

MANAGEMENT and USE AGREEMENT
between
STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
and
TOWNSHIP OF SOUTH BRUNSWICK

THIS AGREEMENT is made and executed on this 10th day of December, 2004, by and between THE STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION with its principal office at 501 East State Street, Trenton, New Jersey 08625 ("the Department"), and the TOWNSHIP OF SOUTH BRUNSWICK, a municipal corporation organized and existing under the laws of the State of New Jersey with offices at 540 Ridge Road, P.O. Box 190, Monmouth Junction, New Jersey 08852 (the "Township"). Collectively, the Department and the Township shall hereinafter be referred to as "the Owners".

WHEREAS, the Department and the Township are or concurrent with this Agreement will be co-owners, as tenants in common, of property known as Block 99, part of Lot 3.011 and part of Lot 7.01, Block 108, Lots 12-18 and Block 109, Lots 13-18 located in South Brunswick Township, Middlesex County, consisting of approximately 52.9 acres as depicted on the attached tax map at Schedule A, hereinafter referred to as the "Property"; and

WHEREAS, the Owners recognize that the Property contains significant natural resources and man-made features of recognized historic and natural resources value as the Property is located within the D&R Canal State Park as well as the State Princeton Nurseries Historic District and adjacent to other significant historic Federal and State designations, including the National Recreation Trail System, the D&R Canal Historic District, the Camden and Amboy Railroad Branchville District; and,

WHEREAS, the Owners agree that the Property will serve as a potential interpretive outdoor educational, horticultural and historic preservation center and a historic landscape greenway/passive recreational trail corridor between the D&R Canal State Park, the Cook Natural Preserve, Middlesex County parkland and South Brunswick Township parkland; and,

WHEREAS, the Division of Parks and Forestry within the Department has accepted assignment of the Property as part of the D&R Canal State Park; and

WHEREAS, the Owners are interested in preserving the Property and are committed to managing, maintaining and preserving the natural and historic resources of the Property for the purposes set forth in this Agreement; and,

WHEREAS, the Owners wish to formalize their relationship and set forth the rights and obligations of each party concerning the operation, management, monitoring and maintenance of the Property;

NOW, THEREFORE, the parties mutually covenant and agree as follows:

I. DESCRIPTION OF PROPERTY. The Property subject to this Agreement is described as Block 99, part of Lot 3.011, part of Lot 7.01, Block 108, Lots 12-18, and Block 109, Lots 13-18 consisting of approximately 52.9 acres located in South Brunswick Township, Middlesex County and is more specifically described in Schedules A & B.

II. MANAGEMENT. During the term of this Agreement, the Township agrees to manage the Property in accordance with a Management Plan developed as described in Paragraph VII. The Township agrees to perform all administration, management, maintenance and monitoring of the Property that is necessary or appropriate. The Owners agree to consult with each other and to cooperate in the management of the Property. No portion of the Property may be leased except as provided in the Management Plan described in Paragraph VII. The Township shall not execute any leases without prior written approval by the Department.

III. CONSIDERATION. The consideration for this Agreement is the mutual promises contained herein and the right of the Township to manage and protect the Property in accordance with this Agreement. The sufficiency of the consideration is hereby acknowledged by the parties.

IV. TERM OF AGREEMENT. The term of this Agreement shall be for 20 years, commencing on the date of its execution. The Owners may agree to renew the Agreement and agree to meet prior to the termination to determine the terms and conditions of a new or extended Agreement.

V. USE OF PROPERTY. As required by Green Acres regulations, the use of the Property shall be limited to recreation and conservation purposes as defined by the Green Acres and Department statutes and regulations. The Owners agree that the Property shall be managed for passive recreation, historic preservation, nature preserve purposes as well as historic agricultural and horticultural activities surrounding the use of the structures on the Property (ie., an interpretive outdoor educational, horticultural and historic preservation center and a historic landscape greenway/passive recreational trail corridor). Permitted uses shall include

hiking, birding, photography, nature walks as well as uses related to historic preservation and horticultural purposes and associated activities pertaining thereto, such that any such use would not be a detriment to the State Princeton Nurseries Historic District designation. Prohibited uses by the general public shall include motorized vehicles (snowmobiles, ATV's, dirt bikes, vehicles), hunting and overnight use and such other uses as may be established by the Township by ordinance subject to the approval of the Department.

VI. ENFORCEMENT. The Township shall develop ordinances, which shall not be inconsistent with the current State Park Service rules and regulations, regarding the uses permitted on the Property. The Township will conduct law enforcement patrols in conjunction with these ordinances.

VII. MANAGEMENT PLAN. The Owners shall, prior to the date of conveyance of title from Wm. Flemer's Sons, Inc. to the Owners, develop an Interim Management Plan for the general operation and maintenance of the Property, attached as Schedule C.

Endowment Funds

The Owners agree that an Endowment Committee is hereby established which shall be made up of one representative each from the Township of South Brunswick, the Department's Division of Parks and Forestry and the Department's Historic Preservation Office. Its first order of business shall be to approve Bylaws for the conduct of the Committee.

The Endowment fund, currently held by Wilentz, Goldman & Spitzer, P.A., pursuant to the Donation Fund Escrow Agreement, shall be deposited into a trust account of the Township of South Brunswick, upon adoption of an ordinance, subject to approval of the Department and the Township, creating an advisory commission to oversee the Property.

This Committee shall have exclusive authority to direct the use of the Endowment fund, by unanimous vote, including but not limited to those funds specifically donated by the Wm. Flemer's Sons, Inc. at the time of conveyance of the Property to further the outdoor, educational, interpretive and historic preservation purposes of said Property and additional adjacent property to be donated by the Trustees of Princeton University. Said endowment funds shall be used only for the implementation and execution of the Management Plan (for example the rehabilitation of the main Propagation House including the chimney stack and eight (8) greenhouses and the reutilization of the warehouses for the purposes set forth in this agreement). Said endowment funds shall not be used for the creation of said Management Plan or any component thereof, including, but not limited to, administrative and operating costs relating to the management of these structures nor may these funds be used for demolition of any structures.

The Owners agree that the two Warehouses shall not be used in an interim period for storage purposes.

Interim Management Plan

A. The Interim Management Plan shall include:

1. A statement of the goals and objectives in the improvement, policing, and operation of the Property;
2. A description and implementation schedule of the maintenance and improvements to be undertaken by the Owners;
3. A description of potential educational, recreational, cultural and interpretive programs to be offered to the public and a schedule of when potential interpretive programs will be offered (if available).
4. provide that the Township shall not execute any leases or special use permits pertaining to the Property and the use of the Structures without prior written approval by the Department, and that any leases may be subject to procedural requirements at the State level, including the Department and the State House Commission approval process. The Department agrees that it shall not unreasonably withhold or delay approval.

The Owners agree to meet at least once every six (6) months to review operations and potential programs under the approved Interim Management Plan.

Management Plan

The Owners agree that a Management Plan shall be developed by the Township within one (1) calendar year from the date of signing of this Management and Use Agreement which shall cover the first five (5) year period during the Term of this Agreement. Said Management Plan shall define maintenance, access, security, and other activities during the first five (5) year period of this Agreement. The Management Plan shall include, but not be limited to:

- (i) a statement of goals and objectives in the development and implementation of educational, cultural, recreational and interpretive programs, projects and activities to encourage public awareness and understanding of the historic significance of the Property;
- (ii) a description of the educational, cultural, recreational and interpretive

programs, projects and activities to be developed and offered to the public;

- (iii) a description and schedule for initiation and completion of maintenance, preservation, restoration and improvement projects proposed to be undertaken;
- (iv) fund raising initiatives;
- (v) financial management and internal control systems established to meet the terms and conditions of this Agreement; and
- (vi). provide that the Township shall not execute any leases or special use permits pertaining to the Property and the use of the Structures without prior written approval by the Department, and that any leases may be subject to procedural requirements at the State level, including the Department and the State House Commission approval process. The Department agrees that it shall not unreasonably withhold or delay approval.

The Township shall be responsible for the development and circulation of the Management Plan for the Department's input and approval. Prior to expiration of the fourth year of the first five (5) year period, and each succeeding five (5) year period during the Term of this Agreement, the Owners shall develop the Management Plan for the next five (5) year period.

The Owners agree to meet at least once every six (6) months to review operations and potential programs under the approved Management Plan.

As part of this Management and Use Agreement and the Management Plan, the Owners acknowledge that the following structures are to remain on the Property based on the specific terms and conditions further described below: two (2) Warehouse Buildings, the main Propagation House including the Chimney Stack and eight (8) Greenhouse Buildings, as shown on the attached map at Schedule B. The Management Plan shall incorporate the following terms and conditions with regard to the future disposition and use of these structures:

1. Beginning from the date of this Agreement, the Township will have a period of five (5) years to develop a "Use Plan," (Development Period) as a subset of the Management Plan, for the structures on the Property as an interpretive outdoor, horticultural, natural resources educational and historic preservation center with the mutual understanding that these structures will be developed for the purposes set forth in this Agreement.

a) At the end of the Development Period, the Township must have in place, as a component of the Use Plan, a plan for the rehabilitation and restoration of the Propagation House, Chimney Stack and eight (8) Greenhouse Buildings. Once this component of the Use Plan has been developed and approved by the Department, the Township will have an additional period of five (5) years to implement the rehabilitation and restoration of the Propagation House, Chimney Stack and eight (8) Greenhouse Buildings (Implementation Period). At no time shall the Propagation House, Chimney Stack and eight (8) Greenhouse Buildings be demolished except upon the written agreement between the Department and the Township.

b) At the end of the Development Period, if the Township does not have in place, as another component of the Use Plan, a plan for the rehabilitation and restoration of the Warehouse Buildings, it is agreed that the Township will thereafter have one (1) year to have the Warehouse Buildings demolished and properly removed offsite. The Township agrees to regrade and plant seed on the Property where the Warehouse Buildings have been removed.

c) if a plan for the rehabilitation and restoration of the Warehouse Buildings has been developed and approved by the Department, the Township will have an additional period of five (5) years to implement the rehabilitation and restoration of the Warehouse Buildings (Implementation Period).

d) At the end of the Implementation Period if the Township has not implemented the plan for the rehabilitation and restoration of the Warehouse Buildings, it is agreed that the Township will thereafter have one (1) year to have the Warehouse Buildings demolished and properly removed offsite. The Township agrees to regrade and plant seed on the Property where the Warehouse Buildings have been removed.

As approved, the Management Plan shall become a part of this Agreement by reference and the Owners shall not modify or deviate from said approved Plan without first obtaining the express written approval thereof by each of the Owners. Nothing herein shall prohibit the Owners from agreeing to a Management Plan for a term in excess of five (5) years if same would be mutually convenient to the Owners.

VIII. ANNUAL REPORTING. The Township agrees to furnish the Department with an annual summary of activities related to the use and management of the Property. This summary shall be provided on or before the first day of October of each year during the term of this Agreement, along with copies of all documents, including special use permits or leases, if any, relating to the use or management of the Property.

IX. POSTING. The Owners hereto agree to erect and maintain a permanent sign on the Property identifying Wm. Flemer's Sons, Inc. as former owner, the Department and the Township as the owners, and the Township as the manager of the Property. The language and layout of such sign shall be developed by the Township and approved in advance by the Department. The Department's State Park Service rules and regulations sign will be posted on the Property.

a) Additional Signage. The Township has the right to place signs in and upon the Warehouse Buildings identifying them as the "Mapleton Preserve at South Brunswick", subject first to the review and approval by the Department of the design and size of such signs being proposed by the Township and that such signs shall have "NJDEP Delaware and Raritan Canal State Park" identified on such signs.

X. ASSIGNMENT. This Agreement shall not be assigned by any of the Owners hereto without the prior written consent of the other Owner.

XI. INDEMNIFICATION. The Township shall hold harmless, indemnify and defend the Department and the State of New Jersey and its members, directors, officers, employees, agents, and contractors, and their successors and assigns from and against all liabilities, penalties, costs, losses, damages, expenses or claims, including, without limitation, reasonable 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 wrongful act of any of the indemnified parties.

The Township's agreement to hold harmless and indemnify the Department shall not affect the statutory protections available to the Township under the Landowner's Liability Act, NJSA 2A:42A-2, et seq. or the New Jersey Tort Claims Act, NJSA 59:1-1, et seq.

XII. HAZARDOUS SUBSTANCES. The parties agree that they shall not generate, store, use or dispose on the Property any hazardous materials or oil, including, without

limitation, any materials which are toxic, explosive, corrosive, flammable, or otherwise hazardous to health.

Use or storage of products associated with the reasonable use of the Property (ie., cleaning supplies, agricultural products, etc) are excluded.

XIII. TERMINATION. The Township or the Department shall have the right to terminate this Agreement for cause upon ninety (90) days written notice served upon the Owners by Certified Mail, Return Receipt Requested. Termination of this Agreement by any Owner as herein provided shall not release or discharge any obligation or liability owed to the other party under the terms and conditions of this Agreement as of the date of such termination. "Cause" shall be defined as a breach of the obligations contained herein.

XIV. NOTICE. All notices, reports, statements, requests, or authorizations required to be given hereunder shall be personally delivered or sent by first class mail to the Owners at the following addresses, unless a party has been notified of a change of address:

To Township: Township Manager
Township of South Brunswick
540 Ridge Road
PO Box 190
Monmouth Junction, N.J. 08852

To Department: New Jersey Dept. of Environmental Protection
Natural and Historic Resources
501 East State Street
PO Box 404
Trenton, NJ 08625
Attn: Division of Parks and Forestry and
Historic Preservation Office

XV. BINDING EFFECT. All of the terms, conditions, and covenants to be observed and performed by the parties shall be applicable to and binding upon their several successors and assigns, as the case may be.

XVI. SEVERABILITY/WAIVER. All agreements and covenants contained herein are severable, and in the event any of them shall be held to be invalid by any court of competent jurisdiction, this Agreement shall be interpreted as if such invalid

agreements or covenants were not contained herein. Should one or more covenants or conditions be waived by either party, such waiver shall not be deemed to waive or render unnecessary the consent or approval of the waiving party to or of any subsequent similar act by the other party.

XVII. CHOICE OF LAW. This Agreement is being executed and is intended to be performed in the State of New Jersey and shall be governed in all respects by the laws of that State.

XVIII. APPROVALS. Any reviews and/or approvals requested by a party shall not unreasonably withheld by the other party.

IN WITNESS WHEREOF, the parties to this Agreement have subscribed their names hereto on the day and year above first written.

TOWNSHIP OF SOUTH BRUNSWICK

By: Frank Gambatese
Frank Gambatese, Mayor

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: John S. Watson, Jr.
John S. Watson, Jr.
Assistant Commissioner
Natural and Historic Resources

Approved as to Form by:

Randall L. Pease
Randall L. Pease
Deputy Attorney General
State of New Jersey

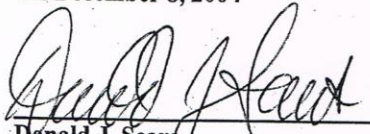
Schedule A – Metes and Bounds Description, Reduced Survey
Schedule B – Map showing structures on Property
Schedule C – Management Plan

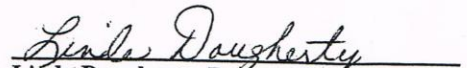
STATE OF NEW JERSEY:
SS
COUNTY OF MIDDLESEX:

I CERTIFY that on December 8, 2004 LINDA DOUGHERTY personally came before me and she acknowledged under oath, to my satisfaction, that:

- (a) she is the Township Deputy Clerk of the Township of South Brunswick, the municipal corporation named in this document;
- (b) she is the attesting witness to the signing of this document by Frank Gambatese who is the Mayor of the Township of South Brunswick;
- (c) this document was signed and delivered by the Township of South Brunswick as its voluntary act duly authorized by a proper resolution of the Township Council;
- (d) she knows the proper seal of the Township of South Brunswick which was affixed to this document; and
- (e) she signed this proof to attest to the truth of these facts.

Signed and sworn to before me
On December 8, 2004


Donald J. Sears
An Attorney at Law
In the State of New Jersey


Linda Dougherty, Deputy Township Clerk