

ORDINANCE NO. 3869-10

AN ORDINANCE OF THE TOWNSHIP OF FRANKLIN, COUNTY OF SOMERSET AND STATE OF NEW JERSEY, AUTHORIZING THE ACCEPTANCE OF EASEMENT FROM TEN MILE RUN HOMEOWNERS ASSOCIATION TO TOWNSHIP OF FRANKLIN FOR PREMISES KNOWN AS BLOCK 20.12, LOT 61.

SUMMARY

An Ordinance authorizing the acceptance of an easement from Ten Mile Run Homeowners Association to the Township of Franklin for premises known as Block 20.12, Lot 61 in connection with the construction of various pedestrian foot paths, trails and related structures.

WHEREAS, Ten Mile Run Homeowners Association (hereinafter called the "Grantor") is the owner of a certain tract of real property situated in the Township of Franklin, County of Somerset and State of New Jersey commonly known as Block 20.12, Lot 61 (hereinafter called the "Property"); and

WHEREAS, the Grantor does agree to convey to the Township of Franklin (hereinafter called the "Grantee") a perpetual, non-exclusive easement to use and access the Easement Area; and

WHEREAS, the conveyance and/or acceptance of said real property requires the approval by Ordinance of the Township Council pursuant to NJSA 40A:12-5; and

WHEREAS, the Township Council has determined that it is in the public interest to accept said easement from the Grantee;

NOW, THEREFORE, BE IT HEREBY ORDAINED AND ENACTED by the Township Council of the Township of Franklin, County of Somerset and State of New Jersey as follows:

SECTION I

The attached Easement Agreement on property designated as Block 20.12, Lot 61 as incorporated by reference and made part of this ordinance. The Township of Franklin hereby accepts an easement in perpetuity from Ten Mile Run Homeowners Association (hereinafter called the "Grantor") in connection with the construction of various pedestrian foot paths, trails and related structures.

SECTION II

Each clause, section or subsection of this ordinance shall be deemed a separate provision to the intent that if any such clause, section or subsection should be declared invalid, the remainder of the ordinance shall not be affected.

SECTION III

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed as to the extent of such inconsistency.

SECTION IV

This ordinance shall take effect immediately upon adoption and publication according to law.

ORDINANCE NO. 3869-10

This is a true copy of an ordinance adopted by the Township Council Township of Franklin, Somerset County, New Jersey.

Introduced: February 9, 2010
Public Hearing: March 9, 2009
Adoption: March 9, 2010
Notice of Adoption: March 15, 2010
Effective Date: March 29, 2010

Ann Marie McCarthy, Township Clerk

Record & Return to:
Leslie G. London, Esq.
McManimon & Scotland, L.L.C.
1037 Raymond Blvd., Suite 400
Newark, New Jersey 07102

Prepared by:

Leslie G. London, Esq.

Easement Agreement
(on portion of Block 20.12, Lot 61, Franklin Township)

Owned by Ten Mile Run Homeowners Association

THIS EASEMENT AGREEMENT (this "Easement Agreement") is made effective as of this __ day of _____, 20__.

By and between: **TEN MILE RUN HOMEOWNERS ASSOCIATION**, having a mailing address of 1711 Route 27, Somerset, New Jersey 08873, as "**Grantor**"; and

to and in
favor of: **THE TOWNSHIP OF FRANKLIN**, a municipal corporation of the State of New Jersey, having a mailing address of 475 De Mott Lane, Somerset, New Jersey 08873 (the "**Township**" or "**Grantee**").

Grantor and Grantee (collectively, the "Parties") agree as follows:

1. **The Property.** The Grantor owns property located on Yardley Court in the Township of Franklin, County of Somerset (the "Property"). The Property is also known as a portion of Block 20.12, Lot 61 on the Tax Maps of the Township of Franklin. The Property involved herein is part of an Open Space Lot that was conveyed to the Grantor herein by Deed of Dedication dated May 12, 2003, and recorded September 30, 2004 at Book 5653, Pages 361-368 in the Office of the Somerset County Clerk, from Ten Mile Run Developers, L.L.C., in accordance with a Resolution of Approval of the Planning Board of the Township of Franklin dated November 6, 2002, under Docket No. PLN 2002-0024. [THIS REQUIRES CLARIFICATION AS TO WHO IS VESTED WITH TITLE PER TAX RECORDS- TAX RECORDS SHOW TEN MILE RUN DEVELOPERS, LLC STILL AS RECORD OWNER AS OF 2009, DESPITE RECORDING OF THE DEED OF DEDICATION]

2. **Easement Area.** The Easement Area (defined below) is a portion of the Property on which there will be constructed various pedestrian foot paths, trails and related structures, all of which shall be as identified further in Section 3 below. Those facilities and structures include, without limitation, the foregoing, as well as those identified in Section 3 below. In consideration of the sum of _____ Dollars (\$_____.00) and other good and valuable consideration, the receipt of which is acknowledged by Grantor, Grantor makes this Easement Agreement, which easement is for the purposes set forth herein and below, and is detailed in Exhibit A attached hereto (the "Easement Area").

3. **Easement.**

3.1. **Grant of Easement.** Subject to the terms and conditions of this Easement Agreement, Grantor grants and conveys to Grantee a perpetual, non-exclusive easement (the "Easement") to use and access the Easement Area for the following purposes:

- (i) For public access on the south side of the Ten Mile Run Development, in and at the location(s) depicted on Exhibit A;
- (ii) To undertake, construct and install (and to thereafter maintain, as indicated below) a path and trail on both the north and south sides of the Property, in the location(s) depicted on Exhibit A;
- (iii) To undertake, construct and install (and to thereafter maintain, as indicated below) a pedestrian bridge across the Ten Mile Run stream, in the location(s) depicted on Exhibit A;

- (iv) To undertake, construct and install (and to thereafter maintain, as indicated below), a fence, upon approval from the New Jersey Department of Environmental Protection (“NJDEP”), in the location(s) depicted on Exhibit A;
- (v) To undertake, construct and install (and to thereafter maintain, as indicated below), appropriate signage indicating private access at various locations within the Easement Area, in the location(s) depicted on Exhibit A;
- (vi) For the purpose of ingress and egress to the Easement Area, in accordance with the terms of this Easement Agreement, in order to facilitate the purposes set forth above, in the location(s) depicted on Exhibit A; and,
- (vii) To, as reasonably necessary, install, operate and maintain service and related equipment, including access to these areas for installation, repair and maintenance of such equipment, all in accordance with the foregoing purposes and as depicted in the location(s) set forth on Exhibit A.

Grantee acknowledges that Grantor is making no representations with respect to the adequacy or appropriateness of the Easement Area for any use, and that Grantee is accepting the Easement Area in “AS IS” condition.

3.2. **Non-Exclusive Use.** Grantee’s use of the Easement Area shall be non-exclusive. Grantee’s right to use the Easement Area is a right in common with the rights of Grantor, its tenants, subtenants, and all of their employees, agents, licensees, guests and invitees, rights of the public, if any, and other recipients of easements over all or any portion of the Easement Area.

3.3. **Subject To.** This Easement is granted subject to: (i) all existing and future liens, encumbrances, restrictions and easements of record created or granted by Grantor; (ii) all agreements with, and rights of, governmental authorities and public utilities, recorded or unrecorded; (iii) all requirements of all applicable insurance entities; and, (iv) all laws, statutes, rules, regulations, codes, ordinances and requirements of all applicable governmental authorities, provided however, that the foregoing limitations shall be consistent with Section 3.4 below, shall not interfere with the use of the Easement for the purposes contemplated herein, and shall be consistent with any applicable law of the State of New Jersey as applied to grants of easement to public entities for the public use.

3.4. **Dedication.** The Easement granted herein is intended, and shall be construed, as a dedication of the Easement Area for public use by the Grantee, consistent with the purposes set forth herein and in accordance with applicable law. The Grantor and Grantee shall take whatever action may be required to effectuate the provisions and intent of this subsection.

Access to the Easement Area by the public shall be as established by the Grantee in consultation with the Grantor.

4. **Curbing.** As necessary, the Grantee shall replace any curbing or similar infrastructure damaged by work performed by the Township or any of its contractors in effectuating the terms of this Easement.

5. **Repairs; Insurance; Compliance with Laws.**

5.1. **Maintenance.** Upon the execution of this Easement Agreement and dedication of the Easement Area to the Grantee in accordance with the terms set forth herein, the Grantee shall have the obligation to operate, repair and maintain the paths and other improvements constructed within the Easement Area, as required in connection with the purposes of the Easement, and in accordance with the terms of this Easement Agreement. Grantee shall be responsible for maintaining, repairing and operating all improvements constructed in the Easement Area, and be responsible for obtaining, at its sole cost and expense, any and all governmental approvals and permits necessary to construct and maintain the improvements, including without limitation approvals from the NJDEP to construct the fence, as referenced above.

5.1.1. **Restoration of Grantor’s Property; Damage to Grantor’s Property; Repairs.** Grantee shall use the Easement Area in a manner consistent with this Easement Agreement and shall not permit any of its employees, agents, licensees, guests or invitees (collectively the “Grantee’s Agents”) to cause any damage or injury to the Easement Area (or any part of Grantor’s

Property). The Grantee or Grantee's Agents, shall restore the Easement Area and/or the Grantor's Property, as applicable, after completion of any and all improvements, to substantially the condition the Easement Area and/or the Grantor's Property, as applicable, was in prior to the improvements, save the completed improvements. If any part of the Easement Area or any part of Grantor's Property is damaged by fire or other casualty caused by the acts or omissions of the Township or its agents, or by vandalism or similar acts (the "Damaged Property"): (i) Grantee will repair such damage and restore the Damaged Property as nearly as practicable to the condition it was in immediately prior to the damage, at Grantee's sole cost and expense, in accordance with plans and specifications reasonably acceptable to Grantor and approved in advance in writing by Grantor, which approval shall not be unreasonably withheld; or (ii) at the option of Grantor, Grantor will repair such damage and restore the Damaged Property as nearly as practicable to the condition it was in immediately prior to the damage, and Grantee will pay or reimburse Grantor promptly following written request for the commercially reasonable costs of such repairs and restoration.

5.1.2. **Insurance.** Grantee will, at its own expense, maintain "all-risk" property insurance covering loss or damage to Grantor's Property in connection with Grantee's use of the Easement Area, in amounts reasonably acceptable to Grantor, with no deductible or self-insurance retention, except as to the Township or any affiliated entity that may satisfy the insurance requirement through self-insurance. Grantor and the holders of any mortgages encumbering Grantor's Property (each, a "**Mortgagee**") will be named as an insured and as loss payees, as their interests may appear, with respect to the Easement Area and the improvements, if any, located within the Easement Area. The Grantee shall keep its insurance as required hereunder in full force at all times.

5.1.3. Grantee will, at its own expense, maintain comprehensive general liability and property damage insurance (which shall include coverage for Grantee's contractual indemnification obligations under this Easement Agreement and otherwise) with respect to loss or damage of any portion of the Easement Area in connection with Grantee's use of the Easement Area, with a combined single coverage limit of not less than \$_____ for injury to or death of any person or persons and for damage to property in any one occurrence, and with a deductible of not more than \$_____ per occurrence. Grantor, and any Mortgagee will be named as insureds. These limits will be subject to periodic review, and the Parties reserve the right to increase them if, in the commercially reasonable opinion of the Parties, the coverage becomes inadequate. The Grantee shall keep its insurance as required hereunder in full force at all times.

5.1.4. Grantee will, at its own cost and expense, obtain and maintain or require its contractors to obtain and maintain, builder's risk insurance coverage during the course of construction of any improvements within the Easement Area.

5.1.5. All policies required by this Section 5 will be in such form and with such insurance companies as Grantee customarily utilizes in its capacity as a municipal corporation of this State, and must provide for at least thirty (30) days' prior written notice to Grantor before the expiration, modification or cancellation of the policy.

5.1.6. Grantee will deliver to Grantor certificate(s) of insurance with respect to all required insurance policies on the date of this Easement and at least once per calendar year thereafter (or more frequently, upon Grantor's reasonable written request), and, with respect to any policy about to expire, at least thirty (30) days prior to the expiration date of such policy. If Grantee replaces any policy, Grantee will supply Grantor with a certificate of insurance with respect to such replacement policy. All such certificates of insurance must, as applicable, be in an ACORD form, or, for the Township of Franklin as a municipal corporation, in such form as its insurer normally provides in the course of its business (and which, in form and substance, permits Grantor to rely upon the certificate as evidence of the underlying insurance coverage), and otherwise be reasonably acceptable to Grantor, such acceptance not to be unreasonably withheld.

5.2. **Compliance with Laws.** While exercising the rights, or performing the obligations, granted or required by this Easement Agreement, Grantee will fully comply with all applicable laws, statutes, ordinances, rules, regulations or codes with respect to the Easement Area, and with all requirements of Grantee's or Grantor's insurance underwriters.

6. **No Liability: Indemnification.**

6.1. **No Liability.** Grantor shall not be liable or responsible, and Grantee shall be fully liable and responsible, for any actions or omissions on the part of Grantee or Grantee's Agents relating in any way to their use or misuse of the Easement Area.

6.2. **Indemnification.**

6.2.1. Grantee will indemnify, defend, and hold harmless Grantor, any Mortgagee and any of their shareholders, directors, officers, members, managers, agents, servants, employees, and any of their respective heirs, executors, legal representatives, successors and assigns (each, an “**Indemnified Party**”), from and against any and all liability, loss, cost, damage, claim, judgment or expenses (including court costs and reasonable attorneys’ fees) of any kind imposed by law, which any Indemnified Party sustains, or incurs by reason of any claim, suit or action based on personal injury, death or damage to property (including any loss of use) arising from, out of or relating to Grantee’s use of the Easement Area, or the violation by Grantee of any environmental law with respect to the Easement Area; or, the applicability of any environmental law with respect to the Property as a result of the operations of the Grantee within the Easement Area; and any claim by any Indemnified Party for enforcement of Grantee’s obligations under this Section (each, an “**Indemnified Claim**”).

6.2.2. Grantee will defend any and all Indemnified Claims that are brought or asserted against any Indemnified Party at Grantee’s sole cost and expense; but this defense obligation will not be deemed to relieve any insurance company which has issued a policy of insurance required by Section 5 from its obligation to defend any Indemnified Party and any other insured named in such policy in connection with claims, suits or actions covered by such policy.

6.2.3. Grantee will reimburse any Indemnified Party for reasonable attorneys’ fees, experts’ testimony costs and all other costs to defend such Indemnified Party in connection with any Indemnified Claim, except for Indemnified Claims for which Grantee or its insurance carrier is defending such Indemnified Party.

7. **Notices and Demands.** Any notice or other communication (for convenience, referred to herein as a “notice”) required or permitted to be given hereunder by one party to the other shall be in writing, and the same shall be given and be deemed to have been delivered, served and given (a) if delivered in person, via a nationally-recognized overnight courier, or by facsimile, when received by the person to whom notice is given, or (b) if mailed, (except where actual receipt is specified in this Agreement) three (3) days after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed to the party at the address specified below:

a) **When sent to Grantor:**

Ten Mile Run Homeowners’ Association
1711 Route 27
Somerset, New Jersey 08873

With a copy to:

b) **When sent to the Township as Grantee:**

Kenneth W. Daly, Township Manager
Township of Franklin
475 De Mott Lane
Somerset, New Jersey 08873

With a copy to:

Leslie G. London, Esq.
McManimon & Scotland, L.L.C.
1037 Raymond Boulevard
Suite 400
Newark, New Jersey 07102

Any party may change its address for notices by notice given in accordance with this Section, which notice shall be deemed effective only when actually received by the other Party.

8. **Binding Effect.** This Easement Agreement is for the benefit of, and shall be binding upon, the Parties hereto and their respective successors and assigns.

9. **Miscellaneous.**

9.1. The interpretation and performance of this Easement Agreement shall be governed by the laws of the State of New Jersey.

9.2. If any provision of this Easement Agreement, or application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement Agreement, or the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

9.3. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

9.4. This instrument sets forth the entire agreement of the Parties with respect to the Easement and the Easement Area, and supersedes all prior discussions, negotiations or agreements relating to the Easement and the Easement Area, all of which are merged herein. Any modification or amendment hereto must be in writing and executed by all Parties.

9.5. The captions in this instrument have been inserted solely for convenience of reference, and are not a part of this instrument and shall have no effect upon construction or interpretation.

9.6. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor and Grantee have executed and delivered this Easement Agreement as of the date set forth on the first page hereof.

* * *

GRANTOR

**TEN MILE RUN HOMEOWNERS'
ASSOCIATION:**

Witnessed by:

Name: _____

By: _____
Name:
Title:

GRANTEE

TOWNSHIP OF FRANKLIN:

Witnessed by:

Name: Ann Marie McCarthy
Title: Township Clerk

By: _____
Name: Brian D. Levine
Title: Mayor