CONSIDERATIONS WITH RESPECT TO THE ASSIGNMENT OF THE COMMONWEALTH'S RIGHT OF FIRST REFUSAL

By obtaining an Agricultural Preservation Restriction ("APR"), it has been and remains the intent of the Commonwealth of Massachusetts to perpetually protect and preserve agricultural lands, to encourage sound soil management practices in accordance with generally accepted agricultural practices, to preserve natural resources, to maintain land in active commercial agricultural use, and to ensure resale of an APR at an agriculturally affordable price for future agricultural use. In general, an APR prohibits activities or uses which may be detrimental to: the actual or potential agricultural viability of an APR; water or soil conservation; good agricultural practices; and activities or uses which may be wasteful of the natural resources of the Commonwealth.

Many APRs held by the Massachusetts Department of Agricultural Resources (the "Department") include a Right of First Refusal (the “ROFR”) running to the Commonwealth. By the terms of the ROFR, when the land is sold to a third party, the land must be first offered to the Commonwealth for the price at which the seller is willing to sell the property to others on the open market. The Commonwealth then has the option to purchase the property in accordance with that offer or assign it's right of first refusal to any other governmental or any non-governmental, non-profit organization whose intended uses include further of the purpose of the APR. The Department has a duty, therefore upon the proposed sale of such an APR parcel, to weigh its assignment of the ROFR to an entity that will maximize the potential of the premises for commercial agricultural production.

In order to assign its Right of First Refusal, the Department must find that the entity requesting the assignment ("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[1];

3. Demonstrated ability to pay the purchase price and close within the timeframe established in the APR. 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;

4. If a governmental entity, provided a Farm Plan[2] and Farmer Resume[3] sufficient to demonstrate the Premises will be utilized to the fullest extent possible for commercial agriculture for the furtherance of the purpose of the APR and if the Potential Assignee:

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

[2] 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

a. owned a Farm[4] previously, the Farm Plan must additionally include number of years of ownership, the acreage of the farming operation, and number of years in business, name of farmer and Farm business; or
b. intends to lease the Premises to a Farmer[5] or New Entry Farmer[6]: 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.

5. If a non-governmental, non-profit organization:

   a. provided Articles of Incorporation or other comparable documents evidencing the purpose of the Potential Assignee is for owning and operating a Farm and that the mission statement is compatible with the goals of the APR; and
   b. provided a Farm Plan and Farmer Resume sufficient to demonstrate the Premises will be utilized to the fullest extent possible for commercial agriculture for the furtherance of the purpose of the APR and if the Potential Assignee
      i. 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
      ii. is a New Entry Farmer: A) the Farm Plan must list relevant degrees, courses, workshops, education and training, and B) a Financial Plan[7] must be provided; or
      iii. intends to lease the Premises to a Farmer or New Entry Farmer: A) a proposed lease agreement or letter of intent with a Farmer or New Entry Farmer must be provided and, B) the above referenced Farm Plan and Farmer Resume must be prepared by the Farmer or New Entry Farmer;

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

1. if a non-governmental, non-profit organization, number of years of incorporation;
2. if a non-governmental, non-profit organization, total operating budget;
3. number of qualified staff whose job responsibilities will include overseeing the ownership of the land and compliance with the terms of the APR; and
4. if a governmental, APR co-holder status.

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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.

[3] a brief account of the entities' professional farm experience and qualifications.

[4] the Premises on which an agricultural use occurs.

[5] an individual or entity who is engaged in an active agriculture use of land for commercial purposes.

[6] a Farmer who has less than two years experience managing or owning a Farm.

[7] 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.

<u>If two or more Potential Assignee's remain equally qualified, the following additional criteria will be considered by the Department</u>: Since Potential Assignees establishment, current and historic number of farm acres under production and demonstrated farming history.