

**AN ORDINANCE OF THE TOWNSHIP OF ABERDEEN AUTHORIZING A
DECLARATION OF DEED RESTRICTION TO THE NEW JERSEY ECONOMIC
DEVELOPMENT AUTHORITY**

WHEREAS, the Township of Aberdeen (“Aberdeen” and/or “Grantor”) is the owner in fee simple of certain real property located in the Township Aberdeen, County of Monmouth, New Jersey, designated as Lots 1 and 4 Blocks 39 and 40 on the official Tax Map of the Township Aberdeen, Monmouth County, New Jersey, and a new lot about to be designated as Lot 1.01 , Block 39 (hereinafter “the Property”); and

WHEREAS, the Township of Aberdeen is party to a Redevelopment Agreement pursuant to which it is bound to transfer fee title ownership to a portion of the Property to Aberdeen Family Housing, L.P. and Aberdeen Senior Housing, L.P.; and

WHEREAS, the NJDEP has recommended that, subject to Aberdeen’s compliance with the New Jersey Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.1 et seq. (the “Remediation Act”) and Aberdeen’s intended use of Lot 1.01 in Block 39 for public open space, the New Jersey Economic Development Authority (the “EDA”) award Aberdeen a Hazardous Discharge Site Remediation Fund (“HDSRF”) in the amount of \$766,408.00 representing 75% of the estimated cost of remediation of at least \$940,612.00 because the remedial action would foster public outdoor recreation or conservation; and

WHEREAS, EDA requires and Aberdeen agrees and intends that a Declaration of Deed Restriction in substantially similar form to that attached hereto as Exhibit A be entered into to ensure that Lot 1.01 in Block 39 is preserved for open space for the benefit of the public; and

WHEREAS, the Grantor, having the authority to do so, intends to enter into this Declaration of Deed Restriction in order to grant to NJEDA a Conservation Restriction/Easement on the Property to restrict subsequent development of the Restricted Area.

WHEREAS, pursuant to the Local Lands and Buildings Law, N.J.S.A. 40A:12-1, et seq. the Township of Aberdeen (the “Township”) has the power to acquire and/or sell any real property or interest therein for a public purpose; and

WHEREAS, pursuant to N.J.S.A. 40A:12-13(B)(1) a municipality may convey an easement in any real property to an agency of the State of New Jersey at private sale; and

WHEREAS, the New Jersey Department of Environmental Protection (“NJDEP”) and the New Jersey Economic Development Authority are departments or agencies of the State of New Jersey; and

WHEREAS, the Township has determined that it would benefit the health and welfare of the citizens of the Township to convey a Declaration of Deed Restriction on the Township property to the NJEDA for nominal compensation.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Aberdeen that:

1) The above recitals are hereby incorporated into the body of this ordinance as if set forth at length herein.

2) The dedication of a Declaration of Deed Restriction to the NJEDA for nominal compensation is hereby authorized pursuant to N.J.S.A. 40A:12-13(B)(1).

3) The Mayor and the Municipal Clerk are hereby authorized and directed to execute the Declaration of Deed Restriction to the NJEDA in a form acceptable to the Township Attorney on the Township property described above.

4) The Township Clerk is hereby authorized and directed to record the Declaration of Deed Restriction with the Monmouth County Clerk and to transmit a copy of the easement to the NJEDA within ten (10) days of the recording of the easement.

BE IT FURTHER ORDAINED, that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section paragraph, subsection, clause or provision so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective; and

BE IT FURTHER ORDAINED, that any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict; and

BE IT FURTHER ORDAINED, that this Ordinance shall take effect upon passage and publication in accordance with applicable law.

PASSED:

ADOPTED:

KAREN VENTURA,
MUNICIPAL CLERK

FRED TAGLIARINI,
MAYOR

DATE: _____

DECLARATION OF DEED RESTRICTION

THIS DECLARATION OF DEED RESTRICTION (“Deed Restriction”) is made as of this ____ day of _____, 2016, by Aberdeen Township, whose address is Township of Aberdeen, One Aberdeen Square, Aberdeen, New Jersey 07747, County of Monmouth, New Jersey (“Declarant”) in favor of the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, having an address at 36 West State Street, P.O. Box 990, Trenton, New Jersey 08625-0990 (“EDA”).

WITNESSETH:

WHEREAS, Declarant is the owner in fee simple of certain real property and the improvements thereon located in the Township of Aberdeen and County of Monmouth, State of New Jersey designated as Lot 1.01, Block 39, of the official Tax Map of the Township of Aberdeen, commonly known as, all as particularly described in Exhibit A, attached hereto and incorporated herein (hereinafter referred to as the “Property”); and

WHEREAS, the soils of the Property have been contaminated by discharges of hazardous substances within the meaning of the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23,11 (the “Spill Act”), and

WHEREAS, Declarant represents that remediation of the contamination is estimated to cost at least \$940,612.00; and

WHEREAS, the New Jersey Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.1 et seq. (the “Remediation Act”), authorizes EDA to award a municipality with a grant from the Hazardous Discharge Site Remediation Fund (the “HDSRF Grant”) pursuant to the Remediation Act of up to 75% of the costs of the remedial action for a project involving the redevelopment of contaminated property for recreation and conservation purposes, provided that the use of the property for recreation and conservation purposes is included in the comprehensive plan for the development or redevelopment of the contaminated property, and provided that use of the property is preserved for recreation and conservation purposes by conveyance of a deed restriction, which shall be recorded and indexed with the deed in the registry of deeds for the county in which the Property is located; and

WHEREAS, subject to the Declarant’s compliance with the Remediation Act, and based on Declarant’s representations regarding the intended use of the Property for public open space, the New Jersey Department of Environmental Protection (“DEP”) has recommended to the EDA that the Declarant be awarded a HDSRF Grant of up to 75% of the costs of the remedial action with respect to the Property because the remedial action would foster public outdoor recreation or conservation; and

WHEREAS, in reliance on DEP's recommendation and subject to, among other things, Declarant entering into this Declaration of Deed Restriction, the EDA has awarded Declarant an HDSRF Grant in the amount of \$766,408.00; and

WHEREAS, the grant of this Deed Restriction by Declarant will help to ensure that the Property is rehabilitated and reused consistent with the Township of Aberdeen Redevelopment Plan; and

WHEREAS, the Declarant, having the authority to do so, intends to enter into this Deed Restriction in order to ensure that the Property is preserved for open space for the benefit of the public.

NOW THEREFORE, in consideration of the award of the HDSRF Grant to Declarant and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the facts recited above and the terms, conditions and restrictions contained herein, the Declarant hereby irrevocably grants, bargains, sells and conveys unto the EDA, TO HAVE AND TO HOLD the same unto EDA, its successors and assigns forever, this Deed Restriction in perpetuity.

1. Deed Restriction for Recreation/Conservation. Declarant hereby conveys, transfers, assigns and grants to the EDA, and its successors and assigns, this Deed Restriction solely with respect to Property.

2. Scope of Deed Restriction. This Deed Restriction conveys to EDA a limited interest in Property only as hereinafter specifically provided, which includes the benefit of the following covenants, conditions and restrictions:

- (a) Declarant agrees to prevent any disturbance or development on the Property in Perpetuity. Public open access is to be permitted when the intended use of the Property is for recreation purposes.
- (b) The NJDEP has approved a Remedial Action Work ("RAW") Plan or the Declarant obtains a RAW from an LSRP for the site that includes work. Declarant agrees to effectuate the remediation in a timely manner consistent with the terms of the RAW.
- (c) Declarant retains all responsibilities and shall bear all costs and liabilities of any kind related to ownership, operation, upkeep and maintenance of the Property. Declarant agrees at all times to use reasonable efforts to maintain the Property in a good and sound state of repair and shall keep the Property free of any liens arising out of the work performed for, materials furnished to, or obligations incurred by Declarant.
- (d) Declarant agrees not to obstruct the substantial and regular opportunity of the public to access and utilize the Property when it has been designated for recreational activities; and

- (e) Declarant and its successors and assigns forever reserve the fee title to the Property and incidents of ownership therein, other than the Deed Restriction, all to the extent not inconsistent with the terms and purposes of the Deed Restriction granted herein.
- 3. Title. Declarant warrants as of the date hereof good and sufficient title to the Property free from all encumbrances that would interfere with this Deed Restriction and hereby promises to defend the same against all claims that may be made in connection therewith. Declarant warrants that there are no mortgage liens on the Property on the date hereof. All mortgages and liens filed against the Property after the date hereof shall in all respects be subordinate to the lien of this Deed Restriction.
- 4. Inspection, Reporting and Right of Entry. At least annually, and on changes in possession, during reasonable hours, on written notice, the EDA or EDA's agents may enter and inspect the Property to determine a breach, default or violation of this Deed Restriction ("Violation"), and for enforcement of its terms. A failure to inspect by the EDA and/or its agents shall not be deemed to constitute a waiver of these rights.
- 5. Nature and Duration. The covenants, conditions and restrictions in this Deed Restriction shall be a burden upon and run with the land constituting the Property in perpetuity and are binding upon Declarant and the successors and assigns of Declarant for the benefit of the public. Declarant agrees that the terms, conditions, restrictions and purposes of this Deed Restriction will be inserted in any subsequent deed, lease, sublease or other legal instrument that includes any portion of the Property by which Declarant divests itself of any interest in the Property.
- 6. Transfer Notices. Declarant shall provide the EDA with written notice of any transfer or change in ownership of the Property, including, but not limited to, the name and address of the new owner, at least one month prior to the day of the signing of those documents accomplishing the actual transfer or change in ownership.
- 7. Remedies – Breach/Default. In addition to, and not in limitation of, any other rights of the EDA hereunder or at law or in equity, if the EDA determines that a Violation of this Deed Restriction has occurred or that a Violation is threatened, the EDA shall give written notice to Declarant of such Violation, setting for the specifics thereof, and demand corrective action sufficient to cure the Violation. If the Declarant fails to cure the Violation after receipt of notice thereof from the EDA, or under circumstances where the Violation cannot reasonably be cured within a time period dictated by the EDA, or fails to continue diligently to cure such Violation until finally cured, the EDA may bring an action at law or in equity in a court of competent jurisdiction.
 - (a) to enjoin and/or cure such Violation;

- (b) to enter upon the Property and to take action to terminate and/or cure such Violation and or to cause the restoration of that portion of the Property affected by such Violation to the condition that existed prior thereto;
 - (c) to seek or enforce such other legal and/or equitable relief or remedies as the EDA deems necessary or desirable to ensure compliance with the terms, conditions, covenants, obligations and purpose of this Deed Restriction; or
 - (d) to exercise any rights and remedies it may have against Declarant under the HDSRF Grant agreement, which rights and remedies shall be applicable to Declarant's successors and assigns under this Deed Restriction.
8. EDA's Rights – Immediate Action. If the EDA, in its discretion, determines that circumstances require immediate action to prevent mitigate significant damage to the Property, the EDA may pursue its remedies under paragraph 7 above without prior notice to Declarant or without waiting for the period provided for cure to expire. The EDA's rights under this paragraph shall apply equally in the event of either actual or threatened violations of the terms of this Deed Restriction, Declarant agrees that the EDA's remedies at law for any Violation of the terms of this Deed Restriction are inadequate and that the EDA shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which the EDA may be entitled, including specific performance. The above language shall in no event be interpreted to derogate or diminish the State of New Jersey or any of its departments or agencies' rights and powers under the laws of the State of New Jersey for the protection of public health, safety and welfare.
9. EDA's Right of Transfer. The EDA reserves the right to transfer, assign, or otherwise convey the Deed Restriction to any other entity or person to enforce the provisions of this Deed Restriction. The Deed Restriction shall inure to the benefit of, and be binding upon, all assignees, transferees and successors in interest of EDA. Declarant shall pay any fee charged by such entity or person to perform those services.
10. Enforcement. Enforcement of the terms of this Deed Restriction shall be at the discretion of the EDA, any forbearance by the EDA to exercise its rights under this Deed Restriction in the event of any Violation by Declarant shall not be deemed or construed to be a waiver by the EDA of such term or of any subsequent Violation of any of the EDA's rights under this Deed Restriction. No delay or omission by the EDA in the exercise of any right or remedy or be construed as a waiver of such right or remedy.
11. Cash Reimbursement. Declarant agrees to reimburse the EDA for any costs incurred by the EDA in enforcing the terms of this Deed Restriction against Declarant, and including, without limitation, the cost of any action taken to remedy an actual or threatened Violation and the reasonable costs of suit and attorney's fees.
12. Indemnification. Declarant agrees to defend, indemnify and hold harmless the EDA, its employees, members, and agents and the State of New Jersey from and against any and

all claims, liabilities, losses, damages, injuries, costs, or expenses that may arise in connection with or on account of the Property or the Deed Restriction.

13. Insurance. The Declarant agrees that it shall keep the Property insured consistent with the insurance requirements of any lender. In the event that there is no lender, Declarant agrees to maintain replacement insurance coverage for Property. Upon the request of the EDA, Declarant agrees to provide EDA with a Certificate of Insurance evidencing the replacement coverage insurance EDA has procured in compliance with this paragraph.

14. Notices. Any notice, demand, request, consent, approval or communication under this Deed Restriction shall be sent by certified mail, return receipt requested or reliable overnight carrier, addressed as follows:

To Declarant: Township of Aberdeen
One Aberdeen Square
Aberdeen, NJ 07747
Attn: Holly Reycraft, Township Administrator

To the EDA:
EDA's address for the purpose of notice is:

36 West State Street
P.O. Box 990
Trenton, NJ 08625-0990

A party may change the address or person to whom notices are required to be given by notice give in the manner above required.

15. Entire Agreement and Severability. This instrument and the attached Exhibit contain the entire agreement of the parties with respect to the Deed Restriction and supersedes any prior agreements relating to the Deed Restriction. If any provision of this Deed Restriction is held unenforceable by a court of competent jurisdiction, the remainder of the Deed Restriction shall continue in full force and effect.

16. Amendments. This Deed Restriction may only be amended by a written instrument signed by Declarant and EDA, and/or their successors and assigns, provided that any amendment shall be null and void if it is not consistent with the public recreation or conservation purposes of this Deed Restriction and would cause the Deed Restriction to not qualify as a conservation and preservation deed restriction under the Remediation Act.

17. Effective Date. This Deed Restriction shall be effective immediately.

18. Miscellaneous.

- a. The laws of the State of New Jersey shall govern the interpretation and performance of this Deed Restriction.

- b. The captions in this Deed Restriction have been inserted solely for convenience of reference and are not a part of this Deed Restriction and shall have no effect upon construction or interpretation.
- c. Execution of this Deed Restriction does not constitute a waiver of the rights or ownership interest of the State of New Jersey in public trust property.

(Signature follow on next page).

IN WITNESS WHEREOF, the undersigned has set its hand and seal as of the date set forth above and directs that this instrument be recorded in the Office of the Monmouth County Clerk.

DECLARANT:

By: _____
Name:
Title:

ATTEST:

,Secretary

EXHIBIT A: LEGAL DESCRIPTION OF PROPERTY

INSERT PROPERTY ADDRESS

[Please insert the Legal Description of the property, which is a document that is usually received when purchasing a property and can be found in the Title Report.]

100 Church Street
Aberdeen, NJ 07747

Attach the Subdivision Plan and the description for metes and bounds.