

October 3, 2007

Board of Selectmen
Town of Hopkinton
Hopkinton Town Hall
18 Main Street
Hopkinton, Massachusetts 01748

RE: Water System Expansion--Alprilla Farms Well

Ladies and Gentlemen:

This Letter Agreement is being written to express the agreement between the Board of Selectmen of the Town of Hopkinton (the "**Town**") and Legacy Farms LLC (the "**Developer**") with respect to improvements to the water system of the Town of Hopkinton (the "**Water System**") and provision of water to the proposed Legacy Farms Project (the "**Project**").

Reference is made to the following facts which form the background to this Letter Agreement:

A. The Developer is the proponent of the Project which is proposed to consist of up to 940 Dwelling Units and up to 450,000 SF of commercial uses, to be developed under a proposed modification of the Town's Zoning By-Law (the "**Zoning Modification**"). The Project will be located on approximately 728 acres of land in East Hopkinton, approximately 708 acres of which were subject to the June 11, 2007 c. 61A Town Meeting vote and approximately 20 acres of which are currently owned by Weston Nurseries, Inc. (the "**Site**").

B. The Board of Selectmen, acting under the authority of G.L. c. 40 Secs. 38, 39E and 42 has the authority, among other matters, to manage, improve and control water rights and permit the laying of conduits for the conveyance of water. Certain of these matters may be delegated by the Board to the Director of the Department of Public Works. The Board of Selectmen also has the authority to enter into a contract with a private party for work related to the municipal water system. No competitive bidding process is required with respect to a contract which is at no cost to the Town. Additionally, the Board of Selectmen has the authority to accept monetary contributions and to expend such monetary contributions without further appropriation.

C. The Town owns in fee certain land on Alprilla Farms Road which is a potential new water source (the "**Alprilla Farms Well**") for expansion of the Water System. The Town and the Developer wish to cooperate to expand the Water System to include the Alprilla Farms Well as a water source for the Site and the Town (the "**Water System Expansion**"), as hereinafter set forth.

Now therefore, the Developer and the Board of Selectmen hereby confirm their agreement as follows:

1. The Developer, acting on behalf of and in the name of the Town but at the Developer's sole cost and expense, will apply for approvals from the Department of Environmental Protection ("**DEP**"), from the Massachusetts Environmental Policy Act ("**MEPA**") Unit, and from other permitting agencies, as required for approval of the Water System Expansion as a public water source. Such

approvals will include, without limitation, Approval to Site Source, Approval to Conduct Pumping Test, Approval of Pumping Test Report, and Approval to Construct Source, any approvals under the Water Management Act, and certification of compliance with MEPA.

2. The Town agrees to cooperate with the Developer in applying for and obtaining any necessary permits and approvals for the inclusion of the Alprilla Farms Well in the Water System. Such cooperation shall include, without limitation, execution of documents, attendance at meetings, making available to the Developer engineering and other data, and other matters reasonably requested by Developer.

3. Provided that the permits and approvals for the Water System Expansion are issued in a timely manner with conditions reasonably acceptable to Developer, without appeal or any appeals having been satisfactorily resolved, the Developer will construct improvements to the Water System at Developer's sole cost and expense to utilize the Alprilla Farms Well as a water source and to distribute water from such water source to serve the Water System, specifically including the entire Site. The improvements to the Water System to be constructed by Developer may include extending and looping from Alprilla Farm Road to Front Street to Clinton Street and East Main Street appropriately sized water lines, hydrants and other water system necessities, in accordance with plans and specifications to be approved by DEP, all located on land owned by the Town or within the public ways.

4. The Town hereby grants to the Developer, its agents and employees, a license to enter onto Town property for the purposes of carrying out the permitting tests, construction, and other activities necessary or desirable for the purposes of securing approvals for and constructing improvements to the Water System as outlined in this Letter Agreement. This license shall be irrevocable as long as the Developer is proceeding with the work under this Letter Agreement and has not given the Town notice of its intent to terminate this Letter Agreement. The Town will provide support by departments and commissions including Public Works, Police, Highway, Health, Conservation and any other departmental support reasonably requested by Developer.

5. The Developer's agreement to proceed with the securing of the permits and approvals for the Water System Expansion is subject to the discretion of Developer based on the Developer's due diligence in determining whether the Water System Expansion would reasonably be expected to result in an increased capacity of not less than 432,000 gpd at a cost for initial permitting and construction not to exceed \$1,825,000. The Developer shall have the right to discontinue its work in connection with the Water System Expansion at any time including, without limitation, based on the determination of Developer in its sole discretion that the Water System Expansion will not be feasible, in the event the Zoning Modification or other permits are not issued for the Project, or in the event the Developer determines not to proceed to construct the Project under Zoning Modification. The Developer further shall not be considered in breach of this Agreement for so long as the Developer is unable to complete the work required hereunder due to a force majeure event or other events beyond the reasonable control of Developer.

6. In the event the Developer discontinues its work in connection with the Water System Expansion for any reason, the Developer will transfer to the Town ownership of any engineering studies or plans prepared by Developer and its consultants and any physical improvements constructed by Developer in the public way related to the Water System Expansion.

7. All contracts to be executed by Developer with contractors and consultants for the Water System Expansion shall provide that any warranties may be enforceable by the Town, and the Developer shall assign, transfer and pass through such warranties to the Town. With respect to any default, breach of failure to perform, the recourse to the Town shall be limited to the warranties of such contractors and

consultants. In no event shall Developer or any of its members, employees or agents be liable for any failure to perform or defects in the Water System Expansion, including any consequential damages.

8. The Town shall defend and indemnify the Developer against all claims and demands for damages to person or property, costs, expenses (including reasonable attorneys' fees and costs), or for compensation on account of, or in any way growing out of or related to any act, failure to act or neglect of the Developer, or by reason of any violation of any term or specification contained in this Agreement, except if caused by the sole negligence or willful misconduct of the Developer, its agents, contractors, subcontractors and/or employees.

9. In recognition of the fact that the Water System improvements to be constructed by Developer will enhance the Water System for the Town, the Town agrees to charge one (1) water main connection for the entire Project, and, thereafter, to charge the Project for water consumption at standard municipal water rates. The Town also agrees that not less than 169,600 gpd in capacity will be allocated to the Site. Any excess of water above such capacity shall be available for provision of water to other users within the Town.

Please execute this letter in the space provided below, to confirm the foregoing agreement.

Sincerely,

LEGACY FARMS LLC

By: _____

ACKNOWLEDGED AND AGREED:

TOWN OF HOPKINTON BOARD OF SELECTMEN

By: _____

Its Chair
Hereunto duly authorized