

CITY OF NORTH ADAMS  
City Clerk's Office  
November 4, 2015

I hereby notify that at twelve noon today the following items of business have been filed with this office and will be acted upon at the meeting in the City Council Chambers at City Hall, Tuesday evening November 10, 2015 at seven-thirty o'clock according to Section 8, Rules and Orders of the City Council.

Marilyn Gomeau  
City Clerk

REGULAR MEETING OF THE CITY COUNCIL  
November 10, 2015

Roll Call  
Moment of silent prayer  
The Pledge  
Approval of the minutes of *October 27, 2015*

- 8717-34**      *Mayor's communication #35 requesting a Public Hearing be set establishing the percentages of tax levy for the various classes of property for FY'16.*
- 11,478**      *Mayor's communication #36 regarding an easement on the former Tannery Site to Blackinton Mill, LLC.*
- 11,478**      *An Order authorizing the Mayor to enter into an easement with Blackinton Mill, LLC.*
- 11,479**      *Mayor's communication #37 recommending the appointment of Michelle Martinez to the North Adams Housing Authority Board to fill the unexpired term of Darrell Clermont to expire march 25, 2019.*

**CORRESPONDENCE**

**LICENSES**

An application submitted by Eric Perry, 118 Eagle Street for a secondhand license in the business name of "Odds & Ends", located at 118 Eagle Street, which was postponed at the meeting of October 27<sup>th</sup>.

An application submitted by Michael Jackson, 37 Meadow Street and Obilio Rodriguez, 38 Meadow Street to operate a taxi business in the business name of RJ Taxi located at 429 Curran Highway.

An application submitted by Michael Jackson, 37 Meadow Street to drive taxi for RJ Taxi.

An application submitted by Obilio Rodriguez, 38 Meadow Street to drive taxi for RJ Taxi.

**OPEN FORUM**

**COUNCILOR & MAYOR'S CONCERNS**



CITY OF NORTH ADAMS, MASSACHUSETTS

Office of the Mayor  
Richard J. Alcombright

November 10, 2015

#35

To: North Adams City Council  
Re: Property Tax Classification-Public Hearing

Dear Honorable Members:

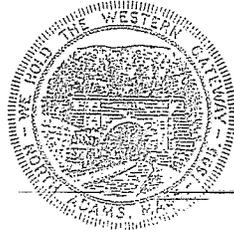
The City Council, with the approval of the Mayor, must determine the percentages of the local tax levy to be borne by each class of real property for the fiscal year.

With that said, Chapter 369 of the Acts of 1982, requires that the City Council conduct a public hearing on the adoption of such percentages prior to its final determination. At this hearing, the Board of Assessors must provide all information and relevant data to the making of such determination and the fiscal impact of available alternatives.

Based on the above, I respectfully request that the City Council convene this mandated hearing of its body on Tuesday, November 24, 2015 at 7:30 p.m.

Sincerely,

Richard J. Alcombright  
Mayor



CITY OF NORTH ADAMS, MASSACHUSETTS

Office of the Mayor  
Richard J. Alcombright #36

November 10, 2015

To: North Adams City Council  
Re: Easement on former Tannery Site to Blackinton Mill, LLC

Dear Honorable Councilors:

You are all aware of the wonderful project taking root at the Redwood Motel being undertaken by Broder Properties.

As a result of that project, Ben Svenson of Broder Properties has expanded the scope of their investment to include the pending purchase of the Blackinton Mill. Eric Kerns who is managing this project will be on hand at the Council meeting to present this exciting addition.

That said enclosed please find an "Easement Agreement" drafted by the City Solicitor, between the City and Blackinton Mill, LLC. This document once approved by Council, will give them access to the former Tannery site, exhibit A in the agreement. In return, they will pay a single payment easement fee to the City of \$18,800 slightly above the assessed value of \$18,200. This agreement is very similar to one I had crafted with the current owners several years ago. The use of the parcel will be for parking and building access as described in exhibit B of the agreement and acceptance of this easement by the City is necessary to ensure their purchase of the mill. This agreement has been signed by the developer and myself, however needs final approval of the Council for complete execution. Solicitor DeRosa will also be at the meeting to answer any questions regarding the document.

The scope of the development within this entire project and within the West End is immense and I would respectfully request that Council grant this easement as presented.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard J. Alcombright", is written over a faint circular stamp or watermark.

Richard J. Alcombright  
Mayor



# City of North Adams

In City Council

.....November 10, 2015.....

— Ordered: —

That the City Council of the City of North Adams hereby authorizes and approves the grant of easement from the City of North Adams to Blackington Mill, LLC dated on October 29, 2015 and executed by Mayor Richard J. Alcombright on behalf of the City of North Adams, a copy of the easement deed being attached hereto and made a part hereof; and further, the Mayor is hereby authorized to record the easement deed in the Northern Berkshire Registry of Deeds.

2. **TERM.** This Easement Agreement shall become effective upon the date that ~~GRANTEE~~ or its designee takes legal title to the Mill as evidenced by a deed duly recorded in the Northern Berkshire Registry of Deeds in Adams, Massachusetts, and shall run in perpetuity unless sooner terminated in accordance with the provisions hereof.

3. **Rights and Obligations of the Parties.**

3.1. **Grantee.** Subject to the terms and conditions set forth in this Easement Agreement, GRANTEE shall have the exclusive right but not the obligation to use, develop, operate and manage the **Easement Area**.

3.2. **Alterations and Improvements.**

**Alterations, Improvements & Replacements.** GRANTEE shall have the right to make any alterations, modifications and improvements to the **Easement Area**, from time to time, as GRANTEE may deem necessary, including without limitation the improvements shown on the attached **Exhibit B**, subject to compliance with applicable legal requirements. Notwithstanding the foregoing, GRANTEE shall not cause any vertical improvements involving the excavation of a foundation to be made without GRANTOR's consent which shall not be unreasonably withheld, conditioned or delayed.

3.3. **Ownership of Improvements.** Any and all alterations, modifications, improvements or additions made in or to the Easement Area or any buildings thereon shall be the property of GRANTEE, subject only to the terms and conditions of this Easement Agreement.

3.4. **Grantor.** GRANTOR shall not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the **Easement Area** or any buildings or improvements thereon or hereinafter placed thereon, or to otherwise contribute any funds or in-kind services to the Project.

4. **FEE.**

4.1 **Easement Fee.** Upon the completion execution and delivery of this Easement Agreement, GRANTEE shall pay GRANTOR a one-time easement fee in the amount of Eighteen Thousand Eight Hundred (\$18,800.00) Dollars. This Easement Agreement being merely incidental and necessary to facilitating the accomplishment of purposes of the proposed development of the Mill and the Project, GRANTEE shall have no further obligation to pay any additional fee to GRANTOR for the easement.

4.2 **Expenses.** Except as otherwise expressly provided herein, GRANTEE

shall be responsible for, and shall pay all amounts in respect of, all ordinary and extraordinary, foreseeable and unforeseeable, costs, expenses and expenditures attributable to the **Easement Area**, including, without limitation, utility charges, liens, insurance, compliance with laws (except for any compliance costs related to any hazardous materials or waste existing prior to the date of this Easement Agreement), maintenance, repairs and all other costs, expenses and expenditures associated with the **Easement Area**. Notwithstanding the foregoing, **GRANTEE** shall not be assessed real property taxes or any payments in lieu of taxes with respect to the **Easement Area** or any existing improvements thereon. In the event, however, that **GRANTEE** constructs a building on the **Easement Area**, **GRANTEE** shall be responsible for all real property taxes, if any, that may be assessed only against the building.

5. **COMPLIANCE.** **GRANTEE**, at its sole cost and expense, shall (i) comply with and abide by any and all applicable federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the **Easement Area** or any activity or condition on or in connection therewith, including, without limitation, any laws, the breach of which might result in any penalty against **GRANTOR** or forfeiture of **GRANTOR's** title to the **Easement Area**; (ii) obtain every permit, license or certificate required in connection with the design and construction of the Project and for operation of the **Easement Area**, by any governmental agency having jurisdiction thereof, including without limitation zoning permits; and (iii) comply with all requirements of any insurance company or organization necessary for the maintenance of insurance with respect to the **Easement Area**. Notwithstanding the foregoing, **GRANTEE** shall have no obligation or liability with respect to any hazardous waste or substance existing on or under the Property as of the effective date of this Easement Agreement and **GRANTOR** hereby releases and waives any claim for any injury, loss, cost or damage against **GRANTEE** in connection therewith.

6. **PROHIBITED USES; WASTE AND NUISANCE; LIENS; ABANDONMENT.**

6.1 **Prohibited Uses.** **GRANTEE** shall not use or permit the **Easement Area**, or any part thereof, to be used for any purpose or purposes other than the purpose or purposes for which the **Easement Area** is granted under this Easement Agreement.

6.2 **Waste and Nuisance.** **GRANTEE** shall not commit, or suffer to be committed, any waste or nuisance on or affecting the **Easement Area**.

6.3 **Liens Against the Easement Area.**

6.3.1 **Liens Prohibited.** **GRANTEE** shall keep all and every part of the **Easement Area** free and clear of any and all mechanics', material suppliers', and other liens for

or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with any operations of GRANTEE, any alteration, improvement, repairs or additions that GRANTEE may make or permit to be made, or any work or construction by, for or permitted by GRANTEE on or about the Easement Area, or any obligations of any kind incurred by GRANTEE, and shall at all times promptly and fully pay and discharge any and all claims on which any lien may or could be asserted. GRANTEE shall indemnify GRANTOR from and against any and all mechanics' liens and claims of such liens and suits or other proceedings of, pertaining to, or in any way affecting the Easement Area. Further, in the event of any contested mechanics' lien, GRANTEE shall protect and indemnify GRANTOR against any and all loss, expense, and damage resulting from such contest.

7. **WARRANTIES OF TITLE AND QUIET POSSESSION.** GRANTOR covenants that it is seized of the Easement Area in fee simple and has full right to make and enter into this Easement Agreement and that GRANTEE shall have quiet and peaceable possession of the Easement Area, subject to GRANTOR's rights under this Easement Agreement.

8. **MAINTENANCE, REPAIRS AND CASUALTY LOSSES.**

8.1 **Maintenance of Improvements.** GRANTEE shall, at its own cost and expense and without any expense to GRANTOR, keep and maintain the Easement Area, including any improvements and appurtenances of every kind and nature that may be a part of the Easement Area, including sidewalks and parking areas, in good order, condition and repair, and shall restore and rehabilitate, or cause the restoration or rehabilitation, of any improvements of any kind that may be destroyed or damaged by fire, casualty, or any other cause whatsoever.

9. **INDEMNITY; WAIVER OF CLAIMS**

9.1 **Indemnification by the GRANTEE.** Subject to the waiver of subrogation provisions set forth herein, GRANTEE shall indemnify and hold harmless GRANTOR from and against any and all claims, liability, loss, damage, costs or expenses whatsoever which GRANTOR may sustain, incur or be required to pay, arising out of, in connection with or on account of (i) any loss, injury, death or damage to the extent due to the negligence or misconduct of GRANTEE in connection with the Easement Area; or (ii) any loss, injury, death or damage in connection with GRANTEE's performance under this Easement Agreement. Notwithstanding the foregoing, such indemnification shall not be available with respect to any loss, injury, death, or damage to the extent arising by reason of the negligence or misconduct of GRANTOR, its agents or employees, or with respect to any pre-existing condition or contamination of the subsurface with any hazardous waste or substance under any applicable environmental legal requirements.

9.2 Waiver of Claims. GRANTEE waives any and all claims against GRANTOR for damage to the improvements that are now on or hereafter placed or constructed on the Easement Area and to the property of GRANTEE in, on, or about the Easement Area, and for injuries to persons or property in or about the Easement Area, from any cause arising at any time; provided, however, that such waiver shall not be applicable with respect to any loss, injury, death, or damage to the extent arising by reason of the negligence or misconduct of GRANTOR, its agents or employees. GRANTOR waives any and all claims against GRANTEE in connection with or pertaining to any pre-existing condition or contamination of the subsurface with any hazardous waste or substance under any applicable environmental legal requirements.

10. INSURANCE AND WAIVERS OF SUBROGATION.

10.1 GRANTEE's Liability Insurance. GRANTEE shall, at GRANTEE's sole expense, procure and maintain public liability insurance covering the Easement Area and its appurtenances in an amount of not less than One Million Dollars (\$1,000,000.00) for property damage or injury to or death of any one person for any one occurrence, with both GRANTOR and GRANTEE as named insureds.

10.2 GRANTOR's Right to Pay Premiums. All policies of insurance required to be maintained by GRANTEE pursuant to this Article shall be in a form satisfactory to GRANTOR and by insurance companies satisfactory to GRANTOR. In the event of the failure by the GRANTEE to procure insurance required by this Easement Agreement, to maintain payment of the premiums therefor, or to deliver the policies or certificates of policies to GRANTOR, GRANTOR shall be entitled, but shall not be obligated, to procure and/or maintain such insurance and to pay premiums therefor, which premiums shall be immediately repayable to GRANTOR by GRANTEE and shall place GRANTEE in default hereunder. Each insurer on an insurance policy procured by GRANTEE shall agree, by endorsement on the policy or policies issued by it, or by independent instrument furnished to GRANTOR, that it will give GRANTOR thirty (30) days' written notice before the policy or policies in question shall be altered or cancelled. GRANTOR agrees that it shall not unreasonably withhold its approval as to the form or insurance companies selected by GRANTEE.

10.4 Mutual Waiver of Subrogation. GRANTOR and GRANTEE waive all rights against each other for (i) damages caused by perils covered by insurance, except such rights as either may have to the proceeds of such insurance held by the other as trustee; and (ii) loss or damage to any equipment used in connection with the Project and covered by property insurance.

11. **Force Majeure.** Notwithstanding any other provision hereof, neither party hereto shall be liable to the other or be deemed to be in breach of this Easement Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather. Dates or times of performance shall be extended to the extent of delays excused hereby, provided that the party whose performance is affected notifies the other promptly of the nature of the existence and nature of such delay.

12. **GRANTOR'S RIGHT TO PERFORM.** In the event that GRANTEE, by failing or neglecting to do or perform any act or thing required by this Easement Agreement, shall be in default hereunder and such default shall continue for a period of sixty (60) days after written notice from GRANTOR specifying the nature of the act or thing to be done or performed, then GRANTOR may, but shall not be obligated to, do or perform or cause to be done or performed such act or thing (and may enter upon the Easement Area for such purpose), and GRANTOR shall not be liable or in any way responsible for any loss, inconvenience, annoyance, or damage resulting to the GRANTEE on account of such election. GRANTEE shall repay to GRANTOR, on demand, the entire expense incurred on account of such election, including compensation to the agents, employees and contractors of GRANTOR. Any act or thing done by GRANTOR pursuant to the provisions of this paragraph shall not constitute or be construed as a waiver by GRANTOR of any such default by GRANTEE, or as a waiver of any covenant, term or condition contained in this Easement Agreement, or of any other right or remedy of GRANTOR, under this Easement Agreement or otherwise.

13. **REPRESENTATIONS AND WARRANTIES.** GRANTOR hereby represents and warrants to GRANTEE that:

13.1 There are no outstanding violations of any laws, statutes, ordinances, rules or regulations pertaining to the Property.

13.2 There are no existing or pending contracts of sale, leases, options to purchase or rights of first refusal (or the like) affecting the Property.

13.3 The Property is now, and at Closing shall be, free and clear of all tenancies or rights of possession and GRANTOR covenants not to grant or permit such tenancies or occupancy rights after the date of this Easement Agreement.

13.4 The Property contains no underground storage tanks, and no release or threat of release of oil or hazardous materials or substances has occurred at the Property for which a

permanent solution has not been achieved under the Massachusetts Contingency Plan or any other applicable environmental legal requirements or for which a no further action letter has been issued.

14. **MISCELLANEOUS.**

14.1 **Independent Entities.** GRANTOR and GRANTEE acknowledge that nothing contained herein, nor any act of the GRANTOR or GRANTEE, shall be deemed or construed by the parties to create any relationship of principal and agent, limited or general partnership, or joint venture. Further, neither party shall make any representations tending to create apparent agency, employment or partnership and neither party shall have the power or authority to act for the other in any manner to create any obligations or debts binding upon the other, and neither party shall be responsible for any obligations or expenses of the other. GRANTEE is and shall be considered an independent contractor with entire direction and control of its business and operations, subject only to the conditions and obligations established by this Easement Agreement.

14.2 **Non-Waiver; Cumulative Remedies.** The failure on the part of either party to this Easement Agreement to act upon a breach of any of the covenants or agreements contained herein shall in no way constitute a waiver of the rights of such party to act upon any other or future breach by the other party. Any and all rights and remedies created for either party herein shall be deemed cumulative and the use of one remedy shall not be taken to exclude the right to use any other.

14.3 **Attorneys' Fees.** If any action at law or in equity shall be necessitated for or on account of any breach, or to enforce or interpret any of the covenants, terms or conditions of this Easement Agreement, the prevailing party shall be entitled to recover from the other party as part of the prevailing party's costs, reasonable attorneys' fees, the amount of which shall be fixed by the court and shall be made a part of any judgment or decree rendered.

14.4 **Severability.** In the event that any one or more of the provisions contained herein or any application thereof shall be declared invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

14.5 **Entire Agreement.** This Easement Agreement sets forth all of the promises, agreements, conditions, understandings, and representations between the parties hereto and with respect to the matters set forth herein. This Easement Agreement supersedes, and is intended by the parties hereto to be an integration of, any and all prior agreements or understandings, oral or written, with respect to the matters set forth herein.

14.6 **Notices.** Any notice, approval, consent, request or other communication ~~hereunder shall be in writing and shall be considered given when delivered personally or mailed~~ by registered or certified mail, return receipt requested, to the parties hereto at the addresses set forth below (or at such other address as a party may specify by notice to the other pursuant hereto):

- (a) If to **GRANTOR**, to it at:

**CITY OF NORTH ADAMS**  
10 Main Street  
City Hall  
North Adams, MA 01247

Attention: Mayor Alcombright

- (b) If to **GRANTEE**, to it at:

**BLACKINTON MILL LLC**  
38 Newbury Street  
Boston, MA 02116

14.7 **Gender and Number.** Masculine, feminine or neuter pronouns shall be substituted for one another, and the plural and the singular number shall be substituted for one another, in any place or places herein in which the context may require such substitution.

14.8 **Headings.** The headings contained within this Easement Agreement are inserted for convenience of reference only and shall not in any manner affect the construction or meaning of anything herein contained or govern the rights or liabilities of the parties hereto.

14.9 **Further Assurances.** The parties hereto shall take all such steps, execute all such instruments and documents, and do all such acts and things as may be reasonably necessary or appropriate in order to effectuate the contemplated purposes and satisfy the terms and conditions of this Easement Agreement

14.10 **Governing Law.** This Agreement shall be governed and construed in accordance with the substantive laws of the Commonwealth of Massachusetts and shall have the effect of a sealed instrument.

14.11 Contingency. GRANTOR's agreements and covenants under this Easement Agreement are contingent upon the approval of the North Adams City Council.

14.12 No Rights in Public; No Implied Easements. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Property. No easements, except those expressly set forth herein, shall be implied by this Easement Agreement.

14.13 No Consequential Damages. Under no circumstances shall either party have the right to any indirect, consequential or punitive damages, or any damages relating to lost profits or lost opportunities with respect to any default by the other party hereto.

14.14 Bind and Inure. This Easement Agreement shall be binding upon, enforceable by and against and shall inure to the benefit of the parties hereto and their respective successors and assigns. All covenants and agreements contained in this Easement Agreement shall be covenants running with the land and shall be binding upon and inure to the benefit of the successors in title and assigns of each party hereto. No party shall be liable hereunder except for acts and omissions occurring during its period of ownership. In no event shall any partner, trustee, principal, officer, director, shareholder, employee, manager, member or beneficiary or agent of or in any owner or mortgagee have or incur any personal liability for any of the liabilities or obligations of any owner or mortgagee and no personal judgment shall be sought, levied or enforced against any such person individually, it being understood and agreed by the parties hereto that their recourse hereunder shall be limited to the interest of any owner or mortgagee in its parcel and the assets of such entity itself.

14.16 Amendments. This Easement Agreement may not be terminated, released, modified or amended in whole or in part except by a written instrument executed by each party hereto, or their respective successors in title to the fee simple estates. Nothing in this Easement Agreement shall be deemed to require any consent or approval or other agreement by any tenant or occupant of any portion of the Property, or any other party, for any such termination, release, amendment or modification. Notwithstanding anything to the contrary, GRANTEE may elect to terminate this Easement Agreement unilaterally upon written notice to GRANTOR and the recording of a notice of termination signed by GRANTEE with the Berkshire North Registry of Deeds.

14.17 Fee Title. GRANTOR hereby represents and warrants to GRANTEE as of the date of this Easement that it is the fee simple owner of title to the Property and that the Property is not encumbered by any mortgage or deed of trust.

14.18 Authority. Each party represents and warrants to the other party that those persons executing this Easement Agreement on its behalf are duly authorized to execute

and deliver this document on its behalf, and that this document is binding upon such party in accordance with its terms.

---

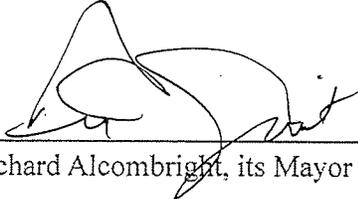
14.19 **Counterparts**. This Easement Agreement may be executed in any number of counterparts, provided each of the parties hereto executes at least one counterpart; each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

(END OF PAGE)

~~IN WITNESS WHEREOF~~, this Easement Agreement has been duly executed under seal  
as of the day and year first above written.

GRANTOR

CITY OF NORTH ADAMS

By   
Richard Alcombright, its Mayor

GRANTEE

BLACKINTON MILL LLC

By   
Benjamin Svenson, its Manager

EXHIBIT A

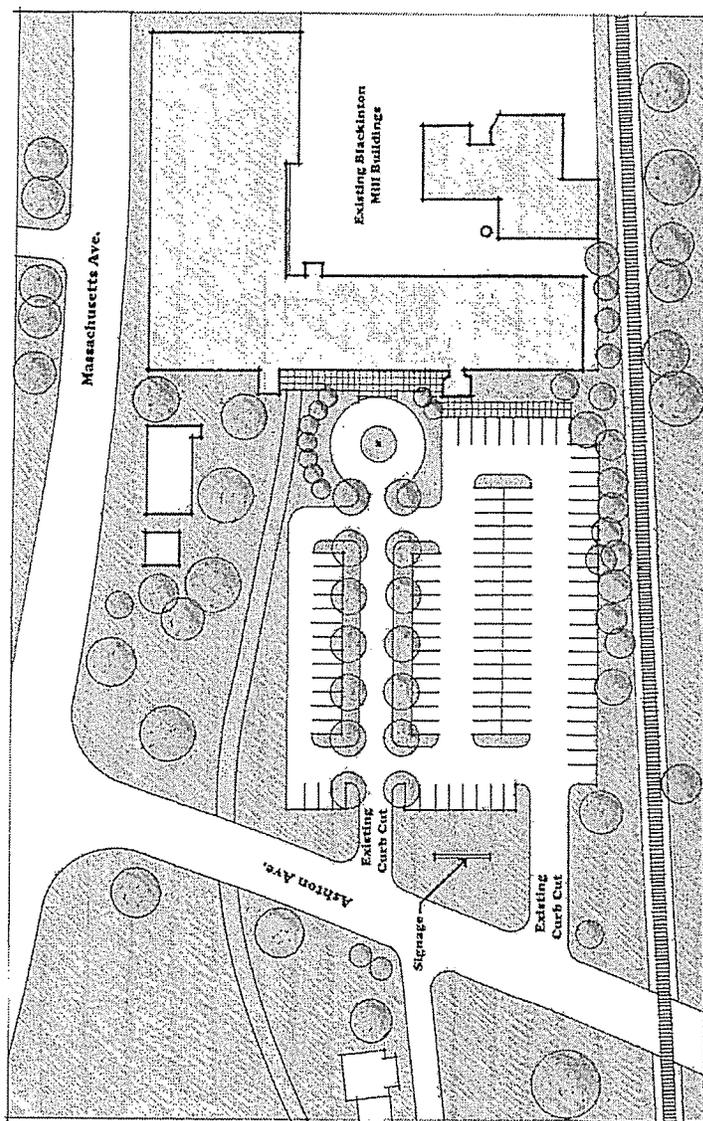
Easement Area

# EXHIBIT A



EXHIBIT B

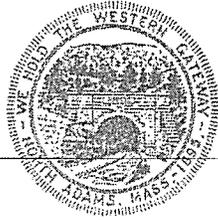
Proposed Improvements



Blackinton Mill  
Parking Lot Layout

Bruner/Cott  
architects and planners

October 26, 2015



CITY OF NORTH ADAMS, MASSACHUSETTS

Office of the Mayor  
Richard J. Alcombright

November 10, 2015

#37

To: North Adams City Council  
Re: Appointment to the North Adams Housing Authority Board

Dear Honorable Councilors:

It is with great confidence that I recommend the appointment of Michelle Martinez to the North Adams Housing Authority Board to fill an unexpired term of Darrell Clermont to March 25, 2019.

Michelle is a 20-year resident of Greylock Apartment's and as such, Michelle fully understands and appreciates the need for public housing and the benefits it can bring to those being served. Michelle will serve as the "tenant" member of the Board in compliance with MA General Law.

I respectfully request confirmation.

Sincerely,

  
Richard J. Alcombright  
Mayor