

AGREEMENT TO SELL DEVELOPMENT EASEMENT

Agreement made this 26th day of November 2019 by and between **David P. Jr. and Lynn M. McAlister, whose address is PO Box 797, Malaga, NJ 08328**, hereinafter referred to as “Seller”; and

The State of New Jersey (through the State Agriculture Development Committee), the County of Gloucester (through the Gloucester County Agriculture Development Board), and the Township of Franklin (through the Franklin Township Agriculture Advisory Committee), hereinafter referred to as the “buyer”. For the purpose of this transaction all correspondence to the buyer will be addressed to the Franklin Township Agriculture Advisory Committee, 1571 Delsea Drive, Franklinville, NJ 08322.

WHEREAS, Seller has applied to the Franklin Township Agriculture Advisory Committee for the sale of the development easement on the seller’s property, located in the Township of Franklin, County of Gloucester, State of New Jersey, and designated on the tax map of said municipality as **Block 5702 Lots 17 and 81**, hereinafter referred to as “Property”, **[excluding 2 – severable exceptions equaling 5.5 acres for a non-agricultural use]**; and

WHEREAS, Seller has applied to the Township to sell a development easement and all of the nonagricultural development rights and development credits on the Property pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., and the Garden State Preservation Trust Act, N.J.S.A. 13:8C-1 et seq., (hereinafter, the “Acts”) and the regulations adopted pursuant thereto; and

WHEREAS, on **October 24, 2019**, the SADC granted approval to the Seller’s application and certified the Deed of Easement Value of the property to be **Six Thousand Five Hundred Dollars (\$6,500.00) per acre**; and

WHEREAS, on **October 28, 2019**, the Seller was advised of the Deed of Easement Value certified by the State and was made an offer, on behalf of the State and County as well as the Township, to buy the development easement of Seller’s farm; and

WHEREAS, Seller and the State, County and Township wish to permanently preserve the Property and restrict the Property to agricultural use for and in consideration of payment to be made by the State, County and Township in accordance with the terms and conditions contained herein; and they agree that said permanent preservation shall occur and be effective upon Seller’s execution of a Deed of Easement conveying a development easement to the County of Gloucester,

NOW THEREFORE, in consideration of the foregoing and of the benefits accruing to

each, the parties agree to the following:

1.0 DEFINITIONS.

“Agricultural use” means the use of land for common farm site 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.

“Application Processing Costs” means the Township’s costs of obtaining appraisals, a survey, metes and bounds description, and title work.

“Commitment period” means the period of time between the date on the first line of the first page of this Agreement and twelve months from that date.

“Development Easement” means an interest in land, less than fee simple absolute title thereto, which enables the owner to develop the land for any nonagricultural purpose as determined by the provisions of the Agriculture Retention and Development Act and any relevant rules or regulations promulgated pursuant thereto.

2.0 SELLER’S COMMITMENT. In accordance and compliance with the terms and conditions of this Agreement, Seller agrees to sell, and the State, County and Township agree to buy a Development Easement on the Property. Seller agrees to execute a Deed of Easement containing the terms, conditions and restrictions which are incorporated herein, and required by N.J.A.C. 2:76-6.15. All information contained in the Deed of Easement is subject to confirmation by survey, inspection, title search, and review by the Attorney General’s office. At closing Seller shall deliver a Deed of Easement, appropriate affidavits of title and any other documentation that may be requested in advance by the State, County and Township.

2.1 SELLER’S AGREEMENT UNCONDITIONAL. Seller shall not be entitled to rescind, cancel or terminate this Agreement nor take any other action which would impair or is contrary to Seller’s promise to perform in accordance with the terms of this Agreement during the Commitment period.

2.2 SELLER’S COST TO PERFORM. Seller shall be responsible for retaining and compensating Seller’s own expert advisors (including, but not limited to, attorneys, accountants and tax experts) with respect to all matters pertaining to this transaction. Seller shall provide the Township with the name, address and telephone number of each of Seller’s expert advisors.

2.3 NO RELIANCE ON SADC. Seller shall not rely on the opinions of the State,

County or Township, their staff, agents, or employees of the State, County or Township's advisors—including their, legal and financial consultants--with respect to any potential benefits that Seller might realize as a result of this transaction. Seller hereby acknowledges and agrees that Seller and Seller's successors, administrators and assigns shall have no claim against the State, County or Township, their officers, agents, servants and contractors in the event that tax consequences of this transaction are not as Seller expected.

2.4 SELLER'S TITLE. Responsibility for establishing Seller's title to the Property shall be Seller's. Seller's title shall be clear, valid record title, marketable and insurable by the title insurance firm of the Township's choice. In the event that Seller's title is not marketable and insurable by the title company selected by the Township, the Township, at its option, may terminate this Agreement.

2.5 SUBORDINATION OF CLAIMS. In the event that there are any outstanding mortgage liens or any other encumbrances or claims against the Property, this Agreement shall be contingent upon the consent of all mortgagees and all other claimants against the Property to subordinate their claims to the Deed of Easement to be executed by Seller. If such mortgagees or claimants are unwilling to subordinate their claims to the Deed of Easement, the Township may terminate this Agreement.

2.6 SELLER'S COVENANTS AS TO USE. Seller's execution of this Agreement shall constitute a certification and covenant to the State, County and Township that no use of or on the Property that is not "agricultural" as defined in Paragraph 1.0 has commenced since the time that Seller filed the application of the Township. Seller further covenants, warrants and agrees that no new use of the Property that is not within the meaning of an "agricultural use" as defined in Paragraph 1.0 shall be commenced pursuant to this agreement.

2.7 SELLER'S ACTION PRIOR TO CLOSING. Seller covenants and agrees not to take any action with respect to the Property that is detrimental to the Property's ability or capability of being put to agricultural use--including, but not limited to, removing soil, rocks or any other earthen materials from the Property or allowing regulated wetlands conditions to develop--unless the practice is a component of a soil conservation plan approved by the Natural Resource Conservation Service ("NRCS").

2.8 CONDEMNATION PROCEEDINGS. Seller affirms and declares that no entity having the right to institute condemnation proceedings has done so as to all or any portion of the Property.

2.9 EXCLUSIVE AGREEMENT. Seller affirms and declares that it has not made or executed any other agreement, oral or written, to sell all or any part of the Property to any other person, and that Seller has not given any person an option to purchase all or any part of the Property.

2.10 NO LITIGATION OR VIOLATIONS PENDING. Seller hereby warrants and certifies that there are no judgments or proceedings pending in any court or before any governmental or regulatory board or agency which affect or might affect the Property. Seller further warrants and certifies that Seller has not received any notice of violation of any statute, ordinance, rule, regulation or insurance requirement which has not been corrected and that Seller has no knowledge of any such violation.

3.0 COMPENSATION TO SELLER

0. In consideration of Seller's execution of a Deed of Easement to the County of Gloucester, and execution and delivery of such other documents as are deemed necessary, the State, County and Township together shall pay **Six Thousand Five Hundred Dollars (\$6,500)** per acre ("purchase price"). Based on the property acreage to be preserved of **60.64 acres, the total sales price to be paid to Seller is Three Hundred Ninety-Four Thousand One Hundred Sixty Dollars (\$394,160). 20% or \$78,832 payable by the Township of Franklin.** However, the exact acreage will be determined by a survey of the property to be obtained by the Township, see Paragraph 5.0 below.

2. The purchase of the development easement is subject to the approval of the Garden State Preservation Trust and the appropriation of sufficient State funds.

3.1 COMPUTATION OF COMPENSATION. The payment to be made pursuant to Paragraph 3.0 shall be subject to the following terms and conditions:

0. Seller shall be allocated no residual dwelling site opportunity ("RDSO") and no portion of the Property shall be excepted from the Deed of Easement.
1. Payment shall not include acreage for (i) existing rights of way and future rights of way for widening or improving existing rights of way along any federal, state, county or municipal roads that abut the Property; (ii) drainage easements for storm, ground or surface waters required for the safety of the roads which abut the Property as determined by the county, and (iii) improvements to road intersections which the county, state or municipality have identified as necessary.
2. Computation of the amount payable shall not include acreage attributable to water bodies which are along a Property boundary.
3. Any mortgages in effect at the time of closing **MUST** be either subordinated to the Deed of Easement or paid off, and any real property taxes which are due and outstanding will be paid.

4. The amount payable shall not include acreage to any portion of the Property which the SADC's title insurer is unwilling to insure.
5. The amount payable shall not include acreage in any Exception Area, either severable or non-severable.

4.0 TITLE INSURANCE. The Township shall investigate title to the Property. Seller agrees to cooperate with the Township's title agent and insurer and to execute such documents as may be required to confirm Seller's title. The insurer's agreement to insure title shall be a precondition to closing. The Township shall be responsible for the cost of title insurance.

4.1 PROOF OF TITLE. The Township shall be entitled to cancel this Agreement if the Township's title insurer is unwilling to insure the development easement on Seller's Property. Seller shall not be relieved from performance if they disagree with the determination of the Township's title insurer of the size and area of the Property owned by Seller.

4.2 EXTENSION OF COMMITMENT PERIOD. The Commitment Period defined in Section 1.0 shall be extended for up to 30 days if the Township's title insurance agent encounters difficulty in confirming Seller's title to the Property. Seller shall be responsible for assisting the Township and its insurer in reviewing Seller's title.

5.0 SURVEY OF PROPERTY. The Township shall be entitled to obtain a survey of the Property by the surveyor of its choice and at the Township's expense. Seller agrees to cooperate with the surveyor in all respects. Execution of this Agreement shall constitute Seller's authorization to the Township's surveyors to enter upon the Property as necessary to complete the survey. Seller shall not be relieved from performance notwithstanding Seller's dispute with the determination of the Township's surveyor or title insurer about the boundaries of the Property.

5.1 EXCEPTION. There shall be two severable exceptions. The first shall be 3.0 acres on Lot 17, and the second shall be 2.5 acres on Lot 81 for a future non-agricultural use. The location and exact configuration of the exception shall be documented in concert with the survey to be accomplished prior to the closing of title on the development easement.

6.0 INSPECTIONS OF PROPERTY. The Township shall have the right to inspect the Property at any time prior to the time scheduled for closing. In addition, pursuant to the terms of the Deed of Easement, the Township shall continue to have the right to inspect the Property following Seller's execution of the Deed of Easement for the purpose of verifying that Seller is not in violation of any of the terms and conditions of this Agreement or of the Deed of Easement. All inspections shall be conducted during

daylight hours, unless otherwise needed, and upon 24 hours advance notice to the Seller.

7.0 RISK OF LOSS. Risk of loss or damage to the Property by fire or other casualty between the date of execution of this Agreement by both parties and closing shall be and is assumed by the Seller. At its sole discretion the Township may elect to cancel this Agreement or limit the area of the Property subject to this Agreement in the event that the Property is substantially damaged or the potential for agricultural use of the Property is substantially impaired as a result of any occurrence between the date of this Agreement and closing. Seller is required to advise the Township of any occurrence which results in loss of or damage to the Property or the agricultural use. Seller hereby represents and affirms to the Township that the Property is substantially and materially in the condition it was when Seller applied to the Program and that Seller knows of no existing circumstance or condition which may impair agricultural use of the Property following closing.

8.0 SELLER'S INDEMNIFICATION. Seller hereby indemnifies and holds the Township harmless from and against any and all claims which may be made, judgments awarded, penalties assessed or orders entered which now exist or which may subsequently exist pertaining to the discharge of hazardous substances on or from the Property that do not result from actions of the Township or its servants or agents. However, Seller shall only be required to indemnify the Township for such claims, judgments, penalties or orders pertaining to the discharge of hazardous substances which Seller caused or for which Seller is responsible under applicable law. The Township's acceptance of a Deed of Easement from Seller conveying the development easement to the Property and the State, County and Township's payment to Seller therefore shall not constitute nor be deemed to be an assumption of any right or power to control the means by which Seller complies with the restrictions on the Property, nor an assumption of liability for any discharge of hazardous substances on the Property, regardless of whether said discharge occurred prior or subsequent to closing.

9.0 USE OF PROPERTY AFTER SALE. Neither the Township nor the Seller make any warranty to the other that economic market conditions will continue to make agricultural use of the Property a viable or profitable choice. Seller understands, acknowledges and agrees that Seller's sale of the Property's development easement to the State, County and Township shall permanently and forever restrict the Property to agricultural use regardless of whether Seller or any other persons are subsequently able to make profitable use of the restricted Property.

10.0 REDUCTION OF PROPERTY'S VALUE. Seller further acknowledges Seller's understanding that execution of the Deed of Easement and conveyance of the Property's development easement to the County may reduce the value of the Property. Seller agrees that acceptance of the State, County and Township's payment to it, computed in accordance with Paragraphs 3 and 3.1, shall constitute full and complete consideration for Seller's execution of the Deed of Easement. Seller acknowledges and

agrees that Seller shall have no further claim for compensation for any loss in value of the Property that may occur subsequent to closing which may be attributable to this sale.

11.0 NO RELIEF FROM RESTRICTIONS. No law, rule or regulation, whether federal, state or local, shall relieve Seller or Seller's successors or subsequent owners of the Property of the restrictions on the Property imposed by the Deed of Easement. Nothing herein shall require the State, County or Township to re-convey any interest in the Property to Seller or any other person by reason of the fact that agricultural use of the Property may no longer be economically viable. Nothing herein shall restrict the State, County or Township with respect to its use of the Development Easement once acquired from Seller.

12.0 DEFAULT BY SELLER. The following actions by Seller shall constitute events of default:

0. Seller advises the Township that Seller does not intend to sell the Property's Development Easement to the Township/County/State.
1. Seller violates or fails to comply with any terms of this Agreement and fails to cure said default within thirty (30) days of the date of the Townships' demand upon Seller to do so.
2. Seller fails to execute and deliver a Deed of Easement and all required supporting documentation on the date of closing scheduled by the Township. "Supporting documentation" includes but is not limited to affidavits of title and mortgage subordination agreements.
3. The Seller or any person acting on Seller's behalf has made a misrepresentation of material fact in the application or in or through any other written communication with the Township concerning the Property;

12.1 BUYER'S RIGHT ON SELLER'S DEFAULT. In the event that Seller defaults in any term, covenants, requirement or condition of this Agreement, the Township shall have the right to declare Seller in default and take any of the following actions:

0. sue for specific performance;
1. cancel the Agreement;
2. require the Seller to pay the Township all of the Application Processing Costs it has incurred with respect to this matter; and
3. require Seller to restore the Property to its prior condition if Seller violated Paragraph 2.6 of this Agreement by allowing a nonagricultural use/activity

on the Property subsequent to the submission of the Seller's application.

13.0 ASSIGNMENT OF AGREEMENT/TRANSFER OF PROPERTY. This Agreement is not assignable by the Seller without the prior written consent of the Township. Seller shall not sell, transfer or convey the Property to any person unless the purchaser, transferee or assignee agrees to comply with and perform in accordance with the terms of this Agreement.

14.0 REVIEW OF AGREEMENT BY SELLER'S ATTORNEY. Seller may submit this Agreement to an attorney for review. In the event that Seller does not submit this Agreement to an attorney for review or in the event that Seller's attorney neither disapproves nor requests modification to this Agreement within five business days of Seller's execution hereof, Seller shall be bound hereby. Seller shall be responsible for the cost of any attorney retained to represent or counsel Seller with respect to this matter.

15.0 COMPLETE AGREEMENT. This Agreement is the entire and only agreement between the Township and Seller. This Agreement can only be changed by an agreement in writing signed by both the Township and Seller.

16.0 ENFORCEMENT OF AGREEMENT. The Township shall have the right to enforce the terms of this Agreement and the restrictions to be imposed on the Property contemplated by this Agreement by any means available, including an action for specific performance for any default by Seller. Seller hereby agrees and consents to jurisdiction of the Court of Gloucester County, in any action brought by the township to enforce the terms of this agreement of the terms and conditions of the Deed of Easement.

17.0 CLOSING. Closing shall be conducted at the office of the Gloucester County Agriculture Development Board, or at another location, such as that of the designated Title Company, at the preference of the Board, on or before twelve months from the date on the first line of the first page of this Agreement.

18.0 NO COLLUSION. Seller hereby affirms that neither Seller nor any person on Seller's behalf has made or agreed to make any valuable gift, whether in the form of service, loan, thing or promise, to the Township, or to any employees of the Township. In the event that Seller's affirmation herein is untrue, the Township shall have all rights on default described above as well as any other right that might be available to it under New Jersey law.

19.0 TIME OF THE ESSENCE. The Township alone, shall have the right to declare time of the essence. No such declaration shall be made until the Township is satisfied that all preconditions to closing have been satisfied. In the event the Township does so, Seller shall be ready and available to perform on the date specified by the Township.

20.0 NOTICES. All notices to each party shall be made in writing, delivered

personally or by certified return receipt requested mail to the other party at the address stated on page 1.

21.0 SURVIVABILITY OF COVENANTS. All covenants and agreements made by Seller in this Agreement are binding on Seller and on Seller's agents, attorneys, heirs, administrators, executors, successors and assigns and shall survive closing. The Township shall be entitled to record this Agreement.

22.0 WAIVER OF BREACH. The waiver of a breach of any provision of this Agreement by the Township shall not operate or be construed as a waiver of any subsequent breach. Failure of the Township to declare Seller in breach of this Agreement shall not operate or be construed as a waiver thereof.

23.0 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with New Jersey law and shall be subject to the requirements of the Agriculture Retention and Development Act, the Garden State Preservation Trust Act and the regulations promulgated pursuant thereto. If any provision of this Agreement shall be or become invalid under any law, such invalidity shall not affect the validity or enforceability of any other provision hereof except at the Township's election.

24.0 EFFECTIVE DATE. This Agreement shall become effective upon execution by both parties.

25.0 PERSONS BOUND. This Agreement shall be binding upon the parties and upon their heirs, executors, administrators, successors and assigns and all persons who succeed to Seller's interest in the Property.

IN WITNESS WHEREOF, the parties have caused these presents to be signed by their proper officers, their corporate seal affixed, and have hereunto set their hands and seals, all of the day and year first above written.

WITNESS:

David P. McAlister Jr.

Lynn M. McAlister

For Franklin Township: David Deegan, Mayor