

ORDINANCE NO. 16-2012

AN ORDINANCE ACCEPTING A PERPETUAL CONSERVATION EASEMENT AND A DEED OF DEDICATION FOR ROADWAY AND OTHER PUBLIC PURPOSES DEDICATED AND CONVEYED TO THE BOROUGH OF MORRIS PLAINS ON BLOCK 185, LOT 7 IN THE BOROUGH OF MORRIS PLAINS.

WHEREAS, John Cortese and Maria Cortese ("Developer") received minor subdivision approval and variance relief from the Morris Plains Planning Board in PB-04-11 in connection with property known and designated as Block 185, Lot 7 on the Tax Map of the Borough of Morris Plains ("Property"); and

WHEREAS, as a condition of approval, the Planning Board required that the Developer provide a suitable conservation easement and dedication of the Property for roadway and other public purposes as set forth in Resolution No. 11-07 adopted by the Morris Plains Planning Board on October 17, 2011; and

WHEREAS, a deed of perpetual Conservation Easement on, over and across the Property, in accordance with the terms and conditions set forth in Resolution No. 11-7, dated March 13, 2012 was recorded on April 10, 2012 in the Morris County Clerk's Office in Book 22015, Page 1557; and

WHEREAS, a deed of dedication for Roadway and other Public purposes on, over and across the Property, in accordance with the terms and conditions set forth in Resolution No. 11-7, dated March 13, 2012 was recorded on April 10, 2012 in the Morris County Clerk's Office in Book 22015, Page 1581; and

WHEREAS, the Borough Council of the Borough of Morris Plains is desirous of accepting the said conservation easement and deed of dedication for roadway and other purposes on, over and across the Property in accordance

with the terms and conditions set forth in the aforesaid Deed of Conservation Easement and Deed of Dedication For Roadway Purposes.

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Morris Plains, they being the Governing Body thereof, as follows:

Section 1:

That the perpetual conservation easement on, over and across Lot 7 in Block 185 in the Borough of Morris Plains, Morris County, New Jersey, as set forth in a Deed recorded on April 10, 2012 in the Morris County Clerk's Office in Book 22015, Page 1557 and as described in Schedule A annexed hereto and made a part hereof, be and the same is hereby accepted as dedicated and conveyed subject to the terms and conditions as set forth in a Deed of Conservation Easement between the Grantor and the Grantee, including but not limited to the following special conditions:

1. No topsoil, sand, gravel, loam, rock, or other material shall be excavated, dredged or removed from the easement area except with the written approval of the Grantee acting through its governing body or such other body or official as the governing body may designate.

2. No buildings, structures or other improvements shall be erected or placed within the easement area and no roads, drives or trails for motorized vehicles shall be constructed or maintained within the easement area except upon roads or drives existing at the time of the approval of the application for development in connection with which this easement area is granted or approved thereafter as herein provided and with written approval of the Grantee acting through its governing body or such other body or official as the governing body may designate.

3. No dumping or placing of soil or other substances or materials and no dumping or placing of trash, waste or unsightly or offensive material for disposal or otherwise shall be permitted within the easement area except with written approval of the Grantee acting through its governing body or such other body or official as the governing body may designate.

4. No solid or liquid materials which might pollute or otherwise adversely affect the flow or quality of the water in any watercourse within or near the easement area shall be kept or stored within the easement area or placed in or discharged into any watercourse traversing or protected by the easement area.

5. No activities shall be permitted within the easement area which might be detrimental to drainage, flood control, springs, water conservation, water quantity or quality protection, erosion control, soil conservation or vegetation or scenic protection, and no other act or uses detrimental to the preservation of the easement area shall be permitted by any person, except with written approval of the Grantee acting through its governing body or such other body or official as the governing body may designate.

6. The Grantee, by its officials, employees and agents shall have the right, but not the duty, to enter upon the easement area for purposes of inspection, protection and maintenance, but this right does not evidence nor create any agreement or obligation upon the Grantee to inspect, protect or maintain the easement area. No act of the Grantee for inspection, protection or maintenance shall give rise to any obligation on the part of the Grantee for further or other inspection, protection or maintenance. In the event, however, that the lands of Grantor are damaged or disturbed by the Grantee, its officials, employees or agents in connection the exercise of rights granted hereunder, the Grantee shall within a reasonable time, restore said lands to substantially the same condition as existed prior to said damage or disturbance.

7. Although the conservation easement hereby granted and conveyed to the Grantee is created for the benefit of the general public by the protection of water and land resources, nothing herein contained shall be construed to convey to the public any right of access to or use of the easement area, and the Grantor shall, subject to the general and specific terms and conditions of this indenture, retain the exclusive right of use of the easement area. This indenture imposes no obligation on Grantor and no restriction on the use of the easement area except as specifically set forth herein, and nothing contained herein shall be construed as interfering with the right of Grantor and Grantor's successors and assigns to utilize the easement area in such manner as they may deem desirable, subject to the provisions of this indenture.

8. In addition to the foregoing, the terms and conditions of this Indenture shall preclude any use or activity prohibited by the rules and regulations of the New Jersey Department of Environmental Protection ("NJDEP") pertaining to wetlands and wetlands transition areas and any activity for which a permit or other approval is required by the NJDEP and has not been obtained, and prior approval of the Grantee shall also be required in connection with any such use or activity.

9. The terms and conditions of this Indenture are not intended to affect in any way the obligations of the Grantor, its successors and assigns, or the Grantee, its successors and assigns, to comply with any applicable federal or state statute, rule or regulation (including the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1, and the rules and regulations promulgated thereunder, N.J.A.C. 7:7A) which may control and regulate the use

of the land, or any portion of the land, which is the subject of the conservation easements hereby granted and conveyed. In the event that such obligations are more strict than the terms and conditions of this Indenture, then such obligations shall be fully met and satisfied.

10. In the event that following application by the Grantee, its successors or assigns, or otherwise, the conservation easement area conveyed hereby shall be reconfigured or revised by regulatory action taken or regulation promulgated by NJDEP, or its successor agency, pursuant to the Freshwater Wetlands Protection Act and the rules and regulations promulgated thereunder, Grantor shall provide notice of the same within 90 days and this Deed of Conservation Easement shall be amended so that the conservation area covered by this Deed of Conservation Easement shall conform to said reconfiguration or revision. Upon the failure of Grantor to notify Grantee as aforesaid, Grantee shall have the right to prepare an amended Deed of Conservation Easement, amending only the area subject to the easement and such other terms as are relevant to such reconfiguration, and Grantor shall be obligated to sign and deliver the same, which obligation may be enforced by Grantee by an action brought in a court of competent jurisdiction and upon entry of an Order or Judgment in favor of Grantee, it shall be entitled to all costs and attorney's fees incurred to enforce this right.

11. The conservation easement hereby granted and conveyed to the Grantee and all rights and obligations set forth in this Indenture shall be construed as running with the land and shall be binding upon and inure to the benefit of the Grantor and Grantee and their respective heirs, successors and assigns in title or interest in perpetuity.

Section 2:

That the perpetual dedication for roadway and other public purposes of a portion of Lot 7 in Block 185 in the Borough of Morris Plains, Morris County, New Jersey, as set forth in a Deed recorded on April 10, 2012 in the Morris County Clerk's Office in Book 22015, Page 1581 and as described in Schedule B annexed hereto and made a part hereof, be and the same is hereby accepted as dedicated and conveyed for the use of the general public, in perpetuity, for roadway purposes, including but not limited to the passage of vehicular and pedestrian traffic, together with all necessary and customary uses attendant thereto, now or hereafter existing, including the construction, maintenance, inspection and operation of curbing, sidewalks, storm drainage,

sanitary sewer and other utilities subject to the terms and conditions as set forth in a Deed of Dedication for Roadway Purposes between the Grantor and the Grantee, including but not limited to the following special conditions:

1. No sign, or signs of any kind whatsoever shall be placed, caused to be placed or allowed to be placed or maintained within the dedicated area, except for signs relating to traffic and safety that are deemed necessary by the Borough for the safe and orderly use of the dedicated area for roadway and other public purposes.

2. Grantor agrees to indemnify, defend and hold harmless the Borough from any and all claims or damages as a result of environmental contamination on the Property which occurs or is alleged to have occurred during Grantor's ownership of the Property, including but not limited to all requirements under the Industrial Site Recovery Act, P.L. 1993, Ch. 139, except where the Borough caused or contributed to the environmental contamination.

3. The within dedication and the rights created and granted hereunder shall be for the benefit of the Borough, its successors and assigns, for the public uses and purposes herein expressed.

Section 3:

If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid by Court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinances.

Section 4:

This Ordinance shall take effect after final passage and publication in accordance with law.

Introduced: 10/18/12

Adopted: 11/8/12

Frank J. Druetzler, Mayor

Lakeland Surveying, Inc.

SCHEDULE A

117. Hibernia Avenue
Rockaway, NJ 07866
Ph: 973-625-5670
Fx: 973-625-4121

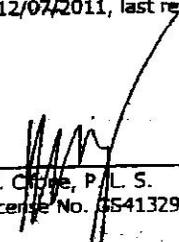
**Description of Proposed
Conservation Easement
to be Conveyed to the
The Borough of Morris Plains
County of Morris, New Jersey**

BEGINNING a point on the Northwesternly line of Lot 7.01 Block 185, said point being distant the following courses and distances from the dividing line between tax lots 6 and 7 on the Southwesterly sideline of Malapardis Road (50' ROW), thence;

- a) Leaving said sideline of Malapardis Road South 05 degrees 35 minutes 00 seconds West 156.86 feet to a point, thence;
- b) North 67 degrees 27 minutes 00 seconds West 100.00 feet to a point, thence;
- c) South 05 degrees 35 minutes 00 seconds West 37.01 feet to the point and place of beginning and running thence;
 - 1) South 31 degrees 00 minutes 17 seconds East 68.66 feet to a point, thence;
 - 2) South 15 degrees 06 minutes 44 seconds East 20.56 feet to a point, thence;
 - 3) South 04 degrees 11 minutes 47 seconds West 100.98 feet to a point, thence;
 - 4) South 45 degrees 48 minutes 59 seconds East 22.29 feet to a point, thence;
 - 5) South 40 degrees 02 minutes 37 seconds East 10.21 feet to a point, thence;
 - 6) South 22 degrees 52 minutes 09 seconds East 14.93 feet to a point, thence;
 - 7) South 10 degrees 40 minutes 18 seconds East 31.37 feet to a point, thence;
 - 8) South 00 degrees 49 minutes 39 seconds East 10.78 feet to a point, thence;
 - 9) South 09 degrees 10 minutes 29 seconds West 8.16 feet to a point, thence;
 - 10) South 19 degrees 53 minutes 00 seconds West 10.19 feet to a point, thence;
 - 11) South 30 degrees 00 minutes 48 seconds West 11.43 feet to a point, thence;
 - 12) South 50 degrees 06 minutes 47 seconds West 16.31 feet to a point, thence;
 - 13) South 66 degrees 00 minutes 53 seconds West 12.25 feet to a point, thence;
 - 14) South 82 degrees 02 minutes 05 seconds West 23.24 feet to a point, thence;
 - 15) South 29 degrees 15 minutes 00 seconds East 63.64 feet to a point, thence;
 - 16) South 15 degrees 20 minutes 39 seconds East 36.72 feet to a point, thence;
 - 17) South 04 degrees 18 minutes 25 seconds West 17.93 feet to a point, thence;
 - 18) South 25 degrees 08 minutes 58 seconds West 80.08 feet to a point, thence;
 - 19) North 62 degrees 47 minutes 00 seconds West 67.82 feet to a point, thence;
 - 20) North 05 degrees 35 minutes 00 seconds East 456.77 feet to the point and place of beginning.

Containing 29,577 S.F. +/-
Containing 0.67 Acres +/-

This description is drawn in accordance with a survey performed by Lakeland Surveying, Inc. dated 12/07/2011, last revised 01/12/12.



Marc J. Cioffe, P.L.S.
N.J. License No. 3541329

Jeffrey O. Males, P.L.S.
NJ License No. GS30087

SCHEDULE B

Lakeland Surveying, Inc.

117 Hibernia Avenue
Rockaway, NJ 07866
Ph: 973-625-5670
Fx: 973-625-4121

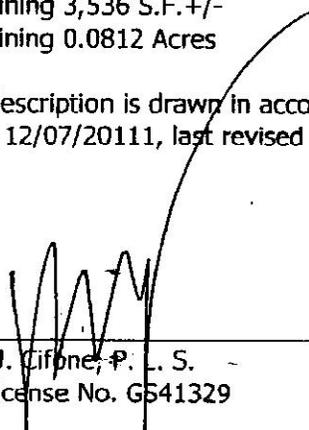
**Description of a Portion of Existing Lot 7
to be Dedicated For Road Purposes
The Borough of Morris Plains
County of Morris, New Jersey**

BEGINNING at a point on the Southwesterly sideline of Malapardis Road (50' ROW), said point being distant 220.91 feet from the intersection of said sideline of Malapardis Road and the Northwesterly sideline of School View Drive (50' ROW) and running thence;

- 1) Along said sideline of Malapardis Road North 63 degrees 27 minutes 00 seconds West 130.75 feet to a point, thence;
- 2) Continuing on said sideline of Malapardis Road North 67 degrees 27 minutes 00 seconds West 7.47 feet to a point, thence;
- 3) Leaving said sidelines of Malapardis Road North 05 degrees 35 minutes 00 seconds East 26.14 feet to a point on the centerline of Malapardis Road, thence;
- 4) Along said centerline of Malapardis Road South 67 degrees 27 minutes 00 seconds East 15.97 feet to a point, thence;
- 5) Continuing on said centerline of Malapardis Road South 63 degrees 27 minutes 00 seconds East 128.70 feet to a point, thence;
- 6) Leaving said centerline of Malapardis Road South 19 degrees 53 minutes 00 seconds West 25.18 feet to the point and place of beginning.

Containing 3,536 S.F. +/-
Containing 0.0812 Acres

This description is drawn in accordance with a survey performed by Lakeland Surveying, Inc. dated 12/07/2011, last revised 01/12/12



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