

STATE OF NEW JERSEY
AGRICULTURE RETENTION AND DEVELOPMENT PROGRAM
OPTION AGREEMENT

An option granted by the owner of property to sell a development easement on the Premises to the Monmouth County Agriculture Development Board.

This OPTION AGREEMENT is made and entered into this ____ day of _____, 2008, by and between _____, whose address is _____ (hereinafter "Optionor" or "Grantor"), and the Monmouth County Agriculture Development Board, Hall of Records Annex, Freehold, New Jersey 07728 (hereinafter "Optionee" or "Grantee").

In consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by Optionee to Optionor, the receipt and sufficiency of which are hereby acknowledged, Optionor hereby grants to Optionee the exclusive right and option to buy a development easement on the property located in the municipality of Upper Freehold, County of Monmouth, State of New Jersey, more particularly described below (hereinafter "the Premises"), for an amount not greater than the per acre price as certified, or to be certified ("Certified Value"), by the State Agriculture Development Committee ("SADC") following the obtaining of appraisals on the Premises ("Option Price"), provided that the Optionor upon receipt of the Certified Value from the Optionee elects to offer to sell the Premises to the Optionee at the Certified Value. If the Optionor elects not to offer to sell the Premises to the Optionee at the Certified Value then either party may declare this Option Agreement null and void and, thereafter, neither party shall have any remedy against the other. The final conveyance of the development easement and the final purchase price shall be subject to any exception(s) pertaining to the Premises, which areas of exception shall not be permitted to be severed from the Premises except as Optionee shall in the exercise of its sole discretion, permit.

TAX MAP REFERENCE:

_____ Township

Block(s) ____, Lot(s) ____

Consisting of approximately _____ acres.

For the purposes of this OPTION AGREEMENT, a "development easement" is defined as an interest in land, less than fee simple title thereto, which enables the owner to develop the land for any nonagricultural purposes determined by and under the provision of N.J.S.A. 4:1C-11, *et. seq.*, P.L. 1983, c. 32, and any other rules or regulations promulgated pursuant thereto.

If the Optionee purchases the Premises, the consideration paid for this option shall be applied to the purchase price.

Unless sooner exercised in writing by Optionee, this OPTION AGREEMENT shall remain in effect until February 28, 2009, and month to month thereafter, until Optionor gives Optionee 120 days advance written notice of Optionor's intention to terminate this OPTION AGREEMENT, whereupon Optionee shall have the right, within 45 days following receipt of Optionor's written notice of the intention to terminate, to exercise this OPTION AGREEMENT by giving Optionor written notice thereof. Within a reasonable time after exercising the option, Optionor shall deliver to Optionee, against payment of the purchase price, a DEED OF EASEMENT which shall contain substantially the following deed restrictions and terms:

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 (*to be prepared prior to closing*). 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.

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. At the time of this conveyance, Grantor has --- (1) existing single family residential building on the Premises and --- (0) 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.

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. [If residual dwelling site opportunities have been allocated pursuant to the provisions of N.J.A.C. 2:76-6.17, the Deed of Easement shall so reflect, or the Deed of Easement shall recite that no residual dwelling site opportunities have been allocated.] 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 only 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 (*to be determined by appraisals*).

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 (_____/_____) (*to be determined by appraisals*). 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.

The deed restrictions contemplated by this OPTION AGREEMENT to be imposed in the future pursuant to a duly executed Deed of Easement shall be liberally construed to effectuate the purpose and intent of the Farmland Preservation Bond Act, P.L. 1981, c. 276, and the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11, *et seq.*, P.L. 1983, c. 32.

Tender of a valid check by the Optionee shall constitute a sufficient tender of the purchase price of the easement.

The development easement is to be conveyed free and clear of all encumbrances except the following: NONE. (This includes the release of rights of dower and curtesy, if any.) The Optionee shall obtain a policy of title insurance insuring the title of Optionee to be free and clear of all matters except those specifically included herein.

In the event this OPTION AGREEMENT is exercised, Optionee shall nevertheless not be required to consummate the purchase of the development easement herein optioned unless and until the Optionee, the State Agriculture Development Committee and the municipal governing body

grant the necessary approvals concerning the entrance of the Premises into a municipally approved farmland preservation program.

If the Optionor elects not to offer to sell the Premises to the Optionee at the Certified Value then the Optionor shall not be eligible to submit an application for participation in the Municipal or County Planning Incentive Grant farmland preservation program for a period of two (2) years thereafter and shall thereafter be eligible to reapply only upon payment to the Optionee a \$5,000.00 re-application fee which shall not be refundable to applicant unless and until the closing occurs on the purchase and sale of the development easement for which said appraisals were conducted.

IN WITNESS WHEREOF, the Optionor has hereunto set his hand and seal the day and year first above written.

Witness

ACKNOWLEDGMENT

STATE OF NEW JERSEY, COUNTY OF MONMOUTH, SS.:

I CERTIFY that on _____, 2008,

_____, 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 OPTION AGREEMENT;
- (b) signed, sealed and delivered this OPTION AGREEMENT as his or her act and deed;
- (c) made this OPTION AGREEMENT for and in consideration of the sum of \$1.00 and the covenants contained herein.

Notary Public or Attorney at Law of New Jersey

MONMOUTH COUNTY AGRICULTURE DEVELOPMENT BOARD

THE UNDERSIGNED, being Chairman of the Monmouth County Agriculture Development Board, hereby accepts and approves the foregoing terms, restrictions, benefits and covenants contained in the within OPTION AGREEMENT.

ACCEPTED AND APPROVED this _____ day of _____, 2008.

Joseph McCarthy, Chairman
Monmouth County Agriculture Development Board

STATE OF NEW JERSEY, COUNTY OF MONMOUTH, SS.:

I CERTIFY that on _____, 2008,

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

- (a) is named in and personally signed this OPTION AGREEMENT,
- (b) signed, sealed and delivered this OPTION AGREEMENT as the Board's act and deed, and
- (c) is the Chairman of the Monmouth County Agriculture Development Board

Notary Public or Attorney at Law of New Jersey

Return to:

Harriet Honigfeld
Farmland Preservation Program Coordinator
Monmouth County Planning Board
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