

ORDINANCE NO. 6-2016

**AN ORDINANCE ACCEPTING A PERPETUAL
CONSERVATION EASEMENT DEDICATED AND
CONVEYED TO THE BOROUGH OF MORRIS PLAINS
ON BLOCK 171, LOT 1.01 IN THE BOROUGH OF
MORRIS PLAINS.**

WHEREAS, Mack-Cali East Lakemont, L.L.C., formerly known as Mack-Cali Properties Co. #3, L.L.C. (the “Grantor”), owner of Block 171, Lot 1.01 (the “Property”), received site plan approval from the Morris Plains Planning Board in PB-02-15 to construct a multi-family residential housing project on the Grantor’s adjoining property at Block 171, Lot 1; and

WHEREAS, the Grantor’s site plan approval requires that all flood plains, wetlands and transition areas on Block 171, Lot 1.01 be placed into a conservation easement;

WHEREAS, the Grantor is now desirous of dedicating and conveying to the Borough of Morris Plains (the “Grantee”) a perpetual conservation easement on, over and across Lot 1.01 in Block 171; and

WHEREAS, the Borough Council of the Borough of Morris Plains is desirous of accepting the said conservation easement on, over, through and across Lot 1.01, Block 171 in the Borough of Morris Plains.

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Morris Plains, they being the Governing Body thereof, as follows:

Section 1:

That the perpetual conservation easement on, over, through and across Block 171, Lot 1.01 in the Borough of Morris Plains, Morris County, New

Jersey, as depicted on Schedule A annexed hereto and made a part hereof, be and the same is hereby accepted as dedicated and conveyed subject to the terms and conditions as set forth in a Deed of Conservation Easement between the Grantor and the Grantee, including the following special conditions:

1. Grantor may convey, mortgage, lease or otherwise transfer title or interest in the lands subject to this Easement provided, however, that the covenants and conditions herein remain superior to such conveyance, mortgage, lease, or transfer, it being the intention of the parties that this Agreement and its terms and conditions shall become a part of the chain of title and shall run with the land.

2. This grant of conservation easement is subject to an existing 25 foot wide sanitary sewer easement located in the Easement Area, which sanitary sewer easement may remain in the Easement Area in perpetuity and said sanitary sewer easement includes the perpetual right to reconstruct, replace, extend, improve, operate, maintain, inspect, protect and repair such sanitary sewer line and all necessary surface and subsurface appurtenances within the Easement Area, and the perpetual right to do within the Easement Area all that may be necessary for the reconstruction, replacement, extension, improvement, operation, maintenance, inspection, protection, repair and use of such sanitary sewer line within the Easement Area, including the perpetual right to use the Easement Area for the aforesaid purposes and the perpetual right of free and unobstructed access thereto, use and possession thereof with men, machinery, supplies, materials and equipment for the accomplishment of any and all of the foregoing purposes within the Easement Area.

3. Except as hereinafter set forth, the Grantor shall not change any features of the natural landscape or general topography of the Easement Area nor remove any trees, shrubs, or other vegetation except as necessary for the construction, maintenance and repair of structures and improvements depicted on the site plans, architectural drawings and accompanying documents for the property, approved by way Resolution 15-09 of the Planning Board of the Borough of Morris Plains on June 15, 2015, and permitted by any other governmental agency or authority having jurisdiction without the prior written approval of the Grantee; provided, however, that the Grantor may, without such written approval, remove dead or diseased foliage that may be reasonably expected to threaten the surrounding foliage or the buildings or other site improvements. Provided, further, that a 4 foot wide nature trail, including picnic tables and benches, and any and all other improvements that will extend within the Easement Area as depicted on the Off-Tract Improvement Plans attached hereto as Exhibit 1, may be constructed and maintained within the Easement Area in the location(s) shown on Exhibit 1.

4. The Grantor shall not make any changes within the Easement Area that will affect existing drainage, flood control, erosion control or soil conservation without the prior written consent of the Grantee.

5. No topsoil, sand, gravel, loam, rock, minerals or other materials shall be excavated within or removed from the Easement Area, nor shall any fill be deposited.

6. The Grantor shall not deposit, or allow to be deposited, any trash, waste, garbage or any other unsightly or offensive materials within the Easement Area and shall not use the Easement Area for the storage of materials whatsoever.

7. No advertising signs shall be located within the Easement Area.

8. No buildings, structures or other man-made improvements shall be erected in the Easement Area.

9. Except as hereinafter set forth, it is understood and agreed that this Deed of Conservation Easement confers upon the Grantee no rights of title or use of the Easement Area and nothing herein shall be construed to permit public access to or use of that area nor require the Grantee to maintain such area. Nothing herein shall be construed to limit the Grantor's right of access to and use of that area except as herein provided. The public shall have access to the nature trail, picnic tables and benches to be constructed in the Easement Area pursuant to the rules to be established by the Grantor.

10. The Grantee, its employees and agents, shall be permitted a permanent right of access to, and entry upon the Easement Area in a reasonable manner and at all reasonable times for the purpose of inspecting the Easement Area and enforcing the foregoing terms and conditions and to remedy any violations thereof.

11. If after inspection of the Easement Area, the Grantee determines that a violation of these terms, conditions or restrictions is found to exist, the Grantee, or its successor or assign, may after 10 days written notice to the Grantor, its successors or assigns, institute a suit to enjoin by temporary and/or permanent injunction, such violation to require the restoration of the Easement Area to its prior condition, or for damages for breach of covenant. The Grantee, its successors or assigns, does not waive or forfeit the right to take action as may be necessary to insure compliance with the terms conditions, restrictions and purposes of this conservation easement by a prior failure to act.

12. No roadways or other rights of way or parking of motor vehicles or equipment shall be allowed within the Easement Area unless shown on the

originally approved plans.

13. It is the intention of the parties hereto that the Easement Area will remain undisturbed and forever wild except as specifically provided herein.

14. The Grantee will hold harmless and indemnify the Grantor from and for any and all payments, expenses, costs, reasonable attorney fees and from and for any and all claims and liability for losses or damage to property or injuries to persons occasioned wholly or in part by or resulting from any acts or omissions by the Grantee or the public or the Grantee's agents, employees, guests, licensees, invitees, or for any cause or reason whatsoever arising out of or by reason of the nature trail or any of Grantee's activities in the Easement Area.

15. Wherever in this Instrument any party shall be designated or referred to by name or general reference, such designation is intended to and shall have the same effect as if the words "heirs, executors, administrators, personal or legal representatives, successors and assigns" had been inserted after each and every such designation, All the terms, covenants and conditions herein contained shall be for and shall inure to the benefit of, and shall bind, the respective parties hereto, and their heirs, executors, administrators, personal or legal representatives, successors and assigns, respectively.

16. In all references herein to any party, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

17. This easement shall in all respects to be governed by and construed in accordance with the laws of the State of New Jersey.

18. In the event that any part or parts of this conservation easement is or are found to be invalid by a Court of competence jurisdiction, the remaining provisions of this easement shall nevertheless be binding with the same force and effect as though the invalid parts were deleted therefrom.

19. In the event of any violation of the covenants and conditions contained in this Easement, the Borough of Morris Plains or its designee shall be entitled to recover, in any action to enforce the terms hereof; reasonable attorney's fees.

20. The provisions of this Agreement may not be amended, modified or terminated without the express written consent of the Borough of Morris Plains, and no such amendment, modification or termination shall be effective for any purpose unless set forth in writing and signed by the appropriate municipal officials.

Section 2:

The Mayor and Clerk are hereby authorized and directed to execute the Deed of Conservation Easement and any other documents necessary to effectuate the conveyance of said easement.

Section 3:

If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid by Court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinances.

Section 4:

This Ordinance shall take effect after final passage and publication in accordance with law.

Introduced: March 3, 2016

Adopted: April 7, 2016

/s/ Frank J. Druetzler