

COUNTY OF MERCER

PRINCETON

STATE OF NEW JERSEY

RESOLUTION

WHEREAS, the New Jersey Conservation Foundation has agreed to acquire and preserve approximately 240 acres of land along both the West and East Side of Carter Road in the Township of Hopewell, County of Mercer, State of New Jersey; and

WHEREAS, the County of Mercer has agreed to provide Grant Funding for said purchase through the Mercer County Municipal and Non-Profit Assistance Program; and

WHEREAS, Municipalities that would otherwise be impacted by the development of this property have been requested to participate and support in this acquisition; and

WHEREAS, as a participant in the acquisition, the County of Mercer has agreed to make available to Princeton the sum of Two Hundred Twelve Thousand Five Hundred Dollars (\$212,500.00) which funds would be utilized towards the purchase of the property; and

WHEREAS, the utilization of said funds through the Mercer County Municipal and Non-Profit Assistance Program being made available to Princeton will have no adverse impact on Princeton and the other municipal participants in seeking future Mercer County Funding for land acquisition and preservation within Princeton.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of Princeton as follows:

1. The Mayor and Clerk of Princeton are hereby authorized and directed to enter into a Multi-Party County Funding Agreement in support of the New Jersey Conservation Foundation Acquisition of the above referenced property. Said Funding Agreement

is on file in the Office of the Municipal Clerk and may be inspected during regular office hours.

2. A certified true copy of this Resolution shall be furnished to the following upon its adoption: New Jersey Conservation Foundation, 170 Longview Road, Far Hills, New Jersey 07931; County of Mercer, 640 South Broad Street, Trenton, New Jersey 08650 and the Township of Hopewell, 201 Washington Crossing - Pennington Road, Titusville, New Jersey 08560. Additionally, the Municipal Clerk shall forward to the Township of Hopewell, 12 (twelve) original signature pages by Princeton of said Funding Agreement.

CERTIFICATION

I, Linda S. McDermott, Clerk of Princeton, do hereby certify that the above Resolution was adopted by the Mayor and Council of Princeton at its regular meeting held on November 7, 2013.

Linda S. McDermott, Clerk
Princeton

MULTI-PARTY COUNTY FUNDING AGREEMENT

THIS MULTI PARTY COUNTY FUNDING AGREEMENT ("Agreement") made as of the 12th day of November, 2013 by and among:

NEW JERSEY CONSERVATION FOUNDATION, a New Jersey non-profit corporation, with an address of Bamboo Brook, 170 Longview Road, Far Hills, New Jersey (the "NJCF"); and

COUNTY OF MERCER, a body politic and corporation of the State of New Jersey, with principal offices located at 640 South Broad Street, Trenton, New Jersey 08650 ("Mercer County"); and

THE TOWNSHIP OF HOPEWELL, a municipal corporation of the State of New Jersey, with an address of 201 Washington Crossing-Pennington Road, Titusville, New Jersey ("Hopewell Township"); and

THE BOROUGH OF HOPEWELL, a municipal corporation of the State of New Jersey, with an address of Municipal Building, 88 E. Broad Street, Hopewell, New Jersey ("Hopewell Borough"); and

THE BOROUGH OF PENNINGTON, a municipal corporation of the State of New Jersey, with an address of Borough Hall, 30 N. Main Street, Pennington, New Jersey ("Pennington Borough"); and

THE MUNICIPALITY OF PRINCETON, a municipal corporation of the State of New Jersey, with an address of 400 Witherspoon Street, Princeton, New Jersey ("Princeton"); and

THE TOWNSHIP OF LAWRENCE, a municipal corporation of the State of New Jersey, with an address of 2207 Lawrence Road, Lawrenceville, New Jersey ("Lawrence Township"); and

FRIENDS OF HOPEWELL VALLEY OPEN SPACE, a New Jersey non-profit corporation, with an address of P.O. Box 395, Pennington, New Jersey ("FOHVOS"); and

D&R GREENWAY LAND TRUST, INC., a New Jersey non-profit corporation, with an address of Johnson Education Center, One Preservation Place, Princeton, New Jersey ("D&R"); and

FRIENDS OF PRINCETON OPEN SPACE, a New Jersey non-profit corporation, with an address of 57 Mountain Avenue, Princeton, New Jersey ("FOPOS"), collectively referred to as the Parties.

WITNESSETH:

WHEREAS, NJCF has entered into an Agreement of Sale and Purchase (the "Purchase Agreement"), with 350 Carter Road, LLC, Carter Road II, LLC, Carter Road III, LLC, Carter Road IV, LLC and Carter Road CE, LLC (hereinafter collectively, the "Sellers"), which Purchase Agreement was joined by execution by Hopewell Valley Citizens Group, Inc., for the purchase, in fee simple, of certain property located along Carter Road, known as (i) Block 40, a portion of Lot 14 (referred to as the "East Side"), and (ii) Block 39, Lots 12, 14.02 and 15 (referred to as the "West Side") on the official tax map of Hopewell Township, County of Mercer (the East Side and West Side shall collectively be referred to

herein as the "Property"), which Property contains approximately 240.2 acres of land, for the total purchase price ("Purchase Price") of Seven Million Five Hundred Thousand Dollars (\$7,500,000.00), a copy of which Purchase Agreement is attached hereto as Schedule A and made a part hereof; and

WHEREAS, the Purchase Agreement is contingent upon NJCF engaging in fundraising efforts and securing monies for payment of the Purchase Price; and

WHEREAS, Mercer County has agreed to provide grant funding ("County Funding") through the Mercer County Municipal and Non-Profit Assistance Program in the amount of Two Million Dollars (\$2,000,000.00), which County Funding will be provided by Mercer County to NJCF on behalf of the Parties as the Parties' contribution to NJCF for payment of a part of the Purchase Price for the East Side of the Property as set forth on the attached Schedule A; and

WHEREAS, in addition to the County Funding, Mercer County has agreed to provide additional funds through the Mercer County Open Space, Recreation, and Farmland and Historic Preservation Trust Fund to NJCF in the amount of \$1,500,000.00 ("Additional County Funds") for use by NJCF in payment of a portion of the Purchase Price for the East Side of the Property; and

WHEREAS, in addition to the County Funding and the Additional County Funds, Hopewell Township has agreed to provide matching grant funds in the amount of Two Million Dollars (\$2,000,000.00) ("Township Matching Funds") to be provided by Hopewell Township to the Parties for contribution to NJCF for payment of a part of the Purchase Price for the East Side of the Property as set forth on the attached Schedule A; and

WHEREAS, the balance of the Purchase Price, in the amount of Two Million Dollars (\$2,000,000.00), is being provided by NJCF from various fundraising efforts ("NJCF Funds"); and,

WHEREAS, notwithstanding the contribution by Mercer County and Hopewell Township of the County Funding, Additional County Funds and Township Matching Funds, the Parties acknowledge and agree that fee simple title to the Property will vest solely in NJCF and Hopewell Township; and

WHEREAS, NJCF agree that in consideration of the receipt of the County Funding and Additional County Funds for application towards the Purchase Price, NJCF agrees to record a conservation easement against the East Side of the Property.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained and for other good and valuable consideration, NJCF, the County of Mercer, Hopewell Township, Hopewell Borough, Pennington Borough, Princeton, Lawrence Township, FOHVOS, D&R and FOPOS do and hereby covenant, stipulate and agree as follows:

1. Incorporation of Recitals. The recitals set forth hereinabove are incorporated by reference as if set forth at length;
2. Funding. At the time of closing on the Property, the Parties shall have the following funds available to contribute to NJCF towards the Purchase Price for the Property:

- a. County Grant Funding:
 - i. Mercer County will be responsible for payment of Two Million Dollars (\$2,000,000.00) in Mercer County Municipal and Non-Profit Assistance Program grants to be provided by Mercer County to NJCF on behalf of the various Parties as follows:
 - a. \$300,000.00 to Hopewell Township
 - b. \$212,500.00 to Hopewell Borough
 - c. \$212,500.00 to Pennington Borough
 - d. \$212,500.00 to Lawrence Township
 - e. \$212,500.00 to Princeton
 - f. \$212,500.00 to NJCF
 - g. \$212,500.00 to FOHVOS
 - h. \$212,500.00 to D&R
 - i. \$212,500.00 to FOPOS
 - ii. The aforesaid funds shall be provided to NJCF for use by NJCF towards payment of a portion of the Purchase Price for the East Side of the Property.
- b. Additional County Funds: Mercer County will be responsible for payment of One Million Five Hundred Thousand Dollars (\$1,500,000.00) in Mercer County Open Space, Recreation, and Farmland and Historic Preservation Trust Fund monies to NJCF for use by NJCF towards payment of a portion of the Purchase Price for the East Side of the Property.
- c. Township Matching Funds:
 - i. Hopewell Township will be responsible for payment of Two Million Dollars (\$2,000,000.00) to be provided to NCF on behalf of the various Parties as follows:
 - a. \$300,000.00 to Hopewell Township
 - b. \$212,500.00 to Hopewell Borough
 - c. \$212,500.00 to Pennington
 - d. \$212,500.00 to Lawrence
 - e. \$212,500.00 to Princeton
 - f. \$212,500.00 to NJCF
 - g. \$212,500.00 to FOHVOS
 - h. \$212,500.00 to D&R
 - i. \$212,500.00 to FOPOS

ii. The aforesaid funds shall be provided to NJCF for use by NJCF towards payment of a portion of the Purchase Price for the East Side of the Property.

d. NJCF Funds: NJCF will be responsible for payment of Two Million Dollars (\$2,000,000.00) for use by NJCF towards payment of the balance of the Purchase Price for the Property.

3. Use of Funding. The County Funding, Additional County Funds, Township Matching Funds and NJCF Funds shall be used by NJCF solely for payment of the Purchase Price for the Property.

4. Title; Management. Fee simple title to the Property shall vest in NJCF with an undivided minority interest in Hopewell Township in an amount acceptable to Hopewell Township, and the Property shall be managed by NJCF.

5. Conditions and Restrictions. NJCF and Hopewell Township agree that the following terms and conditions shall apply to the East Side of the Property, all of which conditions and restrictions shall survive closing of title to the Property and payment of the County Funding and Additional County Funds:

a. Public Access; Maintenance. The East Side of the Property shall be made available for access by the public for public use on a regular basis. Access points must be clearly recognizable and inviting to the public. NJCF and Hopewell Township agree that NJCF shall maintain, protect and preserve the East Side of the Property in good condition at all times.

b. Permitted Purposes. The East Side of the Property shall be used only for recreation, agricultural and conservation purposes including, but not limited to, use for parks, agriculture, natural areas, ecological and biological study, historic areas, forests, and similar uses for either outdoor recreation or conservation of natural resources or both.

c. Deed Restriction Language. The deed to the East Side of the Property shall, at the option of Mercer County, contain the following restrictive language:

"The lands being conveyed herein are being purchased with Mercer County Municipal and Non-Profit Assistance Program grant funds provided by the County of Mercer. The Grantee agrees to accept these lands with restrictions against disposal or diversion to a use for other than recreation and conservation purposes."

"An interest in the land being conveyed herein is being purchased with Mercer County Open Space and Farmland Trust Fund pursuant to *N.J.S.A. 40:12-15.1, et seq.* intended to be used for open space preservation and/or farmland preservation purposes."

d. Prohibition on Transfer. NJCF agrees not to sell, lease, exchange, transfer or

donate the East Side of the Property, except upon approval of Mercer County, which may be withheld in the sole discretion of Mercer County, and under such conditions as the governing body of Mercer County may establish and determine.

e. Diversion. If the Property is not subject to Green Acres restrictions, then in case of a proposed diversion of the East Side of the Property, NJCF and Hopewell Township agree to follow a proscribed Mercer County diversion process.

f. Encumbrances. Aside from an easement in favor of Lawrence Hopewell Trail Corporation as noted in Paragraph 6 below, NJCF and Hopewell Township agree that they shall not further encumber the East Side of the Property without the express written consent of Mercer County, which may be withheld in Mercer County's sole discretion.

g. Access by Mercer County. Mercer County, its employees, agents and personnel shall be provided with reasonable access to the East Side of the Property.

h. Signage. NJCF and Hopewell Township agree that upon completion of the project, it will erect and maintain one or more permanent signs approved by Mercer County in publicly visible locations on the East Side of the Property.

i. Deed. NJCF and Hopewell Township shall provide to Mercer County a copy of the recorded deed to the Property and a copy of the recorded conservation easement for the East Side of the Property.

j. Conservation Easement. NJCF and Hopewell Township shall, simultaneously with recordation of the deed to the Property, record a conservation easement on the East Side of the Property in form and content acceptable to Mercer County.

6. Lawrence-Hopewell Trail. NJCF and Hopewell Township agree that they shall, at or following closing, enter into an easement with the Lawrence Hopewell Trail Corporation for use of a portion of the East Side of the Property for the construction and maintenance of the Lawrence-Hopewell Trail, which shall be located in an area and location to be mutually determined and agreed to. This provision shall survive the payment of the County closing of title to the Property and payment of the County Funding and Additional County Funds.

7. Indemnification. NJCF and Hopewell Township assume all risks and responsibilities for, and hereby agrees to indemnify, defend and save harmless Mercer County, its agents, servants, officers, employees or volunteers from and against any and all claims, demands, actions or lawsuits that may be made by third parties against Mercer County, its respective agents, servants, officers, employees or volunteers for damages of any kind or description arising from the project contemplated for the Property or Agreement, on account of or resulting from the acts or omissions of Mercer County, its employees, agents, contractors or subcontractors, including but not limited to: (1)

any loss, damage or injury to, or death of, any person occurring at or about or resulting from any defect in this project; (2) any damages or injury to persons or property of NJCF and Hopewell Township, their respective contractors, subcontractors, officers, agents, servants or employees or any other person who may be about this project caused by any act of negligence of any person (other than NJCF and Hopewell Township or their respective officers, agents, servants or employees); or (3) any costs, expenses or damages incurred as a result of any lawsuit commenced because of action taken in good faith by Mercer County in connection with this project. NJCF and Hopewell Township shall indemnify, protect, defend and hold Mercer County, and its agents, servants, officers and employees harmless from and against any and all such losses, damages, injuries, costs or expenses and from and against any and all claims, demands, suits, actions or other proceedings whatsoever, brought by any person or entity whatsoever and arising or purportedly arising from this Agreement or from the ownership and operation of this project. NJCF and Hopewell Township shall include, or cause to be included a provision in all contracts executed for the purpose of carrying out this project a requirement that the contractors and subcontractors provide Mercer County with indemnification protection at least as broad as set forth in this Section. This provision shall survive closing of title and payment of the County Funding and Additional County Funds.

8. No Partnership or Joint Venture. This Agreement among NJCF, Mercer County, Hopewell Township, Hopewell Borough, Pennington Borough, Lawrence Township, Princeton, D&R, FOHVOS, and FOPOS does not and shall not be construed to create a partnership, joint venture, agency or other relationship among the Parties except as specifically established herein. In addition, neither Mercer County, Hopewell Borough, Pennington Borough, Lawrence Township, Princeton, D&R, FOHVOS, nor FOPOS are or shall become third party beneficiaries of the underlying Purchase Agreement and have no obligation to perform under the Agreement if title to the Property does not close for any reason under the Purchase Agreement.

9. Cooperation. Subject to the terms and conditions herein provided, each of the Parties hereto shall execute and deliver such documents as the other shall reasonably request in order to consummate and make effective this Agreement; provided, however that the execution and delivery of such documents by such Parties shall not result in any additional liability or cost to such party.

10. Review; Construction. The Parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

11. Survival. The within Agreement shall survive the closing of title from the Seller to NJCF and Hopewell Township, and shall not merge with the Deed.

12. Miscellaneous:

a. Captions and Headings: Captions and headings used herein are for reference only and shall in no way be deemed to define, limit, explain or amplify any provision hereof.

b. Severability. In case any term or provision of this Agreement shall be held to be invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such term or provision, nor the validity of any other provision of this Agreement shall in any way be affected.

13. Date of Agreement. This Agreement shall become final upon signing by the Parties hereto.

14. Entire Agreement. It is understood and agreed that all understandings and agreements previously had between the parties are merged in this Agreement, which alone fully and completely expresses their understanding, and that this Agreement is entered into after full investigation, neither party relying upon any statement or representation by the other which is not contained in this Agreement.

15. Governing Law. This Agreement and the performance hereof shall be governed, interpreted, construed and regulated by the laws of the State of New Jersey.

16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which collectively shall constitute one and the same instrument representing this Agreement between the Parties hereto, and it shall not be necessary for the proof of this Agreement that any Party produce or account for more than one such counterpart.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first above written.

NEW JERSEY CONSERVATION FOUNDATION

By: _____
Name:
Title:

Approved as to Form by:

Counsel to New Jersey Conservation
Foundation

COUNTY OF MERCER

By: _____
Name:
Title:

Approved as to Form by:

Susan E. Bacso, Esq.
Counsel to County of Mercer

TOWNSHIP OF HOPEWELL

By: _____
Name:
Title:

Approved as to Form by:

Counsel to Township of Hopewell

BOROUGH OF HOPEWELL

By: _____
Name:
Title:

Approved as to Form by:

Counsel to Borough of Hopewell

BOROUGH OF PENNINGTON

By: _____
Name:
Title:

Approved as to Form by:

Counsel to Borough of Pennington

PRINCETON

By: _____
Name:
Title:

Approved as to Form by:

Counsel to Township of Princeton

TOWNSHIP OF LAWRENCE

By: _____
Name:
Title:

Approved as to Form by:

Counsel to Township of Lawrence

FRIENDS OF HOPEWELL VALLEY OPEN SPACE

By: _____
Name:
Title:

Approved as to Form by:

Counsel to Friends of Hopewell Valley
Open Space

D&R GREENWAY

By: _____
Name:
Title:

Approved as to Form by:

Counsel to D&R Greenway

FRIENDS OF PRINCETON OPEN SPACE

By: _____
Name:
Title:

Approved as to Form by:

Counsel to Friends of Princeton
Open Space

SCHEDULE A
AGREEMENT OF SALE AND PURCHASE