

DEED OF OPEN SPACE EASEMENT

This EASEMENT made this _____ day of _____, 2023 between the Borough of Tinton Falls, located at 556 Tinton Avenue, Tinton Falls, NJ 07724 (hereinafter referred to as "MUNICIPALITY"), and the **COUNTY OF MONMOUTH**, located in the Hall of Records, 1 East Main Street, Freehold, New Jersey, 07728 (hereinafter referred to as "COUNTY").

WITNESSETH:

WHEREAS, the MUNICIPALITY is the sole owner in fee simple of a tract of land in Tinton Falls, Monmouth County, State of New Jersey, more particularly described as Block 123, Lots 1, 13, 15, 16 & 17 encompassing 39 acres on the tax map of Tinton Falls, Monmouth County, New Jersey (hereinafter referred to as the "Property"); and more particularly described in the tax map attached as Exhibit A attached hereto and made a part hereof; and

WHEREAS, the Property possesses park, recreation and open space values of great importance to the people of the County of Monmouth; and

WHEREAS, the MUNICIPALITY agrees that the park, recreation and open space values of the Property be preserved in perpetuity; and

WHEREAS, the MUNICIPALITY further agrees, as owner of the Property, to convey to the COUNTY the open space easement herein described to preserve and protect the park, recreation and open space values of the Property in perpetuity; and

WHEREAS, the COUNTY is a body politic and corporate of the State of New Jersey empowered pursuant to N.J.S.A. 40:32-2.1 to acquire interests in land and hold same for public park, public recreation and public welfare purposes; and

WHEREAS, the COUNTY has made a financial investment in the Property through the Monmouth County Municipal Open Space Grant Program by providing the MUNICIPALITY with a grant of \$127,000 for the development of the Property.

NOW, THEREFORE, in recognition of the foregoing and in consideration of the Municipal Open Space Grant made to the MUNICIPALITY, the MUNICIPALITY does hereby grant and convey to the COUNTY an easement over, under and right in perpetuity to restrict as set forth herein the use of the real property designated as Block 123, Lots 1, 13, 15, 16 & 17 encompassing 39 acres on the tax map of Tinton Falls, Monmouth County, New Jersey.

1. **PURPOSE.** It is the purpose of this Easement to guarantee that the Property will be retained forever for public park, recreation and open space uses and to prevent any use of the Property that will significantly impair or interfere with the park, recreation and open space values of the Property.

2. **TRUST.** The property shall be held in trust in perpetuity and used exclusively for the purposes authorized by the Open Space and Farmland Preservation, Recreation, Conservation and Historical Preservation Act as may be amended from time to time [NJSA 40:12-15.6b].

3. **PUBLIC ACCESS.** The MUNICIPALITY agrees to make the open space accessible to the public, unless the MUNICIPALITY and COUNTY determines that public accessibility would be detrimental to the lands, waters, or improvements thereon, or to any natural resources associated therewith [NJSA 40:12-15.6D(3)].

4. **OPEN SPACE INVENTORY.** The MUNICIPALITY shall cause the funded property to be listed in the Municipal Recreation and Open Space Inventory at the time it is filed with the New Jersey Green Acres Program or its successors.

5. **RIGHT OF COUNTY.** To accomplish the purpose of this easement, the following rights are conveyed to the COUNTY by this easement:

A. To preserve and protect the park, recreation and open space values of the Property.

B. To prevent any activity on or use of the Property that is inconsistent with the purpose of this easement and to require the restoration of such areas or features of the Property that may be damaged by an inconsistent use or activity.

C. The COUNTY and its agents, representatives, servants or assigns, shall be permitted to enter upon the Property at all reasonable times, after giving prior reasonable notice, in order to monitor compliance with and otherwise enforce the terms of the Easement, provided that COUNTY, its agents, etc. shall not unreasonably interfere with use and quiet enjoyment of the Property.

D. The MUNICIPALITY agrees not to lease, sell, exchange or donate the Property described herein which is being acquired pursuant to P.L. 1997 c. 24, NJSA 40:12-15.6(A) except upon approval of the Monmouth County Board of County Commissioners and upon such conditions as the Monmouth County Board of County Commissioners may establish [NJSA 40:12-15.6(d)(4)] including, but not limited to, replacement with land of no less or greater utility, acreage and value.

6. **PROHIBITED USES.** Any activity on or use of the Property inconsistent with the purpose of this easement is prohibited.

7. **GREEN ACRES RESTRICTIONS.** If the lands being conveyed herein were purchased in part with Green Acres funding, they are subject to Green Acres restrictions as provided in N.J.S.A. 13:8C-1 et seq. and N.J.A.C. 7:36.

8. **RESERVED RIGHTS.** The MUNICIPALITY reserves to itself and to its personal representatives, heirs, successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not inconsistent with this easement.

9. **GRANTEE'S REMEDIES.** If the COUNTY determines that the MUNICIPALITY is in violation of the terms of this easement or that a violation is threatened, the COUNTY shall give written notice to the MUNICIPALITY of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this easement, to restore the portion of the Property so injured. If the MUNICIPALITY or its assigns fail to correct the violation within sixty days after receipt of notice thereof from the COUNTY or under circumstances where the violation cannot be cured within the sixty day period or fails to diligently pursue curing such violation until finally cured, the COUNTY may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this easement, to enjoin the violation ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the term of this easement or injury to any park, recreation or open space values protected by this easement; to require the restoration of the Property to the condition that existed prior to such injury; and all costs and expenses, including reasonable attorney's fees incurred in enforcing the COUNTY's rights herein.

10. **COUNTY'S DISCRETION.** Enforcement of the terms of this easement shall be at the discretion of the COUNTY, and any forbearance by the COUNTY to exercise its rights under this easement in the event of any breach of any terms of this easement by the MUNICIPALITY shall not be deemed or construed to be a waiver by the COUNTY of such terms or any subsequent breach of the same or any other term of this easement or of any of the COUNTY'S rights under this easement. No delay or omission by the COUNTY in the exercise of any right or remedy upon any breach by the MUNICIPALITY shall impair such right or remedy or be construed as a waiver.

11. **SURVIVAL.** The terms of an Agreement between the MUNICIPALITY and the COUNTY dated _____ shall survive the delivery of this Deed of Open Space Easement and the terms of which Agreement are incorporated herein by reference.

12. **WAIVER OF CERTAIN DEFENSES.** The MUNICIPALITY hereby waives any defense of laches, estoppel or prescription.

13. **ACTS BEYOND CONTROL.** Nothing contained in this easement shall be construed to entitle the COUNTY to bring any action against the MUNICIPALITY for any injury or change in the Property resulting from causes beyond the MUNICIPALITY'S control including, without limitation, fire, flood storm and earth movement, or from any prudent action taken by the MUNICIPALITY under emergency conditions to prevent, abate or mitigate injury to the Property resulting from said causes.

14. **COSTS AND LIABILITIES.** The MUNICIPALITY shall retain all responsibilities and shall bear all cost and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. The MUNICIPALITY shall keep the Property free of any liens arising out of any work performed, for material furnished to or obligations incurred by the MUNICIPALITY.

15. **RISK OF LOSS.** Risk of loss or damage to the Property by fire or other casualty shall be, and is assumed, by the MUNICIPALITY. The MUNICIPALITY is required to advise the COUNTY of any occurrence which results in loss of or damage to any improvements funded by the COUNTY or which results in the impairment of the Property's park, recreation and open space use.

16. **COVENANTS.** The MUNICIPALITY covenants with the COUNTY as follows:

- (a) The MUNICIPALITY is seized of said easement and has good right and title to convey same;

- (b) The COUNTY shall quietly enjoy the said easement;
- (c) The MUNICIPALITY shall have quiet possession of the easement free from all encumbrances;

17. **SUCCESSOR.** The covenants, terms, conditions and restrictions of this easement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns, and shall continue as a servitude running in perpetuity with the Property.

This Deed of Easement is signed and attested to by Michelle Hutchinson, Borough Clerk, and Mayor Vito Perillo, the proper corporate officers as of the date at the top of the first page. Its corporate seal is affixed.

ATTESTED BY:

Michelle Hutchinson, Borough Clerk

BY: _____
Mayor Vito Perillo

STATE OF NEW JERSEY:

: SS.

COUNTY OF MONMOUTH:

I CERTIFY that on _____, 2023 Michelle Hutchinson personally came before me, the subscriber, a Notary Public of the State of New Jersey, and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the Borough Clerk; of the Borough of Tinton Falls, the municipality named in this document;

(b) this person is the attesting witness to the signing of this Deed by the proper corporate officer, who is the Mayor of the municipality;

(c) this Deed was signed and delivered by the municipality as its voluntary act duly authorized by a proper resolution of its governing body;

(d) this person knows the proper seal of the municipality which was affixed to this Deed;

(e) this person signed this proof to attest to the truth of these facts; and

(f) the full and actual consideration paid or to be paid for the transfer of title is \$1.00 (such consideration is defined in N.J.S.A. 46:15-5).

Michelle Hutchinson, Borough Clerk

Sworn to and subscribed before
me this _____ day of _____,
2023.

Exhibit A

