

DEED OF EASEMENT

**STATE OF NEW JERSEY
AGRICULTURE RETENTION AND DEVELOPMENT PROGRAM**

This Deed is made _____, 20 _____.

BETWEEN _____, whose address is _____, and is referred to as the Grantor;

AND the Township of _____, whose address is _____, and is referred to as the Grantee and/or Township.

The Grantor, Grantor's 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 the Township of _____, County of _____, described in the attached Schedule A, and, for the limited purpose of the restrictions contained in Paragraph 13(b), the tract of land described in the attached Schedule C, which schedules are incorporated by reference in this Deed of Easement, for and in consideration of the sum of _____ Dollars.

Any reference in this Deed of Easement to "Premises" refers to the property described in Schedule A, and, for the limited purpose of the restrictions contained in Paragraph 13(b), to the tract of land described in Schedule C.

The tax map reference for the Premises is:

Township of _____

Block __, Lot ____

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, _____ Township has endorsed the aforesaid declaration of policy by the State legislature and has established an Agriculture Retention and Development Program in a manner entirely consistent with State statutes, State administrative regulations and the policies and practices of the State Agriculture Development Committee;

WHEREAS, the Grantor is the sole and exclusive owner of the Premises; and

WHEREAS, it is the intention of _____ Township to acquire a development easement from Grantor in a fashion consistent with, and pursuant to, terms which will reserve a right and opportunity on the part of the Grantee to enroll the development easement in the State of New Jersey Agriculture Retention and Development Program at some future time according to rules, regulations and policies of the State Agriculture Development Committee;

WHEREAS, this Deed of Easement presently recites that the State Agriculture Development Committee (Committee) may exercise certain rights and prerogatives with respect to the within easement in anticipation of, and solely in order to facilitate, the possible enrollment of this easement at a future date in the State of New Jersey Agriculture Retention and Development Program, it being explicitly understood that any such rights and prerogatives of said Committee are inchoate and shall not actually be exercised until such time as a development easement for the property is in fact enrolled in the aforesaid State Program by the Grantee assigning a Deed of Easement to the Committee; and

Prepared by: _____

WHEREAS, this Deed of Easement presently recites that the State Agriculture Development Committee ("Committee"), the Secretary of the United States Department of Agriculture (USDA), and the Natural Resource Conservation Service (NRCS) may exercise certain rights and prerogatives with respect to the within easement in anticipation of, and solely in order to facilitate, the possible enrollment of this easement at a future date in the State of New Jersey Agriculture Retention and Development Program, it being explicitly understood that any such rights and prerogatives of said Committee are inchoate and shall not actually be exercised until such time as an Easement for the property is in fact enrolled in the aforesaid State Program by the Grantee assigning this Deed of Easement to the Committee pursuant to N.J.S.A. 4:1C-11 et seq. and N.J.S.A.13:8C-1 et seq. and that such rights and prerogatives of the USDA and NRCS are inchoate and shall not actually be exercised unless the USDA contributes funding for the Committee's acquisition of the Deed of Easement.

NOW THEREFORE, THE GRANTOR, GRANTOR'S HEIRS, EXECUTORS, ADMINISTRATORS, PERSONAL OR LEGAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS PROMISES 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. Grantor certifies 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;
 - 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. Grantor shall obtain within one year of the date of this Deed of Easement, a farm conservation plan approved by the local soil conservation district.
- ii. Grantor's long term objectives shall conform with the provisions of the farm conservation plan.
- iii. As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, his heirs, successors, or assigns, shall conduct all agricultural operations on the Premises in a manner consistent with a conservation plan prepared in consultation with the Natural Resources Conservation Service and approved by the appropriate Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date this easement was executed. However, the Grantor may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the Property, with advance notice to the Grantor, to monitor compliance with the conservation plan.

In the event of noncompliance with the conservation plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed 12 months, to take corrective action.

If the Grantor does not comply with the conservation plan, NRCS will inform Grantee of the Grantor's noncompliance. The Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following notification from NRCS that (a) there is a substantial, ongoing event or circumstance of noncompliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible lands are revised after the date of this Deed of Easement based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farmland Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.

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 Grantor, 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. Grantor 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 Grantor 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 Grantor, to maintain all roads and trails existing upon the Premises as of the date of this Deed of

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

13(a). At the time of this conveyance, Grantor has _____ existing single family residential buildings on the Premises and _____ residential buildings used for agricultural labor purposes. Grantor may use, maintain, and improve existing buildings on the Premises for agricultural, residential and recreational uses 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.

13(b). Grantor, their heirs, executors, administrators, personal or legal representatives, successors and assigns may use and maintain the Exception Area, as described in the attached Schedule C, subject to the following conditions:

- i. the Exception Area may not be moved to another portion of the Premises nor may it be swapped with other land.

sample conditions:

- the Exception Area shall not be severed or subdivided from the Premises
- the Exception Area may be severed and subdivided from the Premises
- the Exception Area shall be limited to one single-family residential unit
- (Right to Farm Language if Exception is Non-Severable)

Grantors, grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns or any person who is occupying or residing on the Exception Area as well as the heirs, executors, administrators, personal or legal representatives, successors and assigns of all such persons are hereby notified and made aware that the Exception Area is adjacent to a parcel ("Premises") permanently deed restricted under the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq. Such persons occupying or residing on the Exception Area are notified and made aware that agriculture is the accepted and preferred use of the adjacent Premises and that the adjacent Premises shall continue in agricultural use as defined in Section 2 of the Deed of Easement.

- (Right to Farm Language if Exception is Severable)

Grantors, grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns or any person to whom title to the Exception Area is transferred as well as the heirs, executors, administrators, personal or legal representatives, successors and assigns of all such persons are hereby notified and made aware that the Exception Area is adjacent to a parcel ("Premises") permanently deed restricted under the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq. Such persons taking title to the Exception Area are notified and made aware that agriculture is the accepted and preferred use of the adjacent Premises and that the adjacent Premises shall continue in agricultural use as defined in Section 2 of the Deed of Easement.

14. Grantor 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 Grantor, Grantor's spouse, Grantor's parents, Grantor's lineal descendants, adopted or natural, Grantor's spouse's parents, Grantor's 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 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 Grantor's use of the Premises except as specifically set forth in this Deed of Easement.

18. This Deed of Easement is binding upon the Grantor, the Grantor's 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.

Grantor, Grantor's 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. 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 the law permits the conveyance of said development rights and in the event the Grantee/Township has assigned this development easement to the State Agriculture Development Committee, the Committee shall reimburse the USDA, NRCS based on the funding contribution provided by NRCS for the acquisition of the development easement.

[Use this language if the Township has contributed funding to the purchase of the easement – i.e., sells it to the SADC for less than the approved purchase price or less than SADC's certified value: In the event that the law permits the conveyance of said development rights, and in the event that the Grantee/Township has assigned the easement to the Committee, the Committee shall reimburse the Grantee/Township and the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture a certain percentage of the value of the development rights as determined at the time the Grantee/Township assigns this Deed of Easement to the Committee. Such percentages shall be based on the respective contributions (or "cost-shares") of each of the parties in the acquisition of the Deed of Easement, which in turn are based on the actual purchase price of the development easement or the certified easement value, whichever is less. (For example, if the Committee's cost-share was 60 percent of the certified value of the development easement, the Township's cost-share was 20 percent, and the NRCS's cost-share was 20 percent, the proceeds from the sale of the development rights shall be distributed among the parties based on these percentages.)]

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 Grantor 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 Grantee 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 Grantee at the time of the initial acquisition, which is identified as (/).

If the Grantee/Township assigns this Deed of Easement to the Committee, the Committee's share 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 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 and the denominator of which is the full fair market value of the unrestricted Premises as certified by the Committee. The Committee shall share its portion of the proceeds with the NRCS, based upon their respective funding contributions for the acquisition of the easement.

(Use this language if the Township has contributed funding to the purchase of the easement – i.e., sells it to the SADC for less than the approved purchase price or less than SADC's certified value: *If the Grantee/Township assigns this Deed of Easement to the State Agriculture Development Committee, the Committee shall also reimburse the Township a portion of any such condemnation proceeds. The Township's portion shall be based on its contribution (or "cost-share") to the acquisition of the Deed of Easement, which in turn is based on the Committee's actual purchase price of the development easement or the certified easement value, whichever is less. The Township shall use its share of the proceeds in a manner consistent with the provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32. The Township shall use their share of the proceeds in a manner consistent with the provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32.]*

24. Grantor understands and accepts that Grantee may, at its sole option, apply to

the State Agriculture Development Committee to have this easement enrolled for participation in the State of New Jersey Agriculture Retention and Development Program as administered by the State Agriculture Development Committee. It is the intention of Grantor to convey to Grantee, by this present instrument, all of the rights which would have to be conveyed under N.J.S.A. 4:1C-11, et seq. and under N.J.A.C. 2:76-1.1, et seq. in order to qualify this easement for participation in the State Program. Grantor hereby agrees and undertakes to cooperate with Grantee in any appropriate aspect of the State application process and to execute any necessary papers presented by the State or by Grantee in connection therewith. Grantor hereby consents to the assignment of any of Grantee's rights, title, interest and obligations hereunder to the State Agriculture Development Committee. Grantee stipulates that any rights and prerogatives which this Deed of Easement extends to the Committee (which entity is neither a party to this conveyance nor to any of the negotiations and agreements leading up to same) are inchoate and shall not be exercised unless and until the Grantee makes such assignment or conveyance to the Committee pursuant to N.J.S.A. 4:1C-11, et seq. and said assignment is recorded in the Clerk's Office of _____ County. Any rights and prerogatives which this Deed of Easement extends to the USDA and NRCS are inchoate and shall not be exercised unless and until the United States Department of Agriculture provides funding for the Committee's acquisition of the Deed of Easement.

25. 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.

26. At the time of acquisition of this development easement, there exists _____ percent of impervious surface on the Premises as identified on the survey plat prepared by _____, dated _____ and revised to _____. Any improvements to existing residential buildings, agricultural labor housing, agricultural buildings or any new residential buildings, agricultural labor housing or agricultural buildings or other improvements resulting in an increase in impervious surface as defined below shall not, in combination with existing improvements cause the total impervious surface coverage to exceed a maximum of _____ percent of the Premises as authorized by the United States Department of Agriculture's Natural Resources Conservation Service. Any impervious surface in excess of _____ percent is expressly prohibited.

Impervious surface, for purposes of this Deed of Easement, is defined as permanent, non-seasonal rooftops, concrete and asphalt surfaces including residential buildings, agricultural buildings (with and without flooring), and paved areas located on the Premises. Conservation practices listed in the United States Department of Agriculture's Natural Resources Conservation Service Field Office Technical Guide are not considered impervious surface.

27. Contingent Right in the United States of America

In the event that the Committee or Grantee fails to enforce any of the terms of this Deed of Easement as determined in the sole discretion of the Secretary of the United States Department of Agriculture, the said Secretary of Agriculture and his or her successors and assigns shall have the right to enforce the terms of this Deed of Easement through any and all authorities available under Federal or State law.

In the event that the Committee or Grantee attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests of this easement without the prior consent of the Secretary of the United States Department of Agriculture and payment of consideration to the United States, then, at the option of such Secretary, all right, title and interest in this easement shall become vested in the UNITED STATES OF AMERICA.

In the event the Governor declares that an eminent domain action instituted by a public body on lands from which a development easement has been acquired is necessary for the public health or safety and that there is no immediately apparent feasible alternative, pursuant to N.J.S.A. 4:1C-25, the consent of the Secretary of the United States Department of Agriculture shall not be unreasonably withheld.

- (c) EASEMENT by the proper officer who is Mayor of _____ Township;
this DEED OF EASEMENT was signed and delivered by the Township as its
voluntary act duly authorized by a proper resolution of the Township
Committee;
- (d) this person knows the proper seal of the Township which was affixed to this
DEED OF EASEMENT; and
- (e) this person signed this proof to attest to the truth of these facts.

 , Clerk

Sworn and subscribed to before me on
 this ____ day of _____, 200__
