

DEED OF CONSERVATION RESTRICTION

NEW JERSEY CONSERVATION FOUNDATION

Grantor

TO

**THE STATE OF NEW JERSEY,
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Grantee

Dated: _____

Record and return to:

Department of Environmental Protection
Mail Code 501-01
Green Acres Program
P.O. Box 420
Trenton, NJ 08625-0420

DEED OF CONSERVATION RESTRICTION

THIS DEED OF CONSERVATION RESTRICTION, made this _____ day of _____, 201____, is between NEW JERSEY CONSERVATION FOUNDATION (“Grantor”), having a principal place of business at 170 Longview Road, Far Hills, New Jersey 07931 and THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, its successors and assigns, having its principal place of business at 401 East State Street, Trenton, New Jersey 08625, (“Grantee”).

Witnesseth:

Whereas, Wyeth Holdings LLC (hereinafter, “Wyeth”) has executed a Natural Resource Damages Settlement Agreement, dated _____, (“Settlement Agreement”) with the New Jersey Department of Environmental Protection, the Commissioner of the New Jersey Department of Environmental Protection, and the Administrator of the New Jersey Spill Compensation Fund to address discharges to groundwater at the American Cyanamid Superfund Site, encompassing approximately 435 acres, located in Bridgewater Township and Bound Brook Borough; and

Whereas, as a condition of the Settlement Agreement, Wyeth agreed to facilitate the acquisition of, and grant a conservation restriction on, certain properties with a collective groundwater recharge value that will, upon their acquisition and preservation, offset and compensate for the injuries to natural resources addressed in the Settlement Agreement; and

Whereas, pursuant to the Settlement Agreement, Wyeth entered into a separate agreement with Grantor pursuant to which Wyeth agreed to provide acquisition funding to Grantor and Grantor agreed to use such funding to acquire said properties and convey a conservation restriction thereon to Grantee; and

Whereas, Grantor is the sole owner in fee simple of real property that consists of approximately ____ acres of land, designated as Block _____, Lot _____ on the tax maps of the [Township, Borough, or City] of _____, County of _____, State of New Jersey, and more particularly described in a metes and bounds description of the property attached to and made a part here of as Schedule A (the “Property”); and

Whereas, the Property has resource qualities that provide natural resource services to the benefit of the general public in the form of groundwater recharge value (“Conservation Values”); and

Whereas, this Deed of Conservation Restriction is entered into in accordance with the New Jersey Conservation and Historic Preservation Restriction Act, N.J.A.C. 13:8B-1 et seq., and shall be binding upon the Grantor its successors and assigns and upon the Grantee, its

successors and assigns.

Now therefore, and in consideration for execution of the Settlement Agreement, Grantor does hereby convey to Grantee, a Deed of Conservation Restriction in perpetuity, pursuant to the laws of New Jersey, for the exclusive purpose of assuring that the Conservation Values will be conserved and maintained forever and that uses of the Property that are inconsistent with the Conservation Values are prohibited and will be prevented or corrected.

I. Purpose. The purpose of this Deed of Conservation Restriction is to protect and maintain the Conservation Values of the Property forever, prevent any use of the Property that will impair or interfere with the Conservation Values, and, subject to the limitations set forth herein, allow the Property to be used for recreation and conservation purposes, as defined by N.J.S.A. 13:8C-3 and N.J.A.C. 7:36, as may be amended and supplemented.

II. Prohibited Acts. Any activity on or use of the Property inconsistent with the purpose of this Deed of Conservation Restriction is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- A. Subdivision.** Any subdivision of the Property is expressly prohibited.
- B. Structures.** Construction on the Property of new structures, temporary or permanent, including, but not limited to, billboards, cellular phone towers, golf courses, airstrips, solar fields and helicopter pads is expressly prohibited, except for trail-related structures as permitted in Paragraph 3A below.
- C. Resource Extraction.** No topsoil, sand, gravel, loam, rock, or other minerals shall be deposited on, excavated, dredged, or removed from, the Property, except as necessary to establish and maintain public access trails, and to carry out agricultural activities expressly permitted below. No subsurface mining, drilling, directional drilling, or fracking for petroleum, natural gas or any other material may occur on the Property.
- D. Roads, Driveways and Impervious Cover.** No portion of the Property shall be covered with concrete, asphalt, oiled stone, or any other impervious paving material. No new roads or driveways may be constructed on the property. Notwithstanding the foregoing, with Grantee's prior written consent, which consent shall be in Grantee's sole discretion, a parking area may be constructed to facilitate public access to the Property.
- E. Trash.** No trash, waste or fill material shall be dumped, stored or placed on the Property.

F. Natural resource protection. No activity shall be permitted on the Property that would be detrimental to the Conservation Values, including, but not limited to, drainage, flood control, water conservation, erosion control, or soil conservation. Further, except as expressly provided in Paragraph III below, the destruction of plant life which would alter the existing pattern of vegetation, the use of fertilizers, herbicides or pesticides and/or the removal or clearing of live vegetation or trees, other than routine maintenance and mowing, shall be prohibited on the Property unless approved by Grantee, in writing, for recreation and conservation purposes, habitat enhancement, invasive species removal or to prevent a safety hazard.

III. Rights of Grantor. The ownership rights of Grantor extend to Grantor's personal representatives, heirs, successors, and assigns, and include, but are not limited to, the right to sell or otherwise transfer the Property and the right to use the property for recreation and conservation purposes, subject to the prohibitions set forth in Paragraph II.

A. Trail Improvements. To support public access to and use of the Property, Grantor may: (1) maintain existing trails and install and maintain additional trails, provided that no trail shall be improved with macadam, gravel, paving stones or other impervious or semi-pervious material without the prior written approval of Grantee, which shall be in Grantee's sole discretion; (2) construct and maintain minor rustic boundary markers, trail markers, and other trail-related improvements reasonably necessary to their safe enjoyment or the control of runoff and trail-related damage, such as steps, bog bridges, erosion bars and railings, small unlighted informational and interpretive signs, provided that they shall be constructed of rustic natural colored materials that blend in with the natural surroundings and complement the natural and scenic features of the landscape; and (3) install barriers and low fences where necessary to prevent use or access by motor vehicles or to protect fragile natural resources.

B. Maintenance of Open Fields. Grantor shall have the right to keep the existing field and meadow areas on the Property as open meadows and fields rather than allowing them to revert to successional woodland.

C. Control of Pest and Invasive Species. Grantor may, without prior consent of Grantee, control non-native invasive species of vegetation and vegetation commonly considered to be pest species by physical means or through responsible application of herbicides and biological control measures.

D. Removal of Hazardous Vegetation. Grantor may, without prior consent of Grantee, trim or remove dead, fallen, diseased or infected trees, tree limbs or plant material if they: (1) obstruct passage on paths, trails, roads or drives; (2) pose an imminent hazard to the safety of persons using the Property, or (3) present a risk of infection

to healthy non-invasive trees or plants.

- E. Existing Agricultural Lease.** The lessee under the existing five-year agricultural lease entered into prior to the date of acquisition of the Property shall have the right to grow crops for food production within the fields currently under cultivation for the duration of the term of said lease. Upon expiration of the five-year lease term, all agricultural use of the Property shall cease. Agricultural activities under the said lease shall be consistent with the following: (1) they will not include sod, nurseries or other non-food crops, nor use of greenhouses or similar structures; and (2) application of fertilizers (including animal manure) and biocides will be in accordance with best organic management practices as recommended from time to time and in compliance with all environmental laws and governmental recommendations concerning the proper use and application of fertilizers and biocides to minimize pollution of aquifers, lakes, estuaries, watercourses and other water bodies. In determining consistency with best organic management practices, the parties shall apply such organic standards as are established at the time by the United States Department of Agriculture or, if same are no longer in effect, applicable recommendations, if any, of the New Jersey Department of Agricultural or the agricultural extension service of the county in which the property is located. Nothing herein shall be construed to permit structures for agricultural use.

IV. Right of First Refusal. Grantor and its successors and assigns agree to give Grantee a Right of First Refusal to purchase the Property, which right shall be of perpetual duration. The conditions of this right shall be such that whenever Grantor receives a written offer from a person or persons to purchase all or any part of the Property, and Grantor accepts the offer subject to this Right of First Refusal, Grantor shall notify Grantee via certified mail of the offer. Grantee may elect to purchase the Property at the offered price and upon such other terms and conditions not less favorable to Grantor than those contained in the conditionally accepted offer. Grantee shall have 90 calendar days to elect to purchase the Property and will notify Grantor by certified mail of such an election. If Grantee shall fail to notify Grantor within such 90-day period of its exercise of the Right of First Refusal, Grantor will be free to sell the Property to a third party on the terms set forth in the offer. The Right of First Refusal shall apply to all offers for interests in the Property. This Right of First Refusal shall not apply to any proposed sale of the Property to any federal, state or local governmental entity.

V. Rights of Grantee. To accomplish the conservation purposes of this Deed of Conservation Restriction the following rights are conveyed to Grantee:

- A. Enforcement.** Grantee has the right to preserve and protect the Conservation Values of the Property and enforce the terms, conditions of this Deed of Conservation Restriction.

- B. Inspection.** Grantee and its agents shall be permitted access to, and have the right to enter upon, the Property for the purposes of inspection in order to enforce and assure compliance with the terms and conditions of this Deed of Conservation Restriction.

VI. Responsibilities of Grantor and Grantee not affected. Other than as specified herein, this Deed of Conservation Restriction is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing obligations of Grantor as owner of the Property. This shall apply to:

- A. Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property.
- B. Upkeep and Maintenance.** Grantor, as owner of the Property, shall continue to be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property. Nothing in this Deed of Conservation Restriction shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which it had no control.
- C. Liability and Indemnification.** Grantor shall hold harmless, indemnify, and defend Grantee, its employees, agents, and contractors, and their successors and assigns from and against all liabilities, penalties, costs, losses, damages, expenses, or claims, including, without limitation, attorneys fees, arising from or in any way connected with 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 or intentional acts of any of the indemnified parties. Grantor's agreement to hold harmless and indemnify shall not affect any statutory protections available to Grantor under the Landowner's Liability Act, N.J.S.A 2A:42A-2, et seq.

VII. Remedies. Grantee shall have the right to prevent and correct violations of the terms of this Deed of Conservation Restriction. Enforcement of the terms of this Deed of Conservation Restriction shall be at the discretion of Grantee and any failure on behalf by Grantee to exercise its rights hereunder shall not be deemed or construed to be a waiver of Grantee of those rights. This shall be true regardless of the number of violations of the terms of this Deed of Conservation Restriction by Grantor that occur or the length of time it remains unenforced. If Grantee finds what it believes is a violation of the terms of this Deed of Conservation Restriction, it may without limitation as to other available legal recourse, at its discretion take any of the following action:

- A. Notice of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Deed of Conservation Restriction has occurred or is threatened, Grantee may give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation in accordance with a plan approved by Grantee.
- B. Injunctive Relief.** If Grantor fails to cure the violation within 45 days after receipt of notice from Grantee, or under circumstances where the violation cannot reasonably be cured with a 45-day period, fails to begin curing such violation, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Deed of Conservation Restriction, to enjoin ex parte the violation by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to such injury. Grantor acknowledges that any actual or threatened failure to comply or cure will cause irreparable harm to Grantee and that money damages will not provide an adequate remedy.
- C. Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Deed of Conservation Restriction or injury to any Conservation Values protected by this Deed of Conservation Restriction, including, without limitation, damages for the loss of Conservation Values. Without limiting Grantors' liability, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- D. Costs of Enforcement.** In any case where a court finds that a violation has occurred, costs incurred by Grantee in enforcing the terms of this Deed of Conservation Restriction against Grantor, including, without limitation, costs and expenses of suit, and attorney's fees, and any costs of restoration necessitated by Grantor's violation of the Deed of Conservation Restriction shall be borne by Grantor.

VIII. Development Rights. Grantor hereby grants to Grantee all development rights or credits that are now or hereafter allocated to, implied, reserved or inherent in the Property, other than those associated with recreation and conservation use reserved herein, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield on the Property or any other property.

IX. Grantor's Representations.

- A. Covenant as to Grantor's Acts.** Grantor promises that, except for this Deed of Conservation Restriction, Grantor has done no act to encumber the Property. This

promise is called a "covenant as to grantor's acts" (N.J.S.A. 46:4-6). This promise means that the Grantor has not allowed anyone else to obtain any legal rights that affect the Property (such as by making a mortgage or allowing a judgment to be entered against the Grantor).

B. Hazardous Substances. Grantor warrants that it has no actual knowledge of the presence on the Property of a hazardous substance, as that term is defined at N.J.S.A. 58:10-23.11b. Grantor hereby promises to defend and indemnify Grantee against all litigation, claims, demands, penalties, and damages, arising from or connected with any discharge of hazardous substances or violation of federal, state, or local environmental laws.

X. Amendment of Deed of Conservation Restriction. This Deed of Conservation Restriction may be amended only with the written consent of Grantee. Any such amendment shall be consistent with the purposes of this Deed of Conservation Restriction and with the laws of the State of New Jersey and any regulations promulgated pursuant to those laws including. Amendments may require, where applicable, approval by NJDEP Commissioner and the State House Commission pursuant to N.J.S.A. 13:8C-1 et seq. and N.J.A.C. 7:36 and/or approval by the NJDEP Commissioner under the New Jersey Conservation and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 et seq.

XI. Interpretation. This Deed of Conservation Restriction shall be interpreted under the laws of the State of New Jersey, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

XII. Perpetual Duration. This Deed of Conservation Restriction shall be a servitude running with the land in perpetuity. Every provision of this Deed of Conservation Restriction that applies to Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear. Grantor agrees that the terms, conditions, restrictions and purposes of this Deed of Conservation Restriction shall be inserted in any subsequent deed, lease, sub-lease or other legal instrument by which Grantor divests itself of any interest in the Property.

XIII. Notices. Any notices required by this Deed of Conservation Restriction shall be in writing and shall be personally delivered or sent by first class mail, to Grantor, Grantee at the following addresses, unless a party has been notified of a change of address:

To Grantor:

New Jersey Conservation Foundation
170 Longview Road
Far Hills, NJ 07931

To Grantee:

New Jersey Dept. of Environmental Protection
C/O Chief, Office of Natural Resource Restoration
PO Box 420
Mail Code 501-01
501 East State Street
Trenton, NJ 08625

XVI. Miscellaneous.

- A.** The laws of the State of New Jersey shall govern the interpretation and performance of this Deed of Conservation Restriction.
- B.** If any provision of this Deed of Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Deed of Conservation Restriction, 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.** This Deed of Conservation Restriction sets forth the entire agreement of the parties and supersedes all prior discussions, negotiations, understandings or agreements relating to the Deed of Conservation Restriction, all of which are merged herein. No alteration or variation of this Deed of Conservation Restriction shall be valid or binding unless contained in writing executed and recorded by the parties hereto.
- D.** Should there be more than one Grantor, the obligations imposed by this Deed of Conservation Restriction upon each Grantor shall be joint and several.
- E.** The captions in this Deed of Conservation Restriction have been inserted solely for convenience of reference and are not a part of this Deed of Conservation Restriction and shall have no effect upon construction or interpretation.
- F.** Execution of this Deed of Conservation Restriction does not constitute a waiver of the rights or ownership interest of the State of New Jersey in public trust property.
- G.** This Deed of Conservation Restriction shall be construed as if it were drafted by both parties. Both parties waive all statutory and common law presumptions which might otherwise serve to have the instrument construed in favor of, or against, either party as the drafter hereof.

- H. Throughout this Deed, the singular shall include the plural, and the masculine shall include the feminine unless the text indicates otherwise.
- I. This Deed of Conservation Restriction may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same instrument.

[Signature follows on next page.]

DRAFT

In witness whereof, the Grantor has executed this instrument on the day and year first written above.

NEW JERSEY CONSERVATION FOUNDATION

By: _____
Name:
Title:

STATE OF NEW JERSEY)
 ss.
COUNTY OF)

On _____, _____ personally appeared before me who I am satisfied is the person named in and who executed this Instrument and they acknowledged that they signed, sealed and delivered the same as their act and deed, for the uses and purposes therein expressed, and that the full and actual consideration paid or to be paid for this Deed of Conservation Restriction as such consideration is defined in P.L. 1969, c49 is reflected in the Natural Resource Damages Settlement Agreement, dated _____, referenced above.

Attachments:
Schedule A – Metes and Bounds Description and reduced survey
Schedule B – Present Condition Report

SCHEDULE A –

Metes and Bounds Description of the Property

Metes and bounds description of the property based upon a survey prepared in accordance with “New Jersey Green Acres, Minimum Specifications for Land Surveys and Property Descriptions,” which is available at: <http://www.state.nj.us/dep/greenacres>;

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SCHEDULE B –

Description of the Property

1. Property location information, including:

(l) Street address, municipality and county; and

(i) Municipal tax block and lot numbers;

2. Property ownership information:

(i) Name and address of each owner of the property;

(ii) Description of any existing legal easements or other encumbrances, including how each easement or encumbrance will, or will not, inhibit implementation of or compliance with the compensatory restoration remedial action work plan the Department has approved;

3. Property description information, including:

(i) Size, in acres;

(ii) A preliminary assessment report for the property prepared pursuant to N.J.A.C. 7:26E-3.13, including, without limitation, an aerial photographic history of the property;

(iii) Land use history of the property and within a 1,000 feet radius of the property, including a map and a written description and location of any past or present utility, building, road, or other improvement on the property;

(iv) Contemporary digital photographs of the property;

(v) Geographical information system maps compatible with the "New Jersey Department of Environmental Protection Mapping the Present to Protect New Jersey's Future: Mapping and Digital Data Standards," in N.J.A.C. 7:1D, Appendix A. For additional guidance see the most recent version of the Department's "Guidance for the Submission and Use of Data in GIS Compatible Formats Pursuant to Technical Requirements for Site Remediation" at <http://www.state.nj.us/dep/srp/regs/techgis/techgis05.htm>, that;

(A) Are on 8.5 inch by 11 inch paper (using multiple sheets if necessary), scaled at one inch to 200 feet or less, and clean, clear, and legible;

(B) Include a bar scale, a north arrow, a legend, the applicable Site Remediation Program

Interest name and Site Remediation Program Interest number, the outline of the municipal tax blocks and lots on which the property is located, physical structures on the property, including buildings, roads, parking lots, pavement, and other improvements, surface water and wetlands located within the boundaries of the property and within one-half mile of the property, streets and roads, and their names, all ground water recharge rates for the property, known contaminated sites within one-half mile of the property, open space, public property, other preserved property within one-half mile of the property, and the date prepared;

(C) A description of the land use on the proposed property and in the surrounding area;
and

(D) A topographic map that shows the location of the land proposed for transfer and or preservation.

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