



Approved as to Form and Legality

Date Adopted

Committee

*Raum Wolf*  
Salem County Counsel

July 17, 2019

Agricultural/ Tourism

Resolution Authorizing the Proposed Acquisition of a Development Easement on Johnson Farm  
Mannington Township

**WHEREAS**, and the Salem County Agriculture Development Board submitted a Planning Incentive Grant (PIG) application to the State Agriculture Development Committee (SADC), pursuant to the State Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et. Seq., the Planning Incentive Grant Program, N.J.S.A. 4:1C-43.1, and the regulations thereunder; and

**WHEREAS**, and the application provided for the proposed acquisition of a Development Easement on the property owned by Ralph and Jill Johnson and designated on the municipal tax map as Block 59 Lot 12 in the Township of Mannington and Block 6, Lot 1 in the Township of Quinton, County of Salem, State of New Jersey; and

**WHEREAS**, and the State Agriculture Development Committee certified the fair market value of the development easement pursuant to N.J.A.C. 2:76-7.14 at \$5,600 per acre on May 23, 2019. The estimated cost sharing breakdown for the acquisition of the development easement is as follows (based on an estimated 45.9 net acres), subject to (a) the actual acreage to be covered by the development easement per the final survey which conforms to the farmland preservation program requirements, and (b) any additional adjustments pursuant to the State statute rule, regulation or policy:

State Agriculture Development Committee	\$	154,224.00
Salem County	\$	102,816.00
Total	\$	257,040.00

**WHEREAS**, and the Salem County Agriculture Development Board gave final approval to the proposed acquisition of a development easement on the Johnson Farm, Block 59, Lot 12 in the township of Mannington and Block 6, Lot 1 in the township of Quinton, on approximately 45.9 net acres at its June 26, 2019 meeting and is subject to the following:

- (a) The conveyance of a development easement which shall provide for the following:
  1. Exception: None
  2. Non-Agricultural use(s): None
  3. Dwellings: One
  4. Residual Dwelling Site Opportunities: None

**NOW THEREFORE, BE IT RESOLVED**, by the Board of Chosen Freeholders of the County of Salem authorizes the proposed acquisition of a development easement on the Johnson Farm in an amount of approximately \$102,816.00.

  
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 LEE R. WARE, Freeholder  
 Chairman, Transportation, Agriculture Committee

I hereby certify the foregoing to be a true resolution adopted by the Board of Chosen Freeholders of the County of Salem on July 17, 2019

  
 \_\_\_\_\_  
 STACY PENNINGTON  
 Clerk of the Board

RECORD OF VOTE

FREEHOLDER	AYE	NAY	ABSTAIN	ABSENT	RESOLUTION MOVED	RESOLUTION SECONDED
G. Ostrum, Jr.	✓					
C. Hassler	✓					
L. Ware	✓				✓	
R.S. Griscom	✓					✓
B. Laury	✓					

✓ Indicates Vote

Department Initials

KA \_\_\_\_\_



## CERTIFICATION OF AVAILABILITY OF FUNDS

**NOTE TO COUNTY DEPARTMENTS:** This form is to be prepared by each department entering into a contract with a vendor when a resolution is required to be adopted by the Board of Chosen Freeholders of the County of Salem.

This form must accompany the resolution, and must be submitted with the resolution to the Finance Officer for approval by the Finance Officer at least one week prior to the Freeholder meeting at which it will be presented for adoption.

The contract/agreement between the County and the vendor shall be further contingent upon availability and appropriation of sufficient funds for this purpose in the County's Temporary and Permanent Budget. *If grant funds are utilized, this contract/agreement is further contingent upon the grants funds availability during the appropriate grant period.*

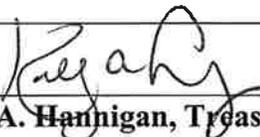
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I, **Kelly A. Hannigan, Treasurer** of the County of Salem, hereby certify in accordance with **Section 5:34-5 of the Local Public Contracts Guidelines and Local Public Contracts Regulations** that adequate funds for the contract listed below are available.

I further certify that the funds are contained in the **OFFICIAL BUDGET** of the County of Salem under the item listed below.

<b>AMOUNT:</b>	Approximately \$102,816.00
<b>ACCOUNT NAME:</b>	Farmland/Open Space Trust
<b>ACCOUNT #:</b>	C-04-55-831-004-903
<b>FOR:</b>	Easement on Ralph and Jill Johnson Farm – Mannington/Quinton
<b>DATE:</b>	June 20, 2019
<b>VENDOR:</b>	West Jersey Title

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**Kelly A. Hannigan, Treasurer**

**CONTRACT OF SALE OF REAL ESTATE**  
**SALE OF DEVELOPMENT EASEMENT**

20<sup>th</sup> This Contract of Sale (hereinafter referred to as the "Contract") is made on this day of June, 2019, between

Ralph and Jill Johnson, whose address is 73 Sandy Ridge Road, Salem, New Jersey, 08079 (hereinafter referred to as the "Seller" or "Grantor"); and

**COUNTY OF SALEM, NEW JERSEY**, whose address is 110 Fifth Street, Salem, New Jersey 08079 (hereinafter referred to as "County," "Purchaser" or "Grantee").

NOW THEREFORE, the Purchaser and Seller hereby agree to be bound by the following terms and conditions of this Contract for sale of the development rights of the Property:

**1. Purchase Agreement.**

A. The Seller agrees to sell to the County and the County agrees to purchase the development easement on the Property. "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 (N.J.S.A. 4:1C-13(f) et seq) and any relevant rules and regulations promulgated pursuant thereto.

B. The Seller and the County wish to permanently preserve the Property and restrict the Property to agricultural use for and in consideration of payment and in accordance with the terms and conditions contained herein. Permanent preservation shall occur and be effective upon the Seller's execution of a Deed of Easement conveying the development easement to the County.

C. The Seller agrees to execute a Deed of Easement containing the terms, conditions and restrictions which are contained in the attached exhibit and required by N.J.A.C. 2:76-6.15 or such other modified Deed of Easement that may be required. All information contained in the Deed of Easement will be subject to confirmation by survey, inspection, title search, and review by the County's counsel.

D. The Seller shall be allocated 0 residential dwelling site opportunity ("RDSO") as defined in N.J.A.C. 2:76-6.15.

E. It is agreed and understood that this Contract is contingent upon the governing body of the County adopting an Ordinance authorizing the purchase of the subject development easement, including a reference to the financing which is contained in the within Contract. In the event that the County does not pass said Ordinance, for any reason, then in that event, either the County or the Seller may declare the Contract null and void.

F. It is agreed and understood by the parties that the Purchaser may purchase the development easement jointly with, or assign the development easement to, the

State Agriculture Development Committee (“SADC”) and this Contract may be subject to the approval of the SADC.

G. The Seller represents they have used the Property for agricultural uses and will continue to use the Property for agricultural uses. “Agricultural use” means the use of the 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.

2. **Property.** The property interest being sold to the County shall be the development rights on Block 6, Lot 1 in the Township of Quinton and Block 59, Lot 12 in the Township of Mannington, commonly known as the “Farm” within the Townships of Mannington and Quinton, County of Salem, State of New Jersey. Said property consists of approximately 45.9+/- acres.

3. **Purchase Price.** The total purchase price is \$257,040.00 based on the mutual assumption of the parties that the Property contains 45.9+/- acres of land and that the development easement on the Property is valued at \$5,600.00 per acre. The total purchase price shall be determined by an accurate survey of the Property obtained by the County, subject to such negative adjustments as may result from the existence of road right-of-ways, water areas located on the boundary, and other rights-of-way and easements as shall be shown on an accurate survey.

4. **Payment of Purchase Price.** The County will pay the purchase price in cash at settlement.

5. **Survey.** The County, at its sole cost and expense, shall obtain a survey of the Property together with a metes and bounds description. That description shall be used in the description of the Property to be conveyed.

6. **Title.** The Seller warrants and represents that they are authorized and are in possession of good and sufficient title to the Property.

The Seller agrees to transfer and the County agrees to accept a Deed of Easement on the property free of all claims and right of others, except for:

A. Restrictions relating to the use and development of the property set forth in this Contract;

B. The rights of utility companies to maintain pipes, poles, cables and wires over, on and under the street, the part of the property next to the street or running to any house or other improvement on the property;

C. Recorded agreements which limit the use of the property, unless the agreements: (1) are presently violated; (2) provide that the property would be forfeited if they were violated, or (3) unreasonably limit the normal use of the property; and

D. Seller's title shall be clear, valid record title, marketable and insurable at regular rates by the title insurance company of the County's choice.

E. In the event Seller is unable to give good and marketable title such as will be insured by the title company as set forth above, County shall have the option (1) of taking such title as Seller can convey, with abatement of the Purchase Price in the amount (fixed or ascertainable) of any lien on the Property, or (2) requiring monies in a reasonable sum needed to clear title be escrowed by Seller with the title company whereupon Seller shall have the right to contest the lien with the understanding that the money escrowed shall be paid to satisfy the lien if Seller's contest is unsuccessful, or (3) of canceling this contract, being repaid the Deposit and in that event there shall be no further liability or obligation by the parties hereunder and this Contract shall become null and void. Seller shall be entitled to adjourn the date of Settlement an additional sixty (60) days if Seller is diligently proceeding to cure any title defects.

F. In the event that there is any outstanding mortgage(s), lien(s), encumbrance(s) or claim(s) on the Property, this Contract shall be contingent upon the consent of all mortgagees or claimants against the Property to subordinate their claims to the Deed of Easement to be executed by the Seller. In the event the Easement is not, for any reason, superior to any mortgage(s), lien(s), encumbrance(s) or claims(s) on the Property, the Seller will pay off such mortgage, lien, encumbrance or claim at the closing or the County may declare the Contract null and void.

**7. Time and Place of Closing.** The time and place of closing cannot be made final at this time. The Purchaser will provide the seller with the date, time and place of closing.

**8. Closing Documents.** At the closing, the Seller will transfer to the County, or any assignee, its interest in the development rights of the Property, including a Deed of Easement, Affidavit of Consideration, Affidavit of Title and any other necessary documents required by the Purchaser or its title company. If changes to the Deed of Easement are presented to the County as required by the SADC, Seller agrees to execute the Deed of Easement or any corrective Deed of Easement along with any additional documents required by the SADC with the changes or modifications.

**9. Real Estate Taxes.** Taxes shall be fully paid and current for the quarter when the closing occurs.

**10. Access to Property.** The Seller shall permit access to the Property for the purpose of any survey and inspections provided for in this Contract. The County shall provide at least two (2) days advance notice of any such survey or inspection. The survey or inspection(s) will be performed in a manner designed to avoid any disturbance to the farm activities conducted on the Property.

**11. Inspection of Property.**

A. Kind of Inspections. The County may have the property inspected by an environmental expert and/or environmental inspection service at its expense. The inspection may include a Phase I study or other studies of the environmental condition

of the Property. The County may also inspect the septic or the sewerage disposal system, examine for the presence of underground fuel storage tanks, and test the well, water system and the quality of the water.

B. Time and Access for Inspections. All inspections must be completed and Seller notified of the results within 60 days of the date this Contract is executed by Seller and County.

C. Results of Inspections and Remedies. If the inspections reveal any environmental defects, or other results which are unacceptable to the County, and the parties within ten (10) days of notice to Seller do not agree on what corrective actions or repairs are to be made by the Seller, the County may, within seven (7) days thereafter, either waive requiring the Seller to correct or repair and proceed to closing, or cancel the Contract in which event all deposit monies shall be refunded, if applicable. If as a result of these inspections, the need for further testing is indicated, the County shall have an additional reasonable amount of time to complete the additional testing and notify Seller of the results. It is agreed that Seller is not obligated to remediate the environmental defects.

## **12. Chemical or Toxic Waste.**

A. Seller represents that to the best of Seller's knowledge the Premises have not been used at any time for the dumping or disposal of any chemical wastes, toxic wastes, chemical drums or other containers, or any chemical or toxic wastes. This representation is a material part of this Contract and County is specifically relying upon this representation.

B. The Seller has not, to the best of Seller's knowledge, created, suffered or permitted the discharge of hazardous substances, generally, and not by way of limitation, being petroleum and petroleum products, explosives, acids, toxic liquids and powders, poison, harmful bacteria, and the like, onto, into or under the Premises or any other lands now or formerly owned by Seller, nor directly or indirectly into any waterways flowing upon, under and near any of said lands.

C. In the event any such hazardous substance as described above is discovered on the Premises or any portion thereof and written notice of same is served upon the Seller prior to a closing of title on the Premises or portion thereof, Seller shall have the option to correct any such condition before said closing to the satisfaction of the New Jersey Department of Environmental Protection and if Seller shall fail or refuse to do so, then County shall have the option to either: (a) terminate this Contract and receive a full refund of any Deposit in which event this Contract shall become null and void and neither party shall have any further obligation to the other or (b) accept the Premises "as is" and accept the responsibility of compliance with the requirements of any public agency. In the event Seller agrees to correct the condition at Seller's expense, and has not obtained a certificate of compliance from the appropriate governmental agency prior to the date set for closing, the closing date shall be extended for the amount of time reasonably required to obtain the certificate. Closing shall take place within thirty (30) days after written notice by Seller to County that the certificate has been obtained, subject to availability of the parties.

D. The foregoing representations set forth in subparagraphs A and B above do not apply to the governmentally permitted applications of fertilizers and pesticides related to the agricultural use of the property.

12. **Property Lines.** The Seller represents that all buildings, driveways and other improvements on the Property are within its boundary lines. Also, no improvements on adjoining properties extend across the boundary lines onto this Property. If the Property does not comply, the Seller will be notified and given thirty (30) days to affect compliance. If the Property still does not comply after that date, the County may waive correction, cancel this Contract or give the Seller more time to affect compliance.

13. **County's Default.** In the event the County violates or fails to fulfill and perform any of the terms or conditions of this Contract, which default is not cured within twenty (20) days of receipt of written notice from Seller specifying the alleged violation or failure, then Seller shall be entitled to pursue any right, power or remedy available to Seller at law or in equity.

14. **Seller's Default.** In the event the Seller violates or fails to fulfill and perform any of the terms or conditions of this Contract at or prior to Settlement, which default is not cured within twenty (20) days of receipt of written notice from County specifying the alleged violation or failure, and/or if as a result thereof Settlement hereunder shall not occur, then County shall be entitled to pursue any right, power or remedy available to County at law or in equity, including the right to specifically enforce this Contract against Seller.

15. **Casualty.** All risk of loss or damage to the Property by casualty of any nature whatsoever prior to Settlement shall be borne by Seller.

16. **Cost of Enforcement.** All reasonable damages and costs incurred by County in enforcing the terms of this Contract against Seller including, without limitation, costs of suit, attorneys' fees, and any costs of restoration necessitated by Seller's violation of the terms of this Contract shall be borne by Seller, provided that County has prevailed in such enforcement action.

17. **Indemnification.** The Seller shall indemnify and hold the County harmless from any claim, suit, litigation, cost or expense arising out of or entering into the within Contract with the County. The Seller will be responsible and liable for all damages, attorneys' fees and costs that the County incurs arising out of such claim, suit or litigation.

18. **Deed Restrictions.** The Deed of Easement the Seller shall provide to the County shall contain terms that are substantially similar to the Deed of Easement attached hereto as Exhibit A.

19. **Subsequent Assistance.** The parties acknowledge that the County may seek reimbursement for the purchase of the Property from the SADC. As such, the Deed of Easement being granted will be in the form required by the SADC. Furthermore, the Seller agrees to execute any documents, or assist in providing documents, information, or conducting the appropriate actions if requested by the County to accomplish its purposes, including but not limited to transfer of the Development Easement and development rights to the State of New Jersey for reimbursement under the farmland preservation programs. This clause shall survive closing of title. This contract is conditioned upon ALE funding in an amount sufficient enough to cover the entire County cost share.

20. **Assignment.** The County shall have the right to assign the Development Easement to any governmental agency including but not limited to any state, county, government or agency created thereunder for purposes consistent with farmland preservation. The County, and any future assignee, may, at any time, upon thirty (30) days notice to the Seller, transfer or assign in whole or in part the Development Easement, and the rights and obligations created thereby without limitation.

The County shall have no further obligation to enforce the provisions of the Easement upon the assignment by County of its rights hereunder to such governmental agencies which has assumed the obligation to enforce the Easement.

21. **Waiver of Certain Defenses.** In view of the fact that the County or its assigns will not be continually present on the Property, that the resources available to the County or its assigns to monitor compliance with the terms of the Easement are limited, and that activities inconsistent with the purposes and intent of the Easement could take place without the County or its assigns immediate knowledge, Seller waives any defense of laches, estoppel or prescription with respect to any violation of the terms of the Easement as to which the County or its assigns were not notified in writing.

22. **General Provisions.**

A. Controlling Law. The interpretation and performance of the Contract shall be governed by the laws of the State of New Jersey.

B. Severability. If any provision of the Contract, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of the Contract, 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.

C. Entire Agreement. This instrument sets forth the entire agreement of the parties and supersedes all prior discussions, negotiations, understandings or agreements all of which are merged herein.

D. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Seller's title in any respect.

E. Successors. The covenants, terms, conditions, and restrictions of the Contract shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, executors, successors and assigns, and shall continue as a servitude running in perpetuity with the Property.

F. Captions. The captions in this instrument have been made solely for convenience or reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

G. Counterparts. The parties may execute the instrument in two or more counterparts, which shall in the aggregate, be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

H. Notices. All notices pertaining to the Contract shall be in writing delivered to the parties personally or by private courier, or by registered or certified mail, return receipt requested, at the addresses set forth above or such other addresses as the parties may specifically designate in writing, and shall be deemed delivered and effective upon actual receipt.

I. Cooperation. The parties agree to cooperate with each other and to take such further actions including execution of such other documents that may be reasonably requested to facilitate the timely purchase and sale of the development rights of the Property.

J. Survivability. All covenants and agreements made by Seller in this Contract are binding on Seller and Seller's agents, heirs, administrators, executors, successors and assigns and shall survive closing. The County shall be entitled to record this Contract.

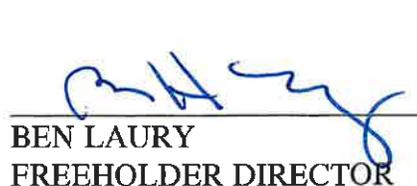
23. **Legal Review**. Each party has had this Contract reviewed by their own attorney and does not rely upon the action or advice of any other attorney.

**SIGNED AND AGREED TO BY:**

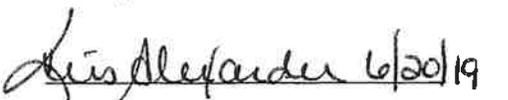
DATED: 7/17/19  
ATTEST:

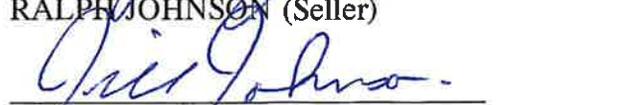
COUNTY OF SALEM

BY:   
Clerk of the Board

  
BEN LAURY  
FREEHOLDER DIRECTOR

DATED:  
WITNESS:

 6/20/19  
 6/20/19

  
RALPH JOHNSON (Seller)  
  
JILL JOHNSON (Seller)