

DANIEL W. O'MULLAN
MORRIS COUNTY COUNSEL

Prepared by: _____
W. RANDALL BUSH
First Assistant Morris County Counsel

DEED OF EASEMENT

STATE OF NEW JERSEY AGRICULTURE RETENTION AND DEVELOPMENT PROGRAM

This Deed is made _____, 2009.

Between the **Township of Washington, a municipal corporation of the State of New Jersey**, whose address is 43 Schooley's Mountain Road, Long Valley, New Jersey 07853, hereinafter referred to as the Grantors;

AND

The **MORRIS COUNTY AGRICULTURE DEVELOPMENT BOARD** (hereinafter "Board"), whose address is **P. O. Box 900, Morristown, New Jersey 07963-0900** and is referred to as the Grantee and/or Board.

The Grantors, Grantors' heirs, executors, administrators, personal or legal representatives, successors and assigns grants and conveys to the Grantee a development easement and all of the nonagricultural development rights and credits on the Premises, located in Township of Washington, County of Morris described in the attached Schedule A, incorporated by reference in this Deed of Easement, for and in consideration of the sum of FOUR HUNDRED THIRTY-FIVE THOUSAND, EIGHT HUNDRED TWENTY-FIVE DOLLARS AND ZERO CENTS (\$435,825.00). Any reference in this Deed of Easement to "Premises" refers to the property described in Schedule A.

The tax map reference for the Premises is:

**Township of Washington
Block 60, Lots 1 and 5**

WHEREAS, the legislature of the State of New Jersey has declared that the development of agriculture and the retention of farmlands are important to the present and future economy of the State and the welfare of the citizens of the State; and

WHEREAS, the Grantors are the sole and exclusive owners of the Premises; and

WHEREAS, the Grantee believes that the retention and preservation of agricultural lands is beneficial to the public health, safety and welfare of the citizens of Morris County;

NOW, THEREFORE, THE GRANTORS, GRANTORS' HEIRS, EXECUTORS, ADMINISTRATORS, PERSONAL OR LEGAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS PROMISE that the Premises will be owned, used and conveyed subject to, and not in violation of the following restrictions:

1. Any development of the Premises for nonagricultural purposes is expressly prohibited.
2. The Premises shall be retained for agricultural use and production in compliance with N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, and all other rules promulgated by the State Agriculture Development Committee, (hereinafter Committee). Agricultural use shall mean the use of the Premises for common farmsite activities including, but not limited to: production, harvesting, storage,

grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management and grazing.

3. Grantors certify that at the time of the application to sell the development easement to the Grantee and at the time of the execution of this Deed of Easement the nonagricultural uses indicated on attached Schedule (B) existed on the Premises. All other nonagricultural uses are prohibited except as expressly provided in this Deed of Easement.

4. All nonagricultural uses, if any, existing on the Premises at the time of the landowner's application to the Grantee as set forth in Section 3 above may be continued and any structure may be restored or repaired in the event of partial destruction thereof, subject to the following:

- i. No new structures or the expansion of pre-existing structures for nonagricultural use are permitted;
- ii. No change in the pre-existing nonagricultural use is permitted; and
- iii. No expansion of the pre-existing nonagricultural use is permitted; and
- iv. In the event that the Grantor abandons the pre-existing nonagricultural use, the right of the Grantor to continue the use is extinguished.

5. No sand, gravel, loam, rock, or other minerals shall be deposited on or removed from the Premises excepting only those materials required for the agricultural purpose for which the land is being used.

6. No dumping or placing of trash or waste material shall be permitted on the Premises unless expressly recommended by the Committee as an agricultural management practice.

7. No activity shall be permitted on the Premises, which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the Premises.

- i. Grantors shall obtain within one (1) year of the date of this Deed of Easement, a farm conservation plan approved by the local soil conservation district.
- ii. Grantors' long term objectives shall conform with the provisions of the farm conservation plan.

8. Grantee and Committee and their agents shall be permitted access to, and to enter upon, the Premises at all reasonable times, but solely for the purpose of inspection in order to enforce and assure compliance with the terms and conditions of this Deed of Easement. Grantee agrees to give Grantors at least 24 hours advance notice of its intention to enter the Premises, and further, to limit such times of entry to the daylight hours on regular business days of the week.

9. Grantors may use the Premises to derive income from certain recreational activities such as hunting, fishing, cross country skiing and ecological tours, only if such activities do not interfere with the actual use of the land for agricultural production and that the activities only utilize the Premises in its existing condition. Other recreational activities from which income is derived and which alter the Premises, such as golf courses and athletic fields, are prohibited.

10. Nothing shall be construed to convey a right to the public of access to or use of the Premises except as stated in this Deed of Easement or as otherwise provided by law.

11. Nothing shall impose upon the Grantors any duty to maintain the Premises in any particular state, or condition, except as provided for in this Deed of Easement.

12. Nothing in this Deed of Easement shall be deemed to restrict the right of Grantors, to maintain all roads and trails existing upon the Premises as of the date of this Deed of Easement.

Grantors shall be permitted to construct, improve or reconstruct any roadway necessary to service crops, bogs, agricultural buildings, or reservoirs as may be necessary.

13. At the time of this conveyance, Grantors has no (0) existing single family residential buildings on the Premises and no (0) residential buildings used for agricultural labor purposes. Grantors may use, maintain, and improve existing buildings on the Premises subject to the following conditions:

- i. Improvements to agricultural buildings shall be consistent with agricultural uses;
- ii. Improvements to residential buildings shall be consistent with agricultural or single and extended family residential uses. Improvements to residential buildings for the purpose of housing agricultural labor are permitted only if the housed agricultural labor is employed on the Premises; and
- iii. Improvements to recreational buildings shall be consistent with agricultural or recreational uses.

14. Grantors may construct any new buildings for agricultural purposes. The construction of any new buildings for residential use, regardless of its purpose, shall be prohibited except as follows:

- i. To provide structures for housing of agricultural labor employed on the Premises but only with the approval of the Grantee and the Committee. If Grantee and the Committee grant approval for the construction of agricultural labor housing, such housing shall not be used as a residence for Grantors, Grantors' spouse, Grantors' parents, Grantors' lineal descendants, adopted or natural, Grantors' spouse's parents, Grantors' spouse's lineal descendants, adopted or natural; and
- ii. To construct a single family residential building anywhere on the Premises in order to replace any single family residential building in existence at the time of conveyance of this Deed of Easement but only with the approval of the Grantee and Committee.
- iii. No (0) residual dwelling site opportunities have been allocated pursuant to the provisions of N.J.A.C. 2:76-6.17. No residential buildings are permitted on the Premises except as provided in this Deed of Easement.

For the purpose of this Deed of Easement:

"Residual dwelling site opportunity" means the potential to construct a residential unit and other appurtenant structures on the Premises in accordance with N.J.A.C. 2:76-6.17.

15. The land and its buildings, which are affected, may be sold collectively or individually for continued agricultural use as defined in Section 2 of this Deed of Easement. However, no division of the land shall be permitted without the joint approval in writing of the Grantee and the Committee. In order for the Grantor to receive approval, the Grantee and Committee must find that the division shall be for an agricultural purpose and result in agriculturally viable parcels. Division means any division of the Premises, for any purpose, subsequent to the effective date of this Deed of Easement.

- i. For purposes of this Deed of Easement, "Agriculturally viable parcel" means that each parcel is capable of sustaining a variety of agricultural operations that yield a reasonable economic return under normal conditions, solely from each parcel's agricultural output.

16. In the event of any violation of the terms and conditions of this Deed of Easement, Grantee or the Committee may institute, in the name of the State of New Jersey, any proceedings to enforce these terms and conditions including the institution of suit to enjoin such violations and to require restoration of the Premises to its prior condition. Grantee or the Committee do not waive or forfeit the right to take any other legal action necessary to insure compliance with the terms, conditions, and purpose of this Deed of Easement by a prior failure to act.

17. This Deed of Easement imposes no obligation or restriction on the Grantors' use of the Premises except as specifically set forth in this Deed of Easement.

18. This Deed of Easement is binding upon the Grantors, the Grantors' heirs, executors, administrators, personal or legal representatives, successors and assigns and the Grantee; it shall be construed as a restriction running with the land and shall be binding upon any person to whom title to the Premises is transferred as well as upon the heirs, executors, administrators, personal or legal representatives, successors, and assigns of all such persons.

19. Throughout this Deed of Easement, the singular shall include the plural, and the masculine shall include the feminine, unless the text indicates otherwise.

20. The word "Grantor" shall mean any and all persons who lawfully succeed to the rights and responsibilities of the Grantor, including but not limited to the Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns.

21. Wherever in this Deed of Easement any party shall be designated or referred to by name or general reference, such designation shall have the same effect as if the words, "heirs, executors, administrators, personal or legal representatives, successors and assigns" have been inserted after each and every designation.

22. Grantors, Grantors' heirs, executors, administrators, personal or legal representatives, successors and assigns further transfers and conveys to Grantee all of the nonagricultural development rights and development credits appurtenant to the lands and Premises described herein and as set forth in Schedule A. Nothing contained herein shall preclude the conveyance or retention of said rights by the Grantee as may be permitted by the laws of the State of New Jersey in the future. In the event that the law permits the conveyance of said development rights, Grantee agrees to reimburse the Committee 15.04% of the value of the development rights as determined at the time of the subsequent conveyance.

23. That portion of the net proceeds, representing the value of the land only (and not the value of the improvements), of a condemnation award or other disposition of the Premises following termination of this Deed of Easement, as permitted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, c. 32, shall be distributed among the Grantors and the Grantee in shares in proportion to the fair market value of their interests in the Premises on the date of execution of this Deed of Easement. For this purpose, the Grantee's allocable share of the proceeds shall be the net proceeds multiplied by a fraction, the numerator of which is the fair market value of the development easement as certified by the Committee at the time of the initial acquisition and the denominator of which is the full fair market value of the unrestricted Premises as certified by the Committee at the time of the initial acquisition, which is identified as (18,000/26,000).

Furthermore, the Grantee's proceeds shall be distributed among the Grantee and the Committee in shares in proportion to their respective cost share grants on the date of execution of this Deed of Easement. The Grantee shall use its share of the proceeds in a manner consistent with the provisions on N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32.

24. No historic building or structure located on the Premises may be demolished by the grantor or any other person without the prior approval of the State Agriculture Development Committee. Historic building or structure is a building or structure that, as of the date of this Deed of Easement, has been included in the New Jersey Register of Historic Places established pursuant to N.J.S.A. 13:1B-15.128 et seq.

The Grantors sign this Deed of Easement as of the date of the top of the first page. If the Grantors are a corporation, this Deed of Easement is signed and attested to by its proper corporate officers, and its corporate seal, if any, is affixed.

WITNESS/ATTEST:

Kenneth Short, Mayor, Township of Washington

STATE OF NEW JERSEY)
) ss:
COUNTY OF MORRIS)

I CERTIFY THAT ON _____, 2009, **Kenneth Short, Mayor, Township of Washington**, personally appeared before me and acknowledged under oath, to my satisfaction, that this person:

- (a) is named in and personally signed this DEED OF EASEMENT;
- (b) signed, sealed and delivered this DEED OF EASEMENT as his act and deed;
- (c) made this DEED OF EASEMENT for and in consideration of mutual obligations and benefits to each party; and
- (d) the actual and true consideration paid for this instrument is \$435,825.

MORRIS COUNTY AGRICULTURE DEVELOPMENT BOARD

THE UNDERSIGNED, being Chairperson of the Morris County Agriculture Development Board, hereby accepts and approves the foregoing restrictions, benefits and covenants.

ACCEPTED AND APPROVED THIS _____ day of _____ 2009.

William Roehrich, Chairman
Morris County Agriculture Development Board

STATE OF NEW JERSEY)
) ss:
COUNTY OF MORRIS)

I CERTIFY THAT ON _____ 2009, **William Roehrich**, personally appeared before me and acknowledged under oath, to my satisfaction that this person:

- (a) is named in and personally signed this DEED OF EASEMENT,
- (b) signed, sealed and delivered this DEED OF EASEMENT as the Board's act and deed; and
- (c) is the Chairperson of the Morris County Agriculture Development Board.

W. RANDALL BUSH
An Attorney-at-Law of New Jersey

STATE AGRICULTURE DEVELOPMENT COMMITTEE

The State Agriculture Development Committee has approved the purchase of the development easement on the premises pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, and has authorized a grant of 15.03% of the purchase price and 6.26% of the certified market value of the development easement to Morris County in the amount of \$64,828.82.

Date: _____

SUSAN E. CRAFT, Executive Director

State Agriculture Development Committee

STATE OF NEW JERSEY)
) ss
COUNTY OF MORRIS)

I CERTIFY that on _____, 2009, **Susan E. Craft** personally appeared before me and acknowledged under oath, to my satisfaction, that this person:

- (a) is named in and personally signed this DEED OF EASEMENT,
- (b) signed, sealed and delivered this DEED OF EASEMENT as the Committee's act and deed, and
- (c) is the Acting Executive Director of the State Agriculture Development Committee.

COUNTY OF MORRIS

THE UNDERSIGNED, being Director of the Board of Chosen Freeholders of the County of Morris, hereby accepts and approves the foregoing restrictions, benefits and covenants.

ACCEPTED AND APPROVED THIS _____ day of _____ 2009.

Attested by:

Diane M. Ketchum
Clerk of the Board

Gene F. Feyl
Freeholder Director

STATE OF NEW JERSEY)
) ss:
COUNTY OF MORRIS)

I CERTIFY that on _____ 2009, **Diane M. Ketchum** personally appeared before me and acknowledged under oath, to my satisfaction that:

- (a) this person is the Clerk of the Board of Chosen Freeholders of the County of Morris, the Corporation named in this document;
- (b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the Director of the Board of Chosen Freeholders of the County of Morris;
- (c) this document was signed and delivered as its voluntary act;
- (d) this person knows the proper seal of the corporation which was affixed to this document; and
- (e) this person signed this proof to attest to the truth of these facts.

Sworn and subscribed before
me this _____ day of _____, 2009

SCHEDULE A

SCHEDULE B

Grantors certify that at the time of the application to sell the development easement to the Grantee no nonagricultural uses existed. Grantors further certify that at the time of the execution of this Deed of Easement no nonagricultural uses exist.