

## MEMORANDUM OF SALE

This Memorandum of Sale is made as of August 17, 2017, between and among \_\_\_\_\_ (the "Buyer"), and JONATHAN R. GOLDSMITH, ESQ. (the "Receiver"), as he is the Receiver of Bill Willard, Inc. ("Owner"). Buyer and Receiver are also referred to individually as a "Party" and collectively as "Parties."

1. Purchase and Sale: Pursuant to a public auction conducted on August 17, 2017 (the "Auction"), on behalf of the Receiver, the Buyer, as the highest bidder, agrees to purchase the real estate described below (the "Property") in accordance with the terms hereof, and in accordance with the Additional Terms and Conditions of Sale (the "Additional Terms and Conditions") as announced at the time and place of sale, which Additional Terms and Conditions are incorporated herein by reference.

2. Description of Property: The property shall mean the following, namely:

**1010 Ryan Road (and adjacent properties), Northampton, MA**, being six (6) parcels of land comprising of approximately 202.1 acres of land *in toto*, and is more specifically identified as:

A. Ryan Road -- Assessor's Map 35, Block 28, Lot 1  
Hampshire Registry of Deeds Book 1583, Page 729

B. Ryan Road – Assessor's Map 35, Block 29, Lot 1  
Hampshire Registry of Deeds Book 1134, Page 226

C. Burts Pit Road – Assessor's Map 35, Block 79, Lot 1  
Hampshire Registry of Deeds Book 1583, Page 727

D. Burts Pit Road – Assessor's Map 35, Block 80, Lot 1  
Hampshire Registry of Deeds Book 1157, Page 444

E. Burts Pit Road – Assessor's Map 36, Block 156, Lot 1  
Hampshire Registry of Deeds Book 4295, Page 332

F. Westhampton Road – Assessor's Map 36, Block 175, Lot 1  
Hampshire Registry of Deeds Book 4295, Page 332

3. Transfer of Property: The Property shall be conveyed by a Receiver's Deed, without covenants, subject to and with the benefit of, inter alia:

- a. the provisions of applicable state and local law, including building codes and local zoning laws, if any;

- b. all of record easements, restrictions, improvements, conveyances, rights of way, and all other instruments of record, if any, and any encroachments of retaining walls or fences situated on or in proximity to any property lines;
- c. the provisions of Massachusetts General Laws, Chapter 21E;
- d. Such taxes for the then current period as are not due and payable on the date of the delivery of such deed;
- e. Any liens for municipal betterments assessed after the date of this Agreement;
- g. a certain Consent Decree in the matter of Conservation Law Foundation, Inc. v. Bill Willard, Incorporated, United States District Court for the District of Massachusetts, Docket No., 1:17-cv-10141 (a copy of said Consent Decree is attached hereto, and is subject to receiving final approval by the United States District Court and appropriate governmental entities as set forth therein);
- h. 2015 Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "Permit"), which Permit application is presently in progress and shall be assigned, transferred and conveyed to the Buyer upon issuance of said Permit thereto;
- i. a Petition dated November 4, 1993, Land Court Case No. 93 REG 43016 (the "Registration Case"), whereby the Owner hereof petitioned the Massachusetts Land Court to have the Property confirmed for Registration pursuant to Chapter 185 of the General Laws (a copy of which is attached and is pending before the Massachusetts Land Court), and all of record agreements, stipulations, orders, and judgments entered therein;
- j. a Deed of Conveyance in consideration of the resolution of a claim asserted in said Registration Case, whereby approximately 0.54 acres of land was conveyed to one Carol A. Apgar, as more particularly described in a Deed recorded in the Hampshire Registry of Deeds in Book 8159, Page 271, and as depicted in a plan of land recorded in said Registry in Book of Plans 204, Page 27 (a copy of said Deed and Plan are attached hereto);
- k. a Stipulation entered in said Registration Case by and between the Owner and the Commonwealth of Massachusetts regarding the rights and interests of the parties and the public in and to the navigable stream identified as "Parsons Brook" (a copy of said Stipulation is attached hereto); and

1. a Settlement Agreement and Agreement for Judgment and Boundary Line Agreement entered in said Registration Case (copies of which are attached hereto), regardless of whether said instruments are on record at the Hampshire Registry of Deeds as of the date of this Memorandum of Sale.
4. Price and Deposit: The Purchase Price is \_\_\_\_\_, of which FIFTY THOUSAND and 00/100 (\$50,000.00) DOLLARS has been paid this day in accordance with the terms of the Auction Sale, with an additional deposit to be delivered to the Receiver by the Buyer within five (5) business days from the date of the sale in an amount that increases the total deposit to ten percent (10%) of the Purchase Price (collectively, the "Deposit"). The balance of the Purchase Price shall be paid in cash, certified check, bank treasurer's or cashier's check at the Closing. In all events the Receiver shall be entitled to any interest, if any, earned on the Deposit, and the amount to be paid by the Buyer shall not be adjusted to reflect any interest earned on the Deposit.
5. Buyer's Premium: At the Closing, as separate bargained-for consideration for the auctioneer's services Buyer shall pay to the Receiver a Buyer's premium equal to Eight (8%) Percent of the Purchase Price.
6. Court Confirmation: The Receiver's obligations under this Memorandum of Sale Receiver's obligations under this Agreement are contingent upon approval thereof by the Hampshire County Superior Court in the Receivership matter of Beth A. Willard, et. al. v. Bill Willard, Inc., Docket No. 1780CV0050. The Receiver agrees promptly to seek Court approval.
7. Closing: The Receiver's Deed and related documents shall be delivered and the balance of the consideration paid at the offices of Goldsmith, Katz & Argenio, PC, 1350 Main Street, Springfield, Massachusetts, on or before the later of: (i) the tenth (10th) business day following the approval by the Superior Court of this Memorandum of Sale; or (ii) the thirtieth (30<sup>th</sup>) day following the execution of this Memorandum of Sale, time being of the essence, unless the Receiver agrees otherwise in writing (the "Closing"). Each party shall pay the costs of its own counsel or other professionals hired by such party. Recording costs, excise tax and documentary stamps shall allocated between the Parties as is as consistent with practice in Hampshire County, Massachusetts. In addition, Buyer shall be responsible for all costs relative to title examination, document preparation, and closing. The conveyance by the Receiver does not warrant or represent that the title to the property will be insurable or marketable.
8. Risk of Loss: The Buyer acknowledges that from and after this date Buyer shall have the sole risk of loss, and the Receiver shall have no responsibility for maintaining insurance covering the Property. If the Property is damaged by fire or other casualty prior to the Closing, Buyer shall accept a deed to the Property and an assignment of so much of any insurance proceeds as may be payable to the Receiver under any policy of insurance as has not been used in the restoration of the Property prior to the Closing, paying therefor the full Purchase Price.

9. Other Assets: If Buyer has agreed to buy other assets from the Receiver pursuant to the Auction, Buyer represents, warrants, and agrees as follows: (a) the identity, extent, and condition of the other assets are not material inducements for this Memorandum of Sale, and they are not material to this Memorandum of Sale; and (b) no sale of any asset to be sold at the Auction is contingent on the sale of any other asset at said Auction, except as set forth on the Asset List attached hereto, if any.

10. Default: If the Buyer shall fail to fulfill the Buyer's agreements herein, the Deposit shall be retained by the Receiver and the Receiver shall be free to sell the Property to the second highest bidder at the public auction in accordance with the terms announced at the public auction, or at a subsequent public auction or private sale. The Buyer shall have no claim to any excess that may be created by a resale. In addition, the Receiver reserves all remedies at law and in equity against the Buyer for any default by the Buyer under this Memorandum of Sale including, without limitation, the right to demand specific performance of the Buyer's obligations hereunder.

11. Receiver's Title: If the Receiver cannot convey title to the Property as stipulated, or the Court fails to approve the sale, the Deposit shall be refunded and all rights hereunder shall cease; and the Buyer shall have no recourse against the Receiver or his employees, agents, attorneys and representatives, whether at law or in equity. The acceptance of the Deed by the Buyer in any event constitutes conclusive evidence of full performance and discharge of all of the Receiver's obligations under this Memorandum of Sale.

12. "As Is" Condition: The Property shall be conveyed in "as-is" condition, subject to known and unknown defects, if any, and subject to the present manner of use and occupancy of the Property, and any improvement on the Property likewise are sold "as is, where is" with no warranties expressed or implied. The Receiver makes no representation or warranty of any kind with respect to the Property, or to its use and occupancy. The Buyer acknowledges that Buyer has not been influenced to enter this transaction by, nor has it relied upon, any warranties or representations of the Receiver or the auctioneer, including but not limited to representations or warranties concerning compliance with any health, building, zoning, environmental or other law or ordinance or regulation (federal, state or local) which may affect the transfer of the Property or the Buyer's use and/or enjoyment of the Property, each of which representations and warranties is expressly disclaimed.

The Buyer acknowledges that it has had the opportunity to investigate the condition of the Property and to examine such public records pertaining to the Property as it has deemed necessary. The Buyer agrees that the cost of any inspections of the Property necessary for compliance with any state, federal or local law, ordinance or regulation will be the Buyer's sole responsibility, and that the Receiver shall have no liability or responsibility therefor whatsoever.

The Buyer acknowledges that the Receiver shall be under no obligation to comply with any statute or regulation, including, without limitation, Massachusetts General Laws c. 148, §§26F, 26G and 28 concerning installation of smoke detectors, carbon monoxide detectors or automatic fire suppression or sprinkler systems, which obligations the Buyer specifically assumes. The Buyer assumes responsibility for all costs relating to compliance with Environmental Codes, state and city requirements regarding smoke detection equipment and lead paint regulations, all as applicable.

In the event the Premises contains an on-site sewage system, the Buyer shall be responsible for complying with the Commonwealth of Massachusetts regulations pertaining thereto at its own cost by obtaining an inspection of the system and, if necessary, repairing and/or replacing the sewage system components in order to bring the system into compliance with the Code of Massachusetts Regulations Ch. 310.

In the event that the premises contain underground storage tank(s), the Buyer shall be responsible for complying with the applicable regulations issued by the Massachusetts Board of Fire Prevention as set forth in 527 CMR 9.00 et. seq., which may require removal of any existing tank(s).

The Buyer shall be responsible for compliance with all applicable environmental laws, including, without limitation, the Massachusetts Oil and Hazardous Material Release Prevention Response Act (M.G.L.c.21E), Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §9601 et. seq.) and other federal, state and local laws and regulations, and any judicial or administrative decree or decisions. The Buyer hereby releases the Seller from any and all liability in connection with any environmental claims, of any kind or nature, which may arise in connection with, or relating to the Premises.

No personal property of any nature is included in this conveyance except as expressly set forth herein. If, as of this date, there is any tenant or occupant, the Buyer, if Buyer wishes to evict such tenant or occupant, must do so at Buyer's own expense.

13. Adjustments: Adjustment shall be made for current real estate taxes or payments due in lieu thereof, assessments, or other municipal charge, rental payments, liens or claims in the nature of liens at Closing as consistent with practice in Hampshire County, Massachusetts. The Receiver makes no representation as to the accuracy of those charges listed on the Certificate(s) of Municipal Lien issued by the City of Northampton.

14. Representations, Warranties and Covenants of Buyer: Buyer represents and warrants as follows:

- (a) Buyer is not relying on any warranty, statement or representation, express or implied, made by or on behalf of Receiver as to any matter whatsoever with respect to the Property, including zoning matters, or any adverse claims with respect to the Property;

(b) Buyer has had full and adequate opportunity to perform due diligence as to the Property; and

(c) Buyer is satisfied with the Receiver's and the auctioneer's conduct of the auction from which this Memorandum of Sale results, and there are no defects or irregularities in the auction.

15. Indemnity: Buyer shall defend, indemnify, and hold the Receiver and the Receiver's agents harmless from and against any claim, loss, cost, expense, liability, or damage, including reasonable attorneys' fees, incurred by the Receiver or the Receiver's agents arising from or related to a breach of any one or more of Buyer's representations, warranties, covenants, or agreements in this Memorandum of Agreement.

16. No Other Obligations: This Memorandum of Sale imposes no obligations or duty on the Receiver other than those expressed in this Memorandum of Sale.

17. No Recording this Memorandum of Sale: Buyer agrees not to record or cause this Memorandum of Sale to be recorded with the land evidence records and that, should this Memorandum of Sale be so recorded by or on behalf of Buyer in breach of this provision, a default by Buyer is deemed to have occurred and Receiver has the right to terminate this Memorandum of Sale by recording with said land evidence records a written notice of termination, executed by Receiver only. Buyer hereby appoints Receiver as Buyer's attorney-in-fact for such purpose.

18. Entire Agreement, Binding Effect: This Memorandum of Sale merges any and all understandings and agreements between Buyer and Receiver with respect to the Property and binds and inures to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns.

19. Survival of Terms: All promises, representations, warranties, covenants, and indemnifications made by the Buyer in this Memo shall survive the Closing and the delivery of the Deed.

20. Assignment: Buyer shall not assign Buyer's rights under this Memorandum of Sale or nominate a third-party buyer without the written consent of the Receiver.

21. Construction: The captions and headings in this Memorandum of Sale are for convenience only and are not to be used to interpret or define the provisions of this Memorandum of Sale. This Memorandum of Sale shall be construed without regard to any presumption or rule requiring that it be construed against the Party causing all or part of this Memorandum of Sale to be drafted. This Memorandum of Sale is executed in multiple counterparts and is to be construed as a Massachusetts contract, to take effect as a sealed instrument, and may be canceled, modified, or amended only by a written instrument executed by the Receiver and Buyer. If two or more persons are named herein as Buyer, their obligations hereunder shall be joint and several.

22. Severability: If any provisions of this Memorandum of Sale is held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or enforceability without in any manner affecting the validity or enforceability of such provision in any other jurisdiction or the remaining provisions of this Memorandum of Sale in any jurisdiction.

23. Governing Law: This Memorandum of Sale must be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts applicable in the case of agreements made and to be performed entirely in Massachusetts.

24. Signature and Effective Date of Memorandum of Sale: This instrument is not binding on the Receiver until the Receiver executes this Memo where indicated below.

25. Time of the Essence: It is hereby agreed that time is of the essence of this Agreement.

26. Receiver Not Personally Liable; Buyer Waives Right to Certain Damages: The Receiver signs this Memorandum of Sale solely in the Receiver's capacity as Receiver of the Property. Nothing makes the Receiver personally liable under this Memorandum of Sale in any way whatsoever. Buyer unconditionally and irrevocably waives any right it may have to recover any special, exemplary, punitive or consequential damages, or any damages other than actual damages, even if the person or organization is on notice of the possibility of any of these types of damages, and limits its recovery of actual damages to the Property.

27. Waiver of the Right to Trial by Jury: The Parties each hereby unconditionally and irrevocably waive any right to trial by jury in any proceeding arising out of or otherwise relating to this Memorandum of Sale or the Property or any transaction or occurrence arising from any of the foregoing or related to any of the foregoing.

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Witness:

RECEIVER:

Jonathan R. Goldsmith, Esq.,  
Receiver of Bill Willard, Incorporated

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Witness:

BUYER:

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(Print Name)

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(Address)



**ASSET LIST**

## ATTACHMENT 3.g

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

Conservation Law Foundation, Inc.	)	
	)	
Plaintiff,	)	Case No. 1:17-cv-10141
v.	)	<b>Proposed Consent Decree</b>
	)	
Bill Willard, Incorporated	)	
	)	
Defendant.	)	
	)	
	)	

WHEREAS, Plaintiff Conservation Law Foundation, Inc. ("CLF") filed this action on January 26, 2017, against Bill Willard, Incorporated ( "Bill Willard" or "Defendant"), alleging violations of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* ("Clean Water Act"), and seeking declaratory and injunctive relief, civil penalties, and attorneys' fees and costs;

WHEREAS, CLF is a regional, nonprofit environmental organization;

WHEREAS, Bill Willard owns a construction sand and gravel (exposed aggregate) facility located at 1010 Ryan Rd., Florence, MA 01062 (the "Facility");

WHEREAS Jonathan R. Goldsmith, Esq. has been appointed receiver of Bill Willard, pursuant to an agreement of the shareholders of Bill Willard in Civil Action 1780CV0050 now pending in the Superior Court for Hampshire County, Massachusetts.

WHEREAS, the Facility is not currently operating and the underlying real property is for sale, but significant materials remain on the areas used for industrial activity at the Facility and those materials are exposed to stormwater;

WHEREAS, CLF alleged that the Facility discharged stormwater and process wastewater associated with its industrial activity without a Clean Water Act discharge permit to waters of the United States;

WHEREAS, CLF alleged in its complaint (the "Complaint") and in a letter (the "Notice Letter") dated January 26, 2017, sent to Bill Willard, Incorporated, that Bill Willard, Incorporated violated Sections 301(a) and 402 of the Clean Water Act, 33 U.S.C. § 1311(a) and 1342(p)(2)(B);

WHEREAS, Bill Willard has engaged a qualified engineering consultant to undertake the preparations necessary to apply for a stormwater permit for the Facility;

WHEREAS, Bill Willard has agreed to develop and implement a Stormwater Pollution Prevention Plan and to file a Notice of Intent to seek coverage under the 2015 Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity for the Facility;

WHEREAS, Bill Willard has agreed to prevent any discharges of process wastewater unless such discharges are covered under and in accordance with a Clean Water Act discharge permit; and

WHEREAS, CLF and Bill Willard (collectively, "the Parties" or individually "Party") agree that resolution of this matter without further litigation is in the best interest of the Parties and the public, and that entry of this Decree is the most appropriate means of resolving this action.

NOW, THEREFORE, without the trial of any issue of fact or law, without the admission by Bill Willard of any of the facts or violations alleged in the Complaint, upon consent of the Parties, and upon consideration of the mutual promises contained herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

## **I. JURISDICTION AND VENUE**

1. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question) and 33 U.S.C. § 1365(a) (Clean Water Act jurisdiction). An actual, justiciable controversy exists between Plaintiff and Defendant. The requested relief is proper under 28 U.S.C. § 2201, 28 U.S.C. § 2202 and 33 U.S.C. § 1365(a).

2. Venue is properly vested in this Court pursuant to 33 U.S.C. § 1365(c)(1), because the alleged events giving rise to this action occurred at the Facility, located at 1010 Ryan Rd., Florence, MA 01062 and in the Middle Connecticut (Massachusetts) watershed, which are located within this judicial district and plaintiff resides in the District of Massachusetts.

## **II. COMPLIANCE PROGRAM**

3. Neither the Facility nor the Defendant shall cause or allow process wastewater to discharge from the Facility, except in compliance with applicable federal and state statutes, regulations, and permits. Defendant and the Facility shall comply with the Clean Water Act.

4. Within thirty (30) days of the date on which this Consent Decree is entered by the Court (the "Effective Date"), Defendant shall apply for coverage under the National Pollutant Discharge Elimination System ("NPDES") 2015 Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity ("2015 MSGP") by submitting a complete and accurate Notice of Intent ("NOI") to the United States Environmental Protection Agency ("EPA") in accordance with this Decree, and shall send a copy of the NOI to CLF within ten days after it is provided to EPA. In making such application the Defendant may claim Inactive Status on the NOI as detailed in Section 8.J.8.1 of the 2015 MSGP. Defendant's NOI shall either include a URL linking to the online electronic copy of the Facility's Stormwater Pollution Prevention Plan ("SWPPP"), or shall otherwise comply with the alternative option provided by the EPA's new eNOI (in lieu of posting an online SWPPP and URL).

5. Defendant shall comply with the 2015 MSGP at the Facility. Defendant shall develop a written SWPPP according to the requirements in Parts 5 and 8.J of the 2015 MSGP by no later than thirty (30) days after the Effective Date. The MSGP, as it may be updated from time to time, is incorporated into this Consent Decree by reference. Development of the SWPPP shall include, at minimum, the following:

- a. Formation of a pollution prevention team of qualified personnel who will be responsible for preparing the plan, implementing practices from the plan, and ensuring compliance with the MSGP.
- b. Identification of potential stormwater pollution sources at the Facility, and selection and installation of appropriate control measures that minimize the discharge of pollutants during storm events for each of these sources.
- c. Development of procedures for conducting required inspection and monitoring activities, as well as regular maintenance of control measures, at the Facility.

6. Defendant has hired a qualified engineering consultant to develop its SWPPP. Defendant will include the consultant's reasonable and necessary recommendations in its SWPPP.

7. Defendant shall provide a copy of its SWPPP to CLF for review and comment by no later than thirty (30) days from the date this Decree is executed by the Parties but shall not be required to incorporate CLF's recommendations or comments into its SWPPP.

8. If Defendant no longer operates the Facility and prevents exposure of industrial materials (including earth materials) to stormwater such that discharges of stormwater associated with industrial activity no longer occur at the Facility, then Defendant may file a Notice of Termination of coverage under the 2015 MSGP. Prevention of exposure of industrial materials to stormwater must include, at a minimum either: (a) removing piles of earth materials and stabilizing the underlying land with appropriate plantings of vegetation, or (b) stabilizing the existing exposed piles of exposed earth materials with appropriate plantings of vegetation. If the Notice of Termination is accepted by EPA, Defendant's monitoring obligations under Section III, below, shall cease.

9. If the Defendant's claim of Inactive Status on the NOI as detailed in Section 8.J.8.1 of the 2015 MSGP is accepted by EPA, Defendant's monitoring obligation under Section III below shall cease except as required by federal and state statutes, regulations, or the Defendant's permits.

### **III. MONITORING PROGRAM**

10. Defendant shall monitor and sample its stormwater runoff, pursuant to the MSGP for pollutants identified in the MSGP for Sector J (i.e., Total Suspended Solids and Nitrate plus Nitrite Nitrogen) commencing on the Effective Date. This monitoring must be performed pursuant to the requirements of the MSGP and include, at a minimum, the stormwater collection areas where runoff is generated, received, stored, treated, or disposed and that are exposed to either precipitation or stormwater runoff.

11. Defendant shall also comply with all other inspection and monitoring requirements of the MSGP including, but not limited to, those of Part 3 including, but not limited to, the in-house inspection of control structures and storage areas after rain events.

12. Defendant may take additional samples of its stormwater discharges. If it does so, Defendant will send a copy of each such inspection and/or sampling result to CLF no later than ten (10) days after receipt.

13. During the first year after the Effective Date of this Decree, Defendant shall implement control measures, if any, and/or maintain control measures at the Facility as necessary to meet the benchmark levels for MSGP Sector J (i.e., Total Suspended Solids and Nitrate plus Nitrite Nitrogen). If, after the end of twelve (12) months from the Effective Date of this Decree, Defendant's quarterly monitoring result for any parameter exceed MSGP Part 8.J benchmark levels, Defendant agrees to pay stipulated additional Supplemental Environmental Project payments as set forth in Paragraph 18 of this Decree. Such stipulated additional Supplemental Environmental Project ("SEP") payments shall be calculated based on the number of monitoring parameters exceeded during a quarterly monitoring event, not on the number of discharge locations where a monitoring parameter is exceeded (i.e., an exceedance of the TSS monitoring parameter at three separate discharge locations sampled during one quarterly monitoring event shall result in one stipulated additional Supplemental Environmental Project payment, rather than three).

14. During the life of the Decree, CLF, through representatives, and at its own expense may conduct one (1) site inspection every year at the Facility. The site inspection shall occur during normal business hours and upon three (3) business days written notice including notice to Defendant. During the site inspection, CLF representatives may collect water and soil samples, take photos at the Facility, and review the Facility's SWPPP and records and reports kept pursuant to the SWPPP in order to monitor compliance with the MSGP and the Decree. Any such samples shall be split samples with one of the split samples remaining in the possession of Defendant. CLF shall provide the Defendant copies of all photographs taken by CLF within 10 days of the inspection. CLF shall further provide the Defendant with copies of any analytical reports for any samples taken from the Facility within 10 days of receipt of such reports. In order to contain costs and minimize the potential for adversarial postures during the site inspections, the site inspections shall be conducted by the parties' expert consultants without the physical presence

of either Party's legal counsel. In addition, if Defendant files a Notice of Termination of coverage under the MSGP pursuant to Paragraph 8, above, CLF may conduct one additional site visit within six months of receipt of such Notice of Termination to confirm that exposed materials have been properly stabilized and discharges of stormwater associated with industrial activity from the Facility have been eliminated.

15. During the life of the Decree, Defendant shall copy CLF and CLF shall copy the Defendant on all documents related to stormwater quality or Clean Water Act compliance regarding the Facility submitted to the EPA or MASSDEP, or any local government. Such documents shall be provided to CLF or the Defendant within ten (10) days of being sent to the agencies and/or local government.

#### **IV. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

16. Defendant shall make a Supplemental Environmental Project ("SEP") payment totaling Twenty Five Thousand and No/100 Dollars (\$25,000) to the Connecticut River Conservancy, Attn: Andrew Fisk, 15 Bank Row St., Greenfield MA 01301, for the environmental protection and restoration of, or other environmental benefit to, the Middle Connecticut (Massachusetts) Watershed. Defendant shall notify CLF in writing concurrently each time a SEP payment is made and provide a copy of each check. Payment under this paragraph shall be made within thirty (30) days of closing the sale of the underlying real property, or, if the underlying real property is not sold, according to the following schedule:

- a. \$12,500.00 upon approval of this Decree as detailed in Section VII herein.
- b. \$12,500.00 on or before 9/1/2017.

17. For each missed deadline included in this Decree, excluding missed payment deadlines (discussed in Paragraph 21 below), Defendant shall make an additional SEP payment to the Connecticut River Conservancy in the amount of five hundred (\$500) for the environmental protection and restoration of, or other environmental benefit to, the Middle Connecticut (Massachusetts) watershed. Payment of each such additional amount shall be due fourteen (14) days following each missed deadline. Defendant shall notify CLF in writing concurrently each time a payment is made and provide a copy of each check. Pursuant to Paragraph 43, below, Defendant shall not be required to make such additional SEP payment for missed deadlines arising from a Force Majeure event.

18. For each exceedance of an MSGP benchmark as described in Paragraph 13 of the Decree, above, Defendant will make an additional SEP payment to the Connecticut River Conservancy in the amount of two hundred fifty and no/100 hundred dollars (\$250.00) for the environmental protection and restoration of, or other environmental benefit to, the Middle Connecticut (Massachusetts) watershed. Payment of each such additional amount shall be due fourteen (14) days following each exceedance. Provided however that the cumulative amounts of such payments shall not exceed the sum of \$5,000.00.

19. None of the SEP payments shall be disbursed to CLF.

#### **V. LIQUIDATED ATTORNEY FEES AND COSTS**

20. Defendant shall pay to CLF a total sum payment of Twenty Five Thousand

Dollars (\$25,000.00) as full and complete satisfaction of CLF's claim for attorneys' fees and costs incurred to date in this matter and for reasonable anticipated costs to be incurred in compliance monitoring and case management over the term of the Decree. Payment under this paragraph shall be made within thirty (30) days of closing the sale of the underlying real property, or, if the underlying real property is not sold, according to the following schedule:

- a. \$15,000.00 upon approval of this Decree as detailed in paragraph VII herein.;
- b. \$10,000.00 on or before 9/1/2017.

21. In the event that any payment owed by Defendant under the Decree is not made on or before the due date, Defendant shall be deemed in default of its obligations under this Decree. In addition to a continued requirement to make said payment, Defendant shall pay to CLF liquidated attorney fees of five hundred dollars (\$500) for every seven days payment is late.

## **VI. EFFECT OF DECREE**

22. CLF hereby covenants not to sue, releases and discharges Bill Willard and its past and present receivers, directors, officers, shareholders, consultants, receivers, employees, agents, partners, subsidiaries, affiliates, parent companies, representatives, consultants, servants, heirs, successors, administrators, assigns, attorneys, (from any and all claims, causes of action, or liability under Section 505 of the Clean Water Act, 33 U.S.C. § 1365, for damages, penalties, fines, injunctive relief, past and future attorney's fees, past and future costs and the like, or any other claim or relief of any nature or kind (i) relating to, resulting from or alleging noncompliance with the Clean Water Act at the Facility occurring prior to the date the Court enters this Decree; (ii) for any violations that were alleged, or could have been alleged, in the Complaint; (iii) for the past conduct alleged to constitute violations in the CLF letter to Defendant dated October 21, 2016; and (iv) for past violations alleged in any CLF correspondence to Defendant dated prior to the date the Court enters this Decree concerning Defendant's facility and operations. Notwithstanding anything to the contrary contained herein, CLF retains all rights necessary to enforce the terms of this Decree, including by the filing of a lawsuit.

23. Defendant Bill Willard, Incorporated covenants not to sue, releases and discharges CLF (and its subsidiaries, officers, directors, trustees, representatives, assigns, agents, consultants, employees, officers, and attorneys, including those who have held positions in the past), its representatives, assigns, agents, employees, officers, and attorneys, including those who have held positions in the past from any and all claims, liability, demands, penalties, costs, and causes of action of every nature which concern or are connected with CLF's investigation of and actions regarding Bill Willard, Incorporated.

24. Neither this Decree, nor terms thereof, nor performance of the terms thereunder by Defendant shall constitute or be construed as an admission or acknowledgment by Defendant of the factual or legal assertions contained in this Decree, the validity of the facts or determination contained in this Decree or CLF's Complaint. Neither this Decree, nor terms thereof, nor performance of the terms thereunder, shall constitute or be construed as an admission or acknowledgment by Defendant of any liability, or an admission of violation of any law, by Defendant or by its officers, directors, employees, agents, successors, or assigns.

25. CLF does not, by consent to the Decree, warrant or aver in any manner that



Defendant's compliance with this Decree will constitute or result in compliance with federal or state law or regulation. Nothing in this Decree shall be construed to affect or limit in any way the obligation of Defendant to comply with all federal, state, and local laws and regulations governing any activity required by this Decree.

26. No Other Actions Pending: The Parties acknowledge that he/she or it has not filed or otherwise initiated any action in a court of law or equity against any other Party named in this Decree.

## **VII. REVIEW AND TERM OF DECREE**

27. The Parties recognize that, Jonathan R. Goldsmith has been appointed receiver for the Defendant pursuant to an agreement of the Defendant's shareholders filed in Civil Action 1780CV0050. Accordingly, it is understood and agreed that the Receiver shall have no personal liability to any person for acts or omissions contemplated by this Consent Decree or any Order of the Court issued thereby or related thereto. Concurrent with the approval process detailed in Section VII herein, Goldsmith shall seek approval of the Superior Court for Hampshire County, Massachusetts to enter into this Decree. Upon approval by the Superior Court, the EPA Administrator, the Regional EPA Administrator, and the Attorney General for review, as required by 40 C.F.R. § 135.5, the Parties will jointly move the Federal District Court for entry of the decree. Therefore, after the signing of this decree by the Parties, the Parties shall jointly inform the Court of the decree, and CLF shall serve copies of this Decree upon the EPA Administrator, the Regional EPA Administrator, and the Attorney General for review, as required by 40 C.F.R. § 135.5 and Goldsmith shall file such paperwork as is necessary to obtain the Superior Court's approval. If for any reason any of the forgoing entities should decline to approve this Decree in the form presented, the Parties agree to continue negotiations in good faith in an attempt to cure any objection raised by the forgoing entities to entry of this Decree.

28. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), this Consent Decree cannot be entered until forty-five (45) days after the receipt of a copy of the proposed Consent Decree by the United States Attorney General and the EPA. Therefore, after the signing of this decree by the Parties, the Parties shall jointly inform the Court of the decree, and CLF shall serve copies of this Decree upon the EPA Administrator, the Regional EPA Administrator, and the Attorney General for review, as required by 40 C.F.R. § 135.5.

29. Upon the expiration of the forty-five-day review period provided by 33 U.S.C. § 1365(c)(3), or upon DOJ's completion of its review process, whichever is sooner, the Parties will jointly move the Court for entry of this Decree. This Decree shall take effect on the date it is entered by this Court and shall terminate upon the following: (i) five years have passed from the Effective Date or (ii) the Facility is covered by a Clean Water Act NPDES permit and has been sold; and (iii) completion of all payment obligations set forth in this Decree. If for any reason the Court should decline to approve this Decree in the form presented, the Parties agree to continue negotiations in good faith in an attempt to cure any objection raised by the Court to entry of this Decree.

## **VIII. MODIFICATION AND ENFORCEMENT OF DECREE**

30. This Decree may be modified only upon written consent of the Parties and the approval of the Court.

31. The Court shall retain jurisdiction over this matter and allow this action to be reopened for the purpose of enabling the Parties to this Decree to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Decree. If the Court does not agree to retain jurisdiction over this matter, then this Consent Decree will remain in full force and effect between the Parties, and either Party may institute a new action in the United States District Court for the District of Massachusetts concerning their respective rights and obligations under this Decree.

## **IX. MISCELLANEOUS PROVISIONS**

32. This Decree shall remain in effect if Defendant relocates the Facility to a different location, provided that the new location falls within the jurisdiction of the Clean Water Act.

33. Sections I, IV, V, VII, VIII, and IX of this Decree shall remain in effect if Bill Willard, Incorporated ceases to be the operator of the Facility, regardless of whether the Facility continues to operate or not.

34. All payments pursuant to this Decree shall be made in form of a business check. In the event that any business check submitted is returned due to insufficient funds, late payment penalties may apply and all subsequent payments shall be made in the form of a certified bank check.

35. Entire Agreement. This Decree constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written, among the Parties.

36. Notices. Any notice, demand, copies of documents and other communications required to be made under the provisions of this Decree (collectively, "Notices") by any Party hereto shall be effective only if in writing and either (a) emailed, (b) personally served, (c) mailed by United States registered or certified mail, return receipt requested, postage prepaid, or (d) sent by a nationally recognized courier service (e.g., Federal Express) for next-day delivery, to be confirmed in writing by such courier. Notices shall be directed to the Parties at their respective addresses set forth below. Notices given in the foregoing manner shall be deemed given when (a) sent via email, (b) actually received or refused by the party to whom sent if delivered by courier, or (c) if mailed, on the day of actual delivery as shown by the addressee's registered or certified mail receipt or at the expiration of three (3) business days after the date of mailing, whichever first occurs.

Notices for Plaintiff shall be sent to:

Zachary K. Griefen, Esq.  
Conservation Law Foundation  
15 East State Street, Suite 4  
Montpelier, VT 05602  
zgriefen@clf.org

Notices for Defendant shall be sent to:

Jonathan R. Goldsmith, Esq.  
Receiver for Bill Willard, Inc.  
1350 Main Street Suite 1505  
Springfield, MA 01103

With a cc to:

Mark A. Tanner, Esq.  
Bacon Wilson, P.C.  
57 Center Street  
Northampton, MA 01060  
mtanner@baconwilson.com

Each Party shall promptly notify the other Party of any change in the above-listed contact information by using the procedures set forth in this paragraph.

37. Authorization. Subject to the terms and conditions of this Decree each person signing this Decree represents and warrants that s/he has been duly authorized to enter into this Decree by the Party on whose behalf it is indicated that the person is signing.

38. Successors and Assigns. Except as otherwise provided for in this Agreement, this Decree shall be binding upon and inure to the benefit of the Parties and their respective representatives, heirs, executors, administrators, successors, officers, directors, agents, attorneys, employees and permitted assigns.

39. Interpretation. The provisions contained herein shall not be construed in favor of or against either Party because that party or its counsel drafted this Decree, but shall be construed as if all Parties prepared this Decree, and any rules of construction to the contrary are hereby specifically waived. The terms of this Decree were negotiated at arm's length by the Parties hereto.

40. Headings. The section and paragraph headings contained in this Decree are for reference purposes only and shall not affect in any way the meaning or interpretation of this Decree.

41. Counterparts. Facsimile, electronic and scanned signatures shall be deemed to be originals for all purposes. Copies of the original Agreement, whether transmitted by facsimile or other means, shall be effective. This Agreement may be signed in counterparts.

42. Severability. In the event that any of the provisions of this Decree are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

43. Force Majeure. For purposes of this Decree, a "Force Majeure event" is defined as any event arising from causes beyond the control of Defendant, including its contractors and

subcontractors, that delays or prevents the timely performance of any obligation under this Decree, except for obligations as provided in Paragraphs 16–18 and 20–21 of this Decree, notwithstanding Defendant's best efforts to avoid the delay. The deadline for the responsibility to perform any action under this Decree may be extended for up to the number of days of nonperformance caused by the Force Majeure event, provided that Defendant complies with the notice requirements of this paragraph. Examples of events which may constitute Force Majeure events include severe weather events, natural disasters, and national, state or regional emergencies. Examples of events that are not Force Majeure events include, but are not limited to, normal inclement weather, unanticipated or increased costs or expenses of work, Defendant's financial difficulty in performing such work and acts or omissions attributable to Defendant's contractors or representatives.

If any event occurs which may delay or prevent the performance of any obligation under this Decree, caused by a Force Majeure event, Defendant shall notify CLF, at the address specified in Paragraph 36 above, within seven (7) business days after Defendant first knows, or should know, that the event might cause a delay. This written notice to CLF shall include, without limitation: (i) an explanation of the causes of any actual or expected delay or noncompliance; (ii) the anticipated duration of delay; (iii) the measures taken and to be taken by Defendant to prevent or minimize the delay or nonperformance; (iv) a proposed schedule for the implementation of such measures; and (v) a statement as to whether in the opinion of Defendant the Facility can continue to operate in a manner which will not violate this Decree.

If CLF agrees that a delay or anticipated delay in performance is attributable to Force Majeure, the time for performance of the obligations under this Decree that are affected by the Force Majeure event shall be extended for the period of time reasonably necessary to allow performance of the obligation to the extent the delay was caused by a Force Majeure event.

**CONSERVATION LAW FOUNDATION, INC.**



By: \_\_\_\_\_  
Christopher M. Kilian, Vice President  
Conservation Law Foundation  
15 East State Street, Suite 4  
Montpelier, VT 05602

Date: 6/26/2017

**BILL WILLARD, INCORPORATED**

By: \_\_\_\_\_  
Jonathan R. Goldsmith, Esq.  
Receiver for Bill Willard, Inc.  
1350 Main Street Suite 1505  
Springfield, MA 01103

Date: \_\_\_\_\_

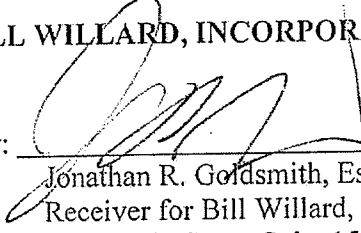
ENTERED and DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017

\_\_\_\_\_  
Honorable \_\_\_\_\_  
United States District Judge

**CONSERVATION LAW FOUNDATION, INC.**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Christopher M. Kilian, Vice President  
Conservation Law Foundation  
15 East State Street, Suite 4  
Montpelier, VT 05602

**BILL WILLARD, INCORPORATED**

By:  \_\_\_\_\_ Date: 6/28/17  
Receiver  
Jonathan R. Goldsmith, Esq.  
Receiver for Bill Willard, Inc.  
1350 Main Street Suite 1505  
Springfield, MA 01103

ENTERED and DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017

\_\_\_\_\_  
Honorable \_\_\_\_\_  
United States District Judge

## ATTACHMENT 3.i

BK4355PG0130 030500

CASE NO. 43016

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

TO ALL WHOM IT MAY CONCERN:

Bill Willard, Incorporated, a Massachusetts Corporation having its  
usual place of business at P.O. Box 307, 1010 Ryan Road, Florence,  
Northampton, Massachusetts 01060

hereby give notice that, on the 4th day of November 1993, Bill Willard, Incorporated  
filed a petition in said Court to have the title to certain land therein described, registered and confirmed  
pursuant to Chapter 185 of the General Laws. Said land is situated in Northampton  
in the County of Hampshire and said Commonwealth, and bounded, and described  
as follows:

The land described in the Exhibit Attached hereto and made a part  
hereof.

Bill Willard, Incorporated  
by its Attorney, MORSE, SACKS & FENTON

By \_\_\_\_\_  
Harley M. Sacks  
31 Trumbull Road  
Northampton, MA 01060  
(413) 584-1287



BK4355PG0131

The land situated on the Southeasterly side of Ryan Road and the Southerly side of Burts Pit Road and the Easterly side of West Farms Road, in Northampton, County of Hampshire, Massachusetts, bounded as follows:

WESTERLY: 340.00 feet, more or less, by land of CAROL A. APGAR;

NORTHWESTERLY AND WESTERLY: 593.00 feet, more or less, along the center line of a brook & ditch and land of EDGAR J. LESKO, JR. & DEBORAH J. LESKO and land of DANIEL J. ZULAWSKI & ANN L. ZULAWSKI;

SOUTHWESTERLY: 126.93 feet, more or less, by land of DANIEL J. ZULAWSKI & ANN L. ZULAWSKI;

NORTHWESTERLY: 88.55 feet by land of WILLIAM HUBBARD & MARY POWERS;

WESTERLY: 15.30 feet by land of WILLIAM HUBBARD & MARY POWERS;

SOUTHERLY: 316.47 feet by land of WILLIAM HUBBARD & MARY POWERS;

WESTERLY: 32.41 feet by WEST FARMS ROAD;

NORTHERLY: 88.07 feet by land of DENNIS A. SEYMOUR & ELIZABETH S. SEYMOUR;

WESTERLY: 310.00 feet by land of DENNIS A. SEYMOUR & ELIZABETH S. SEYMOUR and land of MARJORIE TUCKER;

NORTHERLY: 276.29 feet by land of FREDERICK R. MAILLOUX and land of DONNA MORTON;

WESTERLY: 51.93 feet by land of DONNA MORTON;

NORTHEASTERLY: 42.05 feet by RYAN ROAD;

EASTERLY: 121.40 feet by land of EUGENE T. VANASSE;

NORTHERLY: 100.00 feet by land of EUGENE T. VANASSE;

WESTERLY: 100.00 feet by land of EUGENE T. VANASSE;

NORTHWESTERLY: 529.88 feet by RYAN ROAD;

EASTERLY: 207.55 feet by land of MATTHEW D. PORTER & CATHERINE B. PORTER;

8K4355PG0132

**NORTHWESTERLY:** 695.56 feet by land of MATTHEW D. PORTER & CATHERINE B. PORTER; FRANK L. BAJ; EDWARD F. RUSSELL, JR. & KAREN M. RUSSELL; MARIA RUBASHKIN; WALTER A. SADLOWSKI, JR.; EDWARD W. HIGGINS & MARGARET M. HIGGINS; HARRY W. BRALEY; AND MAURICE A. SCOTT & HELEN A. SCOTT;

**NORTHEASTERLY:** 480.00 feet by land of WILLIAM B. HUBBARD & SANDRA S. HUBBARD;

**NORTHEASTERLY:** 96.00 feet, more or less, along the edge of swamp; and land of WILLIAM B. HUBBARD & SANDRA S. HUBBARD;

**SOUTHWESTERLY:** 92.00 feet more or less, by land of WILLIAM B. HUBBARD & SANDRA S. HUBBARD;

**NORTHEASTERLY:** 755.00 feet by land of CHARLES A. MILLER & CECILEA M. MILLER;

**NORTHWESTERLY:** 533.37 feet by land of CHARLES A. MILLER & CECILEA M. MILLER;

**WESTERLY:** 875.68 feet by land of CHARLES A. MILLER & CECILEA M. MILLER;

**NORTHERLY:** 243.36 feet by land of DONNA MEISSE & JOE HAMILL; and land of GERALD C. HAGUE & SUSAN C. HAGUE;

**NORTHEASTERLY:** 645.08 feet by land of MARK W. WASLICK & SHERRI A. WASLICK; JAMES M. CAMPOSEO & LORI J. CAMPOSEO; GEORGE A. MILLER; JOHN S. TOBIN & JUDITH A. TOBIN; AND CARL J. RUSSO;

**WESTERLY:** 584.74 feet by land of CARL J. RUSSO;

**NORTHERLY:** 19.06 feet by BURTS PIT ROAD;

**EASTERLY:** 1,250.48 feet by land of RICHARD W. ANDRUS; LORRAINE MANGIONE; PATRICK W. HAYES III & MELISSA A. HAYES; AND PARSONS WOODS DEVELOPMENT CORP.;

**EASTERLY:** 946.58 feet by land of PARSONS WOODS DEVELOPMENT CORP.;

**SOUTHERLY:** 1,586.89 feet by land of MICHAEL PARSONS & PAMELA PARSONS; GARY R. CAMPBELL & SANDRA S. CAMPBELL; MARC D. ETCHELLS & MAUREEN C. ETCHELLS; CLAUDE D. DUQUETTE & ANN DUQUETTE; SCOTT N. PHANEUF & DONNA PHANEUF; KENNETH R. JOHNSON & DIANE F. JOHNSON; WILLIAM PARENTEAU & NANCY PARENTEAU; WILLIAM H. MCLOUGHLIN & PATRICIA MCLOUGHLIN;

BK4355PG0133

WESTERLY: 129.59 feet by land of SAND VALLEY, INC.;  
SOUTHERLY: 2,327.00 feet by land of SAND VALLEY, INC.;  
SOUTHWESTERLY: 109.87 feet by land of MICHAEL R. HOULE;

Containing 123.2 acres and all as shown on a plan entitled "PLAN  
OF LAND IN NORTHAMPTON, MASSACHUSETTS HAMPSHIRE COUNTY" dated  
March 4, 1993, prepared by Almer Huntley, Jr. & Associates, Inc.

ited

willard-city-land-descript.

Hampshire ss. November 22 1993 at 11 o'clock and 51 minutes 9 M., Rec'd ent'd and  
(MONTH) (DAY)  
exam'd with Hampshire Reg. of Deeds, Book 4355 Page 150  
Attest \_\_\_\_\_  
REGISTER

ATTACHMENT 3.j



2005 00003326

Bk: 8159Pg: 271 Page: 1 of 2

Recorded: 02/10/2005 12:55 PM

**AFFECTED PREMISES:**  
**West Farms Road and Ryan Road**  
**Northampton, MA 01060**

**KNOW ALL PERSONS BY THESE PRESENTS**

That **BILL WILLARD, INCORPORATED**, a Massachusetts Business Corporation with a usual place of business at 1010 Ryan Road, Northampton, Hampshire County, Massachusetts,

In consideration of **the resolution of a claim now pending under Registration No. 43016** in the Land Court of the Commonwealth of Massachusetts, by and between the Grantor and Grantee,

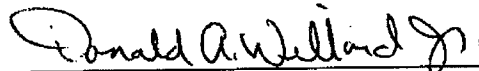
grants to **CAROL A. APGAR**, of 120 West Farms Road, Northampton, Massachusetts, with **QUITCLAIM COVENANTS**,

the land described on **EXHIBIT A**, attached hereto and incorporated herein.

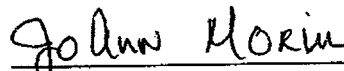
The parcel conveyed hereby is free of fall liens and encumbrances in the nature of a mortgage, attachment or monetary lien, and the grantor hereby agrees to warrant, defend and hold harmless the grantee, her successors and assigns from the same.

Executed as a sealed instrument this 14<sup>th</sup> day of January, 2005.

**BILL WILLARD, INCORPORATED**



**DONALD A. WILLARD, JR.**, Its President



**JO ANN MORIN**, Its Treasurer

**COMMONWEALTH OF MASSACHUSETTS**

**HAMPSHIRE, ss.**

On this 14<sup>th</sup> day of January, 2005, before me, the undersigned notary public, personally appeared **DONALD A. WILLARD, JR.** and **JO ANN MORIN**, proved to me through satisfactory evidence of identification, which were ~~personally known~~ to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as President and Treasurer, respectively, of Bill Willard, Incorporated.



Notary Public: **ROBIN F. CUSSON**

My Commission Expires: 4/21/11

EXHIBIT A

That certain tract or parcel of land situated on the Easterly side of West Farms Road in Northampton, County of Hampshire, Massachusetts, shown as PARCEL 1 TO BE CONVEYED TO & BECOME OTHER LAND OF CAROL A. APGAR on a Plan of Land entitled "Plan of Land in Northampton, Massachusetts Prepared for Bill Willard, Inc. by Huntley Associates, P.C. dated October 29, 2004 and recorded in the Hampshire County, Massachusetts Registry of Deeds at Plan Book 204 Page 27," such parcel consisting of 23,400 sq. feet +/- 0.54 acres +/- (hereinafter "Plan");

TOGETHER with the right to keep, repair and maintain a certain structure shown on said Plan as "W/F SHED (TO BE REMOVED)," which shed is partially built on adjoining land of the Grantor.

BEING a portion of the property conveyed to Bill Willard, Inc. by Deed recorded in Hampshire County Registry of Deeds in Book 1134, Page 226.

ATTEST: HAMPSHIRE, Marianne L. Donohue, REGISTER  
MARIANNE L. DONOHUE

# HUNTLEY

HUNTLEY ASSOCIATES, P.C.  
SURVEYORS ENGINEERS LICENSED SITE PROFESSIONALS  
30 INDUSTRIAL DRIVE EAST  
NORTHAMPTON, MASSACHUSETTS 01060

SURVEYOR:	PRL
FIELD WORK:	VFW
ENGINEER:	
DESIGN:	JSM
COMPS:	JSM/STZ
DRAFTING:	PRL
CHECKED:	
HORIZ SCALE:	1"=40'
VERT SCALE:	

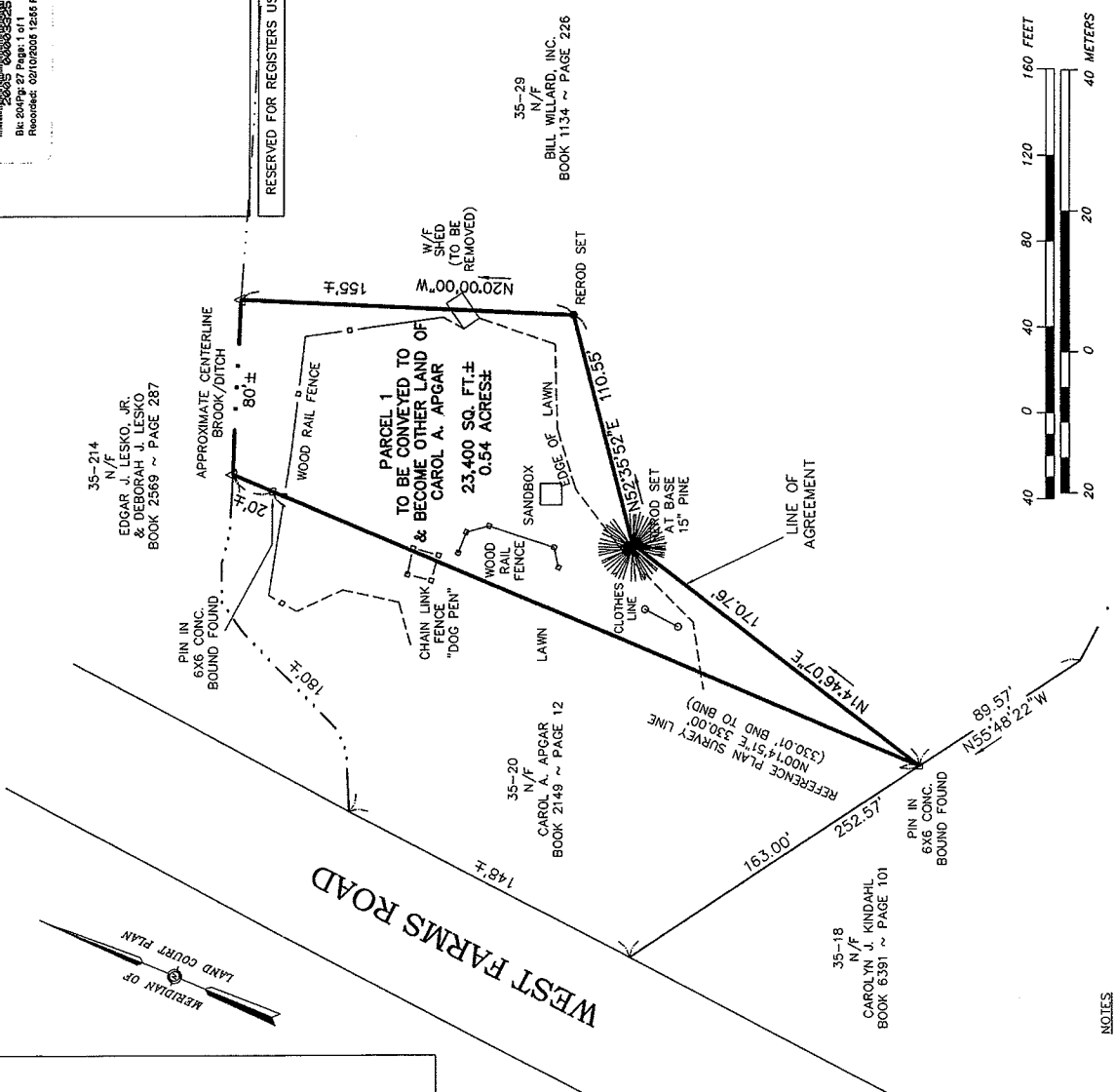
PLAN OF LAND IN  
NORTHAMPTON, MASSACHUSETTS  
PREPARED FOR  
BILL WILLARD, INC.

PROJECT NO:	04-276
DRAWING NO:	04-276
DATE:	10/29/2004
SHEET NO:	1

1 OF 1



RESERVED FOR REGISTERS USE ONLY



### NOTES

1. A SURVEY WAS PERFORMED ON THE GROUND ON JULY 14, 1997 BY ALMER HUNTLEY, JR. & ASSOCIATES, INC.

### REFERENCE PLAN

1. "PLAN OF LAND IN NORTHAMPTON, MASSACHUSETTS, HAMPSHIRE COUNTY," DATED AUGUST 18, 1993 BY ALMER HUNTLEY, JR. & ASSOCIATES, INC. AND SUBMITTED TO THE LAND COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

I REPORT THAT THIS PLAN CONFORMS TO THE TECHNICAL AND  
PROCEDURAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING  
IN THE COMMONWEALTH OF MASSACHUSETTS.  
I REPORT THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY  
WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS  
OF THE COMMONWEALTH OF MASSACHUSETTS.

DATE: 10/29/2004  
PAUL LUSBERG  
REGISTERED PROFESSIONAL SURVEYOR  
NO. 2869

### LEGEND

- N/F NOW OR FORMERLY
- IRON PIN FOUND
- FOUND MONUMENT
- △ UNMONUMENTED POINT

CITY OF NORTHAMPTON, MASSACHUSETTS PLANNING  
BOARD APPROVAL NOT REQUIRED UNDER SUBDIVISION  
CONTROL LAWS.



DATE:

NOTE: PLANNING BOARD'S ENDORSEMENT IS NOT A  
DETERMINATION THAT THE LOTS SHOWN ARE  
BUILDABLE LOTS.

## ATTACHMENT 3.k



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COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF THE TRIAL COURT

HAMPSHIRE, ss.

LAND COURT  
C.A. NO. 93 REG 43016 (AHS)

BILL WILLARD, INC.,

Petitioner,

v.

DENNIS SEYMOUR, et al.,

Respondents.

**STIPULATION**

It is hereby agreed by Bill Willard, Inc. (the "Petitioner") and the Commonwealth of Massachusetts (the "Commonwealth") that:

1. The Petitioner filed this action seeking to register certain land located in Florence, Massachusetts.
2. The Commonwealth was notified that it is a party in interest in this proceeding.
3. Parsons Brook, a navigable stream, runs through the property and along a portion of the alleged property line at issue.
4. The Petitioner and the Commonwealth agree that Parsons Brook is subject to the rights and interest of the public to navigate said stream, and this shall be reflected in the decree.
5. The Petitioner and the Commonwealth agree that portions of the property the Petitioner seeks to register is subject to the Commonwealth's jurisdiction and the requirements set forth in the Wetlands Protection Act (G.L. c. 131, § 40, et seq) and its related regulations, and this shall be reflected in the decree.

---

6. No rights in the public or otherwise not specifically detailed in this Stipulation are created by or through this Stipulation.

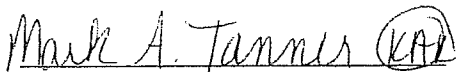
7. Upon the execution and filing of this stipulation, the Commonwealth withdraws its objections, reserving the right to see and review the final plan and decree to ensure that the Commonwealth's interests are reflected in these documents.

8. As of the date of this Stipulation, there appears to be no other issues that may affect any right or interest of the Commonwealth or the public in the above-entitled action. Should any issue subsequently arise prior to the entry of judgment that may affect any right or interest of the Commonwealth or the public, the Petitioner and Commonwealth agree that the Commonwealth, upon reasonable notice to the Petitioner, shall have the right to reappear and resolve or litigate those issues.

Respectfully submitted,

BILL WILLARD, INC.,

By its attorney,

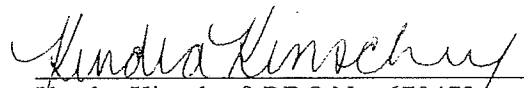


Mark A. Tanner, BBO No. 649532  
Bacon Wilson, P.C.  
31 Trumbull Road  
Northampton, MA 01060  
(413) 584-1287  
mtanner@baconwilson.com

COMMONWEALTH OF  
MASSACHUSETTS

By its attorneys,

MAURA HEALEY  
ATTORNEY GENERAL



Kendra Kinscherf, BBO No. 670472  
Assistant Attorney General  
Government Bureau/Trial Division  
One Ashburton Place  
18th Floor  
Boston, MA 02108  
(617) 963-2888  
Kendra.Kinscherf@state.ma.us

Dated: February 24, 2016

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CERTIFICATE OF SERVICE

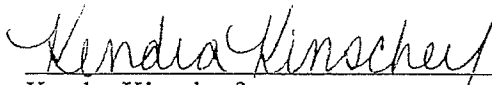
I, Kendra Kinscherf, Assistant Attorney General, hereby certify that I have on this day served the foregoing document upon all parties of record by mailing a copy in the U.S. Mail to:

Mark A. Tanner, Esq.  
Bacon Wilson, P.C.  
31 Trumbull Road  
Northampton, MA 01060

Alan Seewald, Esq.  
Law Office of Alan Seewald  
71 King Street  
Northampton, MA 01060

Alan R. Kuusisto  
64 West Farms Road  
Florence, MA 01062  
Thomas A. Emmerson  
34 West Farms Road  
Florence, MA 01060

Jody R. Cudworth  
51 West Farms Road  
Florence, MA 01060

  
\_\_\_\_\_  
Kendra Kinscherf  
Assistant Attorney General  
Trial Division

Dated: February 24, 2016

## ATTACHMENT 3.I



2017 00015598  
Bk: 12704Pg: 191 Page: 1 of 5  
Recorded: 08/01/2017 12:23 PM

### **SETTLEMENT AGREEMENT AND AGREEMENT FOR JUDGMENT**

This agreement is entered into by and between Bill Willard, Incorporated, a Massachusetts corporation with offices located at 1010 Ryan Road, Florence, MA 01062 ("Willard") and Elizabeth S. Wood f/k/a Elizabeth S. Seymour, of 50 West Farms Road, Florence, MA 01062 ("Wood").

WHEREAS, Willard owner of certain real property found at Book 1583 Pages 727-129; Book 1157 Page 444; and Book 1067 Page 280 in the Registry of Deeds for Hampshire County, Massachusetts ("Registry") ("Willard Properties"), and

WHEREAS, in 1993, Willard filed in the Land Court a petition to register certain land to which Willard claimed title (see Case No 43016, recorded in the Hampshire Registry of Deeds in Book 4355, Page 130); and,

WHEREAS, Whereas Wood is the owner of certain real property by way of the Deed found at Book 1787 Page 186 in the Registry and the Judgment found at Book 3034 Page 65 in the Registry (hereinafter collectively with Willard "Parties")("Wood Properties")

WHEREAS, Wood claims title to the land shown as Lot A and Lot B on a plan of land entitled "Plan of Subdivision of Land in Northampton, Mass to be Conveyed to Mrs. Eva M. Maslar by Osias Riel," dated May 20, 1957, and recorded in the Hampshire Registry of Deeds in Plan Book 51, Page 7 ("the 1957 Plan"); and,

WHEREAS, the parties each claim title to the southerly portion of Lot B on the 1957 Plan; and,

WHEREAS, the parties wish to settle their dispute by fixing an agreed-to boundary.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. The boundary line established in this Agreement, shown on the plan entitled "Plan of Land in Northampton, Massachusetts Prepared for Bill Willard, Incorporated," dated January 16, 2007 to be recorded herewith ("the 2016 Plan") shall be bounded and described as follows: beginning at a Fence Post and running S 00°09'54"E for a distance of 310' and then running N 85°40'38" W for a distance of 89.05' to West Farms Road. This boundary line shall be deemed to run with the lands of property owned by the Parties to this Agreement and to be binding upon and inure to the benefit of each of the Parties hereto and their respective heirs, assigns, transferees, executors administrators and devisees.
2. Except as herein provided, Willard hereby relinquishes and conveys to Wood with quitclaim covenants any and all right, title and interest in and to Parcel B as shown on the 2016 Plan.

3. Except as herein provided, Wood relinquishes and conveys to Willard with quitclaim covenants any and all right, title and interest in and to Parcel C as shown on the 2016 Plan.
4. The parties acknowledge that Willard intends to use Parcel C as access for vehicles to its land located to the Willard Properties. Wood agrees not to oppose or cause others to oppose the layout of such access. Prior to the commencement of the use of the access way, Willard shall install a barrier of its choosing between Parcel B and Parcel C sufficient to delineate the boundary line. Such barrier shall accommodate the easement granted to Wood in paragraph 6, below.
5. Until such time as Willard lays out an access over Parcel C, Willard hereby grants a revocable license to Wood to use Parcel C and to maintain same. Willard also grants Wood a revocable license to maintain the existing shed located on Parcel C and identified on the 2016 Plan as "A". Willard shall give Wood six months' notice to remove the shed, and Wood hereby agrees to remove the shed upon receipt of such notice.
6. Willard hereby conveys to Wood an irrevocable and perpetual non-exclusive easement, which easement shall touch and concern and run with the land for the benefit of the Wood Properties, for the sole purpose of passing and repassing over Parcel C by foot, vehicle and with equipment, in order to access the rear of the Wood residence and the easterly portion of the Wood property for the purpose performing inspections, repairs, reconstruction, or replacement of the septic system, the structure, roof and the systems of the Wood residence with vehicles and equipment that are unable to access the easterly portion of the Wood property over Parcel B. Providing however that nothing in this paragraph shall give Wood the right to construct or maintain any septic system, structure, roof, home related system or the like on Parcel C.
7. Wood grants to Willard an irrevocable and perpetual easement for all purposes for which a public way may be used in the Commonwealth of Massachusetts, which easement shall touch and concern and run with the land for the benefit of the Willard Properties to the burden of the Wood Property ("Easement"). The Easement granted herein is shown as D on the 2016 Plan. No driveway shall be constructed so as to be within three (3) feet of the southern edge of the driveway on the Wood Property.
8. Willard and Wood shall share evenly the cost of the preparation of the 2016 Plan. Wood shall pay all recording costs in the Hampshire Registry of Deeds. Any costs associated with the Land Court registration process shall be borne by Willard.
9. This agreement shall run with the land of the Parties hereto and shall binding upon and inure to the benefit of each of the Parties hereto and their respective heirs, assigns, transferees, executors, administrators and devisee.

Witness the execution hereof under seal dated this \_\_\_\_\_ day of January, 2016.

\_\_\_\_\_  
Witness

**Bill Willard, Incorporated**

Nancy McGrath  
By: Nancy McGrath  
Its: President

\_\_\_\_\_  
Witness

Joann Morin  
By: Joann Morin  
Its: Treasurer

\_\_\_\_\_  
Witness

Elizabeth S. Wood  
Elizabeth S. Wood

COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss

On this 31<sup>st</sup> day of January, 2017 before me the undersigned notary public, personally appeared **Nancy McGrath**, President of Bill Willard, Inc., proven to me through satisfactory evidence of identification which was personally known to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.



MARK A. TANNER  
NOTARY PUBLIC  
COMMONWEALTH OF MASSACHUSETTS  
MY COMMISSION EXPIRES  
SEPTEMBER 21, 2018

[Signature]  
Notary Public

My Commission Expires 9/21/2018

COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss

On this 31<sup>st</sup> day of January, 2017 before me the undersigned notary public, personally appeared **Joann Morin**, Treasurer of Bill Willard, Inc., proven to me through satisfactory evidence of identification which was personally known to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.



MARK A. TANNER  
NOTARY PUBLIC  
COMMONWEALTH OF MASSACHUSETTS  
MY COMMISSION EXPIRES  
SEPTEMBER 21, 2018

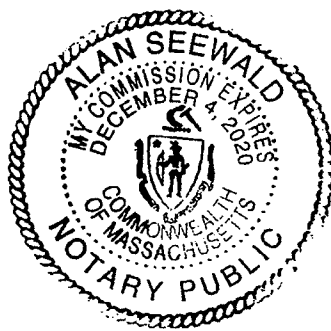
[Signature]  
Notary Public

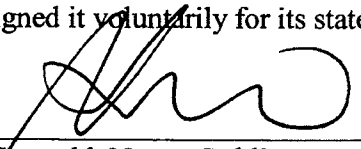
My Commission Expires 9/21/2018

COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss

On this 27<sup>th</sup> day of January, 2017 before me the undersigned notary public, personally appeared **Elizabeth S. Wood**, proven to me through satisfactory evidence of identification which was personal knowledge of identity to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.



  
Alan Seewald, Notary Public  
My Commission Expires: Dec. 4, 2020





PLAN OF LAND IN  
NORTHAMPTON, MASSACHUSETTS  
PREPARED FOR  
**BILL WILLARD, INCORPORATED**  
SCALE: 1"=20' JANUARY 16, 2017  
HAROLD L. EATON AND ASSOCIATES, INC.  
REGISTERED PROFESSIONAL LAND SURVEYORS  
235 RUSSELL STREET - HAILEY - MASSACHUSETTS  
413-584-7599 413-585-5976 (fax)  
email - hiedon@aol.com



ATTEST: HAMPSHIRE, *Mary Olberding*, REGISTER  
MARY OLBERDING

COPY

## BOUNDARY LINE AGREEMENT

This agreement is entered into by and between Bill Willard, Incorporated, a Massachusetts corporation with offices located at 1010 Ryan Road, Florence, MA 01062 ("Willard") and Elizabeth S. Wood f/k/a Elizabeth S. Seymour, of 50 West Farms Road, Florence, MA 01062 ("Wood").

WHEREAS, Willard owner of certain real property found at Book 1583 Pages 727-129; Book 1157 Page 444; and Book 1067 Page 280 in the Registry of Deeds for Hampshire County, Massachusetts ( "Registry" ) ( "Willard Properties" ), and

WHEREAS, in 1993, Willard filed in the Land Court a petition to register certain land to which Willard claimed title (see Case No 43016, recorded in the Hampshire Registry of Deeds in Book 4355, Page 130); and,

WHEREAS, Whereas Wood is the owner of certain real property by way of the Deed found at Book 1787 Page 186 in the Registry and the Judgment found at Book 3034 Page 65 in the Registry (hereinafter collectively with Willard "Parties")("Wood Properties")

WHEREAS, Willard has filed a Land Court Registration Proceeding under Docket Number Land Court Registration # 43016 (Sands, J.)

WHEREAS Wood contested the Land Court Registration, and claimed title to the land shown as Lot A and Lot B on a plan of land entitled "Plan of Subdivision of Land in Northampton, Mass to be Conveyed to Mrs. Eva M. Maslar by Osias Riel," dated May 20, 1957, and recorded in the Hampshire Registry of Deeds in Plan Book 51, Page 7 ("the 1957 Plan"); and,

WHEREAS, the parties each claim title to the southerly portion of Lot B on the 1957 Plan; and,

WHEREAS, the true boundary lines of the Lot B are unknown or are unascertained and were the subject of the parties dispute in the Land Court Registration Proceeding; and

WHEREAS, the parties wish to settle their dispute by fixing an agreed-to boundary; and

WHEREAS, Jonathan R. Goldsmith is the duly appointed Receiver of Bill Willard, Inc. pursuant to an order issued in Hampshire County Superior Court Civil Action 1780CV050, a true copy of which is attached hereto as Exhibit A;

WHEREAS, Attorney Goldsmith has been authorized to enter into this Boundary Line Agreement by Order of said Court, a true copy of which is attached hereto as Exhibit B.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. The boundary line established in this Agreement, shown on the plan entitled "Plan of Land in Northampton, Massachusetts Prepared for Bill Willard, Incorporated," dated

January 16, 2007 to be recorded herewith ("the 2016 Plan") shall be bounded and described as follows: beginning at a Fence Post being the northeast corner of the land of Wood, running S 00°09'54"E for a distance of 310', then running N 85°40'38" W for a distance of 89.05' to West Farms Road. This boundary line shall be deemed to run with the lands of property owned by the Parties to this Agreement and to be binding upon and inure to the benefit of each of the Parties hereto and their respective heirs, assigns, transferees, executors administrators and devisees.

2. Except as herein provided, Willard hereby relinquishes and conveys to Wood with quitclaim covenants any and all right, title and interest in and to Parcel B as shown on the 2016 Plan.
3. Except as herein provided, Wood relinquishes and conveys to Willard with quitclaim covenants any and all right, title and interest in and to Parcel C as shown on the 2016 Plan.
4. The parties acknowledge that Willard intends to use Parcel C as access for vehicles to its land located to the Willard Properties. Wood agrees not to oppose or cause others to oppose the layout of such access. Prior to the commencement of the use of the access way, Willard shall install a barrier of its choosing between Parcel B and Parcel C sufficient to delineate the boundary line. Such barrier shall accommodate the easement granted to Wood in paragraph 6, below.
5. Until such time as Willard lays out an access over Parcel C, Willard hereby grants a revocable license to Wood to use Parcel C and to maintain same. Willard also grants Wood a revocable license to maintain the existing shed located on Parcel C and identified on the 2016 Plan as "A". Willard shall give Wood six months' notice to remove the shed, and Wood hereby agrees to remove the shed upon receipt of such notice.
6. Willard hereby conveys to Wood an irrevocable and perpetual non-exclusive easement, which easement shall touch and concern and run with the land for the benefit of the Wood Properties, for the sole purpose of passing and repassing over Parcel C by foot, vehicle and with equipment, in order to access the rear of the Wood residence and the easterly portion of the Wood property for the purpose performing inspections, repairs, reconstruction, or replacement of the septic system, the structure, roof and the systems of the Wood residence with vehicles and equipment that are unable to access the easterly portion of the Wood property over Parcel B. Providing however that nothing in this paragraph shall give Wood the right to construct or maintain any septic system, structure, roof, home related system or the like on Parcel C.
7. Wood grants to Willard an irrevocable and perpetual easement for all purposes for which a public way may be used in the Commonwealth of Massachusetts, which

easement shall touch and concern and run with the land for the benefit of the Willard Properties to the burden of the Wood Property ( "Easement" ). The Easement granted herein is shown as D on the 2016 Plan.

8. Willard and Wood shall share evenly the cost of the preparation of the 2016 Plan. Wood shall pay all recording costs in the Hampshire Registry of Deeds. Any costs associated with the Land Court registration process shall be borne by Willard.
9. This Agreement shall run with the land of the Parties hereto and shall binding upon and inure to the benefit of each of the Parties hereto and their respective heirs, assigns, transferees, executors, administrators and devisee.

Witness the execution hereof under seal dated this 8<sup>th</sup> day of August, 2016.

Witness

**Bill Willard, Incorporated**

By: **Jonathan R. Goldsmith**  
Its: Receiver

Witness

**Elizabeth S. Wood**

COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss

On this 8<sup>th</sup> day of August, 2017 before me the undersigned notary public, personally appeared **Jonathan R. Goldsmith** duly appointed receiver of Bill Willard, Inc. under Superior Court Civil Action Number 1780CV050, Receiver of Bill Willard, Inc., proven to me through satisfactory evidence of identification which was personal knowledge to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Receiver of Bill Willard, Inc.

Notary Public  
My Commission Expires



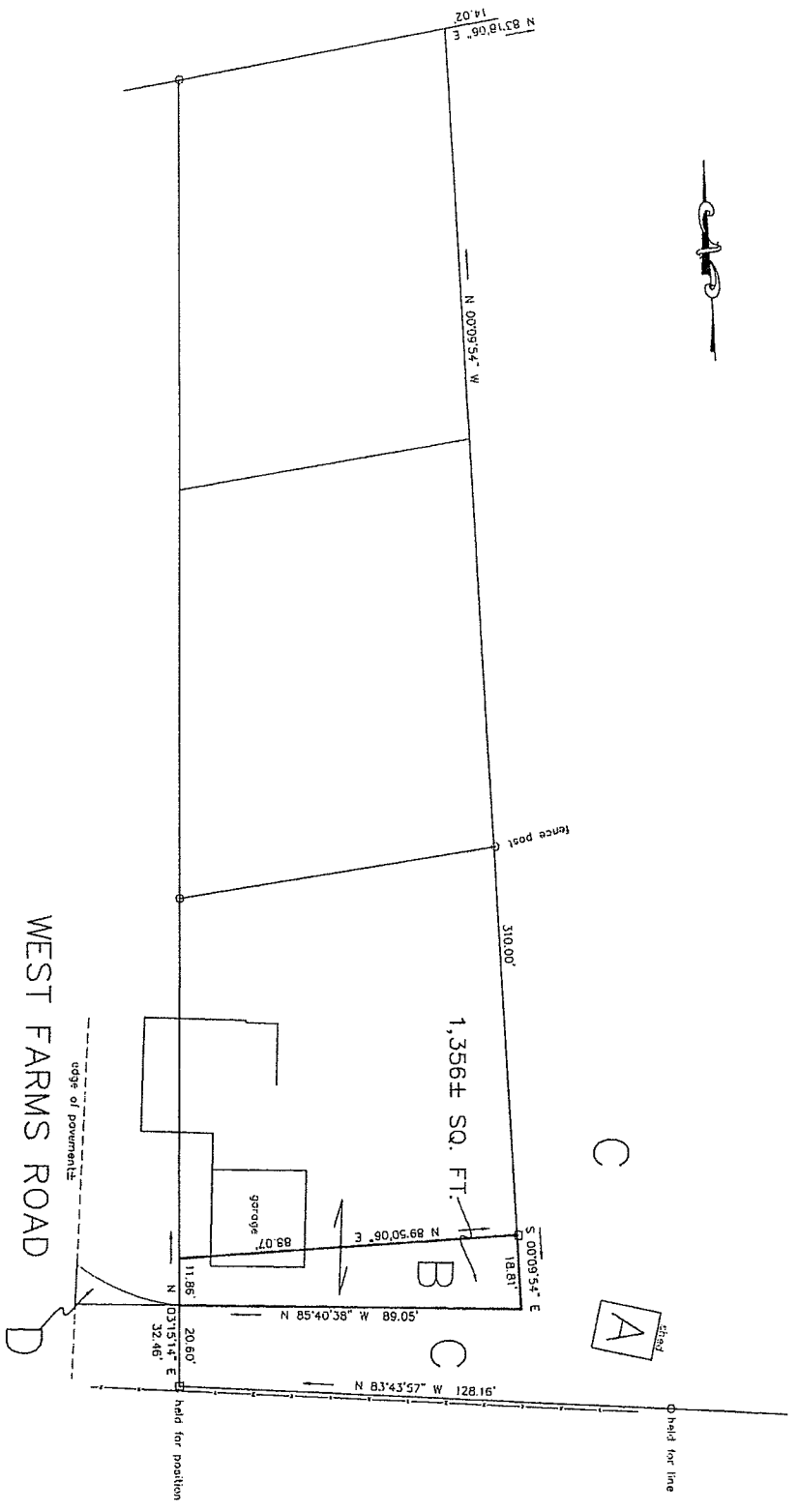
**PATRICIA MAKOWSKI**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires 1/18/2019

COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017 before me the undersigned notary public, personally appeared **Elizabeth S. Wood**, proven to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires



- LEGEND**
- FOUND IRON PIN
  - FOUND CONCRETE BOUND
  - △ UNMARKED POINT



PLAN OF LAND IN  
NORTHAMPTON, MASSACHUSETTS  
PREPARED FOR  
**BILL WILLARD, INCORPORATED**  
SCALE: 1"=20'  
JANUARY 16, 2017  
RANDALL L. EATON AND ASSOCIATES, INC.  
REGISTERED PROFESSIONAL SURVEYORS  
235 RUSSELL STREET - HADLEY - MASSACHUSETTS  
413-584-7539 413-585-5876 (fax)  
email - hieaton@aol.com

