THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

Department of Agricultural Resources
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MDAR MASSACHUSETTS DEPARTMENT OF AGRICULTURAL RESOURCES

CHARLES D. BAKER Governor | KARYN E. POLITO Lt. Governor | MATTHEW A. BEATON Secretary | JOHN LEBEAUX Commissioner

AGRICULTURAL PRESERVATION RESTRICTION PROGRAM GUIDELINES

ASSIGNMENT OF OPTION TO PURCHASE AT AGRICULTURAL VALUE

I. PURPOSE:

By purchasing Agricultural Preservation Restrictions ("APR(s)"), it is the intent of the Commonwealth to perpetually protect and preserve agricultural lands, encourage sound soil management practices, preserve natural resources, maintain land in active commercial agricultural use, and ensure resale of a land restricted by an APR at an agriculturally affordable price for continuing agricultural use. Since its establishment in 1976, a primary goal of the APR Program, has been to ensure the availability of farmland that would be sold at its agricultural value, providing an opportunity for those entering or currently engaged in commercial agriculture to acquire farmland at a price that is supported by the farming operation.

In order to ensure that the Premises remains affordable for commercial agricultural production and that its market value for other uses does not preclude its profitable use for agriculture, in 1994, the Department began purchasing as part of the APR, an option to purchase the land subject to the APR at its agricultural value ("Option"). The Department has the right to assign its Option to a person or entity that will use or facilitate the use of the Premises for commercial agricultural production.

II. CONSIDERATIONS WHEN SELECTING A PERSON OR ENTITY TO ASSIGN ITS OPTION:

A. In order to assign its Option to Purchase at Agricultural Value, the Department must find that the Potential Assignee has:

1. Complied with the terms of the Department's Request for Statement of Interest;

2. If applicable based upon ownership of land subject to an APR, not violated the terms of the APR to such an extent as the violation is detrimental to the actual or potential agricultural use of the premises;

3. Demonstrated ability to pay the FMAV and close within 120 days from the Department's notice of intent to exercise. This criterion is satisfied by providing satisfactory evidence to the Department of available funds:

    a. If purchasing with 100% cash funds, proof of satisfactory availability of funds; or

b. If obtaining financing, must provide letter of commitment for financing and satisfactory proof of ability to additional funds required for purchase price; and

4. Provided a Farm Plan[1] and Farmer Resume sufficient to demonstrate the Premises will be utilized to the fullest extent possible for commercial agriculture and if the Potential Assignee:
   a. owned or operated a Farm previously, the Farm Plan must additionally include the size of the farming operation (acreage and gross income), and number of years in business; or

   b. is a New Entry Farmer: i) the Farm Plan must list relevant degrees, courses, workshops, education and training, and ii) a Financial Plan must be provided; or

   c. intends to lease the Premises to a Farmer or New Entry Farmer: i) a proposed lease agreement or letter of intent with a Farmer or New Entry Farmer must be provided and, ii) the above referenced Farm Plan and Farmer Resume must be prepared by the Farmer or New Entry Farmer.

B. If more than one Potential Assignee satisfies the above criteria, the following additional criteria will be utilized by the Department, Potential Assignee's:

1. Ownership of other land subject to an APR;
2. Demonstrated farming history;
3. Ownership of agricultural land; and
4. Proximity of other agricultural land leased or owned.

C. If two or more Potential Assignee's remain equally qualified, the following additional criteria will be considered by the Department:

1. Whether the Potential Assignee is the Potential Purchaser; or
2. The Potential Assignee's number of Farm acres currently under production.

III. **DEFINITIONS:** As used throughout this Guideline, the words or phrases listed below shall have the following meanings:

Agricultural Preservation Restriction ("APR"): is a perpetual restriction to retain land or water areas predominately in their agricultural farming or forest use, and forbids or limits certain property development rights and uses.

Appraisal: a current (not more than 1 year old) valuation of property by the estimate of an authorized person conducted in accordance with the "Guidelines for Agricultural Appraisals" prepared by the Department and in effect at the time of the Waiver request.

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[1] If the Potential Assignee is the Potential Purchaser, the Farm Plan submitted to the Department with the request for Waiver will be considered the Farm Plan for purposes of this policy. The Potential Purchaser may provide the Department with additional information that supplements the Farm Plan, however any additional information proposing new agricultural uses will not be considered.

APR Owner: the record title owner of the APR.

Business Plan: a comprehensive narrative that sets forth the goals and objectives for the Farm business and strategies to achieve them including at a minimum: a description of Farm resources and buildings and how they are to be used, personnel qualifications and responsibilities, production information and products to be sold, a description of markets and marketing strategies, identification of any needed capital improvements, and details on how proposed agricultural operation on the Premises will contribute to the agricultural industry and food production in Massachusetts, employment considerations (number of employees in existence vs. need to be hired), how the Premises will operate in conjunction with other farm land owned or leased by the Prospective Purchaser (if applicable), and details on business partner(s) (if applicable).

CPI Amount: an amount equal to the FMALV of the Premises as determined by the appraisal relied upon for the acquisition of the APR 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 the appraisal relied upon for the acquisition of the APR to the date of execution of the bona fide Purchase and Sale Agreement.

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

Farm: the Premises on which an agricultural use occurs. The Premises shall be deemed to be in agricultural use when primarily and directly used in raising 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. Also agricultural use shall include horticultural use when primarily and directly used in raising fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flower, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for the purpose of selling these 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 the 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 and directly used in a related manner which is incidental to those uses and represents a customary and necessary use in raising these products and preparing them for market.

Farmer: an individual or entity who is engaged in an active agriculture use of land for commercial purposes.

Farm Plan: a narrative that includes, at a minimum, how the Premises will be utilized to the fullest extent possible for commercial agriculture for a five (5) year period including but is not

limited to, the following: identification of all land uses on the Farm, crops to be grown, acreage for each crop, livestock to be raised, pasture acreage, use of existing structures on Premises (if applicable), and need for additional structures (if applicable) and timeline for implementation of the plan. The narrative shall include a map or diagram identifying each land use proposed for the Farm.

Farmer Resume: a brief account of the Potential Purchaser's professional farm experience and qualifications.

Fair Market Agricultural Value ("FMAV"): the combined total of the Fair Market Agricultural Land Value and the Fair Market Agricultural Business Value and the Fair Market Agricultural Dwelling Value.

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 the APR by the Department. 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 APR Owner, but excluded from the APR ("non-APR land"), when such business on non-APR land is integral to the agricultural business on the Premises.

Fair Market Agricultural Dwelling Value ("FMADV"): the appraised replacement value of a dwelling(s) on the Premises.

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 the APR to the Department. FMALV is applicable at both the time of the Department's purchase of the APR 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.

Financial Plan: a plan, whether narrative or otherwise, that demonstrates the Potential Purchaser can support the operation of the Premises without adversely affecting long term viability of the Premises. Such a plan should, at a minimum, include: a net worth statement, an estimate of start-up costs, identification of costs of production, gross sales and net farm income, and income & expense projections for at least three years.

New Entry Farmer: a Farmer who has less than two years experience managing or owning a Farm.

Premises: the acres of land and buildings and structures thereon that was described in the Exhibit A attached to and incorporated into the APR.

Potential Assignee: the person or entity who responded to the Department's Request for Statement of Interest and has expressed interest in being assigned the Department's Option to Purchase at Agricultural Value. If the entity is a corporation or limited liability company, the Department must be provided the articles of incorporation demonstrating the corporation was formed and the nature of the business to be transacted is owning and operating a Farm. If the entity is a partnership, the Department must be provided partnership agreement which evidences partnership was formed for the purpose of owning and operating a Farm.

Potential Purchaser: the person or entity who has entered into a bona fide purchase and sale agreement with the APR Owner.

Purchase Price: the price listed for the Premises in the purchase and sale agreement by and between the APR Owner and the Potential Purchaser.

Waiver: a document in recordable form issued by the Department that waives the Department's right to purchase or assign the right to purchase the Premises.

IV. AUTHORITY: Most APRs since June 23, 1994 include an Option which grants at the Department's discretion the right to purchase or assign the right to purchase the Premises at its agricultural value.

Adopted May 18, 2015

John Lebeaux
Commissioner