

Prepared by: _____

NJDE File No. _____

GRANT OF CONSERVATION RESTRICTION/EASEMENT
(Highlands Preservation Area Approval)

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 _____, 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 property is also depicted as lots _____, of block _____ of the plan entitled _____ prepared by _____ dated _____ last revised date _____; 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, pursuant to N.J.S.A. 13:20-1 et seq. the Legislature has determined that the New Jersey Highlands is an essential source of drinking water, providing clean and plentiful drinking water for one-half of the State's population, including communities beyond the New Jersey Highlands; and

WHEREAS, the New Jersey Highlands contains exceptional natural resources such as clean air, contiguous forest lands, wetlands, pristine watersheds, and habitat for fauna and flora, and includes many sites of historic significance, and provides abundant recreational opportunities for the citizens of the State; and

WHEREAS, the New Jersey State Legislature has passed and the Governor has enacted the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq., (the “Highlands Act”) in recognition of the unique Highlands natural resources, and in so doing established the Highlands Preservation Area and the requirement for a Highlands Preservation Area Approval for regulated activities within that area; and

WHEREAS, the Grantor has obtained a Highlands Preservation Area Approval, pursuant to N.J.S.A. 13:20-30 (NJDEP File No. _____, SHR), under the Highlands Act, for the Property as set forth in **Exhibit A** attached hereto and made a part hereof; and

WHEREAS, the Highlands Preservation Area Approval issued to the Grantor for the Property is conditioned upon the Grantor’s recording of this Conservation Restriction/Easement for the area identified as “Highland Conservation Area”, and the area identified as the “Restricted Development Area” (together known hereinafter as “the Restricted Area”) as shown on the approved plan(s) entitled _____, prepared by _____, dated, _____, and last revised, _____, attached hereto as **Exhibit B**, and more particularly described on legal description (metes and bounds), attached hereto as **Exhibit C**; and

WHEREAS, the Grantor, having the authority to do so, hereby enters into this Conservation Restriction/Easement and grants to the Grantee a Conservation Restriction/Easement on the Property to prohibit regulated activities in, on, under, above, across and through the Highlands Conservation Area, and to preclude any unauthorized impervious surface within the Restricted Development Area.

NOW, THEREFORE, pursuant to the issuance of the Highlands Preservation Area Approval, the facts recited herein and the terms, conditions and restrictions contained herein, and pursuant to the Highlands Act, the Grantor agrees that the property shall be subject in perpetuity to the following conveyances, covenants and restrictions in favor of the Grantee:

1. There shall be no site disturbances, pre-construction earth movement or any construction of any kind throughout any portion of the Property until the Grantor delivers to the Grantee a complete and fully recorded copy of this Conservation Restriction/Easement, and the HPAA approval shall be ineffective until Grantee receives a complete copy of the fully recorded instrument.
2. The following restrictions apply to the Highlands Conservation Area:
 - a. Except as noted in paragraph 2b below, the Grantor shall not undertake or perform any regulated activities within the Highlands Conservation Area, including but not limited to the following activities:

- i. Construction or placing of buildings, roads, signs, billboards or any other structures on, in below, across, through or above the ground;
 - ii. Dumping or placing of soil or other substance or material, or dumping or placing of trash, waste or unsightly materials;
 - iii. Removal or destruction of any existing or planted tree cover, shrubs or any other vegetation;
 - iv. Excavation, dredging or removal of loam, peat, gravel, soil, rock, or other mineral substance;
 - v. Use except for purposes that do not inhibit or impair land and water areas from remaining in their natural condition;
 - vi. Activities that may be detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation; and/or
 - vii. Other acts or uses, or disturbances unless otherwise specified in this Conservation Restriction/Easement and/or paragraph 2b.
 - b. For the purposes of this Conservation Restriction/Easement only the following activities are allowed within the Highlands Conservation Area:
 - i. Continued agricultural practices on existing, active agriculture fields;
 - ii. The maintenance of the existing, active fields and meadows in an herbaceous state;
 - iii. Harvesting of forest products in accordance with a forest management plan approved by the State Forester, and;
 - iv. Removal of existing vegetation in accordance with a non-native/invasive species removal plan, or a wildlife management plan, approved by the Grantee prior to removal.
3. The following limitations apply to the Restricted Development Area:
- a. The current proposed impervious surface for the property is _____ square feet;

- b. A maximum of _____ square feet of total impervious surface is allowed within the Restricted Development Area subject to approval by the Grantee of a Highlands Preservation Area Approval;
 - c. Unless allowed per paragraph 3b above, vegetation disturbance is limited to continued agricultural practices on existing, active agriculture fields, mowing of existing lawn areas, and removal of existing vegetation in accordance with a non-native species removal plan, or a wildlife management plan, approved by the Grantee prior to disturbance.
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 fence post, pipe in the ground, survey markers, and a shrub or tree line.
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 provide a copy of this Conservation Restriction/Easement to 1) the Highlands Water Protection and Planning Council, 2) the municipal clerk with a request that it be placed in the file for the lot containing the approved project, and 3) all holders of any interests in the Restricted Area within 30 days of this instrument's recordation 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. To carry out this purpose, the following rights are granted to the Grantee and the Highlands Water Protection and Planning Council by this Conservation Restriction/Easement:
 - a. 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 Restricted Area, including but not limited to the name and address of the any new owner, at least one month prior to the day of the execution 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 its 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 Easement Areas affected by such Violation to the condition that existed prior thereto, and/or
 - c. To seek or enforce any 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 purposes of this Conservation Restriction/Easement including, but not limited to, the recovery of costs and attorney fees.
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 or 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. In addition, the Highlands Water Protection and Planning Council shall have a right of enforcement of the terms and conditions of this Conservation Restriction/Easement whether or not Grantee transfers, assigns or otherwise conveys the Conservation Restriction/Easement to another public entity or private conservancy pursuant to paragraph 11 below.
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, including, without limitation, the reasonable costs of suit and attorneys' fees.
12. The Grantee reserves the rights to transfer, assign, or otherwise convey the Conservation Restriction/Easement to any other public entity or private conservancy to facilitate the management of the Restricted Area.
13. Any notice, demand, request, consent, approval or communication under this Conservation Restriction shall be sent by certified mail, return receipt requested or reliable overnight courier, addressed as follows:

To Grantor:

To the Grantee:

State of New Jersey
Department of Environment Protection
Division of Land Use Regulation
501 East State Street
Mail Code 501-02A
P.O. Box 420
Trenton, NJ 08625-0420
Attention: Director, Division of Land Use Regulation
(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
Coastal & Land Use Compliance & Enforcement
401 East State Street
Mail Code 401-04C
P.O. Box 420
Trenton, NJ 08625-0420
Attention: Manager, Coastal & Land Use Compliance & Enforcement
(609) 292-1240

To the Highlands Council:

Highlands Water Protection and Planning Council
And its successors and assigns
100 North Road
Chester, NJ 07930
Attention: Executive Director (908) 879-6737

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, including the Restricted Area.
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/visual marker as stated or shown in **Exhibit A**, **Exhibit B** and/or **Exhibit C**. 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 shall be inserted in any subsequent deed, subdivision deed, lease, sub-lease or any other legal instrument by which the Grantor divests itself of any interest in any portion of the Property. However, notwithstanding the failure to include the terms and restrictions of this instrument, this Conservation Restriction/Easement shall nonetheless run with the land and be binding on all heirs, successors and assigns.
18. The Grantee may only assign its rights under this Conservation Restriction/Easement to another governmental body or a charitable conservancy,

and only in accordance with N.J.S.A. 13:8B-1 et seq. and N.J.S.A. 13:9B-1 et seq.

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, and as set forth under N.J.S.A. 13:8B-1 et seq.
20. This Conservation Restriction shall survive any merger of the fee and 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 Highlands Preservation Area Approval, **Exhibit A**, the latter shall govern.
22. Taxes, Insurance.
 - a. Grantor retains all responsibilities and shall bear all costs and liabilities of any and all kind related to the ownership, operation, upkeep and maintenance of the Restricted Area. Grantor shall keep the 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 Restricted Area. 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 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 Highlands Preservation Area Approval 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 by the parties hereto, undertaken pursuant to N.J.S.A., and recorded in the chain of title.
 - 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 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 only be removed pursuant to N.J.S.A. 13:8B-1 et seq.

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 shall bind the Grantor and its agents, personal representatives, heirs, 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)

_____ (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: Highland Preservation Area Approval
NJDEP Approved Plan(s)
Legal Description of the Restricted Area (metes and bounds)