

ZONING

132 Attachment 4

Township of Kingwood

Prepared by: \_\_\_\_\_

**DEED OF CONSERVATION EASEMENT  
[Amended 3-4-2009 by Ord. No. 15-04-2009]**

THIS DEED OF CONSERVATION EASEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ and \_\_\_\_\_, having an address at \_\_\_\_\_ ("Grantors"), in favor of the Township of Kingwood, having an address at P.O. Box 199, Baptistown, New Jersey ("Grantee").

WITNESSETH:

WHEREAS, Grantors are the sole owners in fee simple of certain real property situated in Kingwood Township, Hunterdon, County, New Jersey, and known and designated as Block \_\_\_\_, Lot \_\_\_\_ on the Tax Map of Kingwood Township and commonly known and referred to as \_\_\_\_\_ (the "Property"); and

WHEREAS, the property contains several sensitive environmental areas, such as wetlands or Category 1 streams and their associated buffer or transition areas of great importance to Grantors, Grantee, the people of Kingwood Township and the people of the State of New Jersey; and

WHEREAS, the Grantors have received municipal approval for a subdivision, boundary line adjustment or site plan by virtue of a Memorializing resolution dated \_\_\_\_\_, \_\_\_\_\_ and a condition of said approval is the creation and recordation of a Conservation Easement protecting the sensitive environmental areas on the Property; and

WHEREAS, Grantors intend that this Deed of Conservation Easement be created and recorded to satisfy the aforesaid condition of approval and to convey to Grantee the right to preserve and protect the sensitive environmental areas on the Property in perpetuity; and

NOW, THEREFORE, in consideration of the above, and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the law of New Jersey Grantors hereby grant, transfer and convey to Grantee, in perpetuity, a conservation easement, over that portion of the Property more specifically described in Exhibit A attached hereto and made a part hereof (the "Easement Area"), of the nature and character and to the extent hereinafter set forth ("Easement").

- 1. Purpose.** It is the purpose of this Easement to assure that the Easement Area will be retained forever predominantly in its natural, undisturbed and undeveloped condition and to prevent any use of the Easement Area that will impair or interfere with the sensitive environmental areas on the Property, subject to such rights to use or improve the Easement Area as may exist pursuant to State regulations applicable to such areas, including without limitation, freshwater wetlands, Category One Streams, flood hazard areas and riparian stream buffers. Grantors intend that this Easement will restrict and limit the use of the Easement Areas.

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2. **Rights of Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:
- (a) To preserve and protect the Easement Area;
  - (b) To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with Section 5; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon at least 24 hours prior notice to Grantors, and Grantee shall not in any case unreasonably interfere with Grantors' use and quiet enjoyment of the Property; and
  - (c) To prevent any activity on or use of the Easement Area that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Easement Area that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Section 5.
3. **Prohibited Uses.** Any activity on or use of the Easement Area inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:
- (a) Any development, including the construction, erection or placement of any structure or building, of or within the Easement Area;
  - (b) Grading, mining, excavation, dredging or removal or disturbance of top soil, gravel, sand, loam, rock or other materials or minerals from, in, on, over or beneath the Easement Area;
  - (c) Filling, dumping, placing, storage or burning of soil, trash, waste, or other substances or materials in, on, over, or underneath any portion of the Easement Area;
  - (d) Cutting or removal of trees or shrubs, or clearance of vegetative growth on or within the Easement Area, except as required for pre-existing agricultural, horticultural and forestry uses or management in accordance with a plan prepared by a New Jersey licensed landscape architect or forester or for which Grantor receives Grantee's prior written consent;
  - (e) Use of motorized or non-motorized vehicles or conveyances, including without limitation, automobiles, trucks, vans, snowmobiles, motorcycles, bicycles and all-terrain vehicles on the Property, except that motorized vehicles may be used for pre-existing agricultural, horticultural and forestry uses or management in accordance with a plan prepared by a New Jersey licensed landscape architect or forester or for which Grantor receives Grantee's prior written consent;
  - (f) Any activity which would be detrimental to natural drainage, flood control, water conservation, soil erosion control, soil conservation or fish or wildlife habitat preservation.

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Notwithstanding the foregoing limitations, Grantor shall not be prohibited from undertaking any activity or improvement within the Easement Area which is permitted under applicable regulations, N.J.A.C. 7:13-1, et seq., or for which Grantor has obtained a valid permit authorizing such activity from the New Jersey Department of Environmental Protection or such other agency as may have jurisdiction over activities within the Easement Area.

### 4. Notice and Approval.

**4.1 Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantors to notify Grantee prior to undertaking certain permitted activities, as provided in Section 3 is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Whenever notice is required, Grantors shall notify Grantee in writing not less than sixty (60) days prior to the date Grantors intend to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

**4.2 Grantee's Approval.** Where Grantee's approval is required, as set forth in Section 3, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantors' written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

### 5. Grantee's Remedies.

**5.1 Notice of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Easement Area resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Easement Area so injured to its prior condition in accordance with a plan approved by Grantee.

**5.2 Injunctive Relief.** If Grantors fail to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and to require the restoration of the Easement Area to the condition that existed prior to any such injury.

**5.3 Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to the Easement Area, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantors' liability

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therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Easement Area.

- 5.4 Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Easement Area, Grantee may pursue its remedies under this Section 5 without prior notice to Grantors or without waiting for the period provided for cure to expire.
- 5.5 Scope of Relief.** Grantee's rights under this Section 5 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantors agree that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in Section 5.2, both prohibitive and mandatory, in addition to such other relief as Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 5 shall be cumulative and shall be in addition to all other remedies now or hereafter existing at law or in equity.
- 5.6 Costs of Enforcement.** All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantors, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors; provided, however, that if Grantors ultimately prevail in a judicial enforcement action each party shall bear its own costs and expenses.
- 5.7 Forbearance.** Forbearance by Grantee from the exercise of its rights under this Easement in the event of any breach of any term of this Easement by Grantors shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.
- 5.8 Waiver of Certain Defenses.** Grantors hereby waive and relinquish any defense of laches, estoppel, or prescription.
- 5.9 Acts Beyond Grantors' Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Easement Area resulting from causes beyond Grantors' control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes.
- 6. Access.** No right of access by the general public to any portion of the Property is conveyed by this Easement.
- 7. Costs, Liabilities, Taxes, and Environmental Compliance.**

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- 7.1 Costs, Legal Requirements, and Liabilities.** Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Easement Area, including the maintenance of adequate liability insurance coverage. Grantors remain solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements.
- 7.2 Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Easement Area, or any of Grantors' activities on the Property, or otherwise to become an owner or operator with respect to the Easement Area within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and The Spill Compensation and Control Act, as amended. 7.
- 8.** Grantors agree to incorporate the terms of this Easement by reference in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.
- 9. Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by certified mail, return receipt requested, postage prepaid, at the addresses set forth in the preamble of this Easement or to such other address as either party from time to time shall designate by written notice to the other.
- 10. Recordation.** Grantor shall record this instrument in timely fashion in the official records of Hunterdon County, New Jersey. Grantee may re-record it at any time as may be required to preserve its rights in this Easement.
- 11. General Provisions.**
- 11.1 Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of New Jersey.
- 11.2 Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement.
- 11.3 Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.





