

March 12, 2008

Board of Public Works
Town of Hopkinton
P.O. Box 209
66 Fruit Street
Hopkinton, Massachusetts 01748

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

Water Department
Town of Hopkinton
Hopkinton Town Hall
83 Wood Street
Hopkinton, Massachusetts 01748

RE: Water System Expansion--Alprilla Farms Well

Ladies and Gentlemen:

This Letter Agreement is being entered into among the Board of Public Works, the Board of Selectmen and the Water Department (collectively, the "**Town Boards**") 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, consisting 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 Town owns in fee certain land on Alprilla Farms Road (the "**Parcel**"), on which may be located a potential new public water supply well (the "**Alprilla Farms Well**") for expansion of the Water System. The Town Boards and the Developer wish to cooperate to expand the Water System to utilize the Alprilla Farms Well to supply water for the Site and for other water customers of the Town (the "**Water System Expansion**"), as hereinafter set forth.

C. The Developer holds (pending completion by the Department of Environmental Protection ("**DEP**") of transfer documentation in connection with Developer's purchase of the Site) a Water Withdrawal Registration Statement, on file with DEP allowing the withdrawal of .76 million gallons of water per day for 180 days from various sources on the Site and within the Concord Watershed (the "**Water Withdrawal Registration**")

Now therefore, the Developer and the Town Boards, for good and valuable consideration, the adequacy of which they mutually acknowledge, hereby agree and covenant as follows:

1. The Developer shall at Developer's sole cost and expense (i) if accepted by DEP notwithstanding the fact that the water withdrawal points subject to the Water Withdrawal Registration are located within the Site and are not being transferred to the Town, transfer the Water Withdrawal Registration to the Town (excluding an amount not to exceed .09 million gallons per day for 180 days to be continued to be used for irrigation purposes by Weston Nurseries at the Site) in accordance with the provisions of 310 CMR 36.09. Such transfer would allow the Town the opportunity to relinquish the use of up to 0.67 million gallons per day for 180 days, if necessary, upon the issuance of the DEP permits for the Water System Expansion; or (ii) if not accepted by DEP due to the fact that the water withdrawal points subject to the Water Withdrawal Registration are located within the Site and are not being transferred to the Town, relinquish the Water Withdrawal Registration to DEP at the request of the Town upon issuance by DEP of the DEP permits for the Water System Expansion. Developer's agreement as set forth above will allow the Developer and the Town the opportunity to maintain to DEP that the withdrawals under the Water System Expansion will be offset by an amount not more than 0.67 million gallons per day for 180 days.

2. The Developer, acting on behalf of, and in the name of the Town, but at the Developer's sole cost and expense, shall apply for approvals from 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 supply. Such approvals may 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. The Developer shall consult with the Board of Public Works and other appropriate Town Officials prior to the submission of applications for approvals in the name of the Town, shall obtain the approval of the Town Board(s), as determined to be appropriate for a particular submission, for all submissions made in connection with any such applications. Each party shall timely apprise the other party of all developments material to such applications and this Letter Agreement.

3. The Town Boards agree to cooperate with the Developer in accepting the transfer of the Water Withdrawal Registration, if approved by DEP, and in applying for and obtaining any necessary permits and approvals for the Water System Expansion. Such cooperation shall include, without limitation, execution of documents, attendance at meetings, making engineering and other data available to the Developer, and other matters reasonably requested by the Developer.

4. Provided that the permits and approvals for the Water System Expansion are issued in a timely manner with conditions reasonably acceptable to the Developer, without appeal or with any appeals having been satisfactorily resolved, the Developer will construct the improvements included in the Water System Expansion at Developer's sole cost and expense. The Developer shall conduct an impact study to determine the effects of the Water System Expansion and water usage by the Project during both normal usage and fire flows on the existing Water System and on existing private wells possibly affected by a water withdrawal at the Alprilla Farms Well, which will clarify the scope of such improvements. Upon acceptance of such study by the Board of Public Works and the Developer, the Developer shall undertake all necessary improvements identified, which, at a minimum, shall include the improvements identified on Schedule A to this Letter Agreement, in accordance with plans and specifications to be approved by the Board of Public Works, the Water Department and DEP, all such improvements to be located on land owned by the Town or within the public ways. All work related to construction of the Water System Expansion shall be performed in accordance with the Department of Public Works' Rules and Regulations for Public Water Mains and Services as in effect as of the date hereof, subject to modifications set forth in Section 12 below. All site investigations, pump tests, and

groundwater monitoring conducted shall be done according to protocols approved in advance by the Board of Public Works.

The Town shall advise the Developer of any title restrictions which may exist encumbering the Parcel within 30 days of this Letter Agreement. In the event the Developer reasonably determines that any such restriction adversely affects the Water System Expansion, the Developer shall so notify the Town of its objection to the title restriction within 10 days of receipt of the title information from the Town. In such event, the Developer shall have the right to terminate its obligations under this Letter Agreement or to defer such decision to terminate until a later date to allow the Town an opportunity to remove or modify such title restriction. The Developer shall comply with any such title restriction which is not objected to.

5. Each Board having custody and control of the relevant property agrees to grant to the Developer, its agents and employees, such licenses as reasonably will be required to enter onto Town property for the purposes of carrying out, in accordance with applicable requirements of federal, state or local law or regulations, hydrant and other hydraulic testing at times outside of high demand periods and water bans, the permitting tests, construction, and other activities necessary or desirable for the purposes of securing approvals for and constructing the Water System Expansion. Any license to enter Town property shall be irrevocable but shall be subject to rescission or suspension by the Town as reasonably necessary if the Developer is in default in its obligations under such license, after giving the Developer thirty (30) days' prior notice of intention to rescind or suspend, unless Developer has cured or commenced to cure such default within such period and diligently prosecutes such cure to completion; provided that the foregoing shall not be deemed to alter the authority of a municipality to take such action as is necessary in the case of an emergency affecting public health or safety. The Town shall provide support by departments and commissions including the Department of Public Works, Water Department, Police, Highway, Health, Conservation and any other departmental support reasonably requested by Developer; provided, however, that the Developer shall reimburse the Town for any extraordinary costs reasonably involved in providing such support including, without limitation, any outside consultant services engaged by the Town to advise the Town on matters related to the Water System Expansion under the Scope of Work attached as **Schedule B** to this Letter Agreement, at the best faith estimate amount of \$45,000, which shall be inclusive of the amount of \$15,000 set forth in that certain Fee Letter transmitted to Town Counsel on January 28, 2008 and accepted by the Town through its Town Counsel.

6. 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 the Developer, based on the Developer's due diligence in determining whether the Water System Expansion can reasonably be expected to result in an increased capacity of not less than 170,000 gpd (average daily flow) pumping 16 hours and resting 8 hours per day, subject to any and all terms and at a cost for permitting, design, and construction not to exceed \$1,825,000 (inclusive of the improvements specified in **Schedule A**). At any time after providing the Town Boards with 14 days' notice, the Developer shall have the right to discontinue work in connection with the Water System Expansion in the event that: (a) the Developer reasonably determines that the Water System Expansion will not be feasible; (b) the Zoning Modification is disapproved or other permits for the Project are denied, or (c) the Developer determines not to proceed to construct the Project under the Zoning Modification; provided, however, that in the event the Zoning Modification is disapproved or other permits for the Project are denied, the Developer shall have the right to reapply for such permits but shall provide any notice of intent to discontinue such work in connection with the Water System Expansion no later than 14 days after the final disapproval or denial. In the event the Developer gives the Town notice of its intent to discontinue the work, Developer's sole obligation during the period subsequent to such notice but prior to the termination date shall be to fulfill the obligations set forth in Section 8 below. The Developer shall not be considered in breach of this Letter 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 the Developer. However, if the Developer does not elect to terminate this Agreement in the event the Zoning Modifications or other permits are not issued for the Project, this Agreement will remain in full force and effect for the benefit of the Town and of any permitted development which may be constructed on the Site by Developer or its successors and assigns under applicable zoning.

7. If any permit issued for the Water System Expansion includes conditions, not currently included in existing permits held by the Town, that the Town Boards reasonably determine are unduly burdensome to the Town, the Town shall have the option to notify the Developer within 10 business days of the issuance of such permit of the matters considered unduly burdensome and of its intention to reject the permit and terminate its obligations under this Letter Agreement; provided, however, that the Town shall have duly objected to the inclusion of such conditions in discussions with DEP or other agencies issuing such permits during the permitting process leading to the issuance of the permit to the extent such objectionable condition was discussed during such permitting process or was included in a draft permit. If the Developer does not satisfy the Town within 30 days of such notice regarding removal or assumption of the burdensome condition or commence a process leading to removal of the burdensome condition and diligently prosecute such modification to completion, the Town may terminate its obligations under this Letter Agreement.

8. In the event the Developer discontinues its work in connection with the Water System Expansion for any reason, the Developer shall transfer to the Town ownership of any engineering studies or plans prepared by the Developer or any of its consultants, and any physical improvements related to the Water System Expansion constructed by Developer in the public way or on other Town-owned land. In the event of any such discontinuance, the Town shall have the option of requiring that any area of the public way or other Town-owned land that has been disturbed in connection with the Water System Expansion remain in its then-current condition or be returned to either its original condition at the time of execution of this Letter Agreement (taking into account the disturbance which had taken place under this Letter Agreement) or such other usable condition mutually agreed upon by the Developer and the Town Boards.

9. All Water System Expansion contracts to be executed by the Developer with design, engineering or construction contractors or consultants shall provide industry standards of care and warranties that are enforceable by the Town subsequent to transfer of title to the Water System Expansion to the Town, and the Developer shall immediately execute any and all documentation necessary to assign, transfer and pass through all such contractual agreements and warranties to the Town to be effective on transfer of title to the Water System Expansion to the Town. The Water System Expansion contracts shall include payment for the services of a supervising engineer to be hired by the Town to ascertain conformance of the construction to the approved plans and specifications in accordance with good and workmanlike construction practices. With respect to any default, breach or failure to perform by any such contractors or consultants, the Town's recourse shall be limited to those available against 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 consequential damages, provided that the Town Boards or its agents shall have approved the plans and specifications for the Water System Expansion.

10. Upon completion of the Water System Expansion and the testing and acceptance of the Water System Expansion by the Water Department, the Developer shall transfer title to the Water System Expansion to the Town, subject to the restrictions set forth below. Upon the transfer of such title, the Water System Expansion shall be part of the Water System, to be operated and maintained by the Town in accordance with all applicable laws and regulations.

11. Upon the transfer of title to the Water System Expansion to the Town, the Town shall have the obligation to allocate water to customers located on the Site in a volume not less than 170,000 gpd (average daily flow) per day, subject to any and all terms and conditions generally applicable to similar customers located outside of the Site. Notwithstanding any other provision of this Letter Agreement, however, the Town shall not have the obligation to provide water to customers located on the Site in a total aggregated volume in excess of 170,000 gpd (average daily flow). The Town's obligations to allocate water pursuant to this Letter Agreement shall be subject to proportionate adjustment to reflect any conservation or use restrictions imposed under federal or state law which are applicable generally to users of water throughout the Town.

12. The Developer's obligations under this Letter Agreement shall be contingent upon the lawful adoption of an amendment to the Department of Public Works' Rules and Regulations for Public Water Mains and Services to establish a procedure for waiving the provisions thereof and, pursuant to such procedure, the issuance of a waiver to:

A. Grant the Developer a proportional credit against the water connection fees otherwise payable under such Rules and Regulations to reflect the pro rata cost of the increased volume of water available to customers located outside of the Site as the result of the Water System Expansion (including **Schedule A** Work). Such credit shall equal to the amount expended by the Developer (which may exceed \$1,825,000 if the Developer so elects) pursuant to the terms of this Letter Agreement inclusive of the cost of the Existing Water Main Upgrade Work (hereinafter defined), multiplied by the following fraction:

$$\frac{\text{Water volume made available to customers outside the Site as the result of the Water System Expansion}}{\text{Total water volume made available to customers as the result of the Water System Expansion}}$$

By way of example, in the event the Developer expends \$1,800,000 in connection with the Water System Expansion (including **Schedule A** Work) and the Water System Expansion yields 288,000 gpd, the Developer shall receive a credit of \$737,500 against water connection fees, determined as follows:

$$\frac{\$1,800,000 \times 118,000}{288,000} = \$737,500$$

B. In the event existing water mains require upgrading (the "**Existing Water Main Upgrade Work**") to satisfy the hydraulic requirements as set forth in **Schedule A**, the total costs of such Existing Water Main Upgrade Work shall be included in the value of **Schedule A** work for the purposes of determining the credit under Clause A above.

C. Permit the Developer to obtain a single connection and usage meter to serve multiple users within the Site, and to adjust the applicable usage fee structure.

13. To the extent permitted by law and upon acceptance by the Town of the Water System Expansion, 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 or failure to act of the Developer hereunder, except if caused by the sole negligence or willful misconduct of the Developer, its agents, contractors, subcontractors and/or employees.

14. The obligations of the Developer to the Town pursuant to this Letter Agreement may be assigned and transferred to Developer's mortgagee in the event of foreclosure or deed in lieu of foreclosure without the consent of the Town Boards. The obligations of the Developer to the Town

pursuant to this Letter Agreement may be assigned and transferred to a successor master developer of the Site to the consent of the Town Boards, which consent shall not unreasonably be withheld or delayed. The rights of the Developer related to water usage at the Site shall be appurtenant to and run with the land.

15. Whenever the consent or approval of any party is required under this Letter Agreement, such consent or approval shall not unreasonably be withheld, delayed or conditioned. Such approvals shall be deemed given if no written response is received within ten (10) business days of the request for approval having been so delivered.

16. Upon the execution of this Letter Agreement, the Town Boards shall promptly cause to be published in the Central Register a notice the Town's determination to acquire title to the Water System Expansion without utilizing the advertising requirements contained in Chapter 30B of the General Laws. No waiver shall be granted pursuant to Section 12 of this Letter Agreement and no obligation to transfer title to the Water System Expansion shall be created by Section 10 if this Letter Agreement until 30 days after the publication of such notice.

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 PUBLIC WORKS

By: 

Its Chair

Hereunto duly authorized

TOWN OF HOPKINTON BOARD OF SELECTMEN

By: 

Its Chair

Hereunto duly authorized

By: 

Town Counsel as to Form

TOWN OF HOPKINTON WATER DEPARTMENT

By: 

Schedule A

Scope of Improvements

Improvements, in addition to developing the Alprilla Farms well site area itself, shall include furnishing and installing all site work water distribution system pipe, hydrants, gates, valves, connections to existing water distribution systems and other means necessary for a good and workmanlike expansion to the local water distribution system. Expansion shall include the water distribution system pipe to be laid within the road from the new Alprilla Farms Well to the existing water service located within Front Street and Clinton Street. Additionally, existing water mains may need to be upgraded, if reasonably determined to be required to satisfy hydraulic requirements for the Project and the service area as determined by the Town and Developer. Methods typical in the remediation of existing in situ water piping may be employed.

Any work associated with water distribution piping shall include all laterals for fire protection and stub offs for adjoining public ways.

The major components associated with the construction of a permanent groundwater supply source at the Alprilla Farms well site, consist of insulated brick and block masonry walled building(s) constructed above grade on reinforced concrete foundation(s); with gable-end roof design utilizing prefabricated wood trusses, with exterior plywood and asphalt shingles as roofing materials; pumping equipment and discharge piping that includes but is not limited to air release valve, check valve, magnetic flow meter, three (3) chemical injection ports and an isolation valves; three (3) independent chemical containment areas for sodium hypochlorite, potassium hydroxide, and phosphate chemical storage and feed systems; auxiliary generator unit; instrumentation and control equipment compatible with the Town's existing Supervisory, Control and Data Acquisition (SCADA) system; primary and secondary power supply; natural gas supply if available to the Site; site work that includes but is not limited to finish grading and restoration of all areas disturbed to construct the Project, bituminous concrete access roadway, and protective fencing and discharge water main to connect this source to the existing distribution as described elsewhere. The Project shall be designed and constructed in accordance with current building codes, the Massachusetts Department of Environmental Protection (DEP) regulations and Hopkinton Water Department standards established for these types of facilities.

See Locus Plan attached.

Schedule B

Consultant Scope of Work

The Scope of Additional Work for the Town's consultant services pursuant to the Legacy Farms Water System and Wastewater Effluent Disposal System design, approval and implementation is associated with three primary components of the Development.

(1) A Prolonged Pumping Test to be conducted at the Alprilla Well Site which is projected to run 10 days in the field. There are up front regulatory approvals required prior to the performance of the field test and there is a report required to be submitted to the Massachusetts Department of Environmental Protection (DEP) that summarizes the results of the testing and includes a recommendation and a request for approval of the permanent well supply.

(2) A Water Distribution System Model Analysis is necessary to evaluate the adequacy of the existing water system to support the Development. Prior to modeling field flow testing is required to determine/establish model parameters.

(3) A Groundwater Flow Model Analysis to be conducted in association with the discharge of treated wastewater effluent from the wastewater treatment facility. The model parameters should be evaluated and based on the data collected during the Prolonged Pumping Test. The scope of work for the Town's Consultant assumes that the Developer's Model will be modified as necessary after the results of the Prolonged Pumping Test are evaluated and then provided to Jesse Schwalbaum at his business office in Amherst MA. It does not include travel from Amherst MA to meetings or any significant time should Mr. Schwalbaum have issues with the modeling as presented initially. The \$5,000 budget for this work assumes the time frame for the analysis is about July 2008.

The \$30,000 budget for Earth Tech does not include any time for review of final design documents to be used for constructing any permanent infrastructure associated with the Project. The Earth Tech budget is based on its understanding of level of effort to provide a comprehensive Peer Review for the Town of Hopkinton.

EXHIBIT

