

TOWNSHIP OF DELAWARE
ORDINANCE NO. 2017-18

AN ORDINANCE OF THE TOWNSHIP OF DELAWARE IN HUNTERDON COUNTY, NEW JERSEY, AUTHORIZING THE ACQUISITION OF PROPERTY LOCATED ON WHISKEY LANE, DESIGNATED AS BLOCK 3, LOTS 19, 19.01-19.04 ON THE DELAWARE TOWNSHIP TAX MAP IN COOPERATION WITH THE NEW JERSEY CONSERVATION FOUNDATION, THE COUNTY OF HUNTERDON, AND THE STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, AND ALSO TO PROVIDE FOR THE CONVEYANCE OF INTERESTS IN THE PROPERTY TO THE NEW JERSEY CONSERVATION FOUNDATION.

WHEREAS, Sonia Millner & Barbara Gelner (“**Sellers**”) owns an approximately 119 acre parcel of land located on Whiskey Lane designated on the Delaware Township Tax Maps as Block 3, Lots 19, 19.01-19.04 (the “**Property**”);

WHEREAS, in cooperation with the New Jersey Conservation Foundation (“**NJCF**”), the County of Hunterdon (“**County**”), and the State of New Jersey, Department of Environmental Protection, Green Acres (“**NJDEP**”), the Township of Delaware wishes to preserve the Property and acquire interests therein;”

WHEREAS, situated on the Property are the headwaters of an NJDEP-designated Category 1 stream which known as the Wickecheoke Creek, a largely protected natural water source to the Delaware River managed by the Delaware & Raritan Canal Commission and by the New Jersey Water Supply Authority;

WHEREAS, acquisition of the Property will expand the existing Wickecheoke Creek Preserve, a green belt of preserved open space and farmland along the stream for which it is named, protect an important viewscape and wildlife habitat through the preservation of a natural setting;

WHEREAS, NJCF entered into an option agreement with the Sellers for the acquisition of the Property, plans to exercise that option, and wishes to assign the option agreement to the

Township of Delaware, with the understanding that ultimately the Township will hold a 5% undivided interest in the Property, and NJCF will hold a 95% undivided interest in the Property;

WHEREAS, the total purchase price of the Property is \$1,344,700.00;

WHEREAS, the Township of Delaware wishes to apply the sum of \$672,350.00 for the acquisition of the Property, which sum has accrued in a Green Acres Local Assistance Grant for the benefit of the Township, currently being held by the NJDEP Green Acres Program;

WHEREAS, the Delaware Township Green Acres Grant will be matched by grant from the County in the amount of \$672,350.00;

WHEREAS, the NJDEP Green Acres Program requires that the Township initially take a 100% interest in the Property at closing, but, agrees that, thereafter, the Township may convey a 95% undivided interest in the Property to NJCF, which is a tax exempt, not-for-profit 501 (c)(3) organization under the Internal Revenue Code, with a specific mission to conserve land and its resources, and to promote public access thereto in accordance with the rules and regulations of NJDEP Green Acres Program, and is also recognized as a “charitable conservancy” under N.J.S.A. 40:12-15.1;

WHEREAS, ownership of a 100% in the Property by the Township is not needed by the Township to further the public use thereof because NJCF will promote the Property’s public use, maintenance and management, and, accordingly, following closing, the Township will convey a 95% undivided interest in the Property to NJCF;

WHEREAS, pursuant to N.J.S.A. 13:8C-34, the Township may convey lands it holds for recreation and conservation purposes to a qualifying tax exempt nonprofit organization, such as NJCF, provided that the lands will continue to be preserved and used for recreation and conservation purposes;

WHEREAS, the Township wishes to retain a 5±% undivided interest in the Property, but convey the balance of its interest in the Property to the NJCF in consideration of NJCF’s efforts to secure the Property’s preservation, obtain the Option Agreement to acquire the Property, assignment of the Option Agreement to the Township, contribution of costs associated with acquisition of the Property and its undertaking to solely manage and maintain the Property, and in order to facilitate natural flood protection, the woodland and watershed management of the Property, and educational and recreational use of the Property by the general public, including the residents of the Township;

WHEREAS, it is the intention of the Township and NJCF to provide for the management and maintenance of the Property exclusively by NJCF through a mutually acceptable Management Agreement;

WHEREAS, uses of and activities on the Property shall be consistent with the State of New Jersey Green Acres Program rules and regulations as contained in N.J.A.C. 7:36-20, *et seq.* as may be amended and supplemented from time to time, and the Township and NJCF will deed

one or more conservation restrictions to NJDEP and, if sought by the County to the County, to confirm this requirement; and

WHEREAS, uses permitted on the Property are limited to passive, non-motorized recreation (except as may be required by applicable law to afford access to disabled persons) including, but not limited to, trails and pathways, as well as meadow, wildlife, natural flood protection, woodland and watershed management, agricultural activities, and additional uses and activities related to the aforesaid purposes.

NOW, THEREFORE, BE IT ORDAINED, by the Township Committee of the Township of Delaware, in Hunterdon County, State of New Jersey, as follows:

Section 1. Preamble Incorporated. The preamble to this ordinance is incorporated and made part hereof as if set forth at length herein.

Section 2. Findings. The Township Committee of the Township of Delaware hereby finds and determines that it is in the best interests of the Township and its residents to preserve the Property and consequently, to enter into an Assignment and Assumption Agreement with NJCF for the acquisition of the Property.

Section 3. Authorization to Acquire the Property. Pursuant to N.J.S.A. 40A:12-1 et seq., the Township of Delaware is hereby authorized to acquire the fee simple ownership of Property for the purposes set forth above, and to that end to expend the funds held in reserve on behalf of Township of Delaware in the New Jersey Department of Environmental Protection Green Acres Local Assistance Grant Program in the amount of \$672,350.00. A County grant of \$672,350.00 to the Township shall also be applied to the acquisition.

Section 4. Authorization to Convey Partial Ownership of Property to NJCF. Pursuant to N.J.S.A. 13:8C-34, the Township of Delaware is hereby authorized, following acquisition, to convey all but 5±% of its undivided interest in the Property to NJCF for the purposes set forth herein, which will result in undivided ownership interests in the Property as follows:

NJCF	95%
Township	5%

Section 5. Management of Property. The Property shall be managed and maintained solely by NJCF in accordance with the terms of a mutually acceptable Management Agreement, consistent with the purposes of this acquisition and the permitted activities and uses identified herein and in the conservation restriction(s) to be placed on the Property, to be executed by the parties to the transactions herein authorized, and the requirements of NJDEP.

Section 6. Authorization to Execute Documents and Undertake Acts Necessary to Effectuate the Purposes of this Ordinance. The Mayor, Clerk and Township Attorney are hereby authorized and directed to execute any and all such documents, including but not limited to agreements providing for the Township of Delaware's purchase and conveyance of interests in

the Property as described herein, and to undertake any and all such acts as may be necessary to effectuate the terms hereof, subject to the Township Attorney's approval of the form and substance of said documents. This grant shall include the authority to make non-material changes to the terms described herein as may be necessary to satisfy NJDEP and/or County requirements.

Section 7. Repealer. All ordinances and resolutions, or parts thereof, inconsistent with this Ordinance, are hereby repealed.

Section 8. Severability. If any section, paragraph, subsection, clause or provision of this ordinance shall be adjudged to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and the remainder of this ordinance shall be deemed valid and effective.

Section 9. Effective Date. This ordinance shall take effect immediately upon its passage and publication as required by law.

Charles Herman, Mayor

ATTEST:

Jodi McKinney
Township Clerk
October 10, 2017

PLEASE TAKE NOTICE that the above Ordinance was approved on first reading at the regular meeting of the Delaware Township Committee held October 10, 2017. It will be considered on second reading for final adoption at a regular meeting to be held October 30, 2017, beginning 7:30 P.M. at Township Hall, Sergeantsville, New Jersey. At that time an opportunity will be given for all interested citizens to be heard.