

SAMPLE DRAFT EASEMENT

PREPARED BY

Signature

Typed or Printed Name

**HIGHLANDS TRANSFER OF DEVELOPMENT RIGHTS PROGRAM
DEED OF EASEMENT**

(For Agricultural or Horticultural Use and Development
with Bonus Highlands Development Credit Allocation)

This deed of easement is made this _____ day of _____, 20__, by and between _____, residing at _____, hereinafter referred to as GRANTOR; and the State of New Jersey Highlands Water Protection and Planning Council (“Highlands Council”), hereinafter referred to as GRANTEE.

WHEREAS, GRANTOR is the owner in fee simple of certain real estate known as Block _____, Lot _____ located in the municipality of _____ in the County of _____, New Jersey (“Property”), which is more fully described in Schedule A and incorporated by reference in this deed of easement; and

WHEREAS, the New Jersey State Legislature has passed and the Governor has enacted the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq., (“Highlands Act”) in recognition of the unique Highlands natural resources, and in so doing established the Highlands Council with the authority to prepare and adopt a regional master plan for the Highlands Region (“Highlands Regional Master Plan”); and

WHEREAS, pursuant to the Highlands Act, the Legislature has determined that the New Jersey Highlands Region is an essential source of drinking water, providing clean and plentiful drinking water for one-half of the State's population, including communities beyond the Highlands Region; that the Highlands Region contains exceptional natural resources such as clean air, contiguous forest lands, wetlands, pristine watersheds, and habitat for fauna and flora; that the Highlands Region includes many sites of historic significance, and provides abundant recreational opportunities for the citizens of the State; and that the Highlands Region contains significant agricultural resources; and

WHEREAS, because the Property contains Highlands resources, including important public trust resources such as ground water, the GRANTEE, through the Highlands Council, desires to preserve the significant natural or agricultural resources of the Property by prohibiting any and all future development of the Property in perpetuity; and

WHEREAS, the Property is located in an area designated by the Highlands Regional Master Plan as eligible for the use rights known as Highlands Development Credits; and

WHEREAS, the Highlands Council has determined that there is/are _____ transferable Highlands Development Credits allocated to the Property; and

WHEREAS the Highlands Council desires to acquire the within deed of easement on behalf of the State;

NOW THEREFORE, for and in consideration of the right to sell, transfer and assign the Highlands

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Development Credit(s) allocated to the Property by means of a Highlands Development Credit Certificate, GRANTOR hereby conveys, sells, transfers and assigns to GRANTEE, its successor and assigns, the following deed of easement in perpetuity:

1. Definitions: For purposes of this deed of easement, the following terms shall apply:

"Agricultural or horticultural development" means construction for the purposes of supporting common farmsite activities, including but not limited to: the 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;

"Agricultural or horticultural use" means the use of land for common farmsite activities, including but not limited to: the 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.

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining, excavation or filling of land, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.).

"Highlands Development Credit" means an entitlement in the form of transferable interest allocated to land with limited capacity for development without adversely affecting ecological integrity, which can be used to increase the density or intensity of development in a designated receiving zone.

"Highlands Regional Master Plan" means the plan adopted by the Highlands Water Protection and Planning Council pursuant to Section 8 of the Highlands Act (N.J.S.A. 13:20-8).

"Public Entity" means any department of the State or any political subdivision thereof.

2. Agricultural or horticultural development shall be allowed to the extent permissible under the Highlands Act, the Right to Farm Act (N.J.S.A. 4:1C-1 et seq.), and State and federal law, as applicable. Any other future development of the Property is expressly prohibited. GRANTOR shall provide GRANTEE a complete copy of any farm conservation plan or resource management systems plan at the time it is submitted to the local soil conservation district for review pursuant to N.J.S.A. 13:20-29.
3. GRANTOR has foregone an applicable Highlands Act exemption for the construction of one (1) single-family dwelling in exchange for receiving a ___ percent bonus [25% for High Value Agricultural Priority Area; 15% for Moderate Value] to the Property's net

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yield calculation for purposes of determining the Property's Highlands Development Credit allocation.

4. Agricultural or horticultural use shall be allowed to the extent permissible under the Highlands Act, the Right to Farm Act (N.J.S.A. 4:1C-1 et seq.), and State and federal law, as applicable. All other uses of the Property shall be prohibited except as authorized by Paragraphs 5 and 7, below.
5. To the extent permissible under the Highlands Act and the Highlands Regional Master Plan, an activity conducted in accordance with an approved woodland management plan pursuant to section 3 of P.L.1964, c.48 (C.54:4-23.3) or the normal harvesting of forest products in accordance with a forest management plan approved by the State Forester shall be permitted.
6. GRANTOR certifies that at the time of application to convey this deed of easement to GRANTEE, and at the time of execution of this deed of easement, only those uses described on the attached Schedule B existed on the Property. GRANTOR also certifies that such uses as described on Schedule B are depicted on the aerial image of the Property attached to Schedule B. Baseline documentation regarding the Highlands resources present on the Property is maintained on file by GRANTEE consistent with GRANTEE'S web-based Consistency Review Application available at www.highlands.state.nj.us.
7. Other than agricultural and horticultural use, existing uses of land on the Property as identified on Schedule B may be continued, maintained and repaired, but may not be expanded unless authorized by an applicable Highlands Act exemption in N.J.S.A. 13:20-28.
8. This deed of easement shall be a burden upon and shall run with the Property, and shall bind GRANTOR, its successors and assigns, in perpetuity.
9. GRANTOR agrees that the terms, conditions, restrictions and purposes of this deed of easement shall be inserted in any subsequent deed, subdivision deed, lease, sub-lease or any other legal instrument by which GRANTOR divests itself of any interest in any portion of the Property. However, notwithstanding the failure to include the terms and restrictions of this instrument, this deed of easement shall nonetheless run with the land and be binding on all heirs, successors and assigns.
10. GRANTOR shall give notice of this deed of easement to all holders of any interests in the Property no later than thirty days (30) prior to this instrument's recordation by the County Clerk and shall provide GRANTEE proof of such notice no later than seven (7) business days afterward.
11. Except as otherwise provided for herein, no provision of this deed of easement shall be construed to convey to the public any right of access to or use of the Property, and GRANTOR, for itself, its successors and assigns, shall retain exclusive right of access to and use of the Property.
12. This deed of easement shall be fully enforceable by GRANTEE in an action in law or in

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equity or both. GRANTEE may transfer, assign, or otherwise convey this deed of easement to a Public Entity to facilitate the enforcement of this deed of easement, provided such enforcement by a Public Entity occurs upon approval of GRANTEE. In addition, GRANTEE expressly reserves the secondary right to enforce the terms of this deed of easement where this deed of easement is transferred, assigned or otherwise conveyed to a Public Entity.

13. GRANTEE and its respective agents shall be permitted access to, and to enter upon, the Property at all reasonable times but solely for the purpose of inspection in order to enforce and ensure compliance with the terms and conditions of this deed of easement. GRANTEE and its respective agents agree to give GRANTOR twenty-four (24) hours advance notice of their intention to enter the Property, and further, to limit such times of entry to the daylight hours during regular business days of the week.
14. If GRANTEE reasonably determines that GRANTOR has violated the terms of this deed of easement and GRANTOR fails to adequately cure the violation, GRANTOR agrees to reimburse GRANTEE for any reasonable costs incurred by GRANTEE in enforcing the terms of this deed of easement against GRANTOR, including, without limitation, reasonable litigation costs and attorneys' fees. Failure by GRANTEE to enforce the terms of this deed of easement shall not constitute laches or estoppel, that is, preclude GRANTEE from enforcing the terms of this deed of easement in the future.
15. It is understood that this deed of easement imposes only those restrictions on the Property that are outlined in this document. Nothing herein contained shall be construed to interfere with the right of the GRANTOR, its successors, assigns, licensees and any party claiming under them to use the Property in such manner as they may deem desirable within the scope of the uses herein expressly reserved to GRANTOR in Paragraphs 2, 4, 5 and 7 hereof. It is understood that GRANTOR shall be exclusively liable for any claim arising from an oral or written contract entered into on GRANTOR'S behalf concerning any use of the land or its resources within the scope of the uses herein expressly reserved to GRANTOR in Paragraphs 2, 4, 5 and 7 hereof.
16. GRANTOR shall provide GRANTEE written notice of any transfer or change in ownership of any portion of the Property, including but not limited to, the name and address of the any new owner, at least one month prior to the day of the execution of those documents accomplishing the actual transfer or change in ownership.
17. Any notice, demand, request, consent, approval or communication under this deed of easement shall be sent by certified mail, return receipt requested or reliable overnight courier, addressed as follows:

To GRANTOR:

To GRANTEE:

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New Jersey Highlands Water Protection and Planning Council
100 North Road (Route 513)
Chester, NJ 07930
Attention: Chief Counsel
(908) 879-6737

18. This deed of easement shall survive any merger of interests in the Property.
19. Taxes, Insurance.
 - a. GRANTOR retains all responsibilities and shall bear all costs and liabilities of any and all kind related to the ownership, operation, upkeep and maintenance of the Property.
 - b. GRANTOR agrees to pay any real estate taxes or other assessments levied on the Property. If GRANTOR becomes delinquent in payment of said taxes or assessments, such that a lien against the Property is created, the State, at its option, shall, after written notice to the GRANTOR, have the right to purchase and acquire the GRANTOR'S interest in the Property and/or to take any and all other actions as may be necessary to protect the State's interest in the Property and to assure the continued enforceability of this deed of easement.
20. This deed of easement may only be amended for the protection of public health or safety, including transportation safety improvements, upon a determination by GRANTEE that such amendment is necessary. Where an amendment to this deed of easement is determined to be necessary, the amendment shall be written to ensure that the purposes of this deed of easement are achieved.
21. The Highlands Act shall govern the interpretation and performance of this deed of easement.
22. If any provision of this deed of easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this deed of 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.

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IN WITNESS WHEREOF, and intending to be legally bound, the GRANTOR has executed this instrument.

By: _____
WITNESS

By: _____
GRANTOR

By: _____
GRANTEE

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 document; and
- (b) signed, sealed and delivered this document as his or her act and deed; and
- (c) this transfer is made for no monetary consideration.

Signed and sworn to before me

On _____, 20__

(Print name of attesting witness below signature)

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STATE OF NEW JERSEY, COUNTY OF _____ SS.:

I CERTIFY that on _____, 20__, _____ personally came before me, and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the _____ secretary of the corporation named in this document;
- (b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the _____ of the corporation;
- (c) this document was signed and delivered by the corporation at its voluntary act authorized by a proper resolution of its board of directors;
- (d) this person knows the proper seal of the corporation which is affixed to this document;
- (e) this person signed this proof to attest to the truth of these acts; and
- (d) this transfer is made for no monetary consideration.

Signed and sworn to before me

On _____, 20__

(Print name of attesting witness below signature)