

ORDINANCE 2011-14

**AN ORDINANCE OF THE TOWNSHIP OF CHATHAM, COUNTY OF MORRIS,
STATE OF NEW JERSEY, ESTABLISHING A MODEL CONSERVATION EASEMENT
AGREEMENT**

WHEREAS, from time to time the Township of Chatham, through resolution by the Chatham Township Planning Board, resolution by the Chatham Township Zoning Board of Adjustment, request of property owner, or other means, finds it necessary or advantageous to accept a conservation easement on all or portions of a tract of land; and

WHEREAS, in accordance with the Conservation Plan Element of the Chatham Township Master Plan, which states in the introduction that, "Chatham Township recognizes the need to plan for future open space, conserving natural resources and protecting environmentally sensitive areas, specifically sensitive areas such as steep slopes, wetlands, streams, recharge areas and flood plains as well as mature vegetation, groundwater, and air quality," the Township wishes to adopt measures to advance these plans; and

WHEREAS, a goal of the Township is to simplify and standardize administrative procedures in order that residents and others doing business with the Township may more conveniently understand requirements and expectations; and

WHEREAS, general use of a model conservation easement ordinance which includes appropriate conservation requirements and is in accordance with State of New Jersey regulations will further the objectives mentioned; and

WHEREAS, the model conservation easement agreement here presented, particularly described in Attachment A, meets these criteria;

NOW, THEREFORE, BE IT ORDAINED, by the Township Committee of the Township of Chatham, County of Morris, State of New Jersey, that

1. Article XXX of the Code of the Township of Chatham is hereby amended to add Section 30-96.29, Model Deed of Conservation Easement to read as follows:

Because from time to time the Township of Chatham, through resolution by the Chatham Township Planning Board, resolution by the Chatham Township Zoning Board of Adjustment, request of property owner, or other means, finds it necessary or advantageous to accept a conservation easement on all or portions of a tract of land, the model conservation easement agreement, particularly described in Appendix V, Model Deed of Conservation Easement, to this

Article, , is hereby adopted by the Township for use in all appropriate circumstances in the Township requiring a conservation easement.

2. This ordinance shall take effect in accordance with law.

Introduced: September 22, 2011
Adopted: November 10, 2011

TOWNSHIP OF CHATHAM
COUNTY OF MORRIS
STATE OF NEW JERSEY

Attest:

Gregory J. LaConte, Clerk

BY: _____
Nicole Hagner, Mayor

ATTACHMENT A

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is made as of _____

between _____, having an address at _____ ("Grantor"),

AND

THE TOWNSHIP OF CHATHAM, IN THE COUNTY OF MORRIS, a municipal corporation of the State of New Jersey, having an address at 58 Meyersville Road, Chatham, New Jersey 07928 ("Grantee").

WHEREAS, Grantor is the owner in fee of certain real property located at _____ and designated on the Township Tax Map as Lot ____, Block ____, in the Township of Chatham, County of Morris, and State of New Jersey (the "Property"); and

WHEREAS, (facts of situation) Grantor agreed to subject a portion of the Property to a conservation easement in recognition of environmental values and consistent with the requirements and purposes of the Chatham Township land use ordinances;

NOW, THEREFORE, in consideration of One Dollar (\$1.00) paid to the Grantor by the Grantee, the receipt of which is hereby acknowledged, the Grantor hereby grants and conveys to the Grantee, its successors and assigns, a CONSERVATION EASEMENT in perpetuity (the "Easement") on, over and upon that portion of the Property, situate, lying and being in the Township of Chatham, County of Morris and State of New Jersey as shown on a certain map entitled _____, also described by Tax Map Reference: Township of Chatham, Block ____, Lot _____, and more particularly described in SCHEDULE A (to include a metes and bounds description of the Easement Area) attached to and made a part of this Deed (collectively, "Conservation Easement Area") to the extent and on the terms set forth herein.

COVENANT RESTRICTIONS AND OTHER TERMS

1. Purpose. The purpose of the Easement is to ensure that the lands in the Easement Area are protected in their existing natural, scenic and open state in perpetuity, subject only to the specific rights expressly reserved to Grantor.

2. Generally Prohibited Uses and Activities. Activities on and uses of the Easement Area that are inconsistent with the purposes of this Easement are prohibited. Without limiting the generality of the foregoing, subsequent to the date of this Easement the following activities and uses are expressly forbidden in the Easement Area, except as provided in Paragraph 3:

a. Construction, placement, enlargement or replacement of any structure on, above or beneath the surface of the Easement Area, unless the structure is expressly authorized by this Easement. For purposes of this restriction, the term "structure" shall mean any combination of materials to form a construction for temporary or permanent occupancy, use or ornamentation, whether installed or placed on, above or below the surface of the land, including, but not limited to any: (i) buildings; (ii) swimming pools, satellite dishes and antennae, signs, storage tanks and other accessory structures and fixed items of equipment; (iii) water, sewer, power, fuel and communication lines, other utility systems and related facilities; (iv) culverts, detention basins, and other stormwater or groundwater storage and control facilities; and (v) pads, patios, playing courts, walkways, roads, driveways, parking areas and other areas surfaced with wood, concrete, macadam, brick, paving stones, cinder block, gravel, clay or other impervious or semi-pervious material.

b. Dumping any substance or material in the Easement Area that may cause significant harm or damage to plants or wildlife, including, but not limited to, refuse, hazardous materials, animal waste, fertilizers, leaves and yard waste.

c. Disturbance or alteration of the surface topography or natural features of the Easement Area.

d. Draining, dredging, filling or other disturbance of wetland areas in the Easement Area, except as necessary to carry out an activity expressly permitted under this Easement.

e. Alteration of any streams or other water bodies located on the Easement Area, except for such conservation and water quality improvement measures as Grantee may approve in writing, which approval shall not be unreasonably withheld.

f. Cutting, destruction or removal of live trees, shrubs, or other vegetation in the Easement Area, except that: (i) non-native vegetation may be controlled by mechanical means or the responsible application of herbicides and biological control measures in accordance with subparagraph (g) of this Paragraph 2; and (ii) dead, fallen, diseased or infected trees, tree limbs and other vegetation that pose a health or safety hazard or that obstruct passage on paths, trails or drives lawfully existing on the Easement Area may be trimmed or removed.

g. Use of chemical or biological pesticides, herbicides, fungicides, rodenticides, or other biocides on the Easement Area, except if: (i) the same is used in a responsible manner to control one or more species generally acknowledged to be a pest or invasive species; (ii) all applicable environmental laws, governmental policies and recommendations concerning the proper use and application of the substance are complied with; and (iii) the substance in question does not pose any significant risk of harm to any threatened or endangered species.

h. Operation in the Easement Area of motorized vehicles including, but not limited to, automobiles, four-wheel drive and all-terrain vehicles, snowmobiles, trail bikes and motorcycles, except as may be required: (i) for emergency purposes; or (ii) to carry out legitimate management actions of Grantor or Grantee on existing trails, using vehicles designed to minimize the disturbance of soil and slopes.

3. Grantor's Reserved Rights. The provisions of Paragraph 2 notwithstanding, Grantor reserves the right to engage in the following uses and activities in the Easement Area, subject to the conditions and limitations stated herein, or imposed by law, ordinance, or governmental regulation:

a. Grantor reserves all rights inherent in the ownership of the Property and Easement Area that are not prohibited by or inconsistent with the terms and purposes of this Easement.

b. Recreational Activities. Grantor may use and allow the Easement Area to be used for nature study and observation and passive recreational activities. In connection with the permitted passive recreational uses, Grantor may with prior notice to and approval of Grantee, which approval shall not be unreasonably withheld: (i) maintain existing trails and bridle paths; and (ii) clear and maintain additional trails and bridle paths, provided that no trail or bridle path shall be improved with macadam, gravel, paving stones or other impervious or semi-pervious material.

c. Soil and Water Conservation and Habitat Restoration. Grantor may engage in such soil and water conservation practices or habitat restoration projects as may be necessary or appropriate, provided that such activities further the goals intended to be achieved by this Easement. Notwithstanding Paragraph 2, and provided there is no degradation of water quality or harm or damage to plants or wildlife, Grantor may place soil, rock, other earth materials, vegetative matter, and compost reasonably needed to combat erosion of natural resources or flooding.

d. Permitted Land Disturbance. Disturbance or alteration of the surface topography and features of the Easement Area otherwise prohibited by Paragraph 2, is permissible if: (i) the disturbance or surface alteration is reasonably necessary to carry out an activity expressly permitted by this Easement; (ii) the circumstances are such that no reasonably feasible alternatives are available that would avoid the need for such disturbance or alteration; and (iii) appropriate measures are taken to minimize and mitigate any adverse impacts on the Easement Area.

e. Signs. Grantor may install signs posting the Easement Area to control unauthorized entry or use, such as "no trespassing" and/or "no hunting" signs, with such signs not to exceed one (1) square foot in area.

f. Existing Structures. Grantor may maintain, repair, demolish and replace any existing structures in the Easement Area, provided that replacements shall be located in substantially the same location as the existing structure being replaced, and no renovation, enlargement or replacement of an existing structure shall substantially alter its character and function or increase its height or size.

g. Utility Structures. With prior notice to Grantee and with the prior approval of Grantee, which approval shall not be unreasonably withheld, Grantor may construct or install in the Easement Area underground pipes and necessary stormwater management facilities (excluding culverts and detention and retention basins) and utility lines necessary for and directly related to Grantor's permitted activities on the Property, which shall be installed underground if reasonably practicable, unless underground installation would, in Grantee's reasonable judgment, require an unacceptable degree of disturbance to natural features of the Easement Area. Such utility improvements shall be used only in connection with permitted activities on and uses of the Property, and not to provide access, utilities or other services to increase or enhance the development potential of any other property.

h. Buffer Areas. No structure or other disturbance authorized by this Easement shall be caused, constructed or installed in this Easement in or within fifty (50) feet of any wetland area, stream, or other water body, except with the prior approval of Grantee, which approval shall not be unreasonably withheld, and with the prior obtaining of all necessary permits and determinations from the New Jersey Department of Environmental Protection.

i. Use of Best Management Practices. All construction, installation, renovation, repair, maintenance, demolition and similar work shall be carried out using best management practices to minimize disturbance or damage to the Easement Area, to nearby wetland areas, streams and other waterbodies, and to steep slopes as defined in the ordinances of the Township of Chatham.

j. Site Improvements. Grantor may perform site improvements depicted on any plans approved by the Township of Chatham or the New Jersey Department of Environmental Protection.

4. Property Costs, Maintenance, Insurance, Taxes and Permits. Grantor retains full responsibility for all taxes, expenses, and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Easement Area. Grantor shall be solely responsible for obtaining all applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity shall be carried out in accordance with all applicable federal, state and local laws, regulations and requirements.

5. Delineation of Easement Area. In order to document the boundaries of the Easement Area, Grantor shall install monuments, constructed as described in the New Jersey Map Filing Law and Chatham Township Code requirement described in Section 30-96.28 "Conservation Easement Monuments", at locations as shown on approved plans for the Easement Area, which monuments Grantee shall be obligated to maintain and replace, if necessary. The parties agree that the conservation easement plan, entitled _____, and prepared by _____, establishes the existing condition of the Easement Area as of the date of this Easement for purposes of monitoring its future uses and condition and assuring compliance with the terms hereof. The parties agree that if a controversy arises about the condition or uses of the Easement Area as of the date of this Easement, the parties may use other relevant or material documents, surveys, reports, and other evidence to assist in the resolution of the controversy.

6. Monitoring, Enforcement and Remedies.

a. Rights of Grantee. To accomplish the purposes of this Easement, the following rights are hereby conferred upon Grantee and its employees, agents and representatives: (I) to have access to and enter upon the Property for the purpose of inspecting the Easement Area to monitor compliance with and otherwise enforce the terms of this Easement, provided, however, that

except in cases where Grantee determines that immediate entry is required to prevent, terminate or mitigate any violation of this Easement, such entry shall be upon prior reasonable notice to Grantor; and (ii) to enforce this Easement in the case of any breach or violation.

b. Notice of Violation. If Grantee determines that a violation of this Easement has occurred, is occurring, or is threatened, Grantee shall give written notice thereof to Grantor. Upon receipt, Grantor shall immediately cease, and cause any third persons to cease, the prospective or alleged violation and take such actions as may be necessary to prevent any further disturbance or damage to the Easement Area. Within sixty (60) days after the date of the notice of violation, Grantor shall cure all violations of this Easement and restore the Easement Area to the condition that would have existed had there been no violation; provided, however, that if the violation is such that it cannot reasonably be cured with such sixty (60) day period, Grantor shall commence to cure such violation within the sixty(60) day period and shall thereafter diligently pursue the same to completion, and the period for cure shall be extended for such time as is reasonably necessary.

c. Remedies. Subject to the notice and cure provisions in Paragraph 6(b) above, Grantee shall be entitled to preliminary and/or permanent restraints and other equitable relief to prevent threatened or continuing violations of this Easement, and to otherwise enforce the terms of this Easement, including relief requiring Grantor to remove offending structures and otherwise restore the Easement Area to the condition that would have existed had there been no violation of this Easement. Grantee shall also be entitled to recover all costs necessary to restore the Easement Area to the condition that would have existed had there been no violation of this Easement. The remedies described herein shall be cumulative and shall be in addition to all remedies new or hereafter existing at law or in equity.

d. Forbearance. Any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver; nor shall Grantor be entitled to assert any defense based on laches, estoppel or prescription with respect to any violation of this Easement as to which Grantee was not specifically notified by Grantor in writing.

e. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Easement Area resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant harm or damage resulting from such causes.

f. Restoration Plans. If restoration work is required as a result of a violation, Grantor shall submit a detailed restoration plan to Grantee for its approval prior to undertaking restoration activities in the Easement Area.

7. Recording & Notice of Transfer. This Easement shall be recorded in the Office of the Clerk of Morris County and a reference to this Easement shall be contained in any future deed, lease or document of conveyance affecting the Property.

8. Assignment. Grantee, and any future assignee of this Easement, may at any time, upon thirty (30) days notice to Grantor, transfer and assign this Easement and the rights and obligations created hereby, in whole or in part and on either a permanent or temporary basis, to one or more of the following organizations or entities (each, a "Qualified Entity"):

a. An organization selected by Grantee that is: (i) exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; (ii) satisfies the requirements to be a "qualified organization" within the meaning of Section 170(h) of the Internal Revenue Code or under any substantially similar provision of any successor tax code; and (iii) is authorized to hold such an easement in and with respect to property located within the State of New Jersey.

b. Any trust or other entity created for substantially similar purposes by the Legislature of the State of New Jersey, Morris County, Chatham Township or other governmental body.

c. The State of New Jersey, County of Morris or any other public body in New Jersey selected by such assignor that is empowered to hold and administer such an easement.

9. Miscellaneous Provision.

a. Notice to Grantee before Undertaking Certain Permitted Actions. Whenever notice is required to be given with respect to an activity permitted hereunder, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends 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 this Easement and all standards contained herein that are applicable to the activity in question. If Grantor wishes to construct or install any additional structure(s) or demolish, remove, enlarge or replace any existing structure, Grantor shall notify Grantee as provided above and shall include in such notice the following specific items of information: (i) drawing and maps showing the proposed location, height, dimensions, exterior elevations, exterior materials and site plans of the proposed structures and their distance from wetlands, streams and waterbodies, and location of structures in relation to steep slopes; (ii) plans and details of all proposed utility lines and facilities, and all erosion and stormwater control measures; (iii) proposed changes in grading or site contours, if any; (iv) calculation of impervious coverage; and (v) any proposed landscaping or site restoration plans.

b. Approval by Grantee. Where Grantee's approval is required by any provision of this Easement, Grantee shall grant or withhold its approval in writing within a reasonable time based on consideration of: (i) the nature of the activity for which approval is sought; (ii) the complexity and extent of the documents, plans, drawing, reports and studies to be reviewed; and (iii) the degree of the potential impact on the Easement Area.

c. No Public Access. Although this Easement has been created for the benefit of the general public through the protection and preservation of water and land resources, nothing herein contained shall be construed to convey to the general public any right of access to or use of the Easement Area.

d. Easement Binding On Successors. The covenants, terms, conditions and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors and assigns, and shall continue as a servitude running in perpetuity with the Property. The terms "Grantor" and "Grantee," wherever used herein shall include, respectively, the above-named Grantor and his, her, their or its agents, employees, invitees, licensees, tenants, contractors, personal representatives, heirs, successors and assigns, and the above-named Grantee and its representatives, agents, employees, successors and assigns.

e. Manner of Giving Notices. All notices pertaining to this Easement shall be in writing delivered to the parties personally or by private courier, or by registered or certified mail, return receipt requested and postage prepaid, at the addresses set forth above or such other addresses as the parties may specifically designate in writing and shall be deemed delivered and effective upon actual receipt in the event of personal or private courier delivery or deposit with the U.S. Postal Service in the event of mail delivery.

f. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Easement, all of which are merged herein.

g. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed to effectuate the purposes of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

h. No Merger. The terms of this Easement shall survive any simultaneous ownership of the fee and Easement interests in the Property, notwithstanding any otherwise applicable legal doctrine under which such property interests would or might be merged.

i. 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.

j. Compliance with Other Laws. The provisions of this Easement shall not be construed to override any applicable municipal, state or federal law or regulation, and any action or activity permitted in the Easement Area by this Easement Agreement shall be subject to and conditioned upon compliance with all other legal requirement.

k. Judicial and Statutory Termination Proceedings. This Easement is intended to be of perpetual duration and therefore may not be terminated by mutual agreement of the Grantor and the Grantee. However, in the event an unexpected change in circumstances arises in the future that makes it impossible to accomplish the purposes of this Easement, this Easement may be extinguished in whole or in part through an appropriate judicial proceeding (and only through a judicial proceeding), and shall satisfy the legal requirements set forth in the New Jersey Conservation Restriction and Historic Preservation Restriction Act beginning at N.J.S.A. 13:8B-1.

IN WITNESS WHEREOF, the Grantor and Grantee have caused-this Grant to be signed, attested, sealed and acknowledged on the day and year hereinabove set forth.

WITNESS:

ATTEST: THE TOWNSHIP OF CHATHAM, IN THE COUNTY OF MORRIS

End of Document

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