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COMMONWEALTH OF MASSACHUSETTS  
AGRICULTURAL PRESERVATION RESTRICTION

RT. 9, DALTON AND WINDSOR, MA.

I. James Edgar Bardin, also known as J. Edgar Bardin of Dalton , Berkshire County, Massachusetts (the "Grantor"), being married, for consideration of Two Hundred Sixty Thousand Dollars (\$260,000) paid, grant to the Commonwealth of Massachusetts, acting through the Commissioner of Food and Agriculture, (the "Commissioner") with an address at 100 Cambridge Street, Boston, Massachusetts, its successors and assigns (the "Grantee"), an Agricultural Preservation Restriction (the "Restriction"), together with a Right of First Refusal as set forth in Exhibit B attached hereto, in perpetuity on those parcels of land located in the Towns of Dalton and Windsor, Berkshire County, and described in Exhibit A attached hereto and incorporated herein by reference (the "Premises") in accordance with the following terms and conditions:

A. The Grantor covenants for himself, his heirs, devisees, legal representatives, successors and assigns, that the Premises will at all times be held, used and conveyed subject to, and not used in violation of, the following restrictions as said restrictions may be limited or affected by the provisions of Paragraph B below:

- (1) Except for structures existing on the Premises at the time of the execution of this Restriction, no building, residential dwelling, tennis court, artificial swimming pool, asphalt driveway, road, parking lot, mobile home, utility pole, tower, conduit or line or other temporary or permanent structure or improvement requiring construction shall be constructed, placed or permitted to remain on the Premises.
- (2) No loam, peat, gravel, soil, sand, rock or other mineral resources, or natural deposits shall be excavated, dredged, or removed from the Premises unless approved by the Grantee under paragraph C, herein.
- (3) No soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, radio-active or hazardous waste or other substance or material whatsoever shall be placed, stored, dumped or permitted to remain on the Premises except in connection with the agricultural use of the Premises.
- (4) No use shall be made of the Premises, and no activity thereon shall be permitted which is



or may be inconsistent with the intent of this grant, being the perpetual protection and preservation of agricultural lands, as determined by the Agricultural Lands Preservation Committee. No activity, including, but not limited to, drainage or flood control activities shall be carried on which is detrimental to the actual or potential agricultural use of the Premises, or detrimental to water conservation, soil conservation, or to good agricultural and/or forestry management practices or which is otherwise wasteful of the natural resources of the Commonwealth of Massachusetts.

- (5) The Premises shall be conveyed as a unit, whether or not said Premises are comprised, as of the date of this Restriction, of more than one separate legal parcel. No subdivision or division of the Premises, or any portion thereof, into two or more lots, whether new or existing as of the date of this Restriction, shall be permitted except that in accordance with the procedures set forth under Section C herein, the Grantee may, at its discretion, approve such division of land as they deem necessary to further the purposes of this Restriction and General Laws, Chapters 184 and 132A.
- (6) No use or development of the Premises other than for agricultural purposes shall be permitted, including the construction and/or placement of dwelling unit(s) on the premises.

B. Notwithstanding any provision of this instrument to the contrary, the Grantor hereby reserves to and for himself and his heirs, devisees, legal representatives, successors and assigns, all other customary rights and privileges of ownership including the right to privacy and to carry out regular agricultural practices, and the right to conduct or permit the following activities on the Premises:

- (1) The maintenance and use of existing trails and farm and wood roads on the Premises substantially in their present condition or as reasonably necessary for the use thereof or hereinafter permitted.
- (2) The construction or placing of buildings or structures for agricultural purposes only, including buildings for related retail sales, structures for housing seasonal agricultural employees or other agriculturally related purposes, all subject to the prior written approval of the Grantee as provided in Paragraph C thereof.
- (3) The installation, maintenance, repair, replacement, removal and relocation of utility facilities and services over the Premises for the purpose of providing utility services to the Premises and unrestricted land of the Grantor, and the right to grant easements over the Premises for such utility purposes in accordance with the provisions of Massachusetts General Laws,

Chapter 184, Section 32. As used herein, the term "utility facilities and services" shall not include sanitary disposal systems serving any residential or non-residential use of land.

C. The parties hereby covenant and agree that prior to the construction of any buildings or structures provided for in Paragraph B (2) and prior to all other approvals required from the Grantee pursuant to this Restriction, the following procedure shall be followed:

- (1) The Grantor shall notify the Grantee in writing of any intended use or intent to engage in any activity when such use or activity (including construction) requires approval hereunder, and shall submit to the Grantee, plans and such other information as the Grantee requires to reasonably determine that the use, activity, structure or building is consistent with the purpose of the Agricultural Preservation Restriction. Prior to making an application for approval under this section, the Grantor shall not seek to secure other applicable permits required by local law for an intended use, activity, or structure requiring approval hereunder.
- (2) The Grantee shall approve, with or without conditions, only upon finding that (a) the proposed use, activity, structure or building is consistent with this Agricultural Preservation Restriction as defined by General Laws, Chapters 184 and 132A, (b) that said use, activity, structure or building shall not defeat or derogate from the intent of this Agricultural Preservation Restriction to provide for the perpetual protection and preservation of agricultural lands. If, based on said findings, the Grantee shall approve or approve with conditions said request, it shall issue a Certificate of Approval suitable for recording. Said certificate shall include the language of Paragraph A (5), of this Restriction. If the Grantee is unable to make the findings necessary for approval, it shall state in writing its reason(s) therefor to the Grantor.
- (3) The Grantee reserves the right to inspect an approved use, activity, structure or building for conformity with its Certificate of Approval. In the case of a building or structure, upon its satisfactory completion in accordance with said approval, the Grantee shall issue to the Grantor a Certificate of Completion in recordable form, which when executed by the Commissioner of Food and Agriculture and duly recorded shall be binding on all co-holders if any, of this Restriction.

The foregoing Restriction is authorized by Massachusetts General Laws, Chapter 184, Sections 31 through 33, and Chapter 132A, Section 3 and Sections 11A through 11D, and otherwise by

law, and is intended to ensure the protection and preservation of agricultural lands.

This Agricultural Preservation Restriction shall be administered on behalf of the Grantee by the Commissioner as provided by General Laws, Chapter 132A, Section 11A. This Restriction shall be enforced by the Grantee as it in its sole discretion may decide. Nothing herein shall impose upon the Grantee any duty to maintain or require that the Premises be maintained in any particular state or condition, notwithstanding the Grantee's acceptance hereof.

This Agricultural Preservation Restriction hereby conveyed does not grant to the Grantee, to the public, or to any other person any right to enter upon the Premises, except that the Grantor hereby grants to the Grantee and its successors at law thereto, the right to enter the Premises in a reasonable manner and at reasonable times, for the purpose of inspecting the Premises to determine compliance herewith, of enforcing this Agricultural Preservation Restriction, or of taking any and all actions with respect to the Premises as may be necessary or appropriate with or without order of court, to remedy or abate any violation hereof. The 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 Agricultural Preservation Restriction.

This Agricultural Preservation Restriction hereby imposed is in gross and is not for the benefit of or appurtenant to any particular land and shall be assignable to any other governmental or any non-governmental non-profit organization whose purposes include conservation of natural areas. The burden of this Agricultural Preservation Restriction hereby imposed 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, by the Grantee by the procedures established by Section 32 of Chapter 184 of the General Laws, as amended and otherwise by law.

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If any section or provision of the 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 the 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 deed Restriction is ambiguous, it shall be interpreted in accordance with the policy and provisions expressed in the General Laws, Chapter 184, Sections 31 through 33, and Chapter 132A, Sections 3 and Sections 11A through 11D, and the regulations duly promulgated in accordance with said Chapters.

This instrument is not a deed. It does not purport to transfer a fee interest to the Grantee. No Massachusetts deed excise stamps are affixed hereto as none are required by General Laws 64D, Section 1, as amended.

WITNESS the execution hereof under seal this 20  
day of March, 1990.

James Edgar Bardin  
JAMES EDGAR BARDIN  
ALSO KNOWN AS  
J. EDGAR BARDIN

COMMONWEALTH OF MASSACHUSETTS

Berkshire Co

, ss

MARCH 30

, 1990.

Then personally appeared the above-named  
**JAMES EDGAR BARDIN** and ALSO KNOWN AS **J. EDGAR BARDIN**  
and acknowledged the foregoing instrument to be ~~their~~ free and  
deed before me.

Mary Jane White  
Notary Public  
My Commission Expires DEC 23, 1994

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APPROVAL OF THE COMMONWEALTH OF MASSACHUSETTS

The undersigned Commissioner of Food and Agriculture of the Commonwealth of Massachusetts hereby certifies that the foregoing Agricultural Preservation Restriction granted by **James Edgar Bardin** to the Commonwealth of Massachusetts with respect to parcels of land located in Dalton and Windsor, Massachusetts described therein, has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32 through 33 and Chapter 132A, Section 11A through 11D.

Date: 12/17/90

COMMONWEALTH OF MASSACHUSETTS

By: Gregory Watson  
Commissioner, Department of  
Food and Agriculture

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

Then personally appeared the above-named Gregory Watson and acknowledged the foregoing to be his free act and deed before me.

Tara Zadeh  
Notary Public for DFA  
My Commission Expires 6/3/94

Approved as to Form  
Department of the Attorney  
General

By: Mark B. L.

Date: 12/18/90

Approved in accordance with  
Chapter 579 of the Acts of  
1980, as amended.

By: John A. Bradshaw  
Deputy Commissioner of  
Capitol Planning and  
Operations

Date: 18 Dec 90

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EXHIBIT A

PARCEL I - Land in Windsor and Dalton, Massachusetts

Beginning at an iron pipe found on the Windsor/Dalton town line and shown on a plan prepared by Brown Associates, Inc., dated May 1, 1984 of land conveyed to by the grantor to A. Michael Brown et ux (which plan is recorded in the Berkshire Northern District Registry of Deeds as Plan #181 in drawer 9);

Thence in the following five courses and distances along land of said Brown, in Windsor, all as shown on the above mentioned plan:

North 23 degrees 38 minutes 11 seconds east 265.57 feet to an iron pipe found;

North 38 degrees 33 minutes 37 seconds east 39.06 feet to an iron pipe set;

North 78 degrees 04 minutes 18 seconds west 278.00 feet to an iron pipe set;

South 70 degrees 36 minutes 28 seconds west 76.95 feet to an iron pipe set;

North 78 degrees 04 minutes 18 seconds west 350.00 feet to an iron pipe set at the Windsor/Dalton town line;

Thence northeasterly in the Windsor/Dalton town line to a point, being the northeasterly corner of the premises herein described, and a corner of land of the Commonwealth of Massachusetts, now or formerly;

Thence northwesterly, in Dalton, along the southerly line land of the Commonwealth of Massachusetts, now or formerly, 1275 feet, more or less, to an iron bar found at a corner of land, now or formerly, of Frederick G. Crane, Jr.;

Thence northwesterly along the southerly line land of said Frederick G. Crane, Jr., now or formerly, 221.77 feet, more or less, to an iron bar at the southwesterly corner of land of Peter I. Bardin, now or formerly, being the same conveyed to him by deed of the grantor dated December 14, 1982 recorded in the Berkshire Middle District Registry of Deeds in Book 1067, Page 359;

Thence continuing northwesterly along said land of Peter I. Bardin to the center line of the old Main Road from Dalton to Cheshire (sometimes known as the Chalet Road or Duncan Brook Road, and earlier known as the Road to Flintstone);

Thence in a southeasterly direction along the center line said old Main Road from Dalton to Cheshire to land, now or formerly, of Western Massachusetts Electric Company;

Thence southerly along the northerly line of land, now or formerly, of Western Massachusetts Electric Company a distance of 711 feet, more or less, to the northerly line of Massachusetts State Highway, Route 9;

Thence along the said northerly line of said State Route 9 to the point of beginning.

Subject to and with the benefit of a Boundary Line Agreement between Crane & Co., Inc. and the grantor herein, dated June 28, 1982, and recorded in the Berkshire Middle District Registry of Deeds in Book 1060, Page 228 (see also plan recorded in said Registry in Drawer E, #8).

Excepting and reserving from the above described premises a parcel of land located on the easterly side of the said old Main Road from Dalton to Cheshire conveyed by the grantor herein to the Town of Dalton, by deed dated November 10, 1958, and recorded in the Berkshire Middle District Registry of Deeds in Book 681, Page 251&c., and also excepting and reserving to the grantor, his heirs, successors and assigns the right of way previously reserved by the grantor in said deed for purposes of ingress and egress to real property located easterly of the parcel deeded to the town of Dalton.

Excepting and reserving from the above described premises that parcel of land continuing 9.23 acres, more or less, described in the Berkshire Middle District Registry of Deeds in Book 678, Page 96&c., and excepting and reserving all from this grant, to the grantor, his heirs, successors and assigns, a right of way for the usual purposes of a street or way over a way 50 feet in width and lying between the northerly line of Route 9 and the southerly boundary of the parcel herein reserved which 50 foot wide right of way shall be centered on the existing blacktop way.

Meaning and intending to convey and hereby conveying all of the grantor's land located northerly of the State Route 9 in Windsor and Dalton, except for the above described 9.23 acres parcel.

**PARCEL II - Land in Dalton, Massachusetts**

A parcel of land on the southerly side of said Massachusetts State Highway, Route 9, beginning at the intersection of said southerly sideline of Route 9 with the center line of Cleveland Road, so called;



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Thence northeasterly along the southerly sideline of Route 9 a distance of 180 feet, more or less, to land now or formerly of Western Massachusetts Electric Company;

Thence southerly on land now or formerly of Western Massachusetts Electric Company in three courses a total distance of 776.66 feet to land now or formerly of Joseph J. Musante;

Thence easterly along a wire fence and land of said Musante in three courses a total distance of 755 feet, more or less to the center line of said Cleveland Road;

Thence northerly in the center line of Cleveland Road a distance of 350 feet, more or less, to the place of beginning.

For grantor's title see deed of Dorothy B. Ford, et al, dated June 29, 1981, and recorded in the Berkshire Northern District Registry of Deeds in Book 706, Page 1114, see also deed dated July 22, 1956, and recorded in the Berkshire Middle District Registry of Deeds in Book 651, Page 525&c.

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EXHIBIT B

**RIGHT OF FIRST REFUSAL FOR PURCHASE OF REAL ESTATE**

Attached Hereto and Made a part of  
Agricultural Preservation Restriction to  
Commonwealth of Massachusetts

I, **James Edgar Bardin** also known as **J. Edgar Bardin**, of Dalton, Berkshire County, Massachusetts (the "Owner") for good and valuable consideration, receipt of which is hereby acknowledged, do hereby grant a Right of First Refusal to the Commonwealth of Massachusetts acting through the Commissioner of Food and Agriculture (the "Commissioner") for the purchase of land located at Route 9 and Cleveland Road, Dalton and Windsor, Berkshire County, Massachusetts described in Exhibit A of this Instrument (the "Property").

A. The owner hereby agrees that so long as the Property is subject to the Agricultural Preservation Restriction, the Owner will not undertake to sell the Property to any third party without first offering to sell the same to the Commonwealth for the price (the "Offering Price") at which the Owner is willing to sell the Property to others on the open market. It is understood that this Right of First Refusal shall constitute a restriction that runs with the land.

B. Any such offer made by the Owner to the Commonwealth pursuant to this agreement shall be carried out in accordance with the following procedures:

(i) The Owner shall give the Commonwealth written notice stating the Offering Price and other principal terms and conditions on which the Owner is willing to sell the Property, including any encumbrances subject to which the Property is to be conveyed and containing an offer by the Owner to sell the Property to the Commonwealth on such terms and conditions, and the Commonwealth shall then have the right for a period of sixty (60) days after receipt of such notice (the "Offering Period") to elect, by written notice to Owner, to purchase the Property in accordance with said offer.

(ii) If the Commonwealth shall for any reason fail to accept such offer in writing within sixty (60) days after its receipt as aforesaid (or having accepted such offer shall fail to complete such purchase as hereinafter provided), the Owner shall thereafter be free to sell the Property so offered to any purchaser the Owner shall determine at the same price and on the same terms and conditions provided that the deed conveying the Property has been recorded within one (1) year after the expiration of the Offering Period. If the Owner determines to alter the terms of such sale to call for a lower purchase price or other terms which are materially different from those set forth in the offer to the Commonwealth, then the Property shall be once again offered to the Commonwealth on such amended terms in accordance with the offering procedure herein set forth; and on each occasion thereafter that the Owner determines to further modify the terms of sale, the Owner shall offer the Property to the Commonwealth on such modified terms.

(iii) In the event that the Commonwealth shall elect to purchase the property in the manner aforesaid, the deed shall be delivered and the consideration paid at the Franklin County Registry of Deeds at 9 o'clock a.m. on the one hundred twentieth (120) day after the date of receipt by the Owner of such notice of election to purchase or, if a Saturday, Sunday or holiday, on the next business day thereafter, and said deed shall convey a good and clear record and merchantable title to the Property free of all encumbrances, except as set forth in the offer, and the Property shall be in the same condition as it was at the time of the acceptance of such Offer, reasonable wear and tear and use thereof excepted.

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(iv) If Owner shall make and record with said Registry an affidavit stating (1) that a conveyance to a third party by the Owner is made pursuant to the provisions hereof and following notice to the Commonwealth containing an offer to sell as hereinabove provided and stating the date that such notice was given; (2) that the Owner has not received from the Commonwealth written notice of election to purchase as above provided, or that the Commonwealth has given notice of election to purchase but has failed to complete the same in accordance with the provisions hereof; and (3) that the conveyance is made at a price which is not lower than the Offering Price as aforesaid and otherwise on materially the same terms as set forth in the offer, then such affidavit shall be conclusive evidence of compliance with the requirement of this paragraph with respect to such conveyance in favor of the purchaser therein and all persons claiming through or under such purchaser.

C. The obligations of the Owner under this Right of First Refusal shall not apply to (i) gifts for nominal consideration to the Owner's spouse and or to any issue or parent of the Owner, (ii) any first mortgage on the Property including foreclosure deeds or deeds in lieu of foreclosure given thereunder, or (iii) the devise or conveyance of said Property by the will or intestacy of the Owner his heirs, successors or assigns, or (iv) by operation of law. 920

D. Any offer to sell or acceptance made pursuant to this Right of First Refusal and any notices given by one party to another hereunder shall be in writing and shall be deemed delivered if delivered in hand or mailed, postage prepaid by certified or registered mail return receipt requested, addressed in the case of the Owner to such address as may be specified in such notice of offer or if none, then to the Property, and in the case of the Commonwealth to Commonwealth of Massachusetts, Department of Food and Agriculture, 100 Cambridge Street, Boston, MA 02202.

E. This Right of First Refusal is assignable to any other governmental or any non-governmental, non-profit organization whose intended uses include furtherance of the purposes of the Agricultural Preservation Restriction as recorded herewith, all at the discretion of the Commonwealth; provided however that no such assignment shall become effective unless the same is made in writing and duly recorded with said deed. Any waiver or declination of the Commonwealth's rights under a specific offer made by the Owner hereunder shall be in writing signed by the Commissioner of Food and Agriculture or his duly constituted agent.

F. The rights and obligations of each Owner hereunder shall inure to and be binding upon the Owner and the Owner's heirs, legal representatives, successors in title and assigns.

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