

## GIFT AGREEMENT

This Agreement is made and entered this \_\_\_\_ day of August, 2012, by and between Joanne Holbrook Patton (the "Donor"), 650 Asbury Street, Hamilton, MA and the Town of Hamilton, 577 Bay Road, Hamilton, MA (the "Town").

WHEREAS, the Donor desires to donate to the Town of Hamilton a 27.22 acre, more or less, parcel of land, improved by a single-family home and other outbuildings, and owned exclusively by her (the "Property"), for the benefit of the Town and subject to certain restrictions; and

WHEREAS, the Town of Hamilton, acting by and through the Board of Selectmen, accepts the terms under which the Donor is willing to donate the Property; and

WHEREAS, the gift of land was accepted by vote of Town Meeting on May 12, 2012 subject to agreement upon terms and conditions acceptable to the Board of Selectmen;

NOW, THEREFORE, in consideration of the promises and mutual covenants and conditions set forth herein, the parties agree to the following:

1. Property Description. The Property comprises 27.22± acres on which there is a single family residence, a barn, gardens, and a swimming pool. The approximately one-acre area surrounding the single family residence and outbuildings and plantings shall be referred to as the "Homestead." The Property is shown as Lot 4 on a Plan of Land in Hamilton & Topsfield, MA prepared for George S. Patton dated November 12, 1997, sheet 1 of 2, by Wayne C. Jalbert, Hancock Survey Associates, Inc., a reduced copy of which is attached as Exhibit A.
2. Donor Intention. The Donor intends to execute a deed with quitclaim covenants for nominal consideration to transfer fee simple interest in the Property to the Town of Hamilton, subject to these terms, conditions and restrictions:
  - a. Should the Town at any time decide to sell, convey or transfer a fee interest in any or all of the Property, except as provided in subparagraph 2 (b) herein below, the Town shall first offer the same to the Donor and her children to the extent then living and legally competent, in accordance with the provisions of Exhibit B (which shall also be incorporated in the deed by which the Donor transfers the Property to the Town). The offerees shall have sixty (60) days from date of first offer to exercise their right to accept. The right of first offer shall be extinguished when neither the Donor nor any of her children are living and legally competent.
  - b. The Donor specifically exempts the Town from the requirement of first offering the Property for sale to the Donor and her children that land situated in the northwest quadrant of the Property (as per the Marshall Gary LLC Schematic Site Plan attached as Exhibit C) where it has been suggested the Town may sell to

develop or develop to sell moderately priced housing provided that all of the following conditions are met:

1) The development of the parcel will be consistent with the rural nature of the neighborhood and the number of units will not exceed twelve; and

2) Twenty-Five percent (25%) of the gross proceeds will be placed in one or more trust, gift, or endowment funds created to maintain and preserve the Homestead and the property.

If all of the conditions are met, in this case only, the terms of subparagraph 2(h) shall not apply. Land outside of the northwest quadrant may be sold, conveyed or leased in whole or in part for housing or other purposes, but shall be subject to the right of first offer set forth in subparagraph 2(a).

- c. None of the items of tangible personal property currently situated in the Homestead are included in the gift. Any request for retention of any of such items must be negotiated separately. Recognizing the complexity of removing items to multiple venues, the Town shall allow the Donor a reasonable period following the date of execution of the deed to the Town, to remove the tangible personal property, as agreed upon by the Donor and the Town. Some items may be loaned to the Town by the Donor or her children, but such lease agreement shall be negotiated separately by the parties. Some items may remain as part of Gordon College's archival project, but shall remain the property of the Donor. If the Town and Gordon College enter into an agreement as described in paragraph 2(e) hereinbelow the Donor shall not be required to remove the items of tangible personal property to be utilized by Gordon College until such date in the future as is agreed upon by the parties in writing.
- d. There will be no endowment funds given by the Donor or members of her family included with the gift. The Town may separately solicit gifts to support the Property and may also rent the Property on a short- or long-term basis to generate income to provide for its support.
- e. In determining the future use of the Homestead residence, the Town shall first offer to Gordon College, of Wenham, Massachusetts (the "College"), the use of the residence for its archival program to maintain, restore and preserve documents, photographs, personal papers and artifacts of the Patton family. If the College does not agree to use the residence for its archival program but proposes a different appropriate use by the College that is acceptable to the Town, it shall have the right to so use the residence. Any use of the residence by Gordon College must be compatible with the use by the Town of the remainder of the Property and will be governed by a lease agreement between the Town and the College, the terms of which may call for the payment of an appropriate rent by the College to offset the cost of maintaining the residence. The Town and Gordon College must coordinate their uses so as to minimize disruption of any one use. If Gordon College ever declines to use, or continue to use, the residence, use of the residence shall devolve exclusively to the Town.



- f. The Town shall establish a Patton Homestead Account (the “Fund”), to be managed by the Town’s Treasurer, and shall deposit twenty percent (20 %) of the annual surplus revenues from rental or any other income derived from the use of the Property. (i.e., the gross income received from the rental or other use of the Property during the fiscal year, less the costs and expenses incurred by the Town in managing and maintaining the Property during that year) as an endowment fund to maintain and preserve the Property. Further, should the Town sell any portion of the Property, other than as described in subparagraph 2(b) hereinabove, the terms of subparagraph 2(h) hereinbelow shall govern. The Town may supplement the Fund with other gifts received to support the Property and shall hold and administer the Fund in accordance with the Town’s investment policies and applicable law. The Town may use any amount of the net income and principal of the Fund for the support of the Property and may make withdrawals from the Fund for such purposes in any amounts that the Town determines to be prudent, taking into account the purposes of the Fund, the present and anticipated future cost of maintaining the Property and administering the Fund, the expected total return on the Fund’s investments and present and anticipated future economic trends.
- g. Any use of the Homestead must acknowledge and respect its historic character. The Town shall have the right to make exterior and interior changes to the buildings and structures, and change the landscaping and topography within the Homestead area without consulting the Donor or her children, but must preserve any historical features of the Homestead unless it is impossible or impracticable to do so given the proposed use and the expected cost of preserving such features. The Town shall also have the right to use for any purposes the last name “Patton” in any marker or description of the Homestead and Property.
- h. Except as provided under subparagraph 2(e) above in connection with the use of the Property by the College, the Property shall be used for the benefit of the Town’s residents. If, in the judgment of the Town, it should become impossible or impracticable to use the Property in that way, the Town may sell any part or all of the Property, subject to compliance with the provisions of subparagraph 2(a) above, and shall donate fifty percent (50%) of the gross proceeds of such sale to a charity or charities qualified under Section 501(c)(3) of the Internal Revenue Code to be named by the Donor, if living and competent, and if not by those of her children who are living and competent. The Town may use and retain the remaining proceeds as it shall determine.

Any substantial deviation from the purposes described in this paragraph 2 shall require the written approval by the Donor, if she is living and competent, or otherwise by a majority of the Donor’s children who are then living and competent.

3. Approval by Town. The parties recognize that the gift has been accepted by the Town at a Town Meeting on May 12, 2012.

4. Notice to Donor and Her Children. Notice to the Donor and her children required to be provided pursuant to Paragraph 2 shall be sufficient when provided in writing, by first class mail, postage prepaid, in care of The 1911 Trust Company, LLC, 400 Essex Street, P.O. Box 5600, Beverly Farms, MA 01915-0512.

5. Execution of Deed. The Donor, by and through herself, her executor, administrator or personal representative, shall execute a deed on or before September 15, 2012.

6. Entire Agreement. The terms of this Agreement are final and binding on all parties, including their respective successors, assigns, executors and personal representatives. This instrument contains the entire agreement of the parties with respect to the subject matter contained herein. This Agreement may be modified or waived only by written instrument signed by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the day first written above.

DONOR

TOWN OF HAMILTON  
BOARD OF SELECTMEN

\_\_\_\_\_  
Joanne Holbrook Patton

\_\_\_\_\_  
David G. Neill Chairman

\_\_\_\_\_  
Marc I. Johnson

\_\_\_\_\_  
Jennifer T. Scuteri

\_\_\_\_\_  
Jeffrey T. Stinson

\_\_\_\_\_  
Jeffrey M. Hubbard



APPROVAL UNDER THE SUBDIVISION  
CONTROL LAW NOT REQUIRED.

HAMILTON PLANNING BOARD

*John B. Bunker*  
*John Willard*  
*John B. Bunker*  
*Mass. Ricker*  
*Peter P. Ricker*

DATE: 11/18/97

EXHIBIT A  
Page 1 of 2

MERIDIAN FROM 1927 COUNTY LAYOUT OF ASBURY STREET

PLANNING BOARD ENDORSEMENT OF THIS  
PLAN INDICATES ONLY THAT THE PLAN IS  
NOT A SUBDIVISION UNDER M.G.L. CH. 45A,  
SEC. 81L AND DOES NOT INDICATE THAT  
THE LOT IS BUILDABLE, OR THAT IT MEETS  
ZONING, HEALTH, CONSERVATION OR GENERAL

MASSACHUSETTS AUDUBON  
SOCIETY  
RIVER

TOPSFIELD

HAMILTON

ESSEX COUNTY  
GREENBELT ASSOCIATION, INC.  
PLAN BOOK 135, PLAN 85  
(PARCEL 9)

I CERTIFY THAT THIS PLAN CONFORMS TO  
THE RULES AND REGULATIONS OF THE  
REGISTERS OF DEEDS.

11/18/97  
DATE

*Wayne Chellier*  
PROFESSIONAL LAND SURVEYOR

ESSEX COUNTY  
GREENBELT ASSOCIATION, INC.  
PLAN BOOK 183, PLAN 39

TOWN OF HAMILTON  
PLAN 31 OF 1958

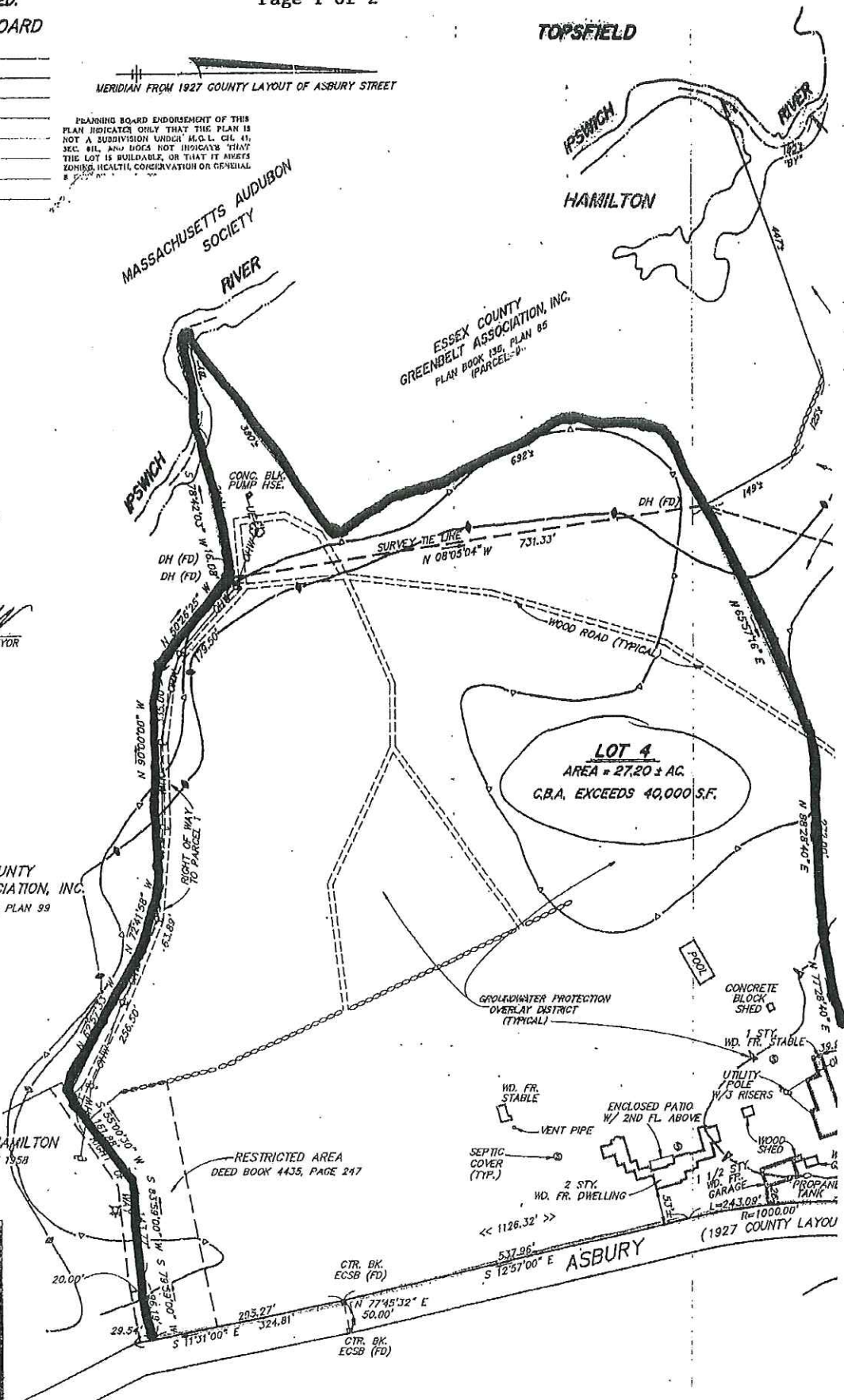
RESTRICTED AREA  
DEED BOOK 4435, PAGE 247

FOR REGISTRY USE

PLAN BOOK 391 PLAN 61

RECEIVED BY REGISTRY ON 11/19/97  
November 19, 1997

Received by  
Notary  
*John B. Bunker*  
Notary of Deeds  
(2 pgs.)



61  
321  
(204)

**ASSESSORS:**

MAP 19, LOTS 1 & 4 - HAMILTON  
MAP 8 LOT 3 - TOPSFIELD

**ZONING:**

**HAMILTON:**

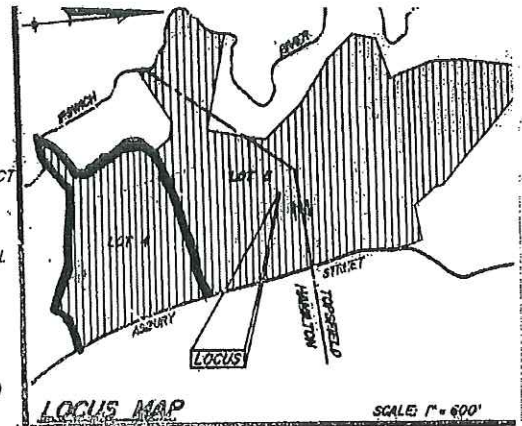
RA - RESIDENCE - AGRICULTURE  
FLOOD PLAIN DISTRICT  
GROUNDWATER PROTECTION OVERLAY DISTRICT  
CONSERVANCY DISTRICT

**TOPSFIELD:**

ORA - OUTER RESIDENTIAL & AGRICULTURAL  
IPSWICH RIVER PROTECTION DISTRICT  
FLOOD PLAIN DISTRICT

**REFERENCES:**

DEED BOOK 5259, PAGE 177  
DEED BOOK 2710, PAGE 378 (BACK DEED)  
PLAN BOOK 49, PLAN 21  
PLAN BOOK 135, PLAN 85  
PLAN BOOK 104, PLAN 19

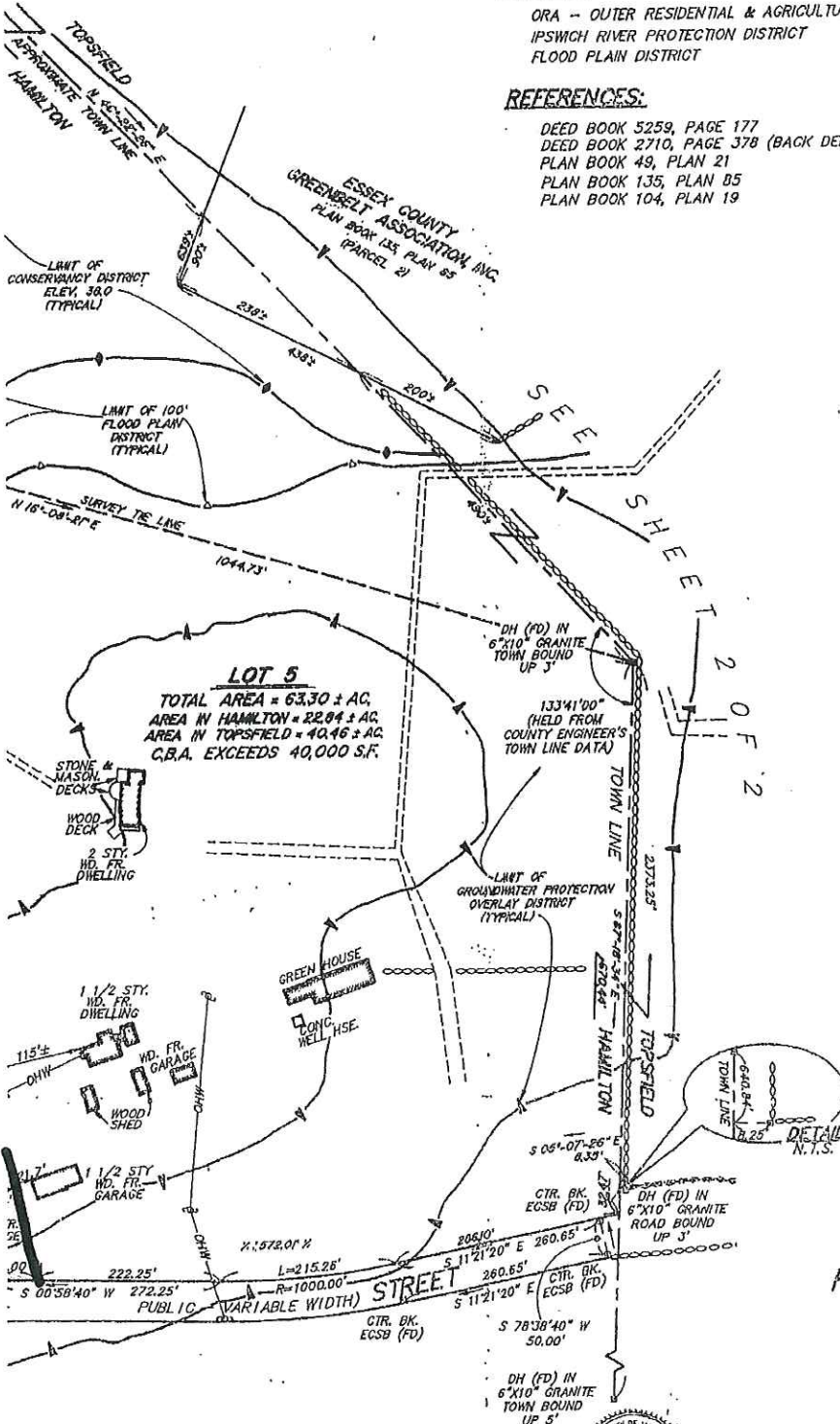


**RECORD OWNER:**

GEORGE S. PATTON

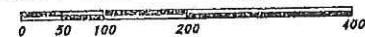
**NOTES:**

- 1) THE FLOOD PLAIN DISTRICT SHOWN HEREON IN HAMILTON IS SCALED FROM THE FLOOD INSURANCE RATE MAP OF COMMUNITY NUMBER 250084 DATED JUNE 4, 1990, AND IS APPROXIMATE.
- 2) THE FLOOD PLAIN DISTRICT SHOWN HEREON IN TOPSFIELD IS SCALED FROM THE FLOOD INSURANCE RATE MAP OF COMMUNITY NUMBER 250106 DATED JUNE 2, 1994, AND IS APPROXIMATE.
- 3) THE GROUNDWATER PROTECTION OVERLAY DISTRICT SHOWN HEREON IS SCALED FROM THE "TOWN OF HAMILTON, MA. GROUNDWATER PROTECTION OVERLAY DISTRICT" MAP, AND IS APPROXIMATE.
- 4) THE CONSERVANCY DISTRICT SHOWN HEREON IS SCALED FROM THE TOWN OF HAMILTON ZONING MAP, AND IS APPROXIMATE. THE 30' CONTOUR WAS NOT FIELD LOCATED.
- 5) THIS PLAN IS COMPILED FROM DEEDS AND PLANS OF RECORD AND A PARTIAL FIELD SURVEY.
- 6) THE IPSWICH RIVER SHOWN HEREON IS SCALED FROM PLANS OF RECORD AND IS APPROXIMATE.



PLAN OF LAND  
IN  
HAMILTON & TOPSFIELD, MA  
PREPARED FOR  
GEORGE S. PATTON

SCALE: 1" = 100' NOVEMBER 12, 1997



**HSA** HANCOCK SURVEY ASSOCIATES, INC.  
235 NEWBURY STREET, DANVERS, MASSACHUSETTS 01923  
VOICE 978-777-3050 FAX 978-774-7816

CHECKED BY: CWG

SHEET 1 OF 2



## **EXHIBIT B**

### **RIGHT OF FIRST OFFER**

The parties agree that the Property is subject to rights of first offer as provided below:

1. In the event that the Town intends to sell, convey or otherwise transfer any part or all of the Property to a third party (other than a board, committee, department or other governmental entity within the Town), the Town (the "Offeror") must first deliver a written offer (the "Offer") to sell such property (the "Sale Property") to the each of the following persons who are then living and legally competent or the legal representative of an Offeree who is living and is not legally competent: the Donor, Joanne Holbrook Patton, and her children, Mother Margaret Georgina Patton, George S. Patton, Jr., Robert H. Patton, Helen Patton and Benjamin W. Patton (the "Offerees"), in care of The 1911 Trust Company, LLC.

2. The Offer shall state the sale price for the Sale Property, which shall be an amount equal to the fair market value of the Sale Property as determined by an independent real estate appraiser having at least ten years' experience in the appraisal of comparable property, selected by the Offeror, and any other terms and conditions on which the Offeror is willing to sell the Sale Property.

3. The Offerees shall have thirty (30) days from the date of the Offer to accept the Offer by written notice to the Offeror; provided, however, that if any one or more of the Offerees disputes the fair market value of the Sale Property as stated in the appraisal obtained by Offeror, such Offeree(s) shall give written notice of such dispute to the Offeror within said 30-day period and shall, within sixty (60) days of the date of the Offer, obtain and deliver to Offeror a second appraisal at the sole cost and expense of said Offerees from an independent appraiser having at least ten years' experience in the appraisal of comparable property of his, her or their own choosing, and said second appraisal shall be averaged with the first appraisal obtained by Offeror to determine the fair market value of the Sale Property. If the fair market appraisals of the two independent appraisers diverge by more than ten percent the two appraisers shall agree on a third similarly qualified appraiser, whose expenses and costs shall be shared by the Offeror and the Offeree(s) and the fair market value shall be the average of the three appraisals. If the fair market value of the Sale Property is adjusted as provided in this paragraph 3, the period in which the Offerees may accept the Offer shall expire fifteen (15) days after the date Offeror receives the second appraisal from Offerees.

4. If only one Offeree accepts the Offer, the Offeror and said Offeree shall have an additional forty-five (45) days from the date of the Offeree's acceptance to negotiate in good faith and execute a purchase and sale agreement reasonably acceptable to all parties. If more than one Offeree accepts the Offer and any of them notifies the Offeror in writing prior to the deadline for accepting the Offer that said Offeree is unwilling to take title as tenants in common with the other Offeree(s), the Offeror shall notify the Offerees in writing that the Sale Property will be sold to the highest bidder and shall require each Offeree to submit a written bid for the Sale Property within fifteen days of receipt of such notice at a price which is not less than the

original offering price (as adjusted in accordance with paragraph 3, above). The Offeror and the Offeree making the highest bid shall then negotiate in good faith and execute a purchase and sale agreement within 45 days after the determination of the identity of the winning bidder.

5. If none of the Offerees timely accepts the Offer, or if one or more Offerees accepts the Offer but, despite good faith efforts, the parties are unable to timely negotiate and execute a purchase and sale agreement, the Offeror may sell the Sale Property to a third party within one (1) year of the date of the Offer at a price not less than that contained in the Offer (as adjusted in accordance with paragraph 3, above), and on such terms and conditions as are not more favorable to the third party buyer than those contained in the Offer.

6. In the event the Town shall attempt to sell any part or all of the Property without offering the Offerees the right of first offer as provided above, such sale shall be null and void.

7. If the Offeror shall make and record with the Essex County Registry of Deeds an affidavit stating (1) that a conveyance made by the Offeror is made pursuant to a bona fide offer to purchase; (2) that the Offeror has given notice to the Offerees and has otherwise complied with the provisions of this right of first offer; (3) that the Offeror has not received written notice of election to purchase from any Offeree in accordance with the provisions hereof, or that any Offeree who has given notice has failed to complete the purchase in accordance with the provisions hereof; and (4) that the conveyance is made to the third party buyer within one (1) year of the date of the Offer at a price not less than that contained in the Offer (as adjusted in accordance with paragraph 3, above), and on such terms and conditions as are not more favorable to the third party buyer than those contained in the Offer, such affidavit shall be conclusive evidence of compliance with the provisions hereof with respect to such conveyance in favor of the grantee therein and all persons claiming through or under such grantee.

8. The right of first offer reserved in this instrument shall not affect the right of the Town to subject the Property to a mortgage or other security instrument. Any first lender coming into possession of the Property, or any part thereof, pursuant to the remedies provided in a mortgage or foreclosure or deed in lieu of foreclosure shall be exempt from any right of first offer.

DONOR

\_\_\_\_\_  
Joanne Holbrook Patton

\_\_\_\_\_  
Date

TOWN OF HAMILTON  
BOARD OF SELECTMEN

\_\_\_\_\_  
David G. Neill Chairman

\_\_\_\_\_  
Date



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Marc I. Johnson

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Date

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Jennifer T. Scuteri

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Date

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Jeffrey T. Stinson

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Date

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Jeffrey M. Hubbard

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Date

