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Prepared by: Agricultural Land Preservation Board 601 Westtown Road Government Services Center, Suite 390 West Chester, PA 19380

Return to: Countywide Abstract Limited Partnership 205 West Miner Street West Chester, PA 19382-3202

File No. 42380

Part of UPI # 45-3-68

DEED OF AGRICULTURAL CONSERVATION EASEMENT

17.25



THIS DEED OF AGRICULTURAL CONSERVATION EASEMENT, made this 25th day of March, 2010, by and between Susan C. Broomell, Nancy E. Dwyer, and Laurie C. Prysock (hereinafter "Grantor") and the County of Chester, Pennsylvania, ("County") by and through its Agricultural Land Preservation Board ("County Board") and Highland Township, Chester County, Pennsylvania ("Township"). "Township", "County", and "County Board" hereinafter collectively referred to as "Grantee" pursuant to the Chester County Agricultural Conservation Easement Challenge Grant Program (hereinafter "Challenge Grant Program").

WHEREAS, Grantor is the sole owner of all that certain land situate in <u>Highland Township</u>, Chester County, Pennsylvania more particularly described in Exhibit "A" attached consisting of <u>31.664 acres</u> 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 preserve prime agricultural land in accordance with the strategy contained in the *Landscapes*, the Chester County Land Use Plan; to protect prime agricultural land, 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, County 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, the preservation for agricultural use of land designated Agricultural or Rural Development and located in locally adopted Agricultural Security Areas which contain prime agricultural soils 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 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 Grantor and Grantee 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, the Township has 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.) in order to acquire said agricultural conservation easement;

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

WHEREAS, Grantor, as owner of the subject land, further intends to convey to Grantee 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 dollars, the receipt and sufficiency of which is hereby acknowledged, Grantor does voluntarily grant, bargain and sell, and convey to Grantee, its successors and assigns, and Grantee voluntarily accepts, 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;
 - 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 Grantor nor his agents, heirs, executors, administrators, successors and assigns, nor any person, partnership, corporation or other entity claiming title under or through Grantor, or his agents, shall suffer, permit, or perform any activity on the subject land other than agricultural production.

- 2. <u>Construction of Building and Other Structures</u>. 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.
- (e) Subject to the provisions of paragraph 10.1, below, Grantor shall provide the County Board and Township with prior notice of any activity described in this paragraph 2 or any subsection of this paragraph, and both County Board and Township shall have the opportunity to approve 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.
- 3. <u>Subdivision</u>. 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. <u>Utilities</u>. Subject to the provisions of paragraph 10.1 below, the granting of rights-of-way by the Grantor, his heirs, executors, administrators, successors and assigns, or any person, partnership, corporation or other entity claiming title under or through Grantor 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 the County Board and Township receive prior notice and the right-of-way will not jeopardize viable economic agricultural production on the Property. 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 the County Board and Township receive prior notice and the activity will not jeopardize viable economic agricultural production on the Property.
- 6. <u>Rural Enterprises</u>. Customary part-time or off-season minor or rural enterprises and activities which are provided for in Challenge Grant Program are permitted.
- 7. <u>Soil and Water Conservation</u>. All agricultural production on the subject land shall be conducted in accordance with a conservation plan approved by the County Conservation District or the County Board. Such plan shall be updated every ten (10) years and upon any change in the basic type of agricultural production being conducted on the subject land. In addition to the requirements established by the County Conservation District or the County Board the conservation plan shall require that:
 - 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 Grantor Not Affected. Except as specified herein, this Deed of Easement does not impose any legal or other responsibility on the Grantee, its successors or assigns. Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the subject land and all improvements erected thereon. Grantor shall continue to be solely responsible for the maintenance of the subject land and all improvements erected thereon. Grantor shall furnish the County Board and Township with satisfactory evidence of payment upon request. Grantor acknowledges that Grantee has no knowledge or notice of any hazardous waste stored on or under the subject land. Grantee'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.

Grantor, his heirs, executors, administrators, successors or assigns agree to hold harmless, indemnify and defend Grantee, its 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 Grantee. Annually, the County Board and Township, and their respective successors, assigns or designees shall each 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. Written notice of such annual inspection shall be mailed to the Grantor, his heirs, executors, administrators, successors or assigns at least ten (10) days prior to such inspection. The annual inspection of each 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 Board, Township, and the landowner, as applicable.

Grantee, its successors, assigns or designees shall also have the right to inspect the subject land at any time, without prior notice, if Grantee has reasonable cause to believe the provisions of this Deed of Easement have been or are being violated.



- 10. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantor to notify the County Board and Township prior to undertaking certain permitted activities, as provided in paragraphs 2, 3, 4, and 5, is to afford both the County Board and Township an opportunity 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 Grantor shall notify the County Board and Township in writing not less than sixty (60) days prior to the date Grantor intends 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 Board and Township to make an informed judgment as to its consistency with the purpose of this Deed of Easement.
- 10.1. Approval of County Board and Township. Where approval of the County Board and Township is required, as set forth in paragraphs 2, 3, 4, and 5, the County Board and the Township shall grant or withhold their respective approval in writing within sixty (60) days of receipt of Grantor's written request therefor. The approvals of the County Board and Township may be withheld only upon a reasonable determination by each that the action that was proposed would be inconsistent with the purpose of this Deed of Easement.
- 11. Grantee's Remedies. If any Grantee herein determines that Grantor is in violation of the terms of this Deed of Easement or that a violation is threatened, such Grantee shall give written notice to Grantor 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 Grantor fails to cure the violation within sixty (60) days after receipt of notice thereof from said Grantee, 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, Grantee 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 Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant



damage to the conservation values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee'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 Grantor agrees that Grantee's remedies at law for any violation of the terms of this Deed of Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee 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. Grantee'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 all Grantees.

- 11.1 Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Deed of Easement against Grantor, including, without limitation, costs of suit and attorney's fees and any costs of restoration necessitated by Grantor's violation of the terms of this Deed of Easement shall be borne by Grantor. If Grantor prevails in any action to enforce the terms of this Deed of Easement, Grantor's costs of suit, including, without limitation, attorney's fees, shall be borne by Grantee.
- 11.2 <u>No Waiver</u>. Any forbearance by Grantee to exercise its rights under this Deed of Easement in the event of any breach of any term of this Deed of Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Deed of Easement or of any of Grantee's rights under this Deed of Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- 11.3 <u>Waiver of Certain Defenses</u>. Grantor hereby waives any defense of laches, estoppel, or prescription.
- 11.4 <u>Acts Beyond Grantor's Control</u>. Nothing contained in this Deed of Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such cases.



- 12. <u>Access</u>. No right of access by the general public to any portion of the Property is conveyed by this Deed of Easement.
- 13. <u>Costs and Liabilities</u>. Grantor retains 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. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.
- 14. <u>Duration of Deed of Easement</u>. 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 Grantor shall apply to Grantor's heirs, executors, administrators, successors, assigns, agents, and any person, partnership, corporation or other entity claiming title under or through Grantor.
- 15. <u>Subsequent Transfers</u>. Grantor agrees 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. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantor 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. Grantor shall hold harmless, indemnify, and defend Grantee and their respective Commissioner or Board ("County", "County Board", and "Township" being hereafter collectively referred to as "Grantee") 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. <u>Applicability</u>. Every provision of this Deed of Easement applicable to Grantor shall apply to Grantor's heirs, executors, administrators, successors, assigns,



agents, and any person, partnership, corporation or other entity claiming title under or through Grantor.

18. <u>Notices</u>. 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 Grantor:

Susan C. Broomell

Nancy E. Dwyer

<u>Laurie C. Prysock</u> 102 Lakewood Drive

Kirkwood, PA 17536

To County:

Board of County Commissioners

2 North High Street, County Courthouse, 5th Floor

West Chester, PA 19380

To County Board:

Chester County Agricultural Land Preservation Board

601 Westtown Road, GSC Ste. 390, P.O. Box 2747,

West Chester, PA 19380

To Township

Board of Supervisors

Highland Township 100 Five Point Road Coatesville, PA 19320

- 19. Grantor understands and by this agreement does convey any and all development rights or density credits associated with the subject property including without limitation any right to transfer development rights and agrees that this agreement extinguishes any such right to transfer development rights.
- 20. <u>Interpretation</u>. 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 Grantee, its successors and assigns in perpetuity.

AND the Grantor, for himself, his heirs, executors, administrators, successors and assigns does 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.

GRANTORS

Witness:

I Time I Hoones

Swan Cournell (SEAL)

Die C. Hoopes

O O O O O SEAL

Diena J. Hoopen

WWW ('- P MATCH (SEAL)



ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA:

SS

COUNTY OF CHESTER:

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

Notary Public

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
Rhonda J. DeCarlo, Notary Public
West Chester Boro, Chester County
My Commission Expires Aug. 24, 2013
Member, Pennsylvania Association of Notaries

COUNTYWIDE ABST 03/29/2010 11:03A B-788

Legal Description ALPB Easement Broomell Property Page 1

All that certain parcel of land, situate in Highland Township, Chester County, Pennsylvania, being an Agricultural Land Preservation Easement, as shown on the Plan of Property owned by Susan C. Broomell, Nancy E. Dwyer, and Laurie C. Prysock prepared by Crossan-Raimato, Inc., Professional Land Surveyors dated September 29, 2009, bounded and described as follows:

Beginning at a point in at or near the centerline of Limestone Road, the said point marking a corner of the herein described easement and a corner of lands now or formerly of I. Glen Engle and Elieen J. Engle; thence leaving the said point of beginning, along or near the centerline of Limestone Road, the following four courses and distances: 1.) by a curve to the left, having a radius of 1500.00', through a central angle of 04°51'12", an arc distance of 127.06' to a point of tangency; 2.) North 22°57'55" West. 175.18' to a point of curvature; 3.) by a curve to the right, having a radius of 700.00', through a central angle of 43°20'38", an arc distance of 529.55' to a point of tangency; 4.) North 20°22'43" East 1071.28' to a point marking a corner of lands now or formerly of D. Todd Scott and Diana Moulton; thence leaving Limestone Road, along the lands now or formerly of D. Todd Scott and Diana Moulton South 31°19'33" East, 169.81' to an iron pin (found); thence continuing along the lands now or formerly of D. Todd Scott and Diana Moulton, and along lands now or formerly Tom Swift North 77°20'27" East, 179.44' to an iron pin (found) in the line of lands now or formerly of Patricia C. Gray; thence along the lands now or formerly of Patricia C. Gray and along lands now or formerly of Harry L. Griest and Mary S. Griest, South 38°55'39" East, 1213.44' to a metal post in concrete (found) marking a corner of lands now or formerly of Elisabeth Ann Kozik Demars and Christpher John Demars, and a corner of lands now or formerly of the aforementioned I. Glen Engle and Eileen J. Engle; thence along the lands now or formerly of I. Glen Engle and Eileen J. Engle South 59°27'56" West, passing over a metal post in concrete (found) at 1452.78' distant, a total distance of 1479.43' to the first mentioned point and place of beginning.

Containing within the said described metes and bounds: 31.6637 Acres of land, be the same more or less.

Subject to any other easements, rights-of-way, notes, or restrictions, of record, and/or as shown on the above referenced Plan.



