

Prepared by: _____

NJDEP File No.: _____

GRANT OF CONSERVATION RESTRICTION/EASEMENT

(Dune Area and/or Adjacent Beach Area)

THIS GRANT OF CONSERVATION RESTRICTION/EASEMENT is made this ____ day of 20__, by _____, its heirs, successors and assigns and all legal and equitable owners, and any and all current or successor holders of any interest in and to the property whose address is _____, Borough/Township, County of _____, State of New Jersey, hereinafter referred to as the "Grantor," in favor of and to the New Jersey Department of Environmental Protection, its successors and assigns, hereinafter referred to as the "Grantee".

WITNESSETH:

WHEREAS, the Grantor is the owner in fee simple of certain real property located in the Township/Borough of _____, County of _____, New Jersey, designated as Lot(s) _____, Block(s) _____ on the official Tax Map of the Township/Borough of _____, _____ County Clerk or Recorder's Deed Book Number _____, Page Number _____, (hereinafter "the Property"); and

WHEREAS, the Grantor has obtained a (**choose applicable permit type**) CAFRA Permit or Waterfront Development Permit, NJDEP File No. _____, pursuant to the (**choose applicable statute(s)**) Coastal Area Facilities Review Act, N.J.S.A. 13:19-1, the Waterfront Development Act, N.J.S.A. 12:5-3, and/or the Coastal Zone Management Rules, N.J.A.C. 7:7) for a land use development, attached hereto as **Exhibit A**; and

WHEREAS, the Permit issued to the Grantor is conditioned upon the Grantor's recording of a Grantee approved Conservation Restriction/Easement, pursuant to N.J.A.C. 7:7-18, for the dune area and adjacent beach area (hereinafter the "Restricted Area") as shown on the approved plan(s), entitled _____, prepared by _____, dated _____, last revised date _____, attached hereto as **Exhibit B**, and more particularly described on a legal description (metes and bounds) of the Restricted Area, attached hereto as **Exhibit C**; and

WHEREAS, coastal areas play a significant role in the maintenance of environmental quality on a community, regional, and statewide level; and

WHEREAS, dune and beach areas are integral portions of a waterfront ecosystem; and

WHEREAS, dune and beach areas are integral to recreation and Public Trust uses and contribute to the State's economy; and

WHEREAS, dune and beach areas are integral to geologic processes and contribute to the overall protection of the shorefront; and

WHEREAS, construction of structures, removal of vegetation, and grading and excavating results in adverse impacts to private and public property during storm events; and

WHEREAS, the Grantee is authorized by N.J.S.A. 13:1D-9 to formulate comprehensive policies for the conservation of natural resources, to promote environmental protection, and prevent pollution of the environment of the State, and is authorized by N.J.S.A. 13:8B-3 to acquire and enforce conservation restrictions; and

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

NOW THEREFORE, in consideration for the issuance of the Permit and for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the facts recited above and the terms, conditions and restrictions contained herein, the Grantor hereby agrees that the Property shall be subject in perpetuity to the following conveyances, covenants and restrictions in favor of the Grantee:

1. Grantor hereby conveys, transfers, assigns and grants to the Grantee a Conservation Restriction/Easement with respect to that portion of the Property designated as the Restricted Area as shown in **Exhibit B** and as described in **Exhibit C**.
2. Specifically, including but not limited to, the following activities shall not occur within the Restricted Area:
 - a. Removal, excavation, grading, or disturbance of the soil;
 - b. Dumping or filling with any materials;
 - c. Installation of structures;
 - d. Placement of pavement or other impervious material;
 - e. Destruction of plant life which would alter the existing pattern of vegetation;
 - f. The use of fertilizers, herbicides or pesticides; and

- g. All other activities, unless explicitly permitted as part of the Conservation Restriction/Easement.
3. The Grantor may conduct the following activities within the Restricted Area provided the Grantor has received prior written approval from the DEP's Division of Land Use Regulation.
 - a. Demolition and removal of paving and structures, when it is demonstrated to the Grantee that such removal will result in enhanced storm damage and hurricane protection, habitat enhancement or to prevent a safety hazard;
 - b. Beach maintenance activities which do not adversely affect the natural functioning of the beach and dune system, and which do not preclude the development of a stable dune along the back beach area may be conducted provided prior written approval is obtained from the DEP. These activities include routine cleaning, debris removal, mechanical sifting, maintenance of access ways and DEP-approved dune creation, and dune stabilization through installation of sand fencing and planting of vegetation in accordance with N.J.A.C. 7:7-10;
 - c. Post-storm beach restoration activities involving the placement of clean fill material on beaches, and the mechanical redistribution of sand along the beach profile from the lower to the upper beach may be conducted provided prior written approval is obtained from the DEP. These post-storm activities, which are different than routine beach maintenance activities, must be carried out in accordance with the standards found at N.J.A.C. 7:7-10; and
 - d. Beach nourishment and shore protection projects constructed by a Federal or State agency, provided that a public access easement has been conveyed to the DEP.
 4. The boundaries of the Restricted Area shall be marked by an unobtrusive, semi-permanent visual marker in a manner of the Grantor's choosing, and to the Grantee's satisfaction, no less than 30 days prior to commencement of site preparation. Examples include survey markers.
 5. This Conservation Restriction/Easement shall be a burden upon and shall run with the Property, and shall bind Grantor, its heirs, successors and assigns, in perpetuity. The Grantor shall give notice of this Conservation Restriction/Easement to all holders of any easements in the Restricted Area within 30 days of recording by the County Clerk.
 6. It is the purpose of the Conservation Restriction/Easement to assure that the Restricted Area will be maintained as such and to prevent any disturbance or

development to that portion of the Property. To carry out this purpose, the following rights are granted to Grantee by this Conservation Restriction/Easement:

- a. Upon advance notice to enter upon the Property in a reasonable manner and at reasonable times so as to assure compliance with the provisions of this Conservation Restriction/Easement; and
 - b. In addition to the exercise of any other statutory or common law right, to enjoin any activity on, or use of, the Restricted Area that is inconsistent with the purpose of this Conservation Restriction/Easement and to enforce the restoration of such areas or features of the Restricted Area that may be damaged by inconsistent activity or use.
7. Grantor shall provide the Grantee telephonic and written notice of any transfer or change in ownership of any portion of the Property and Restricted Area, including but not limited to the name and address of the new owner, and including but not limited to any later-formed condominium association, at least one month prior to the day of the signing of those documents accomplishing the actual transfer or change in ownership.
8. In addition to, and not in limitation of, any other rights of the Grantee hereunder or at law or in equity, if the Grantee determines that a breach, default or violation ("Violation") of this Conservation Restriction/Easement has occurred or that a Violation is threatened, the Grantee shall give written notice to Grantor of such Violation, setting forth the specifics thereof, and demand corrective action sufficient to cure the Violation. If the Grantor fails to cure the Violation after receipt of notice thereof from the Grantee, or under circumstances where the Violation cannot reasonably be cured within a time period dictated by the Grantee, fails to begin curing such Violation within the time period dictated by the Grantee, or fails to continue diligently to cure such Violation until finally cured, the Grantee 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 Restricted Area and to take action to terminate and/or cure such Violation and or to cause the restoration of that portion of the Restricted Area affected by such Violation to the condition that existed prior thereto, or
 - c. To seek or enforce such other legal and/or equitable relief or remedies as the Grantee deems necessary or desirable to ensure compliance with the terms, conditions, covenants, obligations and purpose of this Conservation Restriction/Easement.

9. If the Grantee, in its discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Restricted Area, the Grantee may pursue its remedies under paragraph 8 above without prior notice to Grantor or without waiting for the period provided for cure to expire. The Grantee's rights under this paragraph shall apply equally in the event of either actual or threatened Violations of the terms of this Conservation Restriction/ Easement. Grantor agrees that the Grantee's remedies at law for any Violation of the terms of this Conservation Restriction/Easement are inadequate and that the Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance. The above language shall in no event be interpreted to derogate or diminish the Grantee's rights and powers under the laws of the State of New Jersey for the protection of public health, safety and welfare.
10. Enforcement of the terms of this Conservation Restriction/Easement shall be at the discretion of the Grantee and any forbearance by the Grantee to exercise its rights under this Conservation Restriction/Easement in the event of any Violation by Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent Violation or of any of the Grantee's rights under this Conservation Restriction/Easement. No delay or omission by the Grantee in the exercise of any right or remedy upon any Violation by Grantor shall impair such right or remedy or be construed as a waiver of such right or remedy.
11. Grantor agrees to reimburse the Grantee for any costs incurred by the Grantee in enforcing the terms of this Conservation Restriction/Easement against Grantor, and including, without limitation, the reasonable costs of suit and attorneys' fees.
12. The Grantee reserves the right to transfer, assign, or otherwise convey the Conservation Restriction/Easement to any other entity or person to facilitate the operation of and/or public use and enjoyment of the Restricted Area provided it is in accordance with N.J.S.A. 13:8B-1 et seq.
13. Any notice, demand, request, consent, approval or communication under this Conservation Restriction/Easement shall be sent by certified mail, return receipt requested or reliable overnight courier, addressed as follows:

To the Grantor:

To the Permittee:

State of New Jersey
Department of Environment Protection
Division of Land Resource Protection
and its successors and assigns

As of this date of this Conservation Restriction, Grantee's address for the purposes of notice is:

501 East State Street
Mail Code 501-02A
P.O. Box 420
Trenton, NJ 08625-0420
Attention: Director, Division of Resource Protection
(609) 984-3444

In addition, any notice relating to paragraph 7 shall be addressed as follows:

To the Department:

State of New Jersey
Department of Environmental Protection
Bureau of Coastal & Land Use Compliance & Enforcement
and its successors and assigns

501 East State Street
Mail Code 501-01A
P.O. Box 420
Trenton, NJ 08625-0420
Attention: Manager, Bureau of Coastal & Land Use Compliance &
Enforcement
(609)292-1240

14. A party may change the address or person to whom notices to it are required to be given by notice given in the manner above provided.
15. This instrument conveys no right of access by the general public to any portion of the Property.
16. The Grantor agrees to bear all costs and liabilities of any kind related to the operation, upkeep and maintenance of the Restricted Area, including any required fencing of the Restricted Area, as stated or shown in **Exhibit A** and/or **Exhibit B**. The Grantor shall be responsible for acts of its own negligence consistent with the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:8-1 et seq.
17. The Grantor agrees that the terms, conditions, restrictions and purposes of this Conservation Restriction/Easement will be inserted in any subsequent deed, subdivision deed, lease, sub-lease or other legal instrument by which the Grantor divests itself of any interest in any portion of the Property. Notwithstanding the failure of the Grantor to include the terms and restrictions of this instrument, this

conservation restriction/easement, shall run with the land and be binding on all heirs, successors and assigns.

18. Reserved.
19. Notwithstanding anything contained herein to the contrary, any modification or termination of this Conservation Restriction/Easement shall require the prior written approval of the Grantee, its successor or assign.
20. This Conservation Restriction/Easement shall survive any merger of the fee and restriction interest in the Restricted Area.
21. In the event of a conflict between this Conservation Restriction/Easement and the approved plan(s), **Exhibit B**, and specifications approved by the Grantee in writing pursuant to the Permit, **Exhibit A**, the latter shall govern.
22. Taxes, Insurance.
 - a. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property and Restricted Area. Grantor shall keep the Property and Restricted Area free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.
 - b. The Grantor agrees to pay any real estate taxes or other assessments levied on the Property and Restricted Areas. If the Grantor becomes delinquent in payment of said taxes or assessments, such that a lien against the land is created, the Grantee, at its option, shall, after written notice to the Grantor, have the right to purchase and acquire the Grantor's interest in said Property and Restricted Area or to take such other actions as may be necessary to protect the Grantee's interest in the Restricted Area and to assure the continued enforceability of this Conservation Restriction/Easement.
23. Miscellaneous.
 - a. The laws of the State of New Jersey shall govern the interpretation and performance of this Conservation Restriction/Easement.
 - b. If any provision of this Conservation Restriction/Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Restriction/Easement, or the application of such provision 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.

- c. This Conservation Restriction/Easement and the Permit along with approved plans set forth the entire agreement of the parties with respect to the Conservation Restriction/Easement and supersede all prior discussions, negotiations, understandings or agreements relating to the easement, all of which are merged herein. No alteration or variation of this Conservation Restriction/Easement shall be valid or binding unless contained in writing executed and recorded by the parties hereto.
 - d. Should there be more than one Grantor, the obligations imposed by this Conservation Restriction/Easement upon each Grantor shall be joint and several.
 - e. The covenants, terms, conditions and restrictions of this Conservation Restriction/Easement shall be binding upon, and inure to the benefit of, the parties hereto and all parties having or acquiring any right, title or interest in any portion of the Property, including holders of subdivision deeds, and shall continue as a servitude running in perpetuity with the Property.
 - f. The captions in this Conservation Restriction/Easement have been inserted solely for convenience of reference and are not a part of this Conservation Restriction/Easement and shall have no effect upon construction or interpretation.
 - g. Execution of this Conservation Restriction/Easement does not constitute a waiver of the rights or ownership interest of the State of New Jersey in public trust property.
 - h. This Conservation Restriction/Easement shall be construed as if it were drafted by both parties. Both parties waive all statutory and common law presumptions which might otherwise serve to have the instrument construed in favor of, or against, either party as the drafter hereof.
 - i. This Conservation Restriction/Easement may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same instrument.
24. The Grantor reserves unto itself the right to undertake de minimis modifications of the Restricted Area that are approved in advance and in writing by the Grantee. The Grantee may approve the modification under the following conditions and with the following documentation:
- a. The modification results in an increased level of protection of the regulated resource; or
 - b. The modification results in equivalent areas of resources protected; and

- c. The modification does not compromise the original protected resource.
25. If the Grantee approves the Grantor's modification, the Grantor shall amend this instrument by preparing and submitting to the Grantee for prior review and approval:
 - a. A revised plan and metes and bounds description for the area to be preserved under the modified Conservation Restriction/Easement (hereinafter the "Modification Documents"); and
 - b. An Amended Conservation Restriction/Easement that reflects the modifications to the original Conservation Restriction/Easement, the justification for the modification and that also includes the deed book and page of the title deed for the property or properties subject to the modified Conservation Restriction/Easement set forth in the Modification Documents.
26. The Grantor shall record the documents listed in paragraph 25, above, in the same manner and place as this original Conservation Restriction/Easement was recorded.
27. This Grant of Conservation Restriction/Easement may be removed pursuant to N.J.S.A. 13:8B-1 et seq.
28. The Grantor reserves unto itself the right to abandon the project entitled _____, Permit File Number _____ (the "Project" as depicted and described on Exhibits B and C respectively), whereupon the Grantee shall execute an appropriate release of this Conservation Restriction/Easement without the need for a public hearing that might otherwise be required under N.J.S.A. 13:8B-1 et seq. Abandonment of the approved Project shall include a relinquishment of the Project's associated permits and any and all rights thereto. The right to this release of the Conservation Restriction/Easement may only be undertaken prior to any site disturbance, pre-construction earth movement or construction within any regulated land areas governed by this instrument. Any such release shall be effectuated by the recordation of a Release of Conservation Restriction/Easement which has been duly executed by Grantor and Grantee.

TO HAVE AND TO HOLD unto the State of New Jersey, Department of Environmental Protection, its successors and assigns forever. The covenants, terms, conditions, restrictions and purposes imposed with this Conservation Restriction/Easement shall not only be binding upon the Grantor but also upon its agents, personal representatives, assigns and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, the Grantor has set its hand and seal on the day and year first above written, and directs that this instrument be recorded in the office of the _____ County Clerk.

_____ (Grantor)

By: _____ (Signature names and title)

ATTEST:

(Seal) _____, Secretary

STATE OF _____
COUNTY OF _____

Be it remembered that on this ____ day of _____, 20__, before me, the subscriber, a Notary Public of New Jersey, personally appeared: _____, and he thereupon acknowledged that he signed the foregoing instrument (*in such capacity, that the seal affixed to said instrument is the corporate seal*)

of said corporation), and that said instrument is the voluntary act of deed of said person (or corporation, made by virtue of authority from its Board of Directors).

A Notary Public of _____

My Commission Expires: _____

Attachments required: NJDEP Approved Permit
NJDEP Approved Plan(s)
Legal Description (metes and bounds) of the Restricted Area