



2015 00236620

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Page: 1 of 16 09/28/2015 10:50 AM

COVENANT

The GREAT BARRINGTON HISTORICAL SOCIETY, INC., a Massachusetts nonprofit corporation whose mailing address is P.O. Box 1106, Great Barrington, MA 01230 ("Grantor"), owner of real property located at 817 Main Street, Great Barrington, MA (Assessors Map 38 Lot 12) pursuant to a deed from John D. Mullany and Linda Mullany dated June 15, 2007 and recorded July 5, 2007 at the Southern Berkshire Registry of Deeds in Book 1782 Page 152 ("Property"), for itself and its successors and assigns, hereby grants and covenants to the Town of Great Barrington ("Town"), that said Property shall hereafter be held subject to those certain obligations imposed upon Grantor by way of that Grant Agreement (#09-16) entered into by Grantor (identified as "Recipient" therein) and the Town dated 8/24/2015 ("Agreement"), a true and complete copy of which is attached hereto as Exhibit A, as are set forth in Paragraph 3 of Exhibit A thereto, as follows:

3. No disbursement of funds may occur until the Recipient records an encumbrance on the property such that the Town shall be repaid the full \$50,000.00 of this CPA award if either of the following occurs within 10 years from the date of this Agreement:

- a. The Great Barrington Historical Society sells the property; or
- b. The Dutch Wagon House is demolished.

Attached hereto as Exhibit B and incorporated herein is a plan showing the location of the Dutch Wagon House.

The covenants contained herein shall constitute a covenant running with the land and shall bind and inure to the benefit of, and be enforceable by the Town, its representatives, agents, successors and assigns. They shall apply to the Grantor and its successors and assigns, including any association or entity that may be formed to control

or maintain the Property, and to such successors and assigns as may hereafter exist as a result of a foreclosure or of a bankruptcy.

Grantor, by its signature below, states and acknowledges that the covenant established hereby is of actual and substantial benefit to the Town and its citizens, and touches and concerns those lands of the Town on Main Street in the Town and otherwise in the vicinity of the Property, and covenants on behalf of itself and its successors and assigns that it shall not claim otherwise.

The Town shall have access to all remedies in law or equity as are necessary and proper to enforce the covenants granted herein, including, but not limited to, halting or preventing the violation of the covenants by injunction or other lawful procedure (it being agreed that the Town may have no adequate remedy at law), which shall be in addition to, and not in limitation of, any other rights and remedies available to the Town.

If any provision of this Covenant is held invalid by a court of competent jurisdiction, the remainder of the Covenant, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected, and shall remain in full force and effect.

Notwithstanding anything to the contrary herein, upon the occurrence of the tenth anniversary of the Agreement attached hereto as Exhibit A and provided the Grantor has neither sold the property nor demolished the Dutch Wagon House, the Town, acting through its Selectboard, shall execute and record at the Southern Berkshire Registry of Deeds a Release of Covenant confirming that this Covenant is released, terminated and no longer has any force or effect.

EXECUTED as a sealed instrument this 4<sup>th</sup> day of September 2015.

GREAT BARRINGTON HISTORICAL SOCIETY, INC.

By

Barbara Syer  
Barbara Syer, President & Treasurer

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss

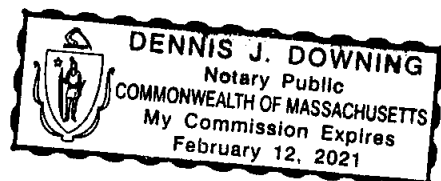
On this 4<sup>th</sup> day of September, 2015, before me, the undersigned notary public, personally appeared **Barbara Syer, President and Treasurer of the Great Barrington Historical Society, Inc.**, proved to me through satisfactory evidence of identification, being (check whichever applies):

☐ driver's license or other state or federal government document bearing a photographic image,

☐ oath or affirmation or a credible witness known to me who knows the above signatory, or

☒ my own personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding or attached document, and acknowledge to me that (he) (she) signed it voluntarily for its stated purposes.

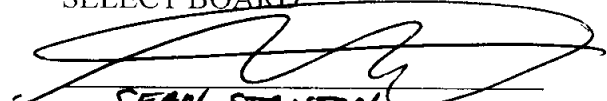
Dennis J. Downing  
Dennis J. Downing, Notary Public  
My Commission Expires: 2/12/21




ACCEPTANCE OF COVENANT

The foregoing Covenant is hereby accepted by the Town of Great Barrington,  
acting by and through its Select Board, this 16<sup>th</sup> day of September  
\_\_\_\_\_, 2015

TOWN OF GREAT BARRINGTON  
SELECT BOARD

  
SEAN STANTON

 ED ABRAHAMS

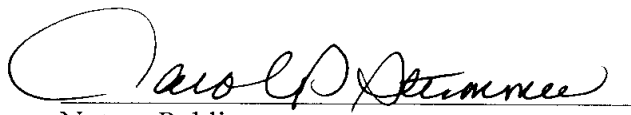
  
WILLIAM COOKE

## COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

Sept 16, 2015

On this 16<sup>th</sup> day of September, 2015  
before me, the undersigned Notary Public, personally appeared SEAN STANTON  
\_\_\_\_\_ who proved to me through satisfactory evidence of identification, which were PERSONALLY KNOWN TO ME, to be the person whose  
name is signed on the preceding document, and acknowledged to me that she signed it  
voluntarily for its stated purposes, as a member of the Select Board and acknowledged  
the foregoing to be the free act and deed of the Board on behalf of the Town of Great  
Barrington.

  
Notary Public  
My commission expires: 8/27/2021

528341/GRBA/0001

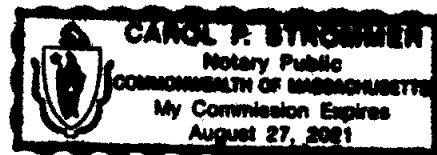


Exhibit A



SS 16

TOWN OF GREAT BARRINGTON  
MASSACHUSETTS

COMMUNITY PRESERVATION COMMITTEE

**GRANT AGREEMENT**

Agreement #: 09-16

Project Name: Wheeler Farmstead Dutch Wagon House

Project Sponsor: Great Barrington Historical Society

Grant Recipient: Great Barrington Historical Society, Inc.

Project Description: preservation of the Dutch Wagon House

Project Address: 817 Main Street, Great Barrington (Map 38, Lot 12)

Primary Contact Person: Debbie U. Oppermann, Director  
Great Barrington Historical Society, Inc.  
PO Box 1106  
Great Barrington, MA 01230  
[deboppermann@gmail.com](mailto:deboppermann@gmail.com)  
(413) 591-8702

Town Meeting Date and Article #: May 4, 2015, Article 14

GBHS / Town of Great Barrington FY16 CPA Grant Agreement  
Dutch Wagon House

*This Grant Agreement* is made this 24 day of August, 2015 by and between the Town of Great Barrington, a municipal corporation duly organized under the laws of Massachusetts and having a business address of 334 Main Street, Great Barrington, MA, 01230 (hereinafter referred to as the "Town"), acting by and through its Community Preservation Committee (hereinafter referred to as the "CPC"), and Great Barrington Historical Society, Inc. (hereinafter referred to as the "Recipient"), with an address of PO Box 1106, Main Street, Great Barrington, MA 01230.

The purpose of this Grant Agreement is to implement the award of Community Preservation Act ("CPA") funds, as approved by Town Meeting under Article 14 on May 4, 2015.

### ***Witnesseth***

*Whereas*, the CPC invited the submission of proposals for grants of funds for purposes consistent with the Community Preservation Act, G.L. c.44B; and

*Whereas*, in response thereto, the Recipient submitted a proposal for funding ("Project Application") for purposes described above as Project Description (hereinafter referred to as the "Project"), and the CPC reviewed and approved the Project and recommended that the funding for the Project be approved by Town Meeting; and

*Whereas*, Town Meeting thereafter appropriated the funds recommended by the CPC pursuant to the above referenced Warrant Article;

*Now, Therefore*, the Town and the Recipient agree as follows:

1. Award. Subject to the terms of this Agreement, the Town agrees to award the Recipient the amount of \$50,000 (fifty thousand dollars) for the Project for the following purpose(s):

Preservation of the Dutch Wagon House

2. Project Application. The Project Application submitted to the CPC, as may be amended by conditions of the CPC upon award, is incorporated into this Grant Agreement by reference.
3. Term. The term of this Grant Agreement is three (3) years from the date of the Town's execution of this Grant Agreement (the "Commencement Date"). All of the work described in this Grant Agreement must be completed no later than three (3) years after the Commencement Date (the "Completion Date"), unless the CPC grants an extension for good cause. Extensions shall be requested by the Recipient not later than four (4) months prior to the expiration of the term. Funds not utilized on the Project must be returned to the Community Preservation Committee.
4. Budget and Other Sources of Funding. Prior to the commencement of the Work, the Recipient must submit a complete project budget ("Project Budget") that accounts for (1) the expenditure of all funds awarded under this Grant Agreement; and (2) all other sources of funding, if necessary, to complete the Project as described herein. Recipient shall not expend any grant funds unless sufficient sources of funding have been secured to complete the Work and the Project Budget has been approved by the CPC. If the CPC determines that funds have been spent on goods or services not included in the Project Budget or otherwise not authorized under the CPA, the Recipient shall be responsible for repayment of such funds to the CPC.

5. Disbursement of Funds. The Recipient hereby acknowledges and expressly agrees that all disbursements of grant funds to the Recipient shall be according to this Agreement and the "Disbursement Schedule and Additional Funding Conditions" as set forth in Exhibit A of this Agreement. The Recipient may request disbursement of CPA grant funds from the Town not more than monthly, unless otherwise provided for in Exhibit A. All requests for disbursement of grant funds shall contain a Project Status Report as detailed in item 6 of this Agreement.
6. Reports. The Recipient shall provide the CPC with a Project Status Report, (hereinafter "PSR") as described in Exhibit B of this Agreement, which shall be due on the first day of January, March, July and October until the Project is complete. The Recipient shall also file a PSR with each Grant Fund Disbursement Request. A final PSR to close out the Project is due within 30 days after the Completion Date. The final PSR shall be to the satisfaction of the CPC, which approval shall not be unreasonably withheld.
  - a. All documents, including but not limited to photographs, videos, etc. submitted by the Recipient to the CPC in connection with the Project shall become the property of the Town of Great Barrington and shall be available for use by the Town and available to the public under the Massachusetts Public Records Law.
7. Project Liaison. The CPC may designate a Project Liaison for the Project being funded by this Grant Agreement. The Project Liaison may be either a municipal employee and/or a consultant retained by the CPC for that purpose. The Recipient shall cooperate with the Project Liaison, including providing access to the Project site at reasonable times and with reasonable notice. The Project Liaison shall serve as the agent of the CPC for the purpose of monitoring compliance with the terms of this Grant Agreement and shall periodically report to the CPC regarding the progress of the Project funded by this Grant Agreement and the compliance of the Recipient with the terms of this Grant Agreement.
8. Records. The Recipient agrees to maintain such records, such as receipts, invoices, contracts and payment records, with respect to utilization of the grant funds and income derived therefrom as are kept in the normal course of business and such additional records as may be required by the CPC. Said records shall be available for inspection by the CPC during the Recipient's normal business hours. The CPC shall be entitled to request copies of any record so kept.
9. Deed Restrictions. Pursuant to Massachusetts General Laws Chapter 44B, § 12 a real property interest that is acquired with CPA funds shall be bound by a permanent deed restriction that meets the requirements of sections 31 to 33 of M.G.L. c. 184, limiting the use of the interest to the purpose for which it was acquired. To the extent that the Project involves the acquisition of such an interest, the Recipient agrees to the imposition of such a deed restriction in a form acceptable to the CPC.
10. Compliance with Laws and Agreement. Recipient understands and agrees that the Project funded through this Grant Agreement must comply with the requirements of the Community Preservation Act, M.G.L. c. 44B. Recipient also agrees to comply with all requirements of this Grant Agreement.
11. Permits and Licenses. It is the obligation of Recipient to obtain all permits and licenses necessary for implementation of the Project. No local permit or license is waived by the award of the Grant.
12. No Liability of Town. By making this award, the Town does not accept any liability whatsoever for any acts, omissions or errors associated with the Project. Nothing in this Grant Agreement shall be construed to render the Town or any elected or appointed official or employee of the Town, or their successors in office, personally liable for any obligation under this Grant Agreement. Recipient

agrees to indemnify and defend the Town from all claims, suits or demands, and costs and expenses, including attorney's fees, resulting from implementation of the Project.

13. Community Preservation Act Awareness and Signage. Upon commencement of the Project, Recipient agrees to post, in an appropriate location mutually acceptable to the parties, a temporary sign, either provided by the CPC, or a sign of the Recipient's choosing subject to the approval of the CPC, stating that the Project was funded through the Town of Great Barrington's Community Preservation Act Program. The temporary sign shall be posted outside in an area conspicuous to the public view for the duration of the construction period.

Upon completion of the Project, Recipient shall post, in an appropriate location mutually acceptable to the parties, a permanent sign stating that the Project was funded through the Town of Great Barrington's Community Preservation Act program. This permanent sign may be inside of the building, if any, in a conspicuous area, and it must remain in place for at least five (5) years after the Completion Date of the Project.

Signs must contain the following statement: "This project was funded in part by the Citizens of Great Barrington through the Community Preservation Act." The sign may also identify the Project component being funded with the CPA funds. All signs shall comply with applicable regulations.

Recipient shall also identify that the Project was funded through the Town of Great Barrington Community Preservation Act in its written and verbal publicity materials about the Project.

14. No Assignment. This Grant Agreement may not be assigned by Recipient without prior written agreement by the Town of Great Barrington.

15. Default and Termination.

- a. If the CPC determines that the Recipient has failed to fulfill any obligations set forth under the terms of this Grant Agreement and so defaulted in said obligations, the CPC shall so notify the Recipient in writing, setting forth the nature and details of the default.
- b. Upon the Recipient's receipt of said notice of default, the Recipient shall immediately cease to incur any additional expenses in connection with this Grant Agreement.
- c. The CPC shall hold a public hearing within fourteen (14) days of the date of the Recipient's receipt of the notice of default for the purpose of determining whether this Grant Agreement should be terminated. The Recipient shall have the opportunity to present evidence and argument at said termination hearing prior to the CPC voting whether to terminate the Grant Agreement.
- d. At the close of the public hearing the CPC shall issue a written decision setting forth its findings that form the basis of its decision. The CPC may:
  1. vote to continue in force the Grant Agreement without any further condition; or
  2. vote to continue in force the Grant Agreement with additional conditions; or
  3. vote to terminate the Grant Agreement.

The decision of the CPC shall be effective immediately, and shall be final and not subject to appeal.



GBHS / Town of Great Barrington FY16 CPA Grant Agreement  
Dutch Wagon House

- e. The CPC shall notify the Recipient in writing of the CPC's decision relative to termination of the Grant Agreement.

16. Return of Funds.

- a. Upon completion of the Project, any funds granted to the Recipient under this Grant Agreement and not yet expended shall be returned forthwith to the Town without further expenditure thereof.
- b. In the event this Grant Agreement is terminated pursuant to the provisions of Section 15 hereof, any funds granted to the Recipient under this Grant Agreement and not yet expended shall be returned forthwith to the Town without further expenditure thereof.
- c. If this Grant Agreement is terminated as a result of negligent or intentional acts or omissions of the Recipient, the Recipient shall be liable to repay to the town the entire amount of funding provided under this Agreement, and the Town may take such steps as are necessary, including legal action, to recover said funds.
- d. In the event the Town is required to take legal action under this Grant Agreement, for enforcement or otherwise, the Recipient shall be liable for all of the Town's costs expended for the enforcement of this Grant Agreement, including but not limited to reasonable attorney's fees and court costs.

17. Notice. Any and all notices, or other communications required or permitted under this Grant Agreement, shall be in writing and delivered in hand or mailed by certified mail, return receipt requested, or by reputable delivery service to the parties hereto at the following addresses:

If to the Recipient: GB Historical Society  
Barbara Syer  
president

If to the CPC: Town of Great Barrington CPC  
334 Main Street  
Great Barrington, MA 01230

|                 |                            |                                       |
|-----------------|----------------------------|---------------------------------------|
| With copies to: | CPA Administrator          | Town Accountant/Financial Coordinator |
|                 | Town of Great Barrington   | Town of Great Barrington              |
|                 | 334 Main Street            | 334 Main Street                       |
|                 | Great Barrington, MA 01230 | Great Barrington, MA 01230            |

18. Severability. If any term or condition of this Grant Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Grant Agreement shall not be deemed affected thereby.

19. Governing Law. This Grant Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.

GBHS / Town of Great Barrington FY16 CPA Grant Agreement  
Dutch Wagon House

20. Entire Agreement. This Grant Agreement constitutes the entire agreement between the parties hereto, and may be amended only in writing executed by both the Town of Great Barrington and the Recipient. Signatory below acknowledges and avers that he/she has the authority to execute this Agreement on behalf of the Recipient.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals, the Town by its authorized representative who, however, incurs no personal liability by reason of the execution hereof or of anything herein contained, as of the day and year first above written.

**RECIPIENT NAME**

Barbara A. Syer  
(signature)  
Barbara A. Syer, Pres.  
(print name) (title)

**TOWN OF GREAT BARRINGTON**

Jennifer Tabakin  
Jennifer Tabakin, Town Manager  
Karen W. Smith  
for the Community Preservation Committee  
KAREN W. SMITH, CHAIR  
(print name) (title)

Approved as to Availability of Funds:

Lauren M. Sartori  
Lauren M. Sartori, C.P.A.  
Great Barrington Town Accountant / Financial Coordinator

Contract Amount: \$ 50,000  
Funding Source: CPA

GBHS / Town of Great Barrington FY16 CPA Grant Agreement  
Dutch Wagon House

### CERTIFICATE AS TO PAYMENT OF STATE TAXES

Pursuant to M.G.L. Chapter 62C, Section 49A, I certify under the penalties of perjury that the Recipient has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

— 0251  
Social Security Number  
or Federal Identification Number

GREAT BARRINGTON HISTORICAL SOCIETY, INC.  
Corporate/Entity Name

by: Barbara A. Syer, Pres.  
Signature of Individual

GBHS / Town of Great Barrington FY16 CPA Grant Agreement  
Dutch Wagon House

**CERTIFICATE OF VOTE**

(Corporations Only)

At a duly authorized meeting of the Board of Directors of the \_\_\_\_\_  
Name of Corporation

held on \_\_\_\_\_, it was voted, that  
Date

\_\_\_\_\_  
Name Officer

of this company, be and hereby is authorized to execute contracts and bonds in the name and on behalf of said company, and affix its corporate seal hereto; and such execution of any contract or obligation in this company's name on its behalf by such officer under seal of the company, shall be valid and binding upon this company.

I hereby certify that I am the clerk of the above named corporation and that

\_\_\_\_\_ is the duly elected officer as above of said company, and that the above vote has not been amended or rescinded and remains in full force and effect as of the date of this certificate.

\_\_\_\_\_  
Date Clerk

Corporate Seal

GBHS / Town of Great Barrington FY16 CPA Grant Agreement  
Dutch Wagon House

## **EXHIBIT A**

### **Disbursement Schedule and Additional Funding Conditions**

Agreement #: 09-16

Project Name: Wheeler Farmstead Dutch Wagon House

Funds to be disbursed in accordance with the Grant Agreement and the following schedule and/or conditions:

1. No disbursement of funds may occur until the project has received necessary municipal approvals.
2. No disbursement of funds may occur until matching funding is in place (commitment or award letters must be provided).
3. No disbursement of funds may occur until the Recipient records an encumbrance on the property such that the Town shall be repaid the full \$50,000 of this CPA award if either of the following occurs within 10 years from the date of this Agreement:
  - a. The Great Barrington Historical Society sells the property; or
  - b. The Dutch Wagon House is demolished.
4. The final 10% (\$5,000) shall be withheld until:
  - a. The contractor or a licensed architect has certified in writing that the U.S. Secretary of the Interior's Standards for Rehabilitation have been met;
  - b. The Historical Society, with the Town Manager and Library Trustees, must discuss a mutually acceptable timeline for relocating that portion of the Historical Society's artifacts and archives that can be housed at the Farmstead from Ramsdell Library to the Farmstead.

GBHS / Town of Great Barrington FY16 CPA Grant Agreement  
Dutch Wagon House

## EXHIBIT B

### Project Status Report Form

Agreement #: 09-16

Project Name: Wheeler Farmstead Dutch Wagon House

Grantee Recipient: Great Barrington Historical Society

Report Date: for the Quarter ending:  
or accompanying the invoice dated:

Is this is a final project close out report or an interim report? (circle one or the other)

CPA Award Amount: \$50,000

CPA Award expended to date:

% of CPA Budget expended to date:

List up to five accomplishments or progress towards meeting the goals, objectives, and requirements of this CPA grant. (Use separate pages as necessary)

Have there been any delays in meeting the goals, objectives, and requirements of this CPA grant? If so, please explain them. (Use separate pages as necessary)

*\*\* Attach documentation that shows the purposes and conditions of this grant award are being met (for example, photos of CPA signage, photos of construction work and completed work, copies of signed contracts, copies of reports from professional consultants, deed restrictions, funding award/commitment letters from other participating grantors, etc.)*

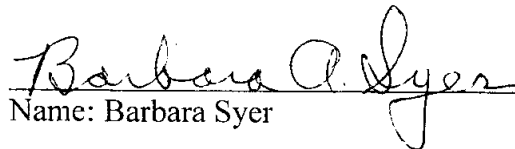
**CORPORATE RESOLUTION****GREAT BARRINGTON HISTORICAL SOCIETY, INC.**

The undersigned, Secretary of GREAT BARRINGTON HISTORICAL SOCIETY, INC., a Massachusetts not for profit corporation (the "Corporation"), hereby certifies that at a meeting of the Board of Directors of the Corporation duly called for the purpose and held on 7/28/15, at which meeting the Directors of the Corporation entitled to vote were present or represented by proxy, the following resolution was adopted:

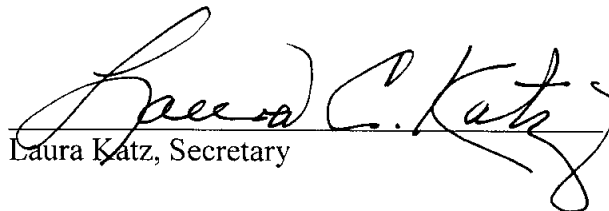
"Resolved, That the Corporation be, and on behalf of the Corporation, the President and Treasurer is authorized and empowered to execute a Grant Agreement with the Town of Great Barrington for Community Preservation Funding and to execute and record a Deed Restriction pursuant to Exhibit A #3 of said Grant Agreement."

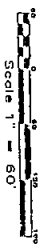
I further certify that the foregoing resolution has not been altered, amended or rescinded but remain in full force and effect and that the person currently authorized and empowered to act thereunder and his specimen signature is as follows:

President/Treasurer:

  
Name: Barbara Syer

WITNESS my hand and the seal of the Corporation this 12<sup>th</sup> day of August 2015.

  
Laura Katz, Secretary



**ATTEST: Berkshire South Wanda M. Beckwith Register**