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WM. FLEMER'S SONS, INC.

Index DEED BOOK  
Book 05507 Page 0776  
No. Pages 0008  
Instrument DEED W/O ABSTRA  
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STATE OF NEW JERSEY  
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This document was prepared by,  
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McCARTHY AND SCHATZMAN, P.A.  
731 Alexander Road, Suite 201  
P.O. Box 2329  
Princeton, NJ 08543-2329

D. Christopher Baker  
G. Christopher Baker, Esq.

## DRAINAGE AND PEDESTRIAN TRAIL EASEMENT AGREEMENT

THIS DRAINAGE AND PEDESTRIAN TRAIL EASEMENT AGREEMENT (this "Agreement") made this 20<sup>th</sup> day of December 2004, by WM. FLEMER'S SONS, INC., whose address is P.O. Box 185, Allentown, New Jersey 08601 ("Flemer") and the TOWNSHIP OF SOUTH BRUNSWICK, having an address at 540 Ridge Road, Monmouth Junction, New Jersey, 08852 ("Township") (Flemer and the Township being hereinafter referred to collectively as "Grantors") to THE TRUSTEES OF PRINCETON UNIVERSITY, a New Jersey corporation, having an office at One Nassau Hall, Princeton, New Jersey 08540 ("Grantee").

### PRELIMINARY STATEMENT

Flemer is the owner of certain land (herein called the "Flemer Property") located in South Brunswick Township, Middlesex County, New Jersey, known and designated as Lots 16 and 17, in Block 108, Lots 13 and 14, in Block 109, and Lot 3.011, in Block 99, on the Tax Maps of South Brunswick Township; and

The Township is the owner of a public easement in a certain street located in South Brunswick Township, Middlesex County, New Jersey, known as Greenwood Avenue (herein called "Greenwood Avenue") (the Flemer Property and Greenwood Avenue being herein called the "Grantor Property"); and

Grantee is the owner of certain land (herein called "Grantee Property") located in South Brunswick Township, Middlesex County, New Jersey, known and designated as part of Lots 3.021, 8.04, 9.01, 10.021, 12.03 and 13, in Block 99, on the Tax Maps of South Brunswick Township; and

Grantors have agreed to grant to Grantee an easement over a portion of the Grantor Property for the purpose of installing, constructing, inspecting, operating and using stormwater pipes (herein called "Drainage Facilities") and a pedestrian trail (herein called "Pedestrian");

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Trail”) to serve improvements on the Grantee Property.

NOW, THEREFORE, in consideration of good and valuable consideration paid by Grantee to Grantors, the receipt of which is hereby acknowledged, and of the mutual covenants herein contained, Grantors and Grantee do mutually covenant, promise and agree as follows:

1. Grant of Easement. Grantor Flemer hereby gives and grants unto Grantee and any contractor, principal, officer, employee, lessee, sublessee, agent, guest or invitee of Grantee (collectively, “Grantee’s Permittees”) the nonexclusive, free, perpetual and uninterrupted right, liberty, privilege and easement, the same to be appurtenant to and run with the Grantee Property, to use its portion of Grantor Property in the location more particularly described in Exhibit A attached hereto (herein called the “Easement Area A”) for the purpose of installing, constructing, inspecting, operating and using the Drainage Facilities and Pedestrian Trail within the Easement Area. Grantor Township hereby gives and grants unto Grantee and Grantee’s Permittees the nonexclusive, free, perpetual and uninterrupted right, liberty, privilege and easement, the same to be appurtenant to and run with the Grantee Property, to use its portion of Grantor Property in the locations more particularly described in Exhibit B attached hereto (herein called “Easement Area B”) (Easement Area A and Easement Area B herein called the “Easement Area”).

2. Construction. Grantee agrees to construct or cause to be constructed the Drainage Facilities and Pedestrian Trail in a good and workmanlike manner, to the satisfaction of the Township Engineer, and in accordance with all applicable requirements of governmental authorities having jurisdiction thereof, all at the sole cost and expense of Grantee.

3. Maintenance and Repair. Grantee agrees to promptly repair or cause to be repaired any damage to the Easement Area caused by the installation, construction, operation and use of the Drainage Facilities and Pedestrian Trail, or other exercise of Grantee’s right hereunder, and to restore or cause to be restored the Easement Area substantially to its former condition (subject to the Drainage Facilities and Pedestrian Trail) all at the sole cost and expense of the Grantee.

4. Insurance. Grantee shall, at Grantee’s sole cost and expense, acquire and maintain or cause to be acquired or maintained at all times hereafter policies of general and public liability insurance in an amount not less than two million dollars (\$2,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate (together with workers’ compensation insurance), which shall be increased to commercially reasonable amounts and coverages in the future in accordance with generally prevailing standards for insurance in the area for first-class residential rental property. Grantors shall be named as additional insureds on such policy. Prior to commencing any work within the Easement Area as contemplated hereby, Grantee shall submit to Grantors certificates of insurance confirming such insurance coverage. Such insurance coverage shall include a provision that the policy will not be canceled or allowed to expire until at least 30 days’ prior written notice has been given to Grantors. If such insurance shall lapse for any reason and is not restored within five days following written notification thereof by Grantors, then Grantors may terminate Grantee’s rights hereunder, effective upon written notice to Grantee.

5. Indemnification. Grantee shall indemnify, defend and hold harmless Grantors from and against any and all liability, loss, damages, claims or expenses of any kind, including,

without limitation, claims or liabilities for damage or injury to persons or property, and reasonable attorney's fees, caused by, or arising out of, the installation, construction, operation and use of the Drainage Facilities and Pedestrian Trail by Grantee, Grantee's Permittees, or any other person or party using the Drainage Facilities and Pedestrian Trail, lawfully or otherwise, or any other exercise of Grantee's rights contained herein, or otherwise caused by or arising out of, or resulting from the presence of, the Drainage Facilities and Pedestrian Trail on Grantor Property.

6. Reservation of Rights. Grantors reserve unto themselves and others to whom easements shall be granted the right to use the Easement Area for all purposes not inconsistent with this Agreement.

7. Assignment. Grantee may not assign this Agreement or any right granted hereunder to any third party without the prior written consent of Grantors and any assignment without such consent shall be void; provided, however, that Grantee's Permittees and all subsequent owners of the Grantee Property shall be entitled to the rights and benefits granted to Grantee hereunder.

8. Binding Effect. This Agreement shall bind and inure to the benefit of Grantors and Grantee, and their respective successors and permitted assigns.

9. Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, with the same effect as if the signature thereto and hereto were upon the same instrument, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

10. Release. The Grantors and Grantee, whose names are set forth above, shall be released from all obligations under this Agreement accruing from and after the sale or other transfer of their respective interests in the Grantee Property or the Grantor Property respectively, provided however, that such obligations shall run with the land and shall be binding upon and shall benefit all future owners of the Grantor Property and the Grantee Property. Anything to the contrary herein notwithstanding, this Drainage and Pedestrian Trail Easement is being granted by the Grantor Flemer as a matter of accommodation and without liability hereunder with respect to matters of title or any other matters. This Easement Agreement is being executed and delivered simultaneously with the execution and delivery of a Deed or Deeds conveying the lands affected by the Easement(s) herein granted, it being understood and agreed that this Easement Agreement will be recorded immediately prior to the aforementioned Deed or Deeds.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

WM. FLEMER'S SONS, INC.

By: Ivan Olinsky  
Ivan Olinsky, President

TOWNSHIP OF SOUTH BRUNSWICK

By: Frank Gambatese  
Frank Gambatese, Mayor

THE TRUSTEES OF PRINCETON UNIVERSITY

By: Christopher McCrudden  
Christopher McCrudden, Treasurer

STATE OF NEW JERSEY )

) ss.:

COUNTY OF MIDDLESEX )

BE IT REMEMBERED that on this 20<sup>th</sup> day of December, 2004, before me, the subscriber, personally appeared Christopher McCrudden, who, being by me duly sworn on his oath, did dispose and make proof to my satisfaction that he is Treasurer of THE TRUSTEES OF PRINCETON UNIVERSITY, the corporation named in and which made the foregoing instrument, and that he signed, sealed and delivered the foregoing Instrument as the act and deed of said corporation, duly authorized by resolution of its Board of Trustees for the uses and purposes state therein.



Notary Public

(Notarial Seal)

**DIANE VERNICKAS**  
Notary Public of New Jersey  
My Commission Expires Dec. 12, 2005

STATE OF NEW JERSEY       )  
  ) ss.:  
COUNTY OF MIDDLESEX       )

BE IT REMEMBERED that on this 30<sup>th</sup> day of Nov, 2004, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared BARBARA ~~GUT~~ Nyitrai, who, by me being duly sworn on his or her oath, say that she is the Clerk of the TOWNSHIP OF SOUTH BRUNSWICK, the municipal corporation named in the foregoing Instrument, that the said Instrument was signed and delivered by Frank Gambatese, Mayor of said Township, at the same time acknowledged that he signed and delivered the same as his voluntary act and deed and as the voluntary act and deed of said municipal corporation, by virtue of a resolution adopted by the Township Council.

Barbara Nyitrai  
Barbara ~~Gut~~, Clerk  
Nyitrai

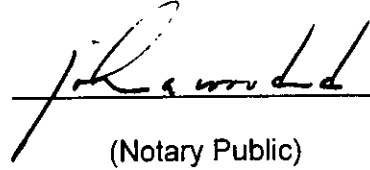
Sworn to and subscribed  
before me this 30<sup>th</sup> day  
of November, 2004.

Donald J. Sears  
Donald J. Sears  
An Attorney at Law in  
the State of NJ

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STATE OF NEW JERSEY )  
COUNTY OF ~~MIDDLESEX~~ <sup>MONMOUTH</sup> ) ss:

I CERTIFY that on *November 26*, 2004, IVAN OLINSKY personally came before me and acknowledged under oath, to my satisfaction, that he is the President of Wm. Flemer's Sons, Inc., and that he delivered this Amended Deed of Easement as the voluntary act and deed of the Wm. Flemer's Sons, Inc..

  
(Notary Public)

John A. Woodward  
Notary Public of N.J.  
My Commission Expires 7-23-2006