

Record & Return to:
Mason, Griffin & Pierson, PC
101 Poor Farm Road
Princeton, NJ 08540

Prepared by:
Allison S. Zangrilli, Esq.

DEED OF EASEMENT

**PERMANENT PEDESTRIAN PATHWAY EASEMENT
AND TEMPORARY CONSTRUCTION EASEMENT**

This Deed of Easement (this "Deed") is made and dated on May __, 2014, by and between:

Institute for Advanced Study -- Louis Bamberger and Mrs. Felix Fuld Foundation, a New Jersey non-profit corporation, having offices at Fuld Hall, Einstein Drive, Princeton, New Jersey 08540, (the "Grantor"), and

Princeton, Mercer County, a municipal corporation of the State of New Jersey, f/k/a Township of Princeton, Mercer County, a municipal corporation of the State of New Jersey, having offices at 400 Witherspoon Street, Princeton, New Jersey 08540 (the "Grantee").

The terms "Grantor" and "Grantee" refer to the Grantor and Grantee named above and to their successors and assigns.

WITNESSETH:

WHEREAS, the Grantor is the owner in fee simple of certain real property located in the municipality of Princeton, County of Mercer, and State of New Jersey, and designated as **Lots 6, 7, 8, 9 and 10, all in Block 10201** on the Princeton Municipal Tax Map (the "Property"); and,

WHEREAS, portions of the Property possess natural, scenic, open space and conservation values;

WHEREAS, the Grantor previously conveyed certain rights in the Property to the Grantee and others pursuant to a Deed of Pathway and Conservation Easement, dated April 15, 1997, and recorded prior to these presents in the office of the Mercer County Clerk in Deed Book 3184 at Page 206 (the "Institute Woods Easement"); and,

WHEREAS, the Institute Woods Easement contemplated the construction of a public pedestrian pathway along Quaker Road through, upon and under a portion of the Property; provided, however, that the provisions of the Institute Woods Easement regarding the use of any such public pedestrian pathway would prevail over any other rules or regulations then or later sought to be adopted or imposed within the area of the Institute Woods Easement;

WHEREAS, the health and welfare of residents of Princeton, Mercer County and New Jersey may best be served by the further preservation for public use of certain parts of the Property in their natural, scenic, open and existing state;

WHEREAS, the Grantee is a municipal corporation, qualified as a "local unit" within the meaning of Section 13:8B-1, et seq., of the New Jersey Conservation Restriction and Historic Preservation Act (the "Conservation Restriction Act"), one purpose of which is to acquisition of rights in land in a natural, scenic open space condition for public use; and,

WHEREAS, the Grantor and the Grantee acknowledge and agree that this Deed is necessary and appropriate to accomplish the construction of the public pedestrian pathway as contemplated by the Institute Woods Easement, and that this Deed does not violate the terms of the Institute Woods Easement; and,

WHEREAS, the Grantor intends to create by this Deed a permanent, non-exclusive easement for pedestrian pathway purposes through, upon and under a portion of the Property, consisting of an aggregate area of 42,485± square feet, or 0.976± acres of land (the "Pedestrian Pathway Easement" or the "Pedestrian Pathway Easement Area"); and,

WHEREAS, the Grantor further intends to create by this Deed a fifteen (15) foot wide self-terminating temporary construction easement consisting of 63,393± square feet, or 1.455± acres of land, for the purpose of constructing the pubic pedestrian pathway through, upon and under a portion of the Property (the "Temporary Construction Easement" or the "Temporary Construction Easement Area"); and,

WHEREAS, the Pedestrian Pathway Easement and the Temporary Construction Easement are further described in the metes and bounds descriptions and maps attached

hereto as **Schedule A**, and made a part hereof. Because both easements cross several tax lots, a tabulation of the aggregate areas of both the Pedestrian Pathway Easement and the Temporary Construction Easement is also attached hereto and made part of Schedule A.

NOW THEREFORE, in consideration of the sum of One (\$1.00) Dollar and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Grantor, the Grantor does hereby grant to the Grantee the Pedestrian Pathway Easement and the Temporary Construction Easement described herein, subject to the following terms and conditions:

1. Permanent Pedestrian Pathway Easement. It is the true intent and purpose of this Deed to convey to the Grantee a perpetual right to construct, reconstruct, inspect, repair, maintain, operate and use a pedestrian pathway six (6) feet in width made of crushed stone, and appurtenances within the Pedestrian Pathway Easement Area, including all incidental rights to protect and preserve the pedestrian pathway and appurtenances, and the perpetual, non-exclusive right of free and unobstructed access, use, and possession of the pedestrian pathway and appurtenances within the Pedestrian Pathway Easement Area. Nothing contained in this Deed shall be construed so as to obligate the Grantee to construct, reconstruct, inspect, repair, maintain, operate or use the pedestrian pathway and appurtenances within the Pedestrian Pathway Easement Area. The Pedestrian Pathway Easement conveyed by this Deed shall be used by the public in a manner consistent with the terms of the Institute Woods Easement, and only as a walk, bikeway path, nature trail or brookside ramble and it is expressly agreed that hunting, fishing, camping, picnicking, parking and collecting firewood within the Pedestrian Pathway Easement Area are prohibited.

2. Temporary Construction Easement. It is the further true intent and purpose of this Deed to convey to the Grantee a temporary right to construct, repair and improve the pedestrian pathway referred to herein, including the non-exclusive right to store construction equipment and materials within the Temporary Construction Easement Area. The rights granted pursuant to the Temporary Construction Easement shall automatically terminate upon the earlier

of: (a) the Grantee's completion of the pedestrian pathway improvements, or (b) two (2) years from the date of this Deed. All work performed by the Grantee, its employees, agents or contractors hereunder shall be done in a workerlike and diligent manner. All such work shall be completed within a reasonable period of time after commencement thereof, subject to such delays as may arise due to causes within the usual definition of force majeure. All such work shall be performed in compliance with all applicable governmental statutes, ordinances and regulations, and shall be at the Grantee's sole cost and expense. Further, the entities performing such work shall be insured by liability insurance policies in standard form and in appropriate amounts, which policies shall name the Grantor as an additional insured party, and a certificate confirming the terms of same shall be delivered to the Grantor prior to the entry onto the Property by any such entities. Upon completion of any work related to the aforesaid purposes, the Grantee shall cause all vehicles, equipment, tools and implements used in connection with such work, and all materials not incorporated therein, to be removed from the Temporary Construction Easement Area and the surface thereof restored to its condition immediately prior to the commencement of such work.

3. Other Responsibilities. This Deed imposes no other obligations or restrictions upon the Grantor from using the Property or the Permanent Pathway Easement Area in such lawful manner as the Grantor may deem desirable, provided that no activities which interfere with or are inconsistent with the purposes of this Deed shall be permitted on the Property or the Permanent Pathway Easement Area, it being understood and agreed that the Pedestrian Pathway Easement shall be a non-exclusive easement. The Grantor shall have no obligation to the Grantee for any injury to or change in the condition of the Property or the Permanent Pedestrian Easement Area resulting from causes beyond Grantor's control, including without limitation, flood, storm, earth movement or fire, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

The Grantee shall be responsible for all costs related to the ownership, upkeep, operation and maintenance of the Pedestrian Pathway Easement, including any appurtenances thereto, and specifically including any pedestrian pathway hereafter constructed therein, in such a way as to assure the safe and orderly passage and repassage thereon by the general public. In two (2) locations, the pedestrian path will cross residential driveways of properties owned by the Grantor. The Grantee shall be solely responsible to install signage on the pedestrian path or take such other steps as are appropriate to warn persons using the pedestrian path of the presence of crossing vehicles. The Grantee shall also be responsible to assure that the pedestrian pathway is not installed or, thereafter, not maintained in such a manner as to be detrimental to the drainage, flood control, water conservation, erosion control or soil conservation and preservation of the farm fields located adjacent to the Permanent Pedestrian Easement Area.

The Grantee shall carry not less than Five Million (\$5,000,000.00) Dollars of commercial general liability insurance applicable to the Permanent Pedestrian Easement Area and the Temporary Construction Easement Area, naming the Grantor as an additional insured and shall provide a certificate evidencing same to the Grantor before any entity related to the construction or use thereof enters upon the Property. The Grantee shall notify the Grantor in writing of any material modification or termination of such insurance and shall immediately take steps to put in place other insurance of the same type and amount.

4. Mutual Hold Harmless. A. The Grantee shall indemnify, defend, and hold harmless the Grantor from and against any damages, losses, claims, costs and expenses (including without limitation, court costs and reasonable attorney's fees) sustained or incurred by the Grantor arising out of or resulting from, in whole or in part any act and/or omission, negligent and/or intentional, or any willful misconduct by the Grantee or any member of the public, in connection with the use by the Grantee or the public of the Permanent Pedestrian Easement Area or the Temporary Construction Easement Area and any of the rights granted hereunder, or any failure by the Grantee or member of the public to

abide by the provisions and conditions hereof, whether resulting in any injury to the Permanent Pedestrian Easement Area, the Temporary Construction Easement Area, or other portions of the Property, or resulting in any claim by any person or entity against the Grantor, provided that such damages, losses, or claims were not due to the gross negligence or willful misconduct of the Grantor.

B. The Grantor shall indemnify, defend, and hold harmless the Grantee from and against any damages, losses, claims, costs and expenses (including without limitation, court costs and reasonable attorney's fees) sustained or incurred by the Grantee arising out of or resulting from, in whole or in part, any act and/or omission, negligent and/or intentional, or any willful misconduct by the Grantor, its employees or contractors, in connection with the use of the Property by the Grantor or any of them, or any failure by the Grantor to abide by the provisions and conditions hereof and, whether resulting in any injury to persons or property by virtue of the use of the Permanent Pathway Easement Area or the Temporary Construction Easement Area by any person under this Deed, provided that such obligation to indemnify the Grantee shall be limited to the liability imposed upon the owner of land such as the Permanent Pedestrian Easement Area or the Temporary Construction Easement Area, as set forth in the Landowner's Liability Act (N.J.S.A. 2A:42A-8.1) and the Conservation Restriction Act, above.

5. Binding Agreement. This Deed shall be binding upon the Grantor and the Grantee, and their respective successors and assigns. In the event of noncompliance with the terms and conditions contained herein, the Grantor and the Grantee may avail themselves of any and all legal and equitable remedies available to either of them to enforce the within terms and conditions.

IN WITNESS WHEREOF, the Grantor and the Grantee have caused this Deed to be duly executed as of the date first written above.

Attest:

Grantor: Institute for Advanced Study - Louis Bamberger and Mrs. Felix Fuld Foundation, a New Jersey non-profit corporation

Name:

By: _____
John Masten, Associate Director
for Finance and Administration

Grantee: Princeton, Mercer County, a municipal corporation of the State of New Jersey, f/k/a Township of Princeton, Mercer County, a municipal corporation of the State of New Jersey

Linda McDermott, Clerk

By: _____
Liz Lempert, Mayor

STATE OF NEW JERSEY)

COUNTY OF MERCER) SS.

I CERTIFY that on May __, 2014, John Masten personally came before me, the subscriber, and he acknowledged under oath, to my satisfaction, that he is the Associate Director for Finance and Administration of the Institute for Advanced Study - Louis Bamberger and Mrs. Felix Fuld Foundation, the entity named in this Deed of Easement; this Deed of Easement was signed and delivered by that entity as its voluntary act, duly authorized by a proper resolution of its Board of Trustees; he signed this proof to attest to the truth of these facts; and, the full and actual consideration paid or to be paid for this Deed of Easement is One (\$1.00) Dollar.

Notary Public

STATE OF NEW JERSEY)
COUNTY OF MERCER)SS.

I CERTIFY that on May __, 2014, Linda McDermott personally came before me, the subscriber, and she acknowledged under oath, to my satisfaction, that she is the Clerk of Princeton, the municipal corporation named in this Deed of Easement; that she well knows the corporate seal of the said municipal corporation, and that the seal affixed to said Instrument is the seal of said municipal corporation; that the said seal was so affixed and the said Deed signed and delivered by Liz Lempert, who at the date thereof was the Mayor of Princeton, the municipal corporation named herein, who acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, and as the voluntary act and deed of said municipal corporation, by virtue of authority from its governing board; and, that the deponent, at the same time, subscribed her name to said Deed as an attesting witness to the execution thereof. The full and actual consideration paid or to be paid for this Deed of Easement is One (\$1.00) Dollar.

Linda McDermott

Sworn to and Subscribed before me
this ___ day of May, 2014.

Notary Public

**DEED OF EASEMENT
PERMANENT PEDESTRIAN PATHWAY EASEMENT
AND TEMPORARY CONSTRUCTION EASEMENT**

Institute for Advanced Study -- Louis Bamberger and Mrs. Felix Fuld Foundation,
a New Jersey non-profit corporation,

GRANTOR,

to

Princeton, Mercer County,
a municipal corporation of the State of New Jersey, f/k/a Township of Princeton, Mercer
County, a municipal corporation of the State of New Jersey

GRANTEE.

Dated: May ____, 2014

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