

**RESTATED AND AMENDED DECLARATION OF COVENANTS AND
RESTRICTIONS (11b)
(LANDFILL)**

THIS RESTATED AND AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS (the "Declaration of Covenants and Restrictions"), is made on the ____ day of _____, 2010 by the TOWNSHIP OF STAFFORD, a body politic with its municipal office located at 260 East Bay Avenue, Manahawkin, New Jersey ("GRANTOR"), and is intended to amend, supersede and replace the Declaration Of Covenants And Restrictions (11b)(Landfill), dated December 7, 2006, and recorded in the Office of the Ocean County Clerk on December 11, 2006, at Deed Book 13446, Page 0118.

WITNESSETH:

WHEREAS, GRANTOR is the owner of Block 25, Lot 39 (and formerly known, as Block 25, Lot 93; and Block 13, Lots 22.01 & 68), as designated on the Stafford Township Tax Map ("the Landfill Property") and depicted on the Lot Consolidation-Subdivision Plan prepared for The Stafford Business park by Thomas J. Ertle & Associates dated June 21, 2005, last revised on November 27, 2006, and filed in compliance with all provisions of the New Jersey Map Filing Law, N.J.S.A. 46:23-9.9, et. seq. in the Ocean County Clerk's Office as Map L3511, on December 11, 2006, (the "Lot Consolidation/Subdivision Plan"); and

WHEREAS, Grantor's Property is located within the Stafford Business Park ("Business Park"); and

WHEREAS, Grantor, Ocean County ("County") and the New Jersey Pinelands Commission ("Commission") have entered into a Memorandum of Agreement, dated June 28, 2006 (the "MOA"), which authorized implementation of the following plans at the Business Park: 1) the Major Landfill Waste Disruption Approval Report and Request for Beneficial Reuse Approval for the Old Stafford Township Landfill (commonly referred to as the "Old Landfill") and the Landfill Closure Report for the Stafford Township Sanitary Landfill (commonly referred to as the "New Landfill") (collectively the "Landfill Closure Plans"); and 2) "Redevelopment Plan for the Stafford Business Park" adopted by the Mayor and Town Council of Stafford on November 1, 2005 by Ordinance No. 2005-102, and which has been amended (the "Redevelopment Plan"); and

WHEREAS, the Redevelopment Plan calls for, inter alia, the closure of both the Old and the New Landfills in accordance with applicable law in order to protect the surface waters, groundwater, and other resources of the Pinelands Area; and

WHEREAS, as part of its review process that resulted in the development and execution of the June 28, 2006 MOA, the Commission determined that implementation of the Landfill Closure Plans and the Redevelopment Plan would result in adverse impacts on wetland buffers, on the survival of two (2) local populations of threatened or endangered plants and on habitats that were critical to the survival of two (2) local populations of threatened or endangered animal species and, therefore, required deviations from the strict application of the requirements of the Pinelands Comprehensive Management Plan (“CMP”) that pertain to those resources; and

WHEREAS, as part of the measures included in the June 28, 2006 MOA intended to provide an equivalent level of protection of the resources of the Pinelands, Grantor as required by Paragraph VI.A.15 of that MOA placed a Conservation Restriction upon portions of the Landfill Property, as depicted in cross hatch on the Lot Consolidation/Subdivision Plan (the “Restricted Area”), against future development and to retain the Restricted Area, in perpetuity, as Open Space; and

WHEREAS, the two landfills have been closed in accordance with the requirements of the Closure Plans and the as-built certification for the landfill closures was approved by the New Jersey Department of Environmental Protection on June 18, 2009; and

WHEREAS, Grantor now desires to utilize the Landfill Property, with the exception of the 20-acre area currently leased to the County for its composting facility, any areas constituting wetlands or wetland buffers, and the existing Landfill Basins depicted on Exhibit ____, attached hereto and incorporated herein by reference, to develop facilities that produce electrical energy from wind, solar, photovoltaic, or other technologies (the “Renewable Energy Facilities”); and

WHEREAS, the New Jersey Department of Environmental Protection on August 5, 2010, approved an amendment to the Land Fill Closure Plan for the New Landfill to provide for, and permit Renewable Energy Facilities to be developed on portions of the Landfill Property, subject to conditions set forth within the Closure Plans as amended and modified by the August 5, 2010 approval; and

WHEREAS, on _____, 2010, the Grantor, County and Commission entered into an amendment of the June 28, 2006 MOA, (the “Amended MOA”) which authorized the development of Renewable Energy Facilities on the Landfill Property and consented to the imposition of this RESTATED AND AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS; and

WHEREAS, Grantor desires and intends to prohibit development activities in, on, and/or under the Restricted Area, in perpetuity, pursuant to the terms, covenants, conditions and restrictions set forth herein, other than the development and use of Renewable Energy Facilities as specifically permitted herein; and

WHEREAS, Grantor desires and intends to maintain and retain the Landfill Basins in their existing condition, state, design and footprint and to prohibit the location of Renewable Energy Facilities therein, on, and/or under; and

WHEREAS, the purposes of this Declaration of Covenants and Restrictions include:

- a. that the Restricted Area and any areas constituting wetlands or wetland buffers, that are the subject of this Declaration of Covenants and Restrictions be protected in its natural, scenic, open and existing state, in perpetuity, subject only to the specific rights reserved to the Grantor herein, including the right to allow the development and use of Renewable Energy Facilities;
- b. that the natural features of the Restricted Area and any areas constituting wetlands or wetland buffers, shall be respected and preserved to the maximum extent consistent with Grantor's exercise of the rights expressly reserved to Grantor by the terms of this Declaration of Covenants and Restrictions as restated and amended; and
- c. that subject only to the specific rights reserved to the Grantor herein, including the right to the development and use of Renewable Energy Facilities, the Restricted Area and any areas constituting wetlands or wetland buffers, be forever protected and preserved in its natural, scenic, open and existing state free from all activities that might damage, compromise or interfere with the ecological diversity, natural beauty or resource quality, or with the natural processes occurring therein; and
- d. that the Landfill Basins be maintained in their existing state, condition, design and/or footprint and Renewable Energy Facilities will not be located there in, on or under..

NOW THEREFORE, in consideration of the foregoing and the agreement, terms, covenants and restrictions contained herein, Grantor, for itself, its successors and assigns hereby declares that Grantor's Property shall be held, transferred, sold, conveyed, leased and occupied subject to the following covenants, conditions, obligations and restrictions hereafter set forth:

1. Except as specifically set forth herein, the Restricted Area, , any areas constituting wetlands or wetland buffers, and the Landfill Basins may not be developed in any manner whatsoever and shall remain, with regard to the Restricted Area and any wetlands or wetland buffers, in their natural condition and, with regard to the Landfill Basins, in their existing state. The term "developed" shall include, but not be limited to, the following activities:

- a. The construction, placement, building, installation, erection, assembly, manufacture, fabrication, alteration, enlargement, renovation or replacement of any building, structure; or pavement in, on, above or beneath the surface of the Restricted Area, any areas constituting wetlands or wetland buffers or the Landfill Basins;
- b. Any disturbance or alteration of the surface topography and any natural features;
- c. Clearing, cutting, destruction or removal of any tree cover, tree limbs, trees, shrubs, plants, vegetation or other plant material, except that dead, fallen, diseased or infected tree limbs or other vegetation that poses a health or safety hazard may be trimmed or removed;
- d. The planting of any invasive or non-native plant species;

- e. Processing, storage, disposal, spreading, placing or dumping of refuse, rubbish, debris, dredge spoils, chemicals, hazardous materials, animal waste, fertilizers, herbicides, pesticides, fungicides, abandoned vehicles or other refuse or offensive materials;
- f. Placement, installation, dumping, side casting of any soils or other substances or materials as fill or the stockpiling of soils or other substances or materials on the Restricted Area, any areas constituting wetlands or wetland buffers or the Landfill Basins;
- g. Use of the Restricted Area, any areas constituting wetlands or wetland buffers or the Landfill Basins by automobiles, trucks, all-terrain vehicles, trail bikes, motorcycles snowmobiles or other motorized vehicles, except in the Restricted Area in connection with the Renewable Energy Facilities as specifically permitted herein;
- h. Use of the Restricted Area, any areas constituting wetlands or wetland buffers or the Landfill Basins for commercial or industrial uses other than the Renewable Energy Facilities as specifically permitted herein;
- i. Mining, quarrying, drilling, extraction, excavation, dredging, extraction or otherwise removing loam, peat, turf, soil, gravel, sand, coal, rock, mineral, petroleum, natural gas, or other natural resources from the Restricted Area, any areas constituting wetlands or wetland buffers or the Landfill Basins; and
- j. Other activities, uses, disturbances or development that could be detrimental to continuation of the Restricted Area or any areas constituting wetlands or wetland buffers in their natural state.

2. Notwithstanding the above, the Restricted Area may be disturbed solely to permit the construction, installation, maintenance and repair of the following: (i) storm water basins associated with the landfill closure; (ii) the landfill cap; (iii) access roads related to the landfill closure; (iv) the proposed 15' wide access road to the compost and chipping areas and the the Renewable Energy Facilities approved by the Amended MOA and the approved August 5, 2010 amendment to the Land Fill Closure Plan for the New Landfill; and (v) development and use of Renewable Energy Facilities, in accordance with the terms of the Amended MOA, the Amended Closure Plans and such other plans as maybe approved by NJDEP and the Commission in the future, and subject to compliance with the requirements of the Pinelands CMP and any other applicable local, county, state and federal laws, rules, regulations and ordinances. Once implementation of the Closure Plans is completed, the Restricted Area, with the exception of the area utilized for the construction of stormwater basins shall be graded and revegetated with native Pinelands vegetation.

3. The Landfill Basins shall be maintained and retained in their existing state, condition, design and/or footprint and Renewable Energy Facilities will not be located there in, on or under.

4. Except as specifically set forth herein, Grantor for itself, its successors, transferees, or assignees, agrees to leave the Restricted Area, any areas constituting wetlands or wetland buffers, and the Landfill Basins unmolested and in their natural or, with regard to the basins, existing state;

5. Grantor agrees that any development of Renewable Energy Facilities shall be carried out subject to the terms and conditions herein and the terms and conditions of the Amended MOA and/or any subsequent NJDEP and Commission approvals relating to thereto and that no development shall occur in the Restricted Area prior to the issuance of all required approvals of all governmental entities with jurisdiction over the Restricted Area;

6. Grantor, its successors and assigns, and its Designated Developer or Redeveloper, and its agents, contractors, employees and assigns, shall, at all times, have the right to access the Restricted Area with personnel and necessary equipment, for the purpose of construction, installation, inspection, maintenance, repair and/or replacement of the Renewable Energy Facilities;

7. To accomplish the purposes of this Declaration of Covenants and Restrictions, the Commission, their respective employees, agents, representatives, successors or assigns shall have the following rights:

- a. To have access to and to enter upon the Restricted Area at all reasonable times for the purpose of inspecting the Restricted Area, the Landfill Basins, any areas constituting wetlands or wetland buffers and the Renewable Energy Facilities in order to enforce and assure compliance with the terms and conditions herein contained;
- b. In addition to the exercise of exercise of any statutory or common law right, the right to enforce this Declaration of Covenants and Restrictions by means of any remedy provided for herein or available at law or equity, including but not limited to, enjoining any activity on, or use of, the Restricted Area that is inconsistent with the purpose of this Declaration of Covenants and Restrictions;
- c. To require Grantor or third persons to restore the Restricted Area, or any portion thereof, as may be damaged by an inconsistent use or activity;
- d. To protect and preserve the Restricted Area, and in connection therewith, to determine the consistency of any activity or use for which no express provision is made herein with the purposes of this Declaration of Covenants and Restrictions.

8. This Declaration of Covenants and Restrictions may be further amended only by written instrument duly executed by Grantor, the Commission and the County, their respective successors or assigns. Such modification shall not be effective until duly recorded by the GRANTOR with the Office of the Recorder of Deeds in and for Ocean County, New Jersey.

9. The terms and conditions of this Declaration of Covenants and Restrictions shall be governed and construed in accordance with the laws of the State of New Jersey and is subject

to the requirements of the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 et seq.

10. This Declaration of Covenants and Restrictions and all rights and obligations incidental thereto, whether expressed or implied, shall be construed to be a covenant running with the land and shall be binding upon and inure to the benefit and be enforceable by of any successor, transferee, or assignee to the parties hereto.

11. The terms of this Declaration of Covenants and Restrictions may be enforced by any appropriate proceeding in law or equity in any Court or administrative tribunal having jurisdiction, against any person or persons, firm or corporation violating or attempting to violate or circumvent any provision herein contained, either to restrain or enjoin such violation or threat of violation or to recover damages and the failure or forbearance by any party benefited by these restrictions to enforce any covenant or restriction contained within this document or to exercise their rights hereunder in the event of any breach by the Grantor or any third persons for any period of time shall in no event be deemed a waiver or estoppel of the right thereafter to enforce the same.

12. This Declaration of Covenants and Restrictions, and any further Amendments thereto, shall be recorded in the Office of the Recorder of Deeds for Ocean County, New Jersey and a reference to this Restated and Amended Declaration of Covenants and Restrictions shall be contained in a separate paragraph of any future deed, lease, or document of transfer or conveyance or any other legal instrument including or affecting the Restricted Area or any portion thereof. Grantor shall give written notice to the Commission of any such transfer or conveyance of interest in the Restricted Area prior to or within ten (10) days following such transfer or conveyance. Such notice shall include the name and address of the transferee of such interest. Grantor shall provide a copy of this instrument to all subsequent transferees of an interest in any part or all of the Restricted Area. The failure of the Grantor to perform any act required by this paragraph shall not impair the validity of this Declaration of Covenants and Restrictions or limit its enforceability in any way. Grantor shall not be responsible for the violation of the terms of this Declaration of Covenants and Restrictions by third parties unless they are acting under the control or authorization of Grantor.

13. Should any covenant or restriction herein contained, or any subsection, sentence, clause, phrase or term of this Declaration of Covenants and Restrictions be declared to be void, invalid, illegal or unenforceable, for any reason, by the adjudication of any Court or other tribunal having jurisdiction, such a declaration shall not affect the validity of the remaining provision which are hereby declared to be severable and which shall continue to remain in full force and effect.

IN WITNESS WHEREOF, this Declaration of Covenants and Restrictions is made and amended on the day and year first above written.

TOWNSHIP OF STAFFORD

Draft
September 16, 2010

By: _____
John McMenamin, Mayor

STATE OF NEW JERSEY :
 :SS
COUNTY OF _____ :

I certify that on _____, 2010, before me the subscriber, a Notary Public of New Jersey, personally appeared John McMenamin, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that he is the Mayor of the Township of Stafford, the Municipal Corporation named in the within Instrument; that the execution, as well as the making of this Instrument, has been duly authorized by a proper Resolution of the Township Council of the said Municipal Corporation; that the deponent well knows the corporate seal of said Municipal Corporation; and that the seal affixed to said Instrument is the proper corporate seal and was thereto affixed and said Instrument signed and delivered by said Mayor as and for the voluntary act and deed of said Municipal Corporation, in the presence of deponent, who thereupon subscribed his/her name thereto as attesting witness.

Sworn and Subscribed to
Before me this _____ day of
_____, 2010

NOTARY PUBLIC OF NEW JERSEY

John McMenamin, Mayor

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