

DISCLAIMER: This document is a draft and certain provisions will be modified depending on the Grantee, specific property conditions, and SADC approval requirements. However, most of the provisions contained in this draft deed are pursuant to [N.J.A.C. 2:76-6.15](#) and cannot be changed. The final version will be based on requirements set forth in the approval of an individual application for farmland preservation. This draft document is provided for reference only. Please contact sadc@ag.nj.gov with any questions.

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

This Deed is made _____, YEAR

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

AND **STATE, COUNTY OR NONPROFIT** whose address is _____ and is referred to as the Grantee and/or Board.

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 __, County 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, the Grantor is the sole and exclusive owner 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 _____ County;

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 non-agricultural 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 non-agricultural 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 non-agricultural 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. Grantor understands and agrees that the Premises are subject to N.J.A.C. 2:76-25, et seq. and 25A, et seq. regulating soil disturbance on preserved farms and establishing supplemental soil disturbance standards, respectively. The soil disturbance allocated to the Premises is a maximum of 12% of the Premises or 4 acres, whichever is greater, as provided by N.J.A.C. 2:76-25, et seq. and 25A, et seq. Grantor is advised that at the time of the execution of this Deed of Easement

there exists ____ % or ____ acres of soil disturbance on the Premises as depicted on the map attached as Schedule D. Due to the potential of additional soil disturbance or soil rehabilitation taking place after the execution of this Deed of Easement, Grantor is hereby put on notice that the amount of soil disturbance depicted on Schedule D may be different at the time of any subsequent conveyance of the Premises.

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 building(s) 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 shall not be moved to another portion of the Premises and shall not be swapped with other land.
- ii. The Exception Area shall not be severed or subdivided from the Premises. **OR** the Exception Area may be severed or subdivided from the Premises.
- iii. The Exception Area shall be limited to __ (#) single family residential unit(s). **OR** **DELETE**
- iv. **(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.

OR

- iv. **(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. This provision shall be included in any deed conveying title to the Exception Area.

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. ____ (#) residual dwelling site opportunity(ies) have been allocated to the Premises pursuant to the provisions of N.J.A.C. 2:76-6.17, "Residual Dwelling Site Opportunity". The Grantor's request to exercise a residual dwelling site opportunity shall comply with the rules promulgated by the Committee in effect at the time the request is initiated.

In the event a division of the Premises occurs in compliance with deed restriction No. 15 below, the Grantor shall prepare or cause to be prepared a Corrective Deed of Easement reflecting the reallocation of the residual dwelling site opportunities to the respective divided lots. The Corrective Deed shall be recorded with the County Clerk. A copy of the recorded Corrective Deed shall be provided to the Grantee and Committee.

In the event a residual dwelling site opportunity has been approved by the Grantee, the Grantor shall prepare or cause to be prepared a Corrective Deed of Easement at the time of Grantee's approval. The Corrective Deed of Easement shall reflect the reduction of residual dwelling site opportunities allocated to the Premises. The Corrective Deed shall be recorded with the County Clerk. A copy of the recorded Corrective Deed shall be provided to the Grantee and Committee.

(OR)

- 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.

MOST PROPERTIES ARE NOT ELIGIBLE FOR A RESIDUAL DWELLING SITE OPPORTUNITY. DETAILS WILL BE DISCUSSED DURING THE APPLICATION PROCESS.

"Residual dwelling site" means the location of the residential unit and other appurtenant structures.

"Residential unit" means the residential building to be used for single family residential housing and its appurtenant uses. The construction and use of the residential unit shall be for agricultural purposes.

"Use for agricultural purposes" as related to the exercise of a residual dwelling site opportunity and the continued use of the residential unit constructed thereto, means at least one person residing in the residential unit shall be regularly engaged in common farmsite activities on the Premises 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, water management and grazing.

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.

22. 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 that the law permits the conveyance of said development rights, Grantee agrees to reimburse the Committee (%) percent 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 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 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 (/).

[Add the following if the consideration is based on the statewide formula valuation:]

- i. The following applies in the event the consideration for this Deed of Easement is determined based on the Statewide Formula valuation pursuant to N.J.A.C. 2:76-26.1, et seq.: 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 Statewide Formula value of the development easement as determined pursuant to N.J.A.C. 2:76-26.1, et seq. 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 (/).

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 of 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.

[Insert the following if Grantor took the voluntary SFV restrictions.]

The parties hereto agree to the following additional restrictions under the authority of N.J.A.C. 2:76-6.15(b):

[If landowner takes the impervious cover limitation]

25. Impervious cover will not exceed 10% of the Premises. "Impervious cover" means any structure or surface that prevents the infiltration of water into the land. Examples include, but are not limited to, pavement, sidewalks, surfaced driveways or parking areas, machine-compacted soil or stone areas, rooftops, buildings, barns, sheds, houses, garages, greenhouses, hoopouses, plastics, or other impermeable ground covers. This term shall not apply to seasonal structures that remain in place for no more than 180 days, unimproved farm lanes, areas of field-based agriculture, or seasonal ground coverings. This limitation does not include public roads or other roads owned or controlled by parties with rights superior to those rights conveyed to the grantee. "Seasonal ground coverings" means permeable, woven or non-woven geotextile fabrics that allow for water infiltration or impermeable materials, such as those used in plasticulture, that are in contact with the soil and used for no more than two consecutive years. At the time of farmland preservation closing on this development easement, there exists _____ percent of impervious cover on the Premises as identified on the survey plat, a reduced copy of which is attached to this deed at Schedule A.

[if landowner takes the house size limit restriction]

25. A maximum house size limitation of 2,500 square feet of heated living space shall apply to any future residential unit retained in accordance with the following: **[insert as applicable]** the replacement of an existing or the construction of a future residential unit identified in paragraph 13(b) above; the replacement of an existing residential unit on the Premises identified in in paragraph 13(a) above, which may be replaced in accordance with paragraph 14.ii. above; and/or an RDSO retained in accordance with paragraph 14.iii. above..

[the following applies if there is a residential unit existing on the premises or in the nonseverable exception area at the time of farmland preservation closing]

- i. If any residential unit existing on the Premises and/or in the nonseverable exception area at the time of farmland preservation closing is rendered uninhabitable by an event beyond the landowner's control, the residential unit can be rebuilt within the square footage existing as of the date of preservation, or 2,500 square feet of heated living space, whichever is larger. At the time of farmland preservation closing on this development easement, there exists a **[insert number]** of residential units located on the Premises and **[insert number]** of residential units existing on the nonseverable exception area. Each residential unit consists of the following square feet of heated living space: **[insert each residential unit's square footage of heated living space].**

The location and heated living space square footage of each residential unit is identified on the survey plat, a reduced copy of which is attached to this deed at Schedule A.

The Grantor signs this Deed of Easement as of the date of the top of the first page. If the Grantor is a corporation, this Deed of Easement is signed and attested to by its proper corporate officers.

_____(L.S.)
Name of Seller, Name of position (if applicable)

_____(L.S.)
Name of Seller, Name of position (if applicable)

(CHOOSE PROPER ACKNOWLEDGMENT BASED ON TYPE OF ENTITY LANDOWNER IS, i.e., individual, corporation, or LLC)

(INDIVIDUAL ACKNOWLEDGMENT)

STATE OF NEW JERSEY, COUNTY OF _____ SS.:

I CERTIFY that on _____, 20____,

_____ personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- a. is named in and personally signed this DEED OF EASEMENT;
- b. signed, sealed and delivered this DEED OF EASEMENT as his or her 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 \$_____

Insert Name & Title under signature

CORPORATE ACKNOWLEDGMENT)

STATE OF NEW JERSEY, COUNTY OF _____ SS.:

I CERTIFY that on _____, 20__, the subscriber (WITNESSING OFFICER), personally appeared before me, who, being by me duly sworn on his or her oath, deposes and makes proof to my satisfaction, that he or she is the Secretary/VP of _____ the Corporation named in the within Instrument; that _____ is the President of said Corporation; that the execution, as well as the making of this Instrument, has been duly authorized by a proper resolution of the Board of Directors of the said Corporation; that said Instrument was signed and delivered by said President as and for the voluntary act and deed of said Corporation, in presence of deponent, who thereupon subscribed his or her name thereto as attesting witness; and that the full and actual consideration paid to purchase a development easement as evidenced by the DEED OF EASEMENT is \$_____ and the mutual obligations and benefits contained herein.

_____, Inc.

_____, (L.S.)

Notary Public_____
Witnessing Officer**(LLC ACKNOWLEDGMENT)**

STATE OF NEW JERSEY, COUNTY OF _____ SS.:

I CERTIFY that on _____, 20__,

_____ personally came before me and that this person acknowledged under oath, to my satisfaction, that:

- a. _____ is the Managing Member of the _____, LLC and has full authority to execute this Deed of Easement as the act of _____ LLC;
- b. the full and actual consideration paid to purchase a development easement as evidenced by this deed of easement is \$_____.

Insert Name & Title under signature

(COUNTY AGRICULTURE DEVELOPMENT BOARD)

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

ACCEPTED AND APPROVED this _____ day of _____ 20____

[NAME], Chairperson

_____ County Agriculture Development Board

STATE OF NEW JERSEY, COUNTY OF _____ SS.:

I CERTIFY that on _____, 20____

_____ personally came 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 _____ County Agriculture Development Board.

Insert Name & Title under signature

(BOARD OF COUNTY COMMISSIONERS)

THE UNDERSIGNED, being _____ of the _____ Board of County Commissioners, hereby accepts and approves the foregoing restrictions, benefits and covenants.

ACCEPTED AND APPROVED this _____ day of _____ 20____.

[Name & Title]

_____ Board of County Commissioners

STATE OF NEW JERSEY, COUNTY OF _____ SS.:

I CERTIFY that on _____, 20____

_____ personally came 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 of County Commissioners act and deed; and
- c. Is the Administrator/Clerk of the _____ Board of County Commissioners

Signed and sworn to before me on _____, 20____

[Name & Title]

_____ Board of County Commissioners

(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 __% of the purchase price of the development easement to ____ County in the amount of \$_____.

_____, Executive Director
State Agriculture Development Committee

Date

STATE OF NEW JERSEY, COUNTY OF MERCER SS.:

I CERTIFY that on _____, 20____,

_____ personally came 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 Executive Director of the State Agriculture Development Committee.

SCHEDULE A

INSERT LEGAL METES AND BOUNDS OF THE PREMISES

SCHEDULE B

Grantor certifies that at the time of the application to sell the development easement to the Grantee no non-agricultural uses existed. Grantor further certifies that at the time of the execution of this Deed of Easement no non-agricultural uses exist.

OR

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 following nonagricultural use occurs on the Premises: *The pre-existing nonagricultural use will be described here based on all pertinent approvals.*

SCHEDULE C

INSERT LEGAL METES AND BOUNDS OF THE EXCEPTION AREA (IF ANY)