

Prepared by/Record and Return to:  
Faegre Drinker Biddle & Reath, LLP  
105 College Road East,  
P.O. Box 527  
Princeton, NJ 08542  
Attn: Christopher DeGrezia, Esq.

### **DEED OF SHADE TREE EASEMENT**

**THIS DEED OF SHADE TREE EASEMENT** (“Deed of Easement”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2022 by and between MID-MONMOUTH, LLC, having an office c/o The Sudler Companies, 245 Green Village Road, P.O. Box 39, Chatham, New Jersey, 07928 a Delaware limited liability company (“Grantor”), and the BOROUGH OF TINTON FALLS, whose address is 556 Tinton Avenue, Borough of Tinton Falls, New Jersey, 07724, a municipal corporation in the County of Monmouth, State of New Jersey (“Grantee”).

#### **W I T N E S S E T H :**

**WHEREAS**, Grantor is the owner of property located in the Borough of Tinton Falls, County of Monmouth and State of New Jersey, designated as Block 114, Lot 13.02 on the tax maps of the Borough of Tinton Falls (the “Property”); and

**WHEREAS**, at the December 8, 2021 the Borough of Tinton Falls Planning Board (the “Board”) granted Preliminary and Final Site Plan approval with associated variances relief to permit construction of an approximately 60,800-square-foot warehouse building on the Property, the terms of which were memorialized by Resolution adopted on April 27, 2022 (the “Approval”); and

**WHEREAS**, the Approval includes a condition requiring Grantor to dedicate a shade tree easement to Grantee upon, over and across a portion of the Property; and

**WHEREAS**, Grantor is willing to grant to Grantee, and Grantee is willing to accept from Grantor, a shade tree easement on the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the promises, covenants and conditions hereinafter contained, Grantor does hereby grant and convey to Grantee, its successors and assigns forever, and Grantee does hereby accept from Grantor, the easement set forth herein, on the terms and conditions herein contained.

1. Grantor hereby grants to Grantee a non-exclusive five (5) foot wide easement for the purposes of the planting and maintenance of shade trees, over and across a portion of the Property, as such area is depicted on the Easement Plan prepared by Menlo Engineering Associates, dated May 25, 2022, attached hereto as **Exhibit A**, as the "Proposed 5' Wide Shade Tree Easement", and as such area is more particularly described on **Exhibit B** attached hereto (the "Easement Area").

2. Grantee, at Grantee's sole cost and expense, shall install and maintain the shade trees within the Easement Area. Grantee shall immediately replace any damaged or dead shade trees, keep the Easement Area free of any hazards and, upon request from Grantor, immediately trim any shade trees interfering with Grantor's use of the Property. For the avoidance of doubt, Grantor assumes no liability with respect to maintenance of the Easement Area or any shade trees located therein. Notwithstanding the forgoing, Grantor shall have the right, at its sole cost and expense, to remove and subsequently replace any shade trees within the Easement Area as necessary to permit development of the Property (including in connection with the installation of any utilities).

3. Following Grantee exercising its rights to enter onto the Property in accordance with the terms herein, Grantee shall at its own cost and expense restore the Property in accordance with this Section 3. Grantee shall at all times act so as to safeguard the Property. Grantee shall perform all work in connection with the rights, privileges and authority herein granted and conveyed in a workmanlike manner and with a minimum inconvenience to Grantor; any damage done to the land or premises of Grantor shall be promptly repaired and restored to its condition immediately prior to damage at the sole cost and expense of Grantee.

4. Notwithstanding anything in this Deed of Easement to the contrary, Grantee's rights granted herein shall be exercised in a manner to minimize (or, if possible, avoid) any impacts to Grantor's construction of the project in accordance with the Approval and Grantor's ongoing use and operation of the Property. Grantee shall be responsible for all liabilities and expenses relating to any damage to property, or for injury to or death of any person, arising from the use of the Easement Area, or from the negligence or willful misconduct of Grantee, its agents, contractors, subcontractors, or employees in exercising the rights granted by this Deed of Easement.

5. Notwithstanding anything to the contrary contained herein, Grantor shall have the right to use, occupy and enjoy the surface of, the subsurface under, and the air space over the Easement Area for any lawful purpose which does not unreasonably interfere with or unreasonably threaten the safe, proper or convenient use, occupancy or enjoyment of the Easement Area by Grantee. For the purposes of this provision, and notwithstanding anything to the contrary contained herein, Grantee hereby agrees that the construction, installation, repair, replacement or maintenance within the Easement Area of landscaping, sewer, gas, electric and other utilities and appurtenant facilities, and any other improvements pursuant to the Approval or future approvals and installed in compliance with applicable legal requirements, shall not be deemed to unreasonably interfere with or unreasonably threaten the safe, proper or convenient use, occupancy or enjoyment of the Easement Area by Grantee.

6. Notwithstanding anything to the contrary contained herein, under no circumstances shall this Deed of Easement be deemed or construed to give or grant to Grantee, the public, or anyone else, any rights to use any portion of the Property, except the Easement Area.

7. Notwithstanding anything to the contrary contained herein, Grantor shall have the right to remove shade trees for future development or for utility connections, as needed.

8. Grantor shall have the right from time to time to close down any portion of the Easement Area for any period of time in Grantor's sole discretion for any special purpose or activity; for maintaining, repairing or reconstructing the Easement Area or any utilities or drainage facilities located within the Easement Area; or to avoid the granting by prescription of any absolute rights in the Easement Area.

9. Grantee agrees, within ten (10) days after the filing thereof, to discharge or cause to be discharged all mechanic's notices of intention, construction liens, claims, stop notices, lien claims, amended lien claims, notices of unpaid balance and right to file lien, amended notices of unpaid balance and right to file lien, and any other encumbrance under the New Jersey Construction Lien Law, N.J.S.A. 2A:44A-1 et seq., as amended from time to time, or any other applicable law, filed against Grantor or the Property in connection with any work or maintenance performed on the Property by Grantee or its employees, agents, contractors, subcontractors, or consultants.

10. Grantor's liability with respect to the Easement Area is subject to the limitations contained in N.J.S.A. 2A:42A-8 (Landowner Liability Act).

11. This Deed of Easement is not to be construed as being intended to prevent further or additional development on or use of the Property from time to time in a manner not inconsistent with the terms of this Deed of Easement.

12. All notices required or permitted to be given hereunder shall be in writing and sent by nationally recognized, overnight delivery service (such as Federal Express), in which case notice shall be deemed given on the first (1st) business day after the date sent, or by personal delivery, in which case notice shall be deemed given on the date received, or by certified mail, return receipt requested, in which case notice shall be deemed given on the third (3rd) business day after the date sent, to the appropriate address set forth in the introductory paragraph above.

13. This Deed of Easement shall be governed by and construed and enforced in accordance with the laws of the State of New Jersey.

14. This Deed of Easement shall be binding on the parties hereto, and their successors, assigns, heirs and transferees.

15. Every covenant, term and provision of this Deed of Easement shall be construed simply according to its fair meaning and in accordance with industry standards and not strictly for or against either party. Every provision of this Deed of Easement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Deed of Easement.

16. This Deed of Easement sets forth the entire agreement and understanding of the parties with respect to the agreements contemplated hereby and supersedes all prior agreements, arrangements and understanding relating to the subject matter hereof. This Deed of Easement may be amended, modified, superseded or cancelled only by a written instrument executed by the parties hereto.

[Signature page follows]





**EXHIBIT A**

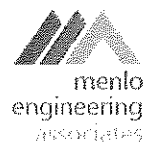
Easement Plan





**EXHIBIT B**

Description of Proposed 5-Foot-Wide Shade Tree Easement



732 846 8585  
732 846 9439

110 Livingston Avenue  
Englewood, NJ 07639

**Legal Description**

**Mid Monmouth Tech Center  
Proposed 5' Wide Shade Tree Easement  
Block 114, Lot 13.02  
Borough of Tinton Falls  
Monmouth County, New Jersey**

**BEGINNING at a point, said point marking the intersection of the common lot line between Lots 13.02 and 30 in Block 114 with the southerly right-of-way line of Pine Brook Road (53.5' R.O.W.); thence**

- 1. North 88 degrees 37 minutes 37 seconds East, along said southerly right-of-way line, a distance of 600.32 feet to a point lying in the common lot line between Lots 12.01 and 13.02 in Block 114; thence**
- 2. South 14 degrees 20 minutes 59 seconds West, along said common lot line, a distance of 5.19 feet to a point; thence**
- 3. South 88 degrees 37 minutes 37 seconds West, along an easement line, a distance of 598.92 feet to a point lying in the common lot line between Lots 13.02 and 30 in Block 114; thence**
- 4. North 01 degree 22 minutes 23 seconds West, along said common lot line, a distance of 5.00 feet to the point or place of BEGINNING.**

**The above-described easement contains 2,998 S.F., more or less, as shown on a map entitled "Mid Monmouth Tech Center - Easement Plan" prepared by Menlo Engineering Associates, Inc.; project no. 98109.03; drawing no. ESMT-1; dated May 25, 2022.**

**KMR/dp  
MEA #98109.03  
May 25, 2022**

**Gregg A. Gaffney  
Professional Land Surveyor  
NJPLS #GS43304**

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