

THIS DEED OF AGRICULTURAL CONSERVATION EASEMENT, made this th day of _____, 2013, by and between _____(hereinafter "Grantors") and the County of Chester, Pennsylvania, ("County") by and through its Agricultural Land Preservation Board ("County Board") and Township(s), Chester County Pennsylvania ("Township(s)"). Township(s)"County", and "County Board" hereinafter collectively referred to as "County" pursuant to the Chester County Agricultural Conservation Easement Challenge Grant Program (hereinafter "Challenge Grant Program").

WHEREAS, Grantors are the sole owner of all that certain land situate in Township(s), Chester County, Pennsylvania more particularly described in Exhibit "A" attached consisting of _____ acres and all buildings and improvements erected thereon (hereinafter "subject land" or the "Property");

WHEREAS, the County, in formulating its Program for agricultural conservation easements has adopted regulations, policies, and criteria within which are incorporated applicable provisions of the Agricultural Area Security Law (P.L. 128, No. 43, as amended, hereinafter "Act 43"), the Conservation and Preservation Easements Act, P.L. 390, No. 29, June 22, 2001, hereinafter "Act 29" and guidelines promulgated by the Commonwealth of Pennsylvania for the acquisition of agricultural conservation easements as the same are contained in the Pennsylvania Code (Volume 7, Chapter 138): where same has been made applicable to the Challenge Grant Program:

WHEREAS, the Commissioners of Chester County have determined that it is in the best interests of its citizens to protect prime agricultural soils, soils of statewide importance, and to promote the retention of open space for agriculture;

WHEREAS, the Commissioners of Chester County have designated funds for the acquisition of agricultural conservation easements pursuant to the Chester County Agricultural Conservation Easement Challenge Grant Program;

WHEREAS, the Chester County Agricultural Land Preservation Board is the public body authorized by the Commissioners of Chester County to further the purpose of the Challenge Grant Program and to acquire agricultural conservation easements;

WHEREAS, pursuant to the guidelines and criteria of the Challenge Grant Program, preservation for agricultural use of land which contain prime agricultural soils

and/or soils of statewide significance is the purpose of the Challenge Grant Program and is, indeed, a public benefit;

WHEREAS, the said County Board has determined to purchase an agricultural conservation easement in the subject land pursuant to the Challenge Grant Program;

WHEREAS, the County and Township(s) wish to provide for the enforcement of an agricultural conservation easement in the subject land;

WHEREAS, the specific agricultural conservation benefits of the subject land are documented in the criteria and ranking system of the Challenge Grant Program, on file at the office of the County Board and incorporated herein by this reference, which shall consist of documents containing the ranking of the subject land with respect to the specific program criteria and all related documents, maps, photographs, reports, and soil analyses which are intended to provide Grantors, County, and Township(s) with an accurate representation of the subject land at the time of this Deed of Easement and will serve as an objective information baseline for determining compliance with the terms of this Deed of Easement;

WHEREAS, Township(s) have taken all actions required by The Open Space Lands Acquisition and Preservation Act, as amended by Act 153 of 1996 (32 P.S. '5001, et seq.) or otherwise in accordance with laws governing municipal acquisition of interests in real estate as may be required in order to participate in funding the acquisition of said agricultural conservation easement;

WHEREAS, Grantors intend that the agricultural value of the subject land be protected, preserved and maintained by the continuation of agricultural use of the land;

WHEREAS, Grantors, as owners of the subject land, further intend to convey to County and Township(s) the right to preserve and protect the agricultural conservation values of the subject land in perpetuity;

AND WHEREAS, all holders of liens or other encumbrances upon the subject land have agreed to release or subordinate their interests in the subject land to this Deed of Agricultural Conservation Easement and to refrain from any action inconsistent with its purpose;

NOW, THEREFORE, in consideration of the sum of \$ _____ the receipt and sufficiency of which is hereby acknowledged, Grantors do voluntarily grant, bargain and sell, and convey to County and Township(s), their successors and assigns, and County and Township(s) voluntarily accept, an agricultural conservation easement in the subject land, under and subject to the Challenge Grant Program and to the following terms and conditions:

1. Permitted Acts. During the term of the agricultural conservation easement conveyed herein, the subject land shall be used solely for the production of crops, livestock and livestock products, including the processing or retail marketing of such crops, livestock or livestock products if more than fifty percent of such processed or merchandized products are produced on the subject land (hereinafter "agricultural production"). For the purpose of this Deed of Easement, "crops, livestock and livestock products" include, but are not limited to:

- (a) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans;
- (b) Fruits, including apples, peaches, grapes, cherries and berries;
- (c) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, onions and mushrooms;
- (d) Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers;
- (e) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs;
- (f) Timber, wood, and other wood products derived from trees; and
- (g) Aquatic plants and animals and their byproducts.

Except as permitted in this Deed of Easement, neither Grantors nor their agents, heirs, executors, administrators, successors and assigns, nor any person, partnership, corporation or other entity claiming title under or through Grantors, or their agents, shall suffer, permit, or perform any activity on the subject land other than agricultural production.

2. Construction of Building and Other Structures. The construction or use of any building or other structure on the subject land other than as existing on the date of the delivery of this Deed of Easement is prohibited except that:

- (a) The erection of fences for agricultural production and protection of watercourses such as lakes, streams, springs and reservoirs is permitted.
- (b) The construction of one additional residential structure is permitted if:
 - (i) The construction and use of the residential structure is limited to providing housing for persons employed in farming the subject land on a seasonal or full-time basis, or as the principal residence of the landowner;
 - (ii) No other residential structure has been constructed on the restricted land at any time since the delivery of the Deed;
 - (iii) The residential structure and its curtilage occupy no more than two acres of the subject land; and
 - (iv) The location of the residential structure and its driveway will not significantly harm the economic viability of the subject land for agricultural production.
- (c) The construction or use of any building or other structure for agricultural production is permitted.
- (d) The replacement of a residential structure existing on the restricted land on the date of the granting of the easement is permitted provided the replacement is located within the footprint of the existing residential structure.
- (e) Subject to the provisions of paragraph 10.1, below, Grantors shall provide County with prior notice of any activity described in this paragraph 2 or any subsection of this paragraph. County shall ensure that a copy is provided to Township(s) in a timely manner and coordinate review and response to Grantor regarding approval of the proposed activity.

- (f) Notwithstanding anything herein to the contrary, any and all construction, use, land development, or subdivision of subject land shall be subject to all applicable ordinances and regulations adopted by the Township(s).

3. Subdivision. Subject to the provisions of paragraph 10.1, below, the subject land may be subdivided in accordance with the Subdivision Guidelines for Land Subject to Agriculture Conservation Easement. If the subject land is subdivided, the Deeds to all of the subdivided parcels shall state on which of the subdivided parcels the residential structure permitted by this Deed of Easement may be constructed. Deeds to all other parcels shall recite that no additional residential structure is permitted.

4. Utilities. Subject to the provisions of paragraph 10.1 below, the granting of rights-of-way by the Grantors, their heirs, executors, administrators, successors and assigns, or any person, partnership, corporation or other entity claiming title under or through Grantors in and through the subject land for the installation, transportation, or use of, lines for water, sewage, electric, telephone, coal by underground mining methods, gas, oil or oil products is permitted so long as County receives prior notice and the right-of-way will not jeopardize viable economic agricultural production on the Property. County will provide Township(s) with a copy of the notification so received in a timely manner. County will consider input from Township(s) regarding the impact of the proposed right-of-way on the economic viability of agricultural production on the Property. County will notify Grantor of the review outcome. The term "granting of rights-of-ways" includes the right to construct or install such lines. The construction or installation of utility lines other than of the type stated in this paragraph is prohibited on the subject land.

5. Mining. Subject to the provisions of paragraph 10.1 below, the granting of leases, assignments or other conveyances of the issuing of permits, licenses or other authorization for the underground mining methods, oil and gas by the owner of the subject land or the owner of the underlying coal by underground mining methods, oil and gas or the owner of the rights to develop the underlying coal by underground mining methods, oil and gas, or the development of appurtenant facilities related to the removal of coal by underground mining methods, oil or gas development or activities incident to the removal or development of such minerals is permitted, so long as County receives prior notice and the activity will not jeopardize viable economic agricultural production on the Property. County will provide Township(s) with a copy of the notification so received in a timely manner. County will consider input from Township(s) regarding the impact of the proposed right-of-way on the economic viability of agricultural production on the Property. County will notify Grantor of the review outcome

6. Rural Enterprises. Customary part-time or off-season minor or rural enterprises and activities which are provided for in Challenge Grant Program are permitted.

7. Soil and Water Conservation. All agricultural production on the subject land shall be conducted in accordance with a conservation plan signed by an individual with current United States Department of Agriculture designation of certified plan writer. Such plan shall be updated as necessary to comply with applicable law. In addition to applicable law, the conservation plan shall require that:

- (i) The use of the land for growing sod, nursery stock ornamental trees, and shrubs does not remove excessive soil from the subject land; and
- (ii) The excavation of soil, sand, gravel, stone or other materials for use in agricultural production on the land is conducted in a location and manner that preserves the viability of the subject land for agricultural production.

8. Responsibilities of Grantors Not Affected. Except as specified herein, this Deed of Easement does not impose any legal or other responsibility on the County or Township(s), their successors or assigns. Grantors shall continue to be solely responsible for payment of all taxes and assessments levied against the subject land and all improvements erected thereon. Grantors shall continue to be solely responsible for the maintenance of the subject land and all improvements erected thereon. Grantors shall furnish the County and Township(s) with satisfactory evidence of payment upon request. Grantors acknowledge that County and Township(s) have no knowledge or notice of any hazardous waste stored on or under the subject land. County and Township(s) exercise or failure to exercise any right conferred by the agricultural conservation easement shall not be deemed to be management or control of activities on the subject land for purposes of enforcement of the Act of October 18, 1988 (P.L. 756, No. 108), known as the Hazardous Sites Cleanup Act.

Grantors, their heirs, executors, administrators, successors or assigns agree to hold harmless, indemnify and defend County, Township(s), their successors or assigns from and against all liabilities and expenses arising from or in any way connected with all claims, damages, losses, costs or expenses, including reasonable attorneys fees, resulting from a violation or alleged violation of any State or Federal environmental statute or regulation including, but not limited to, statutes or regulations concerning the storage or disposal of hazardous or toxic chemicals or materials.

9. Rights of County and Township(s). Annually, the County shall have the right to enter the subject land for the purpose of inspecting to determine whether the provisions of this Deed of Easement are being observed. County will provide written notice of such annual inspection via mail (or electronic mail with prior approval) to the Grantors, their heirs, executors, administrators, successors or assigns at least ten (10) days prior to such inspection. The inspection shall be conducted between the hours of 8 a.m. and 5 p.m. on a weekday that is not a legal holiday recognized by the County of Chester or at a date and time agreeable to the County, Township(s), and the landowner, as applicable. County will produce a report of its findings, provide a copy to Grantors (their successors and assigns), and Township(s) in which they are advised as to any violations. In the event County chooses not to inspect the subject land in any given year, County will notify Township(s). In the absence of a County inspection, Township(s) may, at their sole discretion and expense, choose to conduct said inspection provided it is conducted in accordance with the procedures noted herein including providing a report noting any observed violations to County and Grantors (successors and assigns) at Township(s) sole expense.

County, its successors, assigns or designees shall also have the right to inspect the subject land at any time, without prior notice, if County has reasonable cause to believe the provisions of this Deed of Easement have been or are being violated. Should such an instance arise, County shall notify Grantor and Township(s) in a timely manner. In the event Township(s) have reasonable cause to believe the provisions of this Deed of Easement have been or are being violated, Township(s) shall notify County and County shall follow up within 48 hours. Should County fail to act in a timely manner, Township(s) may, at its sole discretion, notify Grantor and County of its' intention to inspect and then proceed to perform an inspection at its' sole expense. In the event Township(s) performs an inspection as a result of a suspected violation, Township(s) shall provide County and Grantors (successors and assigns) with a copy of their findings.

10. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantors to notify the County and County's requirement to coordinate with Township(s), prior to undertaking certain permitted activities, as provided in paragraphs 2, 3, 4, and 5, is to create a unified way for County and Township(s) to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Deed of Easement. Whenever notice is required Grantors shall notify the County and Township(s) 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 the County and Township(s) to make an informed judgment as to its consistency with the purpose of this Deed of Easement.

10.1. Approval of County and Township(s). Where approval of County is required and consideration is provided to Township(s), as set forth in paragraphs 2, 3, 4, and 5, County shall grant or withhold approval in writing within sixty (60) days of receipt of Grantors' written request therefor. Approval may be withheld only upon a reasonable determination that the action that was proposed would be inconsistent with the purpose of this Deed of Easement.

11. County Remedies. If County determines that any Grantors are in violation of the terms of this Deed of Easement or that a violation is threatened, County 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 Property resulting from any use or activity inconsistent with the purpose of this Deed of Easement, to restore the portion of the Property so injured. If Grantors fail to cure the violation within sixty (60) days after receipt of notice thereof from County, or under circumstances where the violation cannot be reasonably cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, County may bring an action at law or in equity to a court of competent jurisdiction to enforce the terms of this Deed of Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Deed of Easement of injury to any conservation values protected by this Deed of Easement, including damages for the loss of scenic, aesthetic or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantors' liability therefore, County, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If County, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, County may pursue its remedies under this paragraph without prior notice to Grantors or without waiting for the period provided for cure to expire. County's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Deed of Easement, and Grantors agree that County's remedies at law for any violation of the terms of this Deed of Easement are inadequate and that County shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which County may be entitled, including specific performance of the terms of this Deed of Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. County's remedies described in this paragraph shall be

cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. If action is taken pursuant to this paragraph, notice shall be provided to Township(s). In the event County does not act to correct a violation, Township(s) reserves and is granted the right to enforce the terms of this Deed of Easement. Should such a situation arise, Township(s) shall have the rights and benefits ascribed to the County in this paragraph and shall provide notice to County of any and all action taken.

11.1 Costs of Enforcement. Any costs incurred by County and Township(s) in enforcing the terms of this Deed of Easement against Grantors, including, without limitation, costs of suit and attorney's fees and any costs of restoration necessitated by Grantors' violation of the terms of this Deed of Easement shall be borne by Grantors. If Grantors prevail in any action to enforce the terms of this Deed of Easement, Grantors's costs of suit, including, without limitation, attorney's fees, shall be borne by County and Township(s).

11.2 No Waiver. Any forbearance by County and Township(s) to exercise their respective rights under this Deed of Easement in the event of any breach of any term of this Deed of Easement by Grantors shall not be deemed or construed to be a waiver by County of such term or of any subsequent breach of the same or any other term of this Deed of Easement or of any of their rights under this Deed of Easement. No delay or omission by County or Township(s) 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.

11.3 Waiver of Certain Defenses. Grantors hereby waive any defense of laches, estoppel, or prescription.

11.4 Acts Beyond Grantors' Control. Nothing contained in this Deed of Easement shall be construed to entitle County or Township(s) to bring any action against Grantors for any injury to or change in the Property 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 Property resulting from such cases.

12. Access. No right of access by the general public to any portion of the Property is conveyed by this Deed of Easement.

13. Costs 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 Property, including the maintenance of adequate comprehensive

general liability insurance coverage. Grantors shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantors.

14. Duration of Deed of Easement. The agricultural conservation easement created by this Deed of Easement shall be a covenant running with the land and shall be perpetual in duration. Every provision of this Deed of Easement applicable to Grantors shall apply to Grantors' heirs, executors, administrators, successors, assigns, agents, and any person, partnership, corporation or other entity claiming title under or through Grantors.

15. Subsequent Transfers. Grantors agree to incorporate the terms of this Deed of Easement 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 County of the transfer of any interest at least thirty (30) days prior to the date of such transfer. County shall inform Township(s) of such an intended transfer in a timely manner subsequent to being notified. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Deed of Easement or limit its enforceability in any way.

16. Hold Harmless. Grantors shall hold harmless, indemnify, and defend County, Township(s) and their respective Commissioner or Board members, members of the Board of Supervisors, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified in paragraph 8; and (3) the existence or administration of this Deed of Easement.

17. Applicability. Every provision of this Deed of Easement applicable to Grantors shall apply to Grantors' heirs, executors, administrators, successors, assigns, agents, and any person, partnership, corporation or other entity claiming title under or through Grantors.

18. 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 first class mail, postage prepaid, addressed as follows:

To Grantors: _____

_____, PA 19

To County: Chester County Agricultural Land Preservation Board
601 Westtown Road, GSC Ste. 390,
West Chester, PA 19380

To Township(s): Board of Supervisors
_____ Township
_____ Road
_____, PA 19

To Township(s): Board of Supervisors
_____ Township
_____ Road
_____, PA 19

19. Grantors understand and by this agreement do convey any and all development rights in the subject property including without limitation any right to transfer development rights and agree that this agreement extinguishes any such right to transfer development rights.

20. Interpretation. This Deed of Easement shall be interpreted under the laws of the Commonwealth of Pennsylvania. For purposes of interpretation, no party to this Deed of Easement shall be considered to be the drafter of the Deed of Easement. All provisions of this Deed of Easement are intended, and shall be interpreted, to effectuate the intent of the General Assembly of the Commonwealth of Pennsylvania as expressed in Section 2 of Act 43, Act 29, and the intent of the Commissioners of Chester County as expressed in the Chester County Agricultural Conservation Easement Challenge Grant Program.

To have and to hold this Deed of Agricultural Conservation Easement unto the County, its successors and assigns in perpetuity.

AND the Grantors, for themselves, their heirs, executors, administrators, successors and assigns do specially warrant the agricultural conservation easement hereby granted.

IN WITNESS WHEREOF, the undersigned have duly executed this Deed of Easement on the day first written above.

Witness:

GRANTORS

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CHESTER:

On this _____ day of _____, 20__ , before me, the subscriber, a Notary Public for the Commonwealth of Pennsylvania, residing in _____ personally appeared the above named _____ and _____ in due form of law acknowledged that above Deed of Agricultural Conservation Easement to be their voluntary act and deed, and desired the same to be recorded as such.

WITNESS my hand and Notarial Seal the day and year aforesaid.

Notary Public