its election to purchase the Premises at FMAV (or any lesser sale price set forth in the Purchase and Sale Agreement) or to waive its rights under the Option. In the event Grantee exercises its Option to Purchase, Grantee shall notify Grantor in writing ("Notice of Election"). Said Notice of Election shall be sent to Grantor no more than three business days after said decision is made.

- 4. In the event that the Grantee elects to exercise this Option to purchase the Premises, the deed shall be delivered and the consideration paid at the Southern Berkshire County Registry of Deeds before 4 o'clock p.m. on or before the one-hundred-eighty (180) day after the date of mailing by the Grantee of the Notice of Election or, if a Saturday, Sunday or holiday, on the next business day thereafter, and the deed shall convey a good and clear record and merchantable title to the Premises free of all encumbrances, and the Premises shall be in the same condition as at the time of the Notice of Election, reasonable wear and tear and use thereof excepted. The date and time of the transfer may be amended by written mutual agreement of the Grantor, Grantee, and any assignee, if applicable.
- 5. The Grantor may sell the Premises, to the third party purchaser who entered into the Bona Fide Purchase and Sale Agreement referred to in Paragraph 1.a.i above, only in the event that the Grantee:
  - a. declines in writing to exercise its rights under this Option within the specified time period; or
  - b. fails to waive its rights under this Option in writing within the specified time period; or
  - c. having elected to exercise its rights under this Option, fails to complete the purchase within the specified time period, only if however, the failure to complete the purchase

is not based upon a failure or delay by the Grantor.

Said sale of the Premises must take place within one (1) year of the date of the Grantee's receipt of the Notice and be only upon the same terms and conditions as contained in said Bona Fide Purchase and Sale Agreement.

6. The obligations of the Grantor under this Option shall not apply where the transfer of ownership of the Premises will be a result of:
  - a. a conveyance by deed to the Grantor's spouse, parent, child(ren) or grandchild(ren) (whether by blood, marriage or adoption), siblings and/or their child(ren) or grandchild(ren) (whether by blood, marriage or adoption); or
  - b. a devise of said Premises by will or intestacy of the Grantor; or
  - c. a conveyance of an interest in the Premises to a co-owner.
7. Any notices required by this Option shall be in writing and shall be deemed delivered if delivered in hand or mailed, postage prepaid by certified mail return receipt requested, addressed in the case of the Grantor to such address as may be specified in the Notice or if none, then to the Premises, and in the case of the Grantee, to the Commissioner of the Department of Agricultural Resources, 251 Causeway Street, Suite 500, Boston, MA 02114-2151.
8. The Grantee may assign its right to purchase under this Option after providing the Grantor with a Notice of Election exercising its right to purchase, provided that the right to purchase may only be assigned pursuant to the procedures set forth in 330 CMR 22.10(8). Any assignment shall only be effective when made in writing, signed by the Commissioner, and duly recorded with the appropriate registry of deeds.
9. Grantor shall have the right to withdraw its Notice of Intent at any point prior to Grantee's Notice of Election or prior to Grantee's assignment described in Item 8 above.
10. Any waiver of the Grantee's rights under this Option shall be in writing, signed by the Commissioner, and in a form and format suitable for recording in the appropriate registry of deeds. This waiver shall serve to satisfy the Grantor's obligations to the Grantee under this Option only with regard to the third party purchaser who entered into the Bona Fide Purchase and Sale Agreement referred to in Paragraph 1.a.i, above.
11. The rights and obligations of the Grantor hereunder shall inure to and be binding upon the Grantor and all successors in title.

#### **I. ENFORCEMENT OF THIS RESTRICTION**

1. The Grantor grants to the Grantee and to the Co-Holder as applicable, and their successors in title, the right to enter upon the Premises, including the buildings and structures on the Premises, and to the United States, the right to enter upon the ACEP-ALE Parcel, including the buildings and structures, in a reasonable manner and at reasonable times, for the purposes of inspecting the Premises to determine compliance with this Restriction, any Certificate of Approval, Special Permit, or General Laws, Chapter 184, Sections 31 through 33, as amended, and Chapter 20, Sections 23 through 26, as amended, and rules, regulations and policies thereunder; the right to enforce this Restriction, any Certificate of Approval, Special Permit, or General Laws, Chapter 184, Sections 31 through 33, as amended, and Chapter 20, Sections 23 through 26, as amended, and rules, regulations and policies thereunder; and the right to take any other action which may be necessary or appropriate in the

determination of the Grantee, with or without order of court, to remedy or abate any violation of this Restriction, or of any Certificate of Approval, Special Permit, or of General Laws, Chapter 184, Sections 31 through 33, as amended, and Chapter 20, Sections 23 through 26, as amended, and rules, regulations and policies thereunder.

Additionally, the Grantor and the Grantee agree that the natural characteristics, ecological features, and physical and man-made conditions of the Premises on the date of this Restriction are documented in a Baseline Documentation Report prepared by the Grantee and signed and acknowledged by the Grantor establishing the condition of the Premises on the date of this Restriction and including reports, maps, photographs, and other documentation. The Baseline Documentation Report is incorporated into this Restriction by reference. The Grantee will maintain the Baseline Documentation Report and annually monitor the Premises ensuring that active agricultural operations are in compliance with the NRCS ALE Plan, if any, and in compliance with this Restriction.

2. In the event of a violation of the terms of this Restriction, Certificate of Approval, Special Permit, or General Laws, Chapter 184, Sections 31 through 33, as amended, and Chapter 20, Sections 23 through 26, as amended, or rules, regulations and policies thereunder, the Grantee reserves the right to pursue any remedy available at law and equity, including injunctive relief, without prior notice to the Grantor. If a court determines that this Restriction has been violated, the Grantor will reimburse the Grantee for any reasonable costs of enforcement, including court costs, reasonable attorney's fees, and other payments ordered by such court.
3. Any forbearance by the Grantee to exercise its rights under this Restriction or its right arising from a breach of any term hereof shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same by any other term of this Restriction or of any of the Grantee's rights hereunder. No failure, delay, or omission by the Grantee in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver, and the Grantor hereby waives any defense of laches, prescription or estoppel.
4. The enforcement rights hereby granted shall be in addition to, and not in limitation of any other rights and remedies available to the Grantee for enforcement of this Restriction, Certificate of Approval, Special Permit, or General Laws, Chapters 184, Sections 31 through 33, as amended, and Chapter 20, Sections 23 through 26, as amended, and rules, regulations and policies thereunder.
5. The Grantor and its successors in title, shall be jointly and severally liable for any violation of the terms of this Restriction, Certificate of Approval, Special Permit, or General Laws, Chapters 184, Sections 31 through 33 and Chapter 20, Sections 23 through 26, and rules, regulations and policies thereunder.
6. Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement on the ACEP-ALE Parcel that it may exercise only if the terms of the Restriction are not enforced by the Grantee of the Restriction. The Secretary of the United States Department of Agriculture (the "Secretary"), or the Secretary's assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this Restriction on the ACEP-ALE Parcel, as determined in the sole discretion of the Secretary. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative



and legal costs associated with any enforcement or remedial action related to the enforcement of this Restriction on the ACEP-ALE Parcel from the Grantor, including, but not limited to, attorney's fees or expenses, related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Restriction on the ACEP-ALE Parcel from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the Restriction on the ACEP-ALE Parcel against the Grantor up to the amount of the United States' contribution to the purchase of the Restriction on the ACEP-ALE Parcel.

7. The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with this Restriction. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the terms of this Restriction, and the United States ALE Agreement with the Grantee, the United States will have reasonable access to the ACEP-ALE Parcel. Prior to its inspection of the ACEP-ALE Parcel, the United States shall provide advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection. In the event of an emergency, the United States may enter the ACEP-ALE Parcel to prevent, terminate, or mitigate a potential or unaddressed violation of the Restriction on the ACEP-ALE Parcel and will give notice to the Grantee and the Grantor at the earliest practicable time.

#### **J. GENERAL INDEMNIFICATION AND DISCLAIMER**

The United States, its employees, agents, and assigns disclaim and will not be held responsible for the Grantee's or the Grantor's negligent acts or omissions or the Grantee's or the Grantor's breach of any representation, warranty, covenant, or agreements contained in this Restriction, or violations of any Federal, State, or local laws, including all Environmental Laws (defined below) including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Premises.

The Grantor must indemnify and hold harmless the Grantee and the United States, its employees, agents, and assigns from any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the Grantee and the United States may be subject or incur relating to the Premises, which may arise from, but are not limited to, the Grantor's negligent acts or omissions or breach of any representation, warranty, covenant, agreements contained in this Restriction, or violations of any applicable Federal, State, or local laws including all Environmental Laws (defined below).

#### **K. ENVIRONMENTAL WARRANTY**

The Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. The Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Premises. The Grantor further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Furthermore, the Grantor warrants the information disclosed to the Grantee and United States regarding any past violations or non-compliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

The Grantor represents and warrants that no third party owns or leases the oil, natural gas, soil, sand, gravel or any other mineral substance at the time this Restriction is executed.

Moreover, the Grantor hereby promises to hold harmless and indemnify the Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Premises, or arising from or connected with a violation of any Environmental Laws by the Grantor or any other prior owner of the Premises. The Grantor's indemnification obligation shall not be affected by any authorizations provided by the Grantee or the United States to the Grantor with respect to the Premises or any restoration activities carried out by the Grantee at the Premises; provided, however, that the Grantee shall be responsible for any Hazardous Materials contributed after this date to the Premises by the Grantee.

As used herein, "Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

As used herein, "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

#### **IV. GENERAL PROVISIONS**

##### **A. AUTHORIZATION**

The foregoing Restriction is authorized by Massachusetts General Laws, Chapter 184, Sections 31 through 33, as amended, and Chapter 20, Sections 23 through 26, as amended, and otherwise by law, and is intended to ensure the protection and preservation of agricultural lands as expressed herein. In addition, funding provided by the Agricultural Conservation Easement Program ("ACEP") is authorized by the Agricultural Conservation Easement Program, Subtitle H of Title XII of the Food Security Act of 1985, as amended by Section 2301 of the Agricultural

Act of 2014 (Public Law 113-79). The ACEP provides funding for the purchase of an Agricultural Land Easement to protect the Agricultural Use and future viability and related conservation values of eligible land by limiting nonagricultural uses of that land (16 U.S.C. § 3865 *et. seq.*, as amended).

This Restriction shall be administered and enforced by the Commissioner at in his/her sole discretion as he/she may decide and on behalf of the Co-Holder by the Conservation Commission, the Board of Selectmen, or as otherwise provided in General Laws, Chapter 20, Section 23, as amended. Nothing herein shall impose upon the Grantee or the Co-Holder any duty to maintain or require that the Premises be maintained in any particular state or condition, notwithstanding the Grantee's acceptance hereof.

Except as otherwise provided herein, this Restriction does not grant to the Grantee, the Co-Holder, the public, or any other person any right to enter upon the Premises. This Restriction is in gross, exists in perpetuity, and is not for the benefit of or appurtenant to any particular land and shall not be assignable except to another governmental or charitable corporation or trust which has power to acquire interests in land and whose purposes include conservation of agricultural land and natural areas. All rights and obligations of this Restriction shall run with the Premises and shall be binding upon all future owners of any interest therein. This Restriction may only be released, in whole or in part, only by the Grantee through the procedures established in Section 32 of Chapter 184 of the General Laws, as amended, and by Article 97 of the Amended Articles of the Massachusetts Constitution and otherwise by law.

If any section or provision of this Restriction shall be held to be unenforceable by any court of competent jurisdiction, this Restriction shall be construed as though such section had not been included in it. If any section or provision of this Restriction shall be subject to two constructions, one of which would render such section or provision invalid, then such section or provision shall be given the construction that would render it valid. If any section or provision of this Restriction is ambiguous, it shall be interpreted in accordance with the Purpose of this Restriction, rules, regulations and policies, as amended, of the Grantee and the provisions of General Laws, Chapter 184, Sections 31 through 33, and Chapter 20, Sections 23 through 26, as amended. No transfer of the Premises to the Grantee or to any successor or assignee will be deemed to eliminate this Restriction pursuant to the doctrine of "merger" or any other legal doctrine.

#### **B. EXTINGUISHMENT, TERMINATION, AND CONDEMNATION**

The interests and rights under this Agricultural Land Easement may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this Restriction, the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the ACEP-ALE Parcel.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the FMV of the Restriction is eighty-one percent (81 %), hereinafter the "Proportionate Share," of the FMV of the ACEP-ALE Parcel unencumbered by this Restriction. The Proportionate Share will remain constant over time.

If this Restriction is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the FMV of the ACEP-ALE Parcel unencumbered by this Restriction. The FMV of the Restriction will be determined at the time all or part of this Restriction is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional

Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.

The allocation of the Proportionate Share between the Grantee, Co-Holder and the United States will be as follows: (a) to the Grantee or its designee, forty percent (40%) of the Proportionate Share; (b) to the United States fifty percent (50%) of the Proportionate Share; (c) and to the Co-Holder ten percent (10%) of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Grantee and the United States each have a lien against the ACEP-ALE Parcel for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to the Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

### **C. AMENDMENT**

This Restriction may be amended only if, in the sole and exclusive judgment of the Grantee and the United States, by and through the Chief of NRCS, such amendment is consistent with the Purpose of this Restriction and complies with all applicable laws and regulations. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendment(s). Prior to the signing and recordation of the amended Restriction, such amendment(s) must be mutually agreed upon by the Grantee, the Grantor, and the United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States will be considered null and void.

### **D. TRANSFER**

Upon transfer of the Premises or interest in the Premises from one landowner to another, the conveyance document must expressly refer to this Restriction and state that the Premises is subject to its terms. Upon prior written consent from the NRCS, the Grantee may transfer this Restriction to a public agency or nonprofit organization that, at the time of transfer, is a qualified organization under section 170(h) or successor provision of the Internal Revenue Code.

### **E. NOTICE**

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 first class mail, postage pre-paid, addressed as follows:

To Grantor:

North Plain Farm LLC  
Attention; Sean Stanton  
P.O. Box 61  
Great Barrington, MA. 01230

To Grantee:

Commissioner of the Department of Agricultural Resources  
251 Causeway Street, Suite 500  
Boston, Massachusetts 02114-2151

To NRCS:

451 West Street  
Amherst, MA 01002-2953

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

## V. OTHER

**No Massachusetts deed excise stamps are affixed hereto as none are required by law.**

WITNESS the execution hereof under seal this      day of      , 2022.

**GRANTOR:**

**NORTH PLAIN FARM, LLC**

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

Printed Name:

Title:

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss \_\_\_\_\_, 2022.

On this      day of      , 2022, before me, the undersigned Notary Public,  
personally appeared the above-named,

*Name:*

*Evidence of Identification:*

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

and proved to me through satisfactory evidence of identification as noted above, to be the persons whose names are signed on this document and acknowledged to me that, they signed it voluntarily for its stated purpose.

\_\_\_\_\_  
; Notary Public

My Commission Expires:

APPROVAL OF THE COMMONWEALTH OF MASSACHUSETTS

The undersigned John Lebeaux, Commissioner of the Department of Agricultural Resources of the Commonwealth of Massachusetts hereby certifies that the foregoing Agricultural Preservation Restriction with Option to Purchase at Agricultural Value granted by North Plain Farm LLC to the Commonwealth of Massachusetts with respect to the Premises located in North Plain Road, Berkshire County, Massachusetts and more particularly described in Exhibit A attached hereto, has been approved in the public interest pursuant to General Laws, Chapter 184, Sections 32 through 33, as amended and Chapter 20, Sections 23 through 26, as amended.

COMMONWEALTH OF MASSACHUSETTS

By: \_\_\_\_\_  
John Lebeaux, Commissioner  
Department of Agricultural Resources  
GRANTEE

COMMONWEALTH OF MASSACHUSETTS

, ss \_\_\_\_\_, 2022.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned Notary Public, personally appeared the above-named John Lebeaux who proved to me through satisfactory evidence of identification, namely personal knowledge, to be the person whose name is signed on this approval document, 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 :

APPROVAL OF THE MUNICIPALITY

MUNICIPALITY OF GREAT BARRINGTON

We, the members of the Selectboard of the Municipality of Great Barrington, hereby approve the acceptance of the foregoing Agricultural Preservation Restriction granted by North Plain Farm LLC, to the Commonwealth of Massachusetts (with the Municipality of Great Barrington holding the Restriction jointly with the Commonwealth), with respect to Premises, as described therein, in the public interest pursuant to Massachusetts General Laws, Chapter 184, Sections 31 through and including 33 and, Chapter 20, Sections 23 through 26.

Date:

Municipality of Great Barrington Board of Selectmen/ City Council/ Conservation Commission

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss \_\_\_\_\_, 2022.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned Notary Public, personally appeared the above-named,

Name:

Evidence of Identification:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____



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and proved to me through satisfactory evidence of identification as noted above, to be the persons whose names are signed on this document (namely, Agricultural Preservation Restriction and Option to Purchase at Agricultural Value) and acknowledged to me that as duly elected or appointed members of the \_\_\_\_\_ Board of Selectmen/City Council/Conservation Commission, they signed it voluntarily for Great Barrington for its stated purpose.

\_\_\_\_\_  
; Notary Public

My Commission Expires

**Exhibit A**

Land in the Town of Great Barrington, Berkshire County, Commonwealth of Massachusetts, located easterly of North Plain Road, a.k.a. Route 41, and westerly by the Housatonic River and more particularly shown as “Lot 4” containing 66.8 acres on a plan entitled, “Plan of Land Surveyed for North Plain Farm, LLC, Great Barrington, Massachusetts, February 2022” prepared by Kelly, Granger Parsons & Associates, Inc. and recorded with the Berkshire County Southern District Registry of Deeds in Plat File \_\_\_\_\_ (the “Plan”).

Being a portion of the land conveyed to North Plain Farm LLC by deed dated and recorded September 25, 2018 in Book 2495, Page 35, bounded and described as follows:

Beginning at a computed point at the southeasterly corner of “Way #2” as shown on the Plan said point being in the northerly line of Lot 3A on the Plan;

Running thence the following (2) courses along Lot 3A:

S 79-53-51 E a distance of 90.00’ to an iron rod to be set;

S 13-05-44 W a distance of 193.06’ to an iron pipe found in the northerly line of land now or formerly of Well-Kamp Enterprises, Inc.;

Running thence the following (5) courses along land of Well-Kamp Enterprises, Inc:

S 56-34-14 E a distance of 189.73’ to an iron pipe found;

S 52-52-48 E a distance of 93.39’ to an iron pipe found;

S 57-35-55 E a distance of 477.57’ to an iron pipe found;

S 35-17-48 E a distance of 183.90’ to an iron rod to be set;

S 35-17-48 E a distance of 35’ +/- to the Housatonic River;

Running thence northerly along the Housatonic River a distance of 2,400’ +/- to the inlet of a cove;

Running thence the following (6) courses along the cove inlet:

S 73-19-20 W a distance of 100.00’ to an iron pipe found;

S 56-33-23 W a distance of 69.45’ to a computed point;

S 00-47-22 E a distance of 64.47’ to a computed point;

S 54-37-19 W a distance of 98.77’ to a computed point;

S 83-44-47 W a distance of 101.23’ to a computed point;

S 06-15-13 E a distance of 43’ +/- to the edge of the cove;

Running thence westerly, northerly and easterly along the cove a distance of 1,345' +/- to a computed point in the westerly line of land now or formerly of O'Connor & Salzman;

Running thence the following (10) courses along land of O'Connor & Salzman:

N 03-36-43 W a distance of 5' +/- to an iron pipe found;

N 03-36-43 W a distance of 583.91' to an iron pipe found;

N 59-04-53 W a distance of 80.22' to a computed point;

N 74-36-23 W a distance of 93.72' to an iron pipe found;

N 80-34-40 W a distance of 124.39' to an iron pipe found;

N 88-03-30 W a distance of 87.81' to a computed point;

S 87-22-30 W a distance of 86.49' to a computed point;

S 72-19-50 W a distance of 152.12' to an iron pipe found;

S 76-59-40 W a distance of 102.96' to an iron pipe found;

S 78-59-08 W a distance of 837.33' to a stone bound found in the westerly line of land now or formerly of the Massachusetts Department of Transportation;

Running thence along land of Massachusetts Department of Transportation:

S 15-09-11 E a distance of 451.24' to an iron rod to be set at the northwest corner of Lot 1 as shown on the Plan;

Running thence the following (3) courses along Lot 1:

N 74-50-49 E a distance of 175.66' to an iron rod to be set;

S 24-32-15 E a distance of 180.45' to an iron rod to be set;

S 11-40-45 W a distance of 54.46' to an iron rod to be set at the NE corner of Way #1 as shown on the Plan;

Running thence along the east end of Way #1:

S 27-58-18 E a distance of 40.00' to a computed point in the northerly line of Lot 2 as shown on the Plan;

Running thence the following (8) courses along Lot 2:

N 50-10-32 E a distance of 65.91' to an iron rod to be set;

N 16-27-32 E a distance of 55.33' to an iron rod to be set;

N 14-36-53 W a distance of 54.35' to an iron rod to be set;

N 65-30-06 E a distance of 26.84' to an iron rod to be set;

S 59-13-44 E a distance of 96.12' to an iron rod to be set;

S 43-07-05 E a distance of 153.83' to an iron rod to be set;

S 26-59-40 E a distance of 172.29' to an iron rod to be set;

S 05-46-48 E a distance of 119.79' to an iron rod to be set in a drainage ditch;

Running thence the following (3) courses along Lot 2 and the drainage ditch:

N 86-18-47 W a distance of 23.95' to a computed point;

S 53-16-37 W a distance of 82.51' to a computed point;

S 76-47-56 W a distance of 151.32' to an iron rod to be set;

Thence continuing along Lot 2:

S 87-13-04 W a distance of 249.32' to a stone bound found in the westerly line of land of  
Massachusetts Department of Transportation;

Running thence the following (2) courses along land of Massachusetts Department of  
Transportation:

Southerly on a curve to the right with a radius of 2173.87' a distance of  
90.10' to a computed point;

Southerly on a curve to the right with a radius of 2571.72' a distance of  
64.90' to an iron rod to be set in the northerly line of Lot 3B as shown on the Plan;

Running thence the following (2) courses along Lot 3B:

S 85-38-30 E a distance of 122.78' to an iron rod to be set;

S 10-06-09 W a distance of 79.46' to an iron rod to be set in the northerly line of Way #2;

Running thence the following (3) courses along Way #2:

S 54-38-26 E a distance of 10.35' to a computed point;

S 25-57-46 E a distance of 49.15' to a computed point;

S 10-06-09 W E a distance of 60.50' to the point of beginning, containing 66.8 acres +/-  
of land.

THESE PARCELS ARE SUBJECT TO AND WITH THE BENEFIT OF ALL RIGHTS, RESTRICTIONS, CONDITIONS, EASEMENTS, LEASES, ENCUMBRANCES AND APPURTENANCES OF RECORD.

UNLESS OTHERWISE NOTED HEREON, THIS SURVEY PLAN SHALL NOT BE CONSTRUED AS DEPICTING THE PRESENCE, ABSENCE, OR LIMITS OF ANY OR ALL REGULATED WETLANDS OR FLOODPLAINS. ANY SURFACE WATER FEATURES SHOWN, SUCH AS STREAMS OR PONDS, ARE NOT REPRESENTED AS INDICATING LIMITS OF WETLAND RESOURCE AREAS.

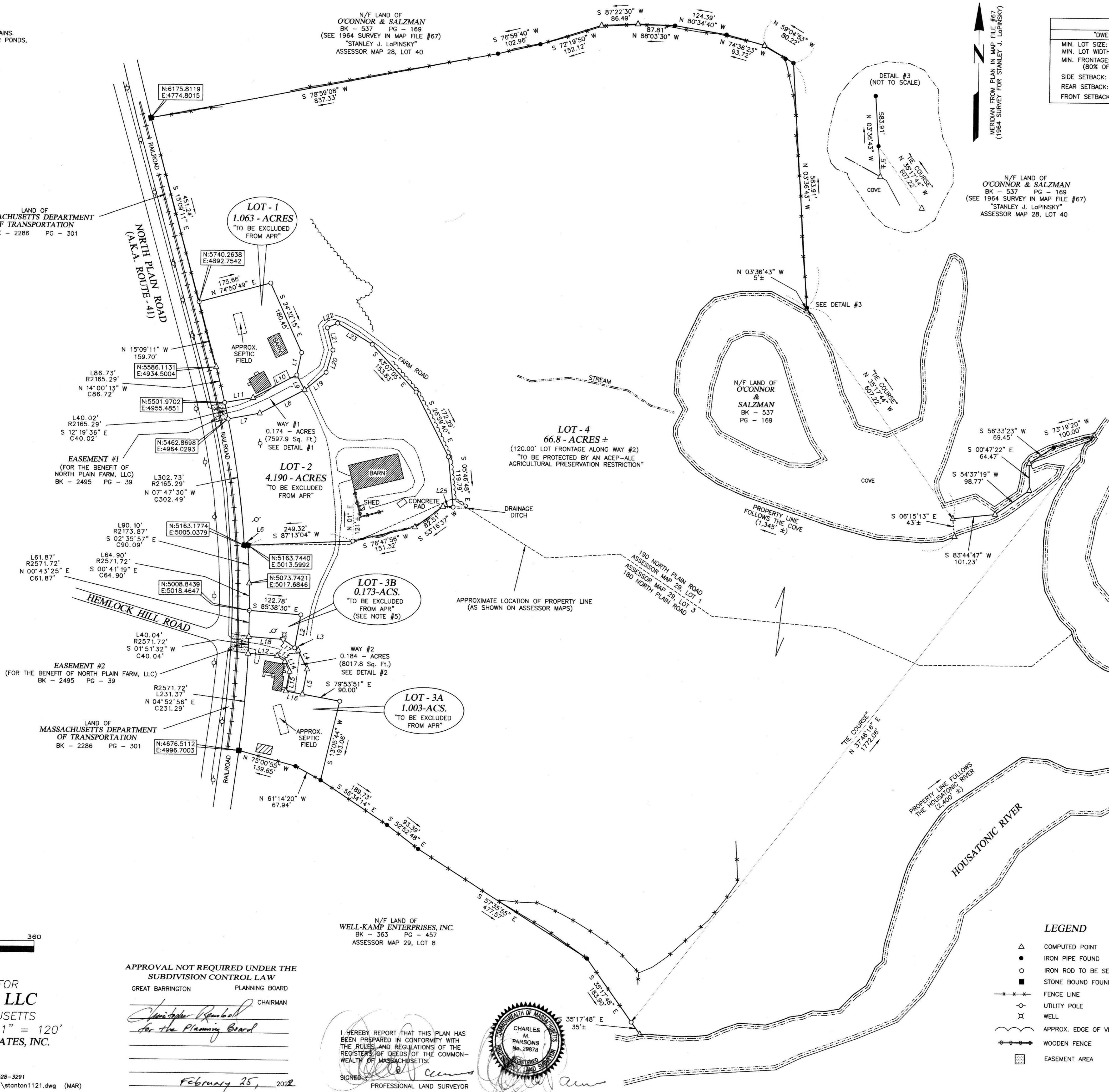
PLANNING BOARD ENDORSEMENT DOES NOT IMPLY COMPLIANCE WITH THE MASS. WETLANDS PROTECTION ACT.

RECORD OWNER: NORTH PLAIN FARM, LLC  
 LOCUS DEED: BK - 2495 PG - 35  
 PROPERTY ADDRESS: 180 & 190 NORTH PLAIN ROAD

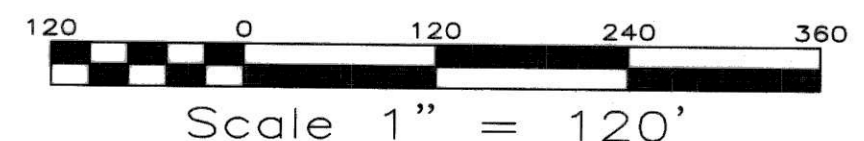
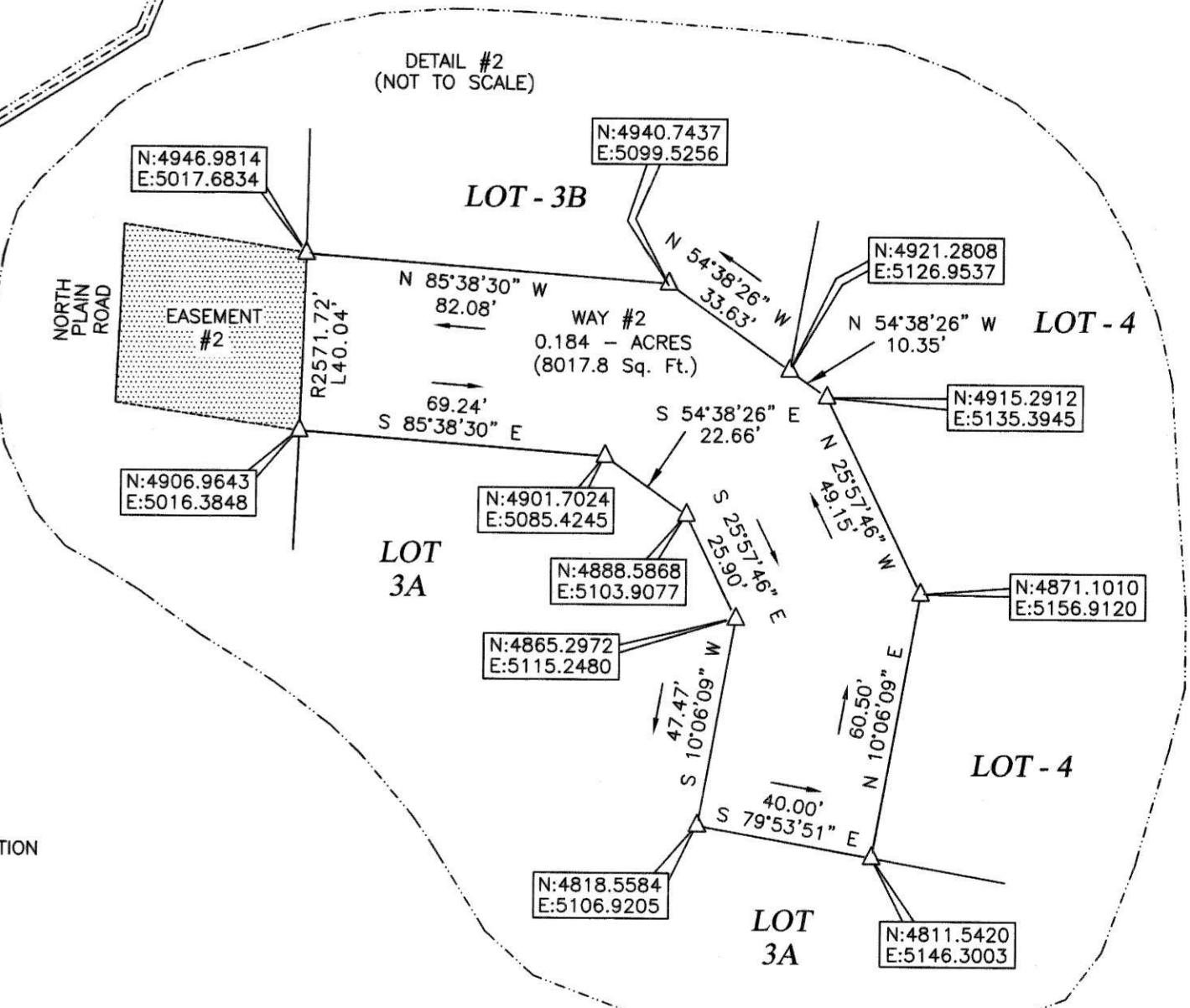
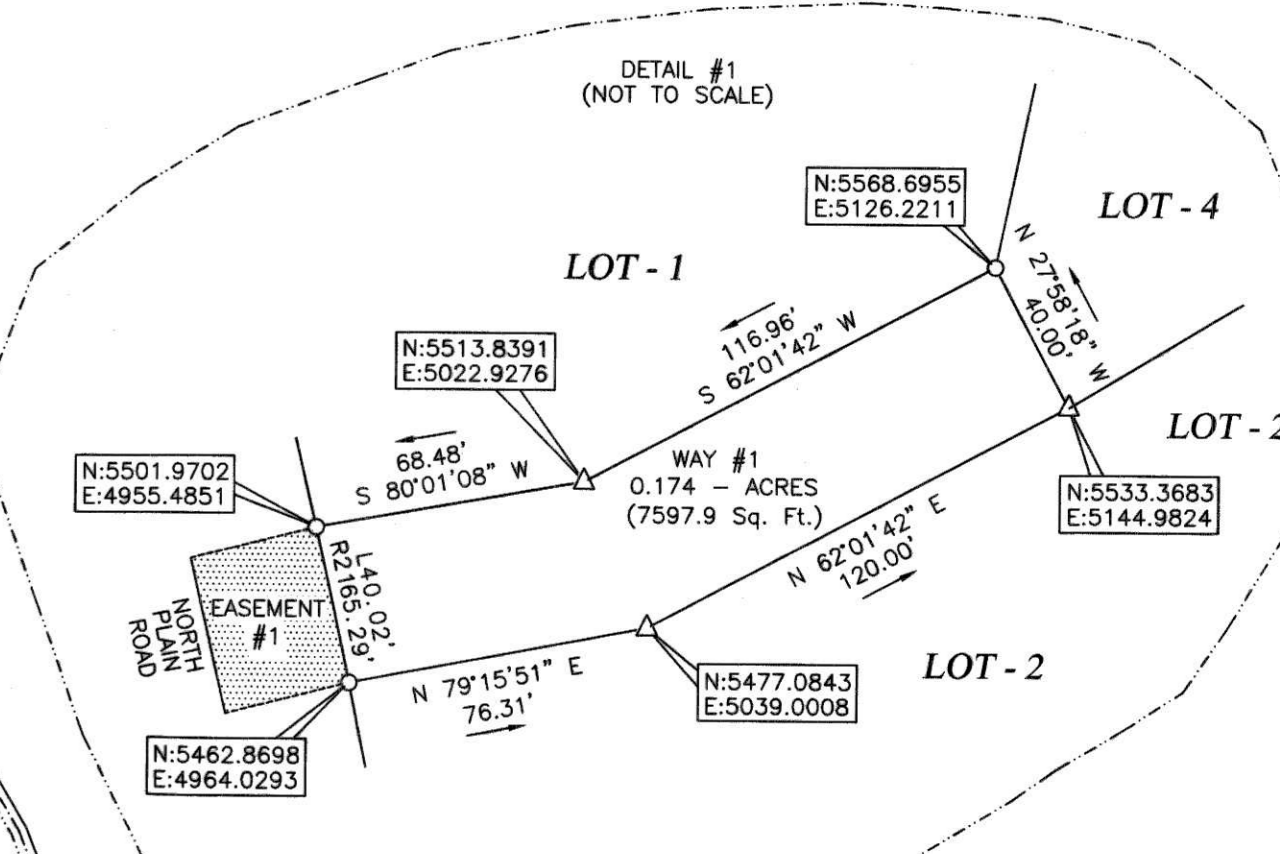
LINK BEARING	DISTANCE
L1 S 114°45' W	54.46'
L2 S 10°06'09" W	79.46'
L3 S 54°38'26" E	110.35'
L4 S 25°57'46" E	49.15'
L5 S 10°06'09" W	60.50'
L6 S 86°12'49" W	8.58'
L7 N 29°15'51" E	76.37'
L8 N 62°01'42" E	120.00'
L9 N 27°58'18" W	40.00'
L10 S 62°01'42" W	116.96'
L11 S 80°01'06" W	68.48'
L12 S 85°38'30" E	82.08'
L13 S 54°38'26" E	22.66'
L14 S 25°57'46" E	25.90'
L15 S 10°06'09" W	47.47'
L16 S 79°53'51" E	40.00'
L17 N 54°38'26" W	33.63'
L18 N 85°38'30" W	82.08'
L19 N 50°10'42" E	65.91'
L20 N 16°27'32" E	55.33'
L21 N 14°36'53" W	54.35'
L22 N 85°30'06" E	28.84'
L23 S 59°13'44" E	98.12'
L25 N 86°18'47" W	23.95'

LAND OF MASSACHUSETTS DEPARTMENT OF TRANSPORTATION  
 BK - 2286 PG - 301

- THE EASEMENT GRANTED TO SOUTHERN BERKSHIRE POWER AND ELECTRIC COMPANY BY CHARLES E. HOLLENBECK ON 190 NORTH PLAIN ROAD, (ASSESSOR'S MAP 29, LOT 1), RECORDED FEBRUARY 16, 1921 AT THE SOUTHERN BERKSHIRE REGISTRY OF DEEDS AT BOOK 230, PAGE 127 CANNOT BE PLOTTED HEREON.
- WAY #1 AND WAY #2 ARE WAYS IN EXISTENCE PRIOR TO THE ADOPTION OF THE SUBDIVISION CONTROL LAW IN GREAT BARRINGTON (01/14/1970).
- LOT #1, LOT #3A, LOT #3B, WAY #1 AND WAY #2 ARE TO BE CONVEYED TO NORTH PLAIN REALTY LLC WITH NORTH PLAIN FARM LLC RETAINING LOT #2 AND LOT #4 AND RESERVING ACCESS EASEMENTS OVER WAY #1 AND WAY #2.
- A PERPETUAL AGRICULTURAL PRESERVATION RESTRICTION IS TO BE CONVEYED TO THE MASSACHUSETTS DEPARTMENT OF AGRICULTURAL RESOURCES ON LOT #4
- LOT #3B CONTAINS A WELL SERVING LOT #3A AND IS NOT A SEPARATE BUILDING LOT.



ZONING DISTRICT: I	
"DWELLINGS"	"OTHER PERMITTED USES"
MIN. LOT SIZE: 1 ACRE	MIN. LOT SIZE: 5,000 SQ.FT.
MIN. LOT WIDTH: 150'	MIN. LOT WIDTH: 50'
MIN. FRONTAGE: 120' (80% OF LOT WIDTH)	MIN. FRONTAGE: 40' (80% OF LOT WIDTH)
SIDE SETBACK: 20'	SIDE SETBACK: 10'
REAR SETBACK: 30'	REAR SETBACK: 10'
FRONT SETBACK: 50'	FRONT SETBACK: 50'

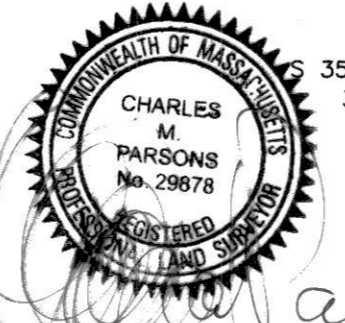


PLAN OF LAND SURVEYED FOR  
**NORTH PLAIN FARM, LLC**  
 GREAT BARRINGTON, MASSACHUSETTS  
 FEBRUARY - 2022 SCALE 1" = 120'  
**KELLY, GRANGER, PARSONS & ASSOCIATES, INC.**  
 PROFESSIONAL LAND SURVEYORS  
 312 MAIN STREET P.O. BOX 88  
 GREAT BARRINGTON, MASSACHUSETTS 01230  
 FAX (413) 528-1912 PHONE (413) 528-3291  
 C:\Carson Projects\Great Barrington\North Plain Road\stanton\stanton1121.dwg (MAR)

APPROVAL NOT REQUIRED UNDER THE  
 SUBDIVISION CONTROL LAW  
 GREAT BARRINGTON PLANNING BOARD  
 \_\_\_\_\_ CHAIRMAN  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 February 25, 2022

N/F LAND OF WELL-KAMP ENTERPRISES, INC.  
 BK - 363 PG - 457  
 ASSESSOR MAP 29, LOT 8

I HEREBY REPORT THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTRY OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.  
 SIGNED: \_\_\_\_\_  
 PROFESSIONAL LAND SURVEYOR



- LEGEND**
- △ COMPUTED POINT
  - IRON PIPE FOUND
  - IRON ROD TO BE SET
  - STONE BOUND FOUND
  - FENCE LINE
  - UTILITY POLE
  - ⊗ WELL
  - ~ APPROX. EDGE OF VEGETATION
  - WOODEN FENCE
  - EASEMENT AREA

FOR REGISTRY USE ONLY