

TOWN OF WESTFORD

AGRICULTURAL PRESERVATION RESTRICTION

3

March 1999

1998

I. STATEMENT OF PURPOSE

By obtaining this Agricultural Preservation Restriction, it is the intent of the Town of Westford to perpetually protect and preserve agricultural lands, encourage sound soil management practices, preserve natural resources, maintain land in active agricultural use, and ensure affordable resale values of agricultural land. No activity 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 Town of Westford and the Commonwealth of Massachusetts shall therefore be permitted.

II. DEFINITIONS

When used throughout this entire document, the following words or phrases shall have the following meaning:

1. Abandoned: land that has not been actively utilized for agricultural uses for a period exceeding three years unless the non-activity is recommended in a current USDA/SCS plan.
2. Actively Engaged: deriving substantial annual farm income from agricultural uses of all available areas and the two contiguous parcels as referenced in Section VI of the Premises.

3. Agricultural Use: 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 M.G.L. c. 61A, §1, as amended, and also horticultural uses, including but not limited to, 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 program certified by the state forester to be a planned program to improve the quantity and quality of a continuous crop for the purpose of selling such products in the regular course of business, as defined in M.G.L. c. 61A, §2, as amended.
4. Condition: including, but not limited to; an easement, restriction, covenant, right, option to purchase at agricultural value, improvement, land exchange, or any other requirement or use prohibition.
5. Permanent Structure: any structure that requires the grading of soil, or the excavation for footings or foundations.
6. Premises: approximately 3 acres of land located on Boston Road in the Municipality of Westford, in Middlesex County, Massachusetts as more fully described in Exhibit A, attached hereto and incorporated by reference into this document.
7. Temporary Structure: a structure that does not have a permanent foundation, or does not substantially alter or otherwise affect the soil profile.

III. TERMS AND CONDITIONS

We, KEITH A. AND NANCI BOHNE, of Westford, Middlesex County, Massachusetts (the "Grantors"), for consideration of One Hundred

seventy-five Thousand Dollars (\$175,000.00) paid, grant to the Town of Westford, acting by and through its Board of Selectmen (the "Grantees"), with an address at 55 Main Street, Westford, Massachusetts, its successors and assigns, an Agricultural Preservation Restriction (the "Restriction") together with a "Right of First Refusal" as set forth in Exhibit B, attached hereto and incorporated by reference into this Restriction, in perpetuity on the Premises, in accordance with the following terms and conditions listed below.

By so doing, the Grantors grant all development rights (except as specifically reserved herein) that are now or hereafter allocated to, implied, reserved or inherent in the Premises to the Grantees, and the parties agree that these development rights are terminated and extinguished, except for such development rights as may be specifically approved pursuant to paragraph D hereof.

A. RETAINED RIGHTS

Notwithstanding any provision of this instrument to the contrary, the Grantor(s) hereby reserves to and for themselves and their heirs, devisees, legal representatives, successors and assigns, the customary rights and privileges of ownership not inconsistent with the statement of purpose herein, including but not limited to, the right to:

- (1) Privacy and to carry out regular agricultural practices.

- (2) 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 their continued use for agricultural uses.

The installation, maintenance, repair, replacement, removal and relocation of electric or gas facilities and services over or under the Premises for the purpose of providing electrical or gas utilities to the Premises for agricultural uses or for other approved uses, and the right to grant easements over or under the Premises for these utility purposes.

- (4) The construction or placement of temporary structures for agricultural uses.
- (5) The maintenance of the existing farmstand-country store building and the continuation of the present use thereof.
- (6) The maintenance of three existing hoop-greenhouses and the use thereof as greenhouses.

B. PROHIBITED USES

The Grantors covenant for themselves, their heirs, devisees, legal representatives, successors and assigns, that the Premises will at all times be held, used and conveyed subject to, and not in violation of, the following restrictions:

- (1) Other than the retained rights set forth in paragraph A above, no use shall be made of the Premises, and no activity thereon shall be permitted, which is inconsistent with the intent of this grant.
- (2) No non-agriculturally related temporary or permanent structure, residential dwelling, tennis court, inground swimming pool, recreational horse riding facility, golf course, golf range or airport landing strip shall be constructed, placed or permitted to remain on the Premises, except structures existing on the Premises at the time of the execution of this Restriction and expansions thereto which may receive approvals pursuant to paragraphs C and D below.

- (3) No 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 as required for the use of the Premises for normal agricultural activities.
- (4) The Premises may not be used for:
 - (a) Transferring development rights to any property, whether or not adjacent to the Premises;
 - (b) Calculating permissible lot yield of the Premises, or of any other property;
 - (c) Use in any calculations involving development of any other property, whether or not adjacent to the Premises, in any manner whatsoever.

C. ACTIVITIES WHICH REQUIRE PRIOR WRITTEN APPROVAL

The following activities shall not be conducted without the prior written approval of the Grantees in accordance with the procedures set forth in section D of this Restriction:

- (1) The construction or placing of permanent structures for housing seasonal agricultural employees or other agricultural uses and non-agricultural uses, including related retail sales.
- (2) The excavation, dredging, depositing or removal from the Premises of loam, peat, gravel, soil, sand, rock or other mineral resources, or natural deposits in accordance with a USDA Soil Conservation Service Plan.
- (3) The maintenance or improvement of a septic or other underground sanitary system which exists on the Premises, or the construction of a septic or other underground sanitary system, for the benefit of an existing dwelling on the Premises.
- (4) The subdivision, recording of a subdivision plan, partition, or any other division of the Premises, or any portion thereof, into two or more parcels, even in the event that the Premises is comprised of one or more deeded parcels at the date of this Restriction. No

subdivision shall be approved without the condition that new Agricultural Preservation Restrictions be recorded on the subdivided, partitioned, or otherwise divided parcels.

- (5) The use of the Premises for non-agricultural uses except as provided in paragraph A above.
- (6) The construction or placement of an asphalt driveway, road, parking lot, utility pole, tower, conduit or line in support of a temporary or permanent structure or improvement, for the benefit of the Premises only.

D. APPROVAL PROCESS FOR PERMITTED ACTIVITIES

- (1) The Grantors covenant for themselves, their heirs, devisees, legal representatives, successors and assigns, that prior to undertaking any activity described in section C, the following procedure shall be followed:
 - (a) The Grantors shall file a completed written application for approval with each Grantees.
 - (b) The application shall include:
 - i) a copy of a current Farm Conservation Plan, prepared by the U.S.D.A. Soil Conservation Service, when requested by the Grantees; and
 - ii) any other information and plans as the Grantees of this Restriction require to reasonably determine that the intended use, activity, structure or building is consistent with the purpose of this Restriction, as stated in the Statement of Purpose.
 - (c) Prior to making an application for approval under this section, the owner shall not secure other applicable permits required by local or state law.
- (2) Within 90 days of receipt of the completed application, the Grantees may approve the application, with or without conditions, only upon findings by Grantees that:
 - (a) the proposed use, activity, structure or building is authorized by this Restriction and General

Laws, Chapter 184 and 132A;

- (b) the use, activity, or structure shall not defeat nor derogate from the intent of this Restriction.
- (3) No application for the use of the Premises or the buildings thereon for non-agricultural uses, as provided for in section C(1) and C(5), shall be approved unless the conditions of paragraph D(2) above are met, and the approval is:
- a) to a farmer(s) actively engaged in full-time commercial farming;
 - b) for an activity incidental to the agricultural use of the farm;
 - c) given when the activity will not impair the agricultural viability of the soil;
 - d) given when the activity occurs in existing structures or expansions thereof which may be approved hereunder;
 - e) given when no major renovations of existing structures are required; and
 - f) given when no major new construction is required;
 - g) not to survive transfer of ownership of the premises to any person not actively engaged in full-time commercial farming of the premises and the two contiguous sections of property as described in deeds recorded at the Middlesex North Registry of Deeds at Book 2201, Page 621 and Book 2421, Page 433.
- (4) If, based on its findings, the Grantees approve or approve with conditions the application, they shall jointly issue a "Certificate of Approval" suitable for recording.
- (5) If the Grantees are unable to make the findings necessary for approval, they shall state in writing their reasons for denial of the application and shall mail a copy of the denial to the applicant within 90 days of receipt of the completed application.

E. ENFORCEMENT OF THE TERMS AND CONDITIONS

- (1) The Grantors grant to the Grantees, and their successors at law, the right to enter the Premises in a reasonable manner and at reasonable times, for the purposes of:
 - (a) inspecting the Premises to determine compliance with this Restriction or a Certificate of Approval;
 - (b) enforcing this Restriction; and
 - (c) any other action which may be necessary or appropriate, with or without order of court, to remedy or abate any violation of this Restriction.
- (2) In the event of a violation of the terms of this Restriction, the Grantees reserve the right to pursue any remedy available at law and equity, including injunctive relief.
- (3) The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantees for enforcement of this Restriction.

F. AFFIRMATIVE COVENANT

The Grantors agree for themselves, their heirs, devisees, legal representatives, successors and assigns, that the Premises shall remain in active agricultural use, and the land shall not be abandoned, except in accordance with a USDA Soil Conservation Service Farm Management Plan, approved by the conservation district for the locality in which the Premises is located. The Grantors and any successors in title shall be liable for any non-compliance with the terms of this Restriction which occurs during their ownership of the Premises.

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IV. AUTHORIZATION

The foregoing Restriction is authorized by Massachusetts General Laws, Chapter 184, Sections 31 through 33, 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 Grantees by the Town of Westford Board of Selectmen. This Restriction shall be enforced by the Grantees as they in their sole discretion may decide. Nothing herein shall impose upon the Grantees any duty to maintain or require that the Premises be maintained in any particular state or condition, notwithstanding the Grantees' acceptance hereof.

Except as otherwise provided herein, this Restriction does not grant to the Grantees, 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. The burden 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, by the Grantees by the procedures established by Section 32 of Chapter 184 of the General

Laws, as amended and otherwise by Article 97 of the Amended Articles of the Massachusetts Constitution and otherwise by law.

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 as exist and are in effect as the date of this instrument.

V. TRANSFER OF PREMISES

No interest in the premises shall be transferred or alienated unless said transfer or alienation is in conjunction with a transfer or alienation of the two contiguous orchard parcels which along with the Premises are described in deeds recorded at the Middlesex North Registry of Deeds at Book 2201, Page 621 and Book 2421, Page 433.

This instrument is not a deed. It does not purport to transfer a fee interest to the Grantees. 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 30th day of

April, 1999

Keith A Bohne

Nanci Bohne

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

April 30, 1999

Then personally appeared the above-named Keith A Bohne and Nanci Bohne acknowledged the foregoing instrument to be their free act and deed before me.

[Signature]

Notary Public

Name:
My Commission Expires Jan 2, 2005

APPROVAL OF THE MUNICIPALITY OF WESTFORD

We, the Board of Selectmen of the Town of Westford, hereby approve the acceptance of the foregoing Agricultural Preservation Restriction granted by Keith A. and Nanci Bohne, to the Town, with respect to parcels of land located in Westford, Massachusetts described therein, in the public interest pursuant to Massachusetts General Laws, Chapter 184, Sections 31 through and including 33.

Date: March 23, 1999

BOARD OF SELECTMEN

[Signature]
Chairman

Michael Ingalls

[Signature]
Hal Schreiber

[Signature]
Geraldine Healy-Coffin

[Signature]

John E. Wrobel, Jr.

COMMONWEALTH OF MASSACHUSETTS

Middlesex

, ss

March 23, 1999

Then personally appeared the above-named Michael Ingalls, Hal Schreiber, Geraldine Healy-Coffin and John E. Wrobel, Jr., and acknowledged the foregoing to be their free act and deed before me.

[Signature]

Notary Public

Name:

NANCY J. OAKES

My Commission Expires:

Notary Public

My Comm. Expires Oct. 2, 2003



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 Keith A. and Nanci Bohne to the Commonwealth of Massachusetts and the Municipality of Westford with respect to parcels of land located in Westford, 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: APRIL 29, 1999 COMMONWEALTH OF MASSACHUSETTS

By: [Signature] Commissioner, Department of Food and Agriculture

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK , ss APRIL 29, 1999.

Then personally appeared the above-named JONATHAN L. HEALY and acknowledged the foregoing to be his free act and deed before me.

Lawrence C. McCormick Notary Public
Name:
My Commission expires: October 1, 2004

Approved as to Form
General Counsel

By: Lawrence C. McCormick
Date: 4/29/99

EXHIBIT A

TO AGRICULTURAL PRESERVATION RESTRICTION

A tract of land consisting of 124,000 ± square feet, being a portion of property described in deeds recorded in the Middlesex North Registry of Deeds at Book 2201, Page 621 and Book 2421, Page 433 and shown as APR 3 on a Plan entitled "Compiled Plan of Land" prepared by Diversified Civil Engineering dated May 6, 1997 and recorded at the Middlesex North Registry of Deeds at Book of Plans 194 Plan 7.

EXHIBIT B

RIGHT OF FIRST REFUSAL
TO PURCHASE REAL ESTATE

We, Keith A. Bohne and Nanci Bohne, 31 Tadmuck Road, Westford, Massachusetts, (collectively the "Grantors") for good and valuable consideration, receipt of which is hereby acknowledged do hereby grant a Right of First Refusal to Purchase Real Estate to the Town of Westford, 55 Main Street, Westford, Massachusetts, (the "Grantee") for the purchase of land located in Westford, Middlesex County, Westford, Massachusetts, described in deeds recorded in the Middlesex North Registry of Deeds at Book 2201, Page 621 and Book 2421, Page 433, and shown as "APR 3" on a Plan entitled "Compiled Plan of Land" prepared by Diversified Civil Engineering dated May 6, 1997 and recorded herewith as described in Exhibit "A" attached hereto and made a part hereof (the "Premises")

- A. The Grantor agrees that no sale of all, or any portion of, or any interest in, the Premises to a third party will occur without first offering to sell the Premises to the Grantee and unless:
- 1) the Grantors have received a bona fide offer to purchase the same;
 - 2) the Grantors have given the Grantee written notice (which shall be deemed to be duly given when mailed by certified mail to the Grantee addressed to Town Manager, Town Hall, 55 Main Street, Westford, Massachusetts 01886) stating the name and address of the offeror and the terms and conditions of said bona fide offer and the encumbrances subject to which the Premises, or any part thereof, are to be conveyed and containing a true, accurate and complete copy of said bona fide offer and containing an offer by the Grantors to sell the same to the Grantee on the same terms and conditions as said bona fide offer; and
 - 3) the Grantee has not, within one hundred twenty (120) days after the giving of such notice, mailed or otherwise given the Grantor written notice (which shall be deemed to be duly given when mailed by certified mail to Grantor addressed to Keith A. Bohne and Nanci Bohne, 31 Tadmuck Road, Westford, Massachusetts 01886) that the Grantee elects to purchase the same in accordance with the offer. In the event the Grantee elects to purchase the Premises, title thereto shall be conveyed by a good and sufficient Quitclaim Deed

conveying a good and clear record and marketable title thereto, free from all encumbrances except as stated in said bona fide offer and such deed shall be delivered and the consideration paid at the Middlesex North Registry of Deeds at 9:00 o'clock a.m. on the thirtieth (30th) day after the date of the giving of such notice of election to purchase.

In the event that the Grantee shall not give such notice of election to purchase within the time above specified or in the event that the Grantee shall, after giving such notice, fail to complete such purchase as hereinabove provided, then the Grantor shall be free thereafter to sell and convey the Premises to the offeror named in the Grantor's notice at a price not lower than that specified therein, but the Grantor shall not sell or convey the Premises or any part thereof to any other person or at any lower price without again offering the same to the Grantee.

- B. The Grantor may sell the Premises, within one (1) year of the date of the Grantee's receipt of Notice, to the purchaser who has made the bona fide offer referred to in paragraph A above, only in the event that the Grantee:
- 1) declines in writing to elect its Right of First Refusal to Purchase Real Estate within the specified time period; or
 - 2) fails to exercise its Right of First Refusal to Purchase Real Estate in writing within the specified time period; or
 - 3) having elected its Right of First Refusal to Purchase Real Estate, fails to complete the purchase within the specified time period.
- C. The obligations of the Grantor under this Right of First Refusal to Purchase Real Estate shall not apply where the transfer of ownership of the Premises will be a result of:
- 1) a gift for nominal consideration to any or all of the Grantor's children;
 - 2) the devise (or conveyance) of said Premises by the will or intestacy of the Grantor to the Grantor's children;
 - 3) any sale or transfer of the Premises to any or all of the Grantor's children to a corporation in which the Grantor or the Grantor's children have a greater than 50% interest.

This Right of First Refusal to Purchase Real Estate shall survive any and all transfers, pursuant to this paragraph, and shall be binding on any and all transferees, pursuant to this paragraph, including but not limited to the Grantor's heirs and any successor individuals, entities or corporations.

D. Any waiver of the Grantee's right shall be in writing, signed and in a form and format suitable for recording in the registry of deeds. This waiver shall serve to satisfy the Grantor's obligations under this Right of First Refusal to Purchase Real Estate to the Grantee with regard to the named buyer only.

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

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 c.64D, §1, as amended.

WITNESS the execution hereof under seal as of the day and year first above written.

GRANTORS

Keith A. Bohne

Keith A. Bohne

Nanci Bohne

Nanci Bohne

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

April 30

, 1999

Then personally appeared the above named, Keith A. Bohne, and acknowledged the foregoing document to be his free act and deed before me,

K. J. [Signature]

Notary Public

My commission expires:

July 28, 2005

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

April 30, 1999

Then personally appeared the above named, Nanci Bohne, and acknowledged the foregoing document to be her free act and deed before me,

K. J. [Signature]

Notary Public

My commission expires: Jan 28, 2005

EXHIBIT A

TO RIGHT OF FIRST REFUSAL TO PURCHASE REAL ESTATE

A tract of land consisting of 124,000 ± square feet, being a portion of property described in deeds recorded in the Middlesex North Registry of Deeds at Book 2201, Page 621 and Book 2421, Page 433 and shown as APR 3 on a Plan entitled "Compiled Plan of Land" prepared by Diversified Civil Engineering dated May 6, 1997 and recorded at the Middlesex North Registry of Deeds at Book of Plans 194 Plan 7.