

**SALEM COUNTY IMPROVEMENT AUTHORITY**

**RESOLUTION 2022-38**

**February 10, 2022**

**RESOLUTION OF THE SALEM COUNTY IMPROVEMENT AUTHORITY**  
**AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT**  
**FOR FARMING PURPOSES**

**WHEREAS**, the Salem County Improvement Authority ("SCIA") is the owner of land designated on the Township of Mannington Tax Map as Block 40, Lot 11 QFarm, consisting of +/- 10.89 acres and on the Township of Alloway Tax Map as Block 7, Lot 2QFarm, consisting of +/- 27.430 acres, located on Welchville Road and McKillip Road ("the Property"); and

**WHEREAS**, N.J.S.A. 40A:12-14.1 authorizes and permits a county or municipal entity to lease property it acquires to a private person who was farming the land at the time of purchase, until such time as the real property is needed for public use; and

**WHEREAS**, SCIA has determined that the property in question was farmed by M & J Catalano Farms, Inc. ("M & J") at the time it was purchased by SCIA, that the land is not currently needed for a public purpose and that the temporary continuance of the private agricultural use will not compromise the property's public use in the future; and

**WHEREAS**, SCIA desires to enter into a one (1) year lease with M & J, pursuant to the terms and conditions set forth in the Lease Agreement attached hereto and made a part of this Resolution as Exhibit A.

**NOW THEREFORE, BE IT RESOLVED** by SCIA as follows:

1. SCIA hereby authorizes and agrees to enter into a one (1) year Lease Agreement with M & J, for the farming of the Property, in accordance with the Lease Agreement attached hereto as Exhibit A; and

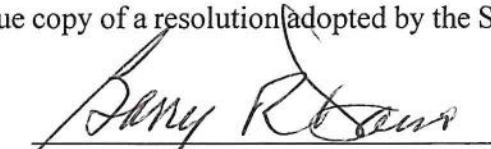
2. The Executive Director, Julie Acton is hereby authorized and directed to execute the Lease Agreement attached hereto as Exhibit A.

  
Barry Davis, Secretary

  
Cordy Taylor, Chairman

**CERTIFICATION**

I hereby certify the above to be a true copy of a resolution adopted by the SCIA at a regular meeting held on February 10, 2022.

  
Barry Davis, Secretary

## LEASE AGREEMENT

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2022 IS BY AND BETWEEN:

THE SALEM COUNTY IMPROVEMENT AUTHORITY, a body politic of the County of Salem, State of New Jersey, who's mailing address is 286 Welchville Road, P.O. Box 890, Alloway, New Jersey 08001-0890, hereinafter "Landlord" or "SCIA",

AND

M&J CATALANO FARMS, INC., a New Jersey Corporation, whose mailing address is 255 Haines Neck Road, Salem, New Jersey 08079, hereinafter "Tenant" or "M&J".

## BACKGROUND

WHEREAS, the Landlord is the owner subject to easements and restrictions, encumbrances, etc. of record of property known on the Township of Mannington Tax Map as Block 40, Lot 11 QFarm, consisting of +/- 10.89 acres and on the Township of Alloway Tax Map as Block 7, Lot 2QFarm, consisting of +/-27.430 (25.06 acres farmed), located on Welchville Road and McKillip Road (together, the 'Property'); and

WHEREAS, SCIA is not currently utilizing said Property; and

WHEREAS, the Property is being leased to M&J pursuant to N.J.S.A. 40A:12-14.1;

## AGREEMENT

NOW THEREFORE, in consideration of mutual covenants contained herein, the parties agree as follows:

1. **Term and Rent.** The Landlord leases to the Tenant and the Tenant hires from the Landlord the Property for a term of one (1) year commencing January 1, 2022 and terminating on December 31, 2022. The rental shall be for the sum of \$50.00 per acre, for a total rental fee of \$1797.50, for said term, payable in one lump sum upon the signing of this Lease Agreement.
2. **Possession and Use.** Tenant covenants and agrees to use the Property solely for agricultural purposes, as defined in N.J.S.A. 54:4-23.1.
3. **Soil Conditions.** Tenant has examined the Property and acknowledges the current pH level and primary nutrients are at a productive fertility level. Tenant shall not take any action which would substantially alter the pH or nutrient levels, without receiving Landlord's prior written permission, which permission shall be Landlord's sole discretion.

4. **Utilities.** The Tenant, shall, at his own expense, be responsible for the utilities necessary to operate the farming enterprise.
5. **Indemnification and Insurance, Performance Bond.** Tenant shall hold Landlord and its officers, board members, employees, and agents harmless and indemnify Landlord from and against all injury, loss, claims, or damage to any person or property while on the Property arising out of the use or occupancy of the Property by Tenant, and from and against all injury, loss, claim or damage to any person or property occasioned by any act, neglect or default of Tenant. Tenant shall maintain Property and Public Liability Insurance with limits of One Million (\$1,000,000.00) Dollars and Property Damage Insurance in limits of Five Hundred Thousand (\$500,000.00) Dollars, in companies qualified to do business in the State of New Jersey insuring Landlord, as well as Tenant, against claims of injury to persons, and to damage of property. Tenant shall provide the Landlord with a Certificate of Insurance naming Landlord as an additional insured on the policies of insurance.
6. **Landlord's Right to Perform Tenant's Covenants.**
  - A. If Tenant shall at any time fail to pay any sum in accordance with the provisions hereof or any other agreement between the Landlord and Tenant, or shall fail to perform any other action on his part, then Landlord, after seven (7) days notice to Tenant, may (but shall be under no obligation to):
    - a. Pay any sum due pursuant to the provisions hereof or any other agreement entered between the Landlord and Tenant, or
    - b. Perform any other act on Tenant's part to be made or performed as provided in this lease or any other agreement entered between Landlord and Tenant, and may enter upon the Property for such purposes.
  - B. All sums paid by Landlord and all costs and expenses including all reasonable legal fees, incurred by Landlord in connection with the performance of any act, together with interest 18% per annum from the respective dates of Landlord making each such payment or incurring cost and expense, under this Lease shall be immediately repaid to Landlord and shall be considered additional rent.
7. **Right of Entry.** Landlord and its authorized agents shall have the right to enter the Property for the purpose of inspecting the general condition of the Property.
8. **Exoneration of Landlord to Maintain.** Landlord shall not be required to maintain the Property in any respect whatsoever.

9. **Maintenance.** Tenant shall cultivate and farm the Property in accordance with accepted agronomical sound practices, including but not limited to:

- A. Not removing any soil or mining the ground, except for soil erosion control purposes and to promote the agrarian enterprises taking place thereon.
- B. If observable soil erosion does exist during the growing season, Tenant must obtain a soil conservation plan from the local soil conservation district and implement it the next growing season.
- C. No sludge or sludge derived products, including but not limited to, waste of any type shall be used or spread upon the Property.
- D. All agricultural chemicals and pesticides, if any, shall be used in accordance with the label requirements and/or recommendations from qualified agricultural or agricultural extension agents.
- E. Cover crops shall be planted to prevent soil erosion with the expressed understanding that at the termination of the lease, Tenant is not entitled to harvest same, if not done prior to termination date.
- F. No storage of any waste or waste products arising from agricultural operations or any other operation shall be permitted to be located upon the Property.
- G. No thistles, elders, briars or other obnoxious plants shall be permitted to grow on the leased Property.

10. **Damage and Maintenance.** Tenant shall not cause or permit any waste, damage or destruction to the Property. Tenant shall, at Tenant's cost and expense, maintain the Property in at least the same condition same was in at the commencement of this lease. All damage or injury to the Property, by any cause of any kind or character, shall be repaired, restored and/or replaced promptly by Tenant. All restorations and replacements required to be made by Tenant under this Agreement shall be of a quality equal to the condition of the Property prior to said repairs, replacements and/or restorations.

11. **Excavations, Changing Contours, Etc.** Tenant may only change the contour and/or excavate the Property for soil erosion control purposes and to promote the agrarian enterprises taking place thereon, only after receiving Landlord's prior written consent with the understanding that such modification shall become Landlord's exclusive Property at the termination of this Agreement. Such alterations shall be made at Tenant's cost and expense, in full compliance with all statutes, ordinance rules, regulations and orders of any governmental authority.

12. **Damages.** No damage to, or destruction of the Property or any portion thereof, shall give Tenant the right to terminate this Agreement, abate the payment of rent, receive

any proceeds of any insurance maintained by the other and this Agreement shall continue unaffected by such event.

13. **Compliance with Laws, Regulations, Etc.** Tenant agrees to observe and comply with all present and future laws, ordinances, orders, rules, regulations of the federal, state, county and municipal authorities applicable to the activities to be conducted by Tenant on the Property. The Tenant agrees not to do or permit anything done on the Property or keep anything thereon which will increase the rate of Fire Insurance premiums or conflict with any insurance policy insuring risks which could occur on the Property.
14. **Signs.** Tenant shall be entitled to erect any signs upon the Property or authorize the erection of any signs upon the Property, in accordance and in compliance with state and local laws, including the ability to place temporary "no trespassing" and/or pesticide signage as per pesticide laws and regulations
15. **Transferability.** The Tenant shall not assign, transfer, participate in any multi-year set aside programs, mortgage or encumber the leasehold estate created hereby in any way, nor sublet or underlet any portion of the Property or license, or permit any portion to be used by others, whether voluntary or by operation of law, without the prior written consent of the Landlord, which consent shall be in the exercise of Landlord's sole discretion.
16. **Subordination.** The Tenant hereby agrees to execute all documents necessary for the purpose of subordinating this Agreement to any future mortgages or agreements which may be entered into by Landlord.
17. **Tenant's Acceptance of "As Is" Condition.** The Tenant acknowledges that it has inspected the Property fully and accepts same "as is."
18. **Events of Default.** The occurrence of any one or more of the following (whether voluntary, involuntary, by operation of law or otherwise) shall constitute an "Event of Default" hereunder: filing a petition by or on behalf of Tenant for bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of Tenant, his property, or filing of any such petition against Tenant if same is not dismissed within fifteen (15) days, or a general assignment by Tenant for the benefit of creditors, or the taking of the possession of any part of the property of Tenant by any governmental authority pursuant to statutory authority for the dissolution or liquidation of Tenant; failure or refusal of Tenant to pay when due any sum herein or in any agreement between Landlord and Tenant; vacation or desertion of the Property for a period exceeding fifteen (15) consecutive days following Landlord's notice to Tenant requesting that Tenant confirm it has not abandoned the Property; Tenant's goods or



personal property from or out of the ordinary and usual course of business without having first paid and satisfied Landlord for all rent that may become due during the term; failure or refusal by Tenant to perform any term, condition or obligation contained in any agreement oral or written entered between the Landlord and Tenant. It is intended that a default in any other agreement shall result in the default of this lease.

If any event of default occurs and continues un-remedied for a period of either: (a) seven (7) days after notice thereof in case the event of default consists of the payment of money; or (b) fifteen (15) days after notice (oral or written) thereof in the case of any other event of default, then a "Default" shall exist under this Agreement.

**19. Landlord's Rights Upon an Event of Default.** Upon the occurrence of an Event of Default, and at any time thereafter during the continuance of such Event of Default, Landlord shall have the following rights and remedies (same to be cumulative with any other legal rights Landlord may have):

- a. The entire amount of rent and other sums payable by Tenant hereunder and in any other agreement entered between the Landlord and Tenant, for the balance of the term of the year of default, at Landlord's option, shall immediately become due and payable as if by the terms of the Agreement same was payable in advance without any further act or notice by Landlord. Further, Tenant shall immediately surrender and vacate Property. Landlord shall be vested with immediate occupancy thereof together with the improvements located thereon.

**20. Default by Landlord.** If the Landlord shall breach any of the provisions hereof, Landlord's liability shall in no event exceed \$1,500 and Tenant agrees that any judgment or award which he may obtain against Landlord shall be recoverable and satisfied solely out of the right, title and interest of the Landlord in the Property and Tenant shall have no rights or liens or levy against any other property or assets of Landlord, by levy, execution or other enforcement proceedings for the collection of any such sums or satisfaction of any such judgment or award.

**21. Tenant's Waiver of Notice.** If proceedings shall be commenced by Landlord to recover possession of the Property and personal property of tenant located on or at the Property, either at the end of the term or upon the occurrence of an Event of Default, Tenant expressly waives any and all demands, notices of intention and notices of action or proceedings which may be required by law to be given or taken prior to any entry or reentry by summary proceedings, ejectment or otherwise, by Landlord.

**22. Holdover Tenancy.** If Tenant continues to occupy the Property or declines to surrender same to Landlord at the end of the term, Tenant shall be liable to Landlord for rent at a

rate equal to twice the rent payable for the previous lease year. Nothing contained in this paragraph shall be construed to extend the term or to prevent Landlord from recovering possession of the Property after the term has expired or to limit Tenant's liability to Landlord for damages arising out of Tenant's failure to surrender the Property to Landlord at the expiration of the term.

23. **Condemnation.** In the event any public authority or agency holding the power of eminent domain, shall at any time during the term of this Agreement, condemn or acquire title to the Property, or any portion thereof, the rental shall be reduced by the extent of the acreage taken and the Landlord shall be entitled to all of the condemnation award with the exception of any sum representing payment for loss of planted, unharvested crops.
24. **Quiet Possession.** The Landlord has the right to enter into this Agreement. If the Tenant complies with this Agreement, the Landlord must provide the Tenant with undisturbed possession of the Property.
25. **Notices.** Every notice required or permitted under this Agreement, unless otherwise specifically provided herein, must be given in writing and shall be sent by United States Certified Mail, return receipt requested, addressed by the party giving, making or sending the same to the other's address first above given, or to such other address as either party may designate from time to time by notice given to the other party. During any postal strike or similar interruption with the mails, personal delivery shall be substituted for certified mail.
26. **Waiver.** A waiver by either the Landlord or Tenant of a breach of this Agreement or any other agreement between them by the other party does not constitute a continuing waiver or a waiver of any subsequent breach.
27. **Jurisdiction.** This agreement shall be construed under, and in accordance with, the laws of the State of New Jersey and all obligations of the parties created by this Agreement are performable in Salem County, New Jersey. Jurisdiction and venue is laid in the Superior Court of New Jersey, Salem County, New Jersey for any legal proceedings regarding the interpretation or enforcement of this Agreement.
28. **Surrender.** The Tenant agrees to surrender possession and occupancy of the Property peaceable at the termination of this Agreement, at which time the Property shall be in as good condition as at the beginning of the leased term. Tenant shall remove all equipment unless separately negotiated with Landlord prior to termination of this Agreement.

29. **Termination and Surrender.** It is explicitly understood and agreed that any crops not harvested at the termination of the term of this Agreement shall revert to Landlord and Tenant shall have no right to harvest same.

30. **Tenant's Letter.** At the request of the Landlord, the Tenant shall sign a letter stating that (a) this Agreement has not been amended and is in effect, (b) the Landlord has fully performed all of the Landlord's obligations in this Agreement, and (c) the Tenant has paid all rent to date.

31. **Binding.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this Agreement.

32. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall be construed as if the invalid, illegal, or unenforceable provision had never been included in this Agreement.

33. **Attorney Fees.** If, as a result of a breach of this Agreement by either party, the non-breaching party employs an attorney or attorneys to enforce its rights under this Agreement, then the breaching or defaulting party agrees to pay the other party the reasonable attorney fees and costs incurred to enforce this Agreement, said fees and costs incurred by the Landlord to be considered additional rent.

34. **Full Agreement.** This Agreement supersedes any prior understandings, written or oral, agreements between parties.

35. **Modification.** No amendment, modification or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties of this Agreement.

36. **Time of Performance.** Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties set their hands and seals on the date first written above.

M&J CATALANO FARMS, INC.

SALEM COUNTY IMPROVEMENT AUTHORITY

By:

Julie Acton, Executive Director

Witness

Witness