

## DECLARATION OF RESTRICTION

THIS DECLARATION OF RESTRICTION (hereinafter the "Declaration") is made this 9 day of September, 2015, by NORTH ANDOVER HOLDINGS, LLC, a Massachusetts limited liability company, having an address of 231 Sutton Street, Suite 1B, North Andover, Massachusetts 01845 (hereinafter the "Declarant").

WHEREAS, Declarant is the owner of those certain parcels of land shown as Lots 1A, 2A, 3A, 4A, 5A, 6, 7, 8, 9, Parcel A, Parcel B and Lot 12A located in the Town of North Andover, Essex County, Massachusetts, on a plan entitled "Plan of Land in North Andover, Mass. Owned by Berry Street Trust at Berry Street" dated March 30, 2015, prepared by Goldsmith, Prest & Ringwall, Inc., and recorded in the Essex North District Registry of Deeds as Plan Book No. 17271 (the "ANR Plan"); and

WHEREAS, the Declarant is the holder of a Comprehensive Permit dated March 11, 2014, and recorded with the Essex North District Registry of Deeds in Book 13818, Page 289 (the "Permit"), which Permit allows the construction of 196 units of rental housing on Berry Street in North Andover (the "Project"), which Project will be constructed on a portion of the land shown on the ANR Plan; and

WHEREAS, paragraph 10 of the Permit labeled "Open Space and Landscape" provides that in addition to the 11.98 acres proposed by the Declarant to be subject to a Conservation Restriction, the Declarant shall place a Declaration of Restriction prohibiting additional buildings and impervious surfaces but allowing passive recreation on the open space on the remainder of the site; and

NOW, THEREFORE, Declarant in accordance with said paragraph 10, hereby voluntarily declares and imposes in perpetuity upon a portion of the land shown as "Declaration of Restriction Area 193,760± S.F." (the "Restricted Land") on a plan entitled "Plan of Land Declaration of Restriction in North Andover, Mass. Owned by North Andover Holdings, LLC at Berry Farms" dated August 11, 2015, and recorded herewith (the "Exhibit Plan"), the following covenants, conditions and restrictions for the benefit of Declarant, its successors and assigns and the Town of North Andover (the "Town"). Said property shall be held, transferred, sold, conveyed, occupied and used subject to the

covenants, conditions, and restrictions hereinafter set forth.

1. Prohibited Acts and Uses. The Declarant hereby declares and imposes that neither the Declarant nor its successor and assigns shall construct or allow to be constructed any buildings or impervious surfaces within the Restricted Land subject however to the reserved provisions contained in Section 2 herein.

2. Reserved Rights. Notwithstanding anything herein to the contrary, Declarant reserves to itself and its successors and assigns the right to use, inter alia, the Restricted Land for passive recreation including the installation of pervious walking paths, signage and benches. The Declarant further reserves within the Restricted Land (i) the right to install and maintain sewer force mains and drainage facilities under the surface of the Restricted Land, (ii) the right to erect and maintain erosion controls and a snow control berm, and (iii) the further right to grade and landscape the Restricted Land in accordance with the Permit provisions and plans associated therewith. The Reserved Rights set forth in this paragraph shall be exercised pursuant to and in accordance with the Permit and plans associated therewith. The Reserved Rights shall be limited to those specifically referenced in this paragraph.

3. Term - Binding Effect In Perpetuity. This Declaration of Restriction and its provisions herein set forth shall run with the Restricted Land as shown on the Exhibit Plan in perpetuity from the date of recordation in the Essex North District Registry of Deeds and shall be binding upon Declarant, Declarant's successors and assigns, and any other party having an ownership interest in said Restricted Land or claiming to have an interest with respect to said Restricted Land as tenants, invitees, or otherwise, and all of the respective heirs, successors, grantees, mortgagees, assigns, agents, contractors, subcontractors and employees of the foregoing.

This Declaration of Restriction is hereby intended and declared to be in perpetuity and no re-recordation of this Declaration of Restriction under G.L. c. 184, ss. 23-30 or any other law shall ever be necessary in order to maintain the full legal effect and authority hereof and Declarant and its successors and assigns, including but not limited to all subsequent owners of the Restricted Land, hereby waive all their legal right to and shall forego any action in law or equity of any kind whatsoever attempting to contest the validity of any provision of this Declaration of Restriction and shall not, in any enforcement action, raise the invalidity of any provision of this Declaration of Restriction.

Notwithstanding anything inconsistent or to the contrary set forth above, the Town is hereby authorized to record and file any notices and/or instruments that the Town deems appropriate to assure the legal validity and enforceability in perpetuity of this Declaration of Restriction and the Declarant, on behalf of itself and its successors and assigns, hereby appoints the Town as its attorney-in-fact to execute, acknowledge, deliver and record any such notice or instrument on its behalf. Without limiting the foregoing, the Declarant and its

successors and assigns agree to execute any such notices and instruments upon request of the Town.

5. Enforceability. The Town shall have the authority and right to enforce this Declaration of Restriction as a benefitted party.

The Town shall have the right to enter the Restricted Land, in a reasonable manner and at reasonable times, for the purposes of (i) inspecting the Restricted Land to determine compliance with this Declaration of Restriction; (ii) enforcing this Declaration of Restriction; and (iii) taking any other action which may be necessary or appropriate.

The Town shall have the right to bring proceedings at law or equity against any party or parties violating or attempting to violate the terms of this Declaration of Restriction to enjoin them from so doing and to cause any such violation to be remedied, including but not limited to restoration of the portion of the Restricted Land adversely affected, after providing written notice to such party or parties and all mortgagees of record if the names and addresses of such parties and mortgagees have been provided in writing to the Town and the Town shall recover its attorney's fees and costs in any action of enforcement.

6. Severability. If any court or other tribunal of competent jurisdiction determines that any provision of this Declaration of Restriction is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

7. Non-Waiver. Any election by the Town as to the manner and timing of its right to enforce this Declaration of Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

8. Access. This Declaration of Restriction does not grant to the Town, the general public, or to any other person or entity any right to enter upon the Restricted Land except the right of the Town to enter the Restricted Land at reasonable times and in a reasonable manner for the purpose of inspecting the same to determine compliance herewith and enforcing this Declaration of Restriction as set forth in Section 5 above.

9. Incorporation Into Deeds, Mortgages, Leases and Instruments of Transfer. Declarant and Declarant's successors and assigns, including all subsequent owners of the Restricted Land or portions thereof, shall incorporate this Declaration of Restriction, in full or by reference, into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest in and/or a right to use the Restricted Land or any portion thereof is conveyed. Any such deed, mortgage or other interest purporting to convey any portion of the Restricted Land without including this Declaration of Restriction in full or be


reference shall be deemed and taken to include said Declaration of Restriction in full even though said Declaration of Restriction is not expressly described or referenced therein.

10. Recordation/Registration. Declarant shall record and/or register this Declaration of Restriction with the appropriate Registry of Deeds and/or Land Registration Office upon thirty (30) days of its date of execution.

11. Amendment and Release. No amendment or release of this Declaration of Restriction shall be effective unless it has been approved in writing by the Town (hereinafter the Town Approval) and said amendment or release and the requisite Town Approval *has* been recorded with the appropriate Registry of Deeds and/or Land Registration Office.

IN WITNESS WHEREOF, the Declarant, has caused these presents to be signed, acknowledged and delivered in its name and behalf this 4 day of September, 2015.

NORTH ANDOVER HOLDINGS, LLC

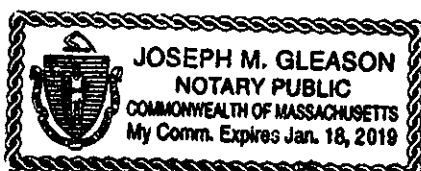
By   
ERIC B. LOTH, JR., Manager

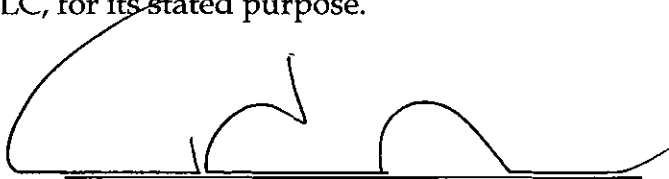
# COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

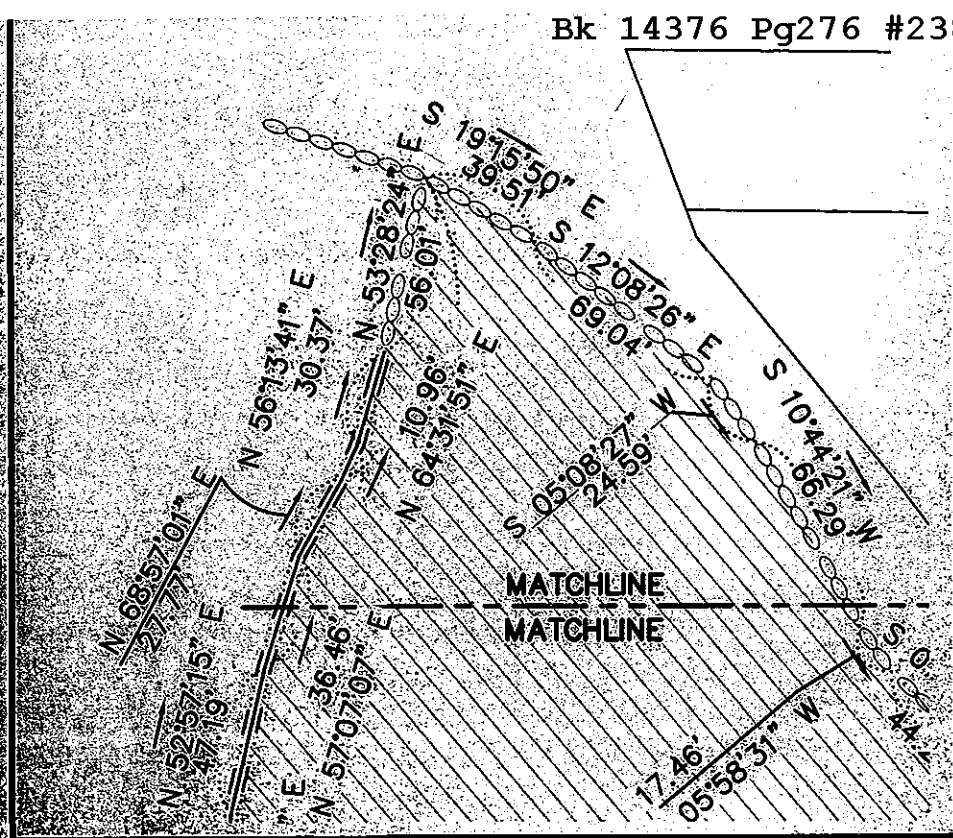
September 4, 2015

On this day before me, the undersigned notary public, personally appeared ERIC B. LOTH, JR., proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness, ☒ personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily as Manager of NORTH ANDOVER HOLDINGS, LLC, for its stated purpose.



  
Notary Public, Joseph M. Gleason  
My Commission Expires: Jan. 18, 2019

N/F  
E HUNDRED FOURTEEN  
TRUST



PROPERTY LINES  
LINES DIVIDING  
LINES OF THE  
THOSE OF  
WAYS ALREADY  
LINES FOR  
OR FOR NEW

TO MEET THE  
OF DEEDS AND  
TITLE OR  
HEREON.

BEEN PREPARED  
AND  
OF DEEDS.

# GPR

Engineering Solutions  
for Land & Structures

## GOLDSMITH, PREST & RINGWALL, INC.

39 MAIN ST., SUITE 301, AYER, MA 01432  
CIVIL & STRUCTURAL ENGINEERING • LAND SURVEYING & LAND PLANNING  
VOICE: 978.772.1590 FAX: 978.772.1591  
[www.gpr-inc.com](http://www.gpr-inc.com)

## PLAN OF LAND DECLARATION OF RESTRICTION IN NORTH ANDOVER, MASS.

OWNED BY  
NORTH ANDOVER  
HOLDINGS, LLC  
AT  
BERRY FARMS

DRW. BY: DSB

DATE: AUG. 11, 2015

JOB 121036

1 OF 1

CHK. BY: DJD