

# **APPENDIX C**

Prepared by: \_\_\_\_\_

## DEED OF CONSERVATION EASEMENT

This Deed of Conservation Easement ("Easement"), made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ is between the Borough of Sayreville ("Grantor"), having a principal place of business at 167 Main Street, Sayreville, Middlesex County, New Jersey 08872, and the New Jersey Department of Environmental Protection ("Grantee"), having its principal place of business at 401 East State Street, Trenton, New Jersey 08625.

### Witnesseth:

Whereas, Grantor is the sole owner in fee simple of real property that consists of approximately 24.15 acres of land, designated as portions of Block 20, Lot 1; Block 21, Lots 2 through 7; Block 22, Lot 1; and Block 23, Lot 1 on the tax map of the Borough of Sayreville, Middlesex County, State of New Jersey, and more particularly described in a metes and bounds description of the property attached to and made a part here of as Schedule A (the "Property"); and

Whereas, the Property has resource qualities that provide natural resource services to the benefit of the general public by providing, among other such services, watershed protection, water quality protection, aquifer recharge potential, a variety of wildlife habitat ("Conservation Values"); and

Whereas, the qualities of the Property are further documented in an inventory of the Property dated \_\_\_\_\_, and attached hereto a Schedule C ("Present Condition Report"), which consists of reports, maps, photographs, and other documentation that the Grantor hereby represents provides an accurate representation of the Property at the time of the grant and which is intended to serve as baseline information for monitoring compliance with the terms of this grant; and

Whereas, Grantor intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity; and

Whereas, this Easement is entered into in accordance with the New Jersey Conservation and Historic Preservation Restriction Act (N.J.A.C. 13:8B-1 et seq.), and shall be binding upon the Grantor its successors and assigns and upon the Grantee, its successors and assigns.

**NOW THEREFORE**, and in consideration of the execution by Grantee of a Consent Judgment, entered on \_\_\_\_\_, for the settlement of the Grantee's claims against Grantor for natural resource damages, the Grantor does hereby convey to the Grantee, a

conservation easement in perpetuity, pursuant to the laws of New Jersey, for the exclusive purpose of assuring that the Conservation Values will be conserved and maintained forever and that uses of the Property that are inconsistent with the Conservation Values are prohibited and will be prevented or corrected.

I. **Purpose.** It is the purpose of this Easement to assure that the Conservation Values of the Property will be retained forever; to prevent any use of the Property that will impair or interfere with the Conservation Values; and to encourage stewardship that is consistent with the terms of this Easement and provide for long term protection of the Conservation Values of the Property.

II. **Prohibited Acts.** Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited unless Grantor obtains the prior written consent of the Grantee to perform such activity or use. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

A. **Subdivision and Development.** Any new development or subdivision of the Property is expressly prohibited.

B. **Structures.** Construction on the Property of new structures, temporary or permanent is specifically prohibited, including construction of billboards and cellular phone towers, wind turbines, golf courses, airstrips, and helicopter pads.

C. **Mining.** No topsoil, sand, gravel, loam, rock, or other minerals shall be deposited on, excavated, dredged, or removed from, the Property.

D. **Roads, Driveways and Impervious Cover.** No portion of the Property shall be covered with concrete, asphalt, oiled stone, or any other impervious paving material. No new roads or driveways may be constructed on the Property.

E. **Trash.** No dumping or placing of trash or solid waste shall be permitted on the Property.

F. **Natural resource protection.** No activity shall be permitted on the Property that would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation.

G. **Utilities and Rights of Way.** Any new installations of utilities, utility easements or grants of rights of way on the Property are expressly prohibited.

III. **Permitted Uses.** Uses that encourage environmental stewardship and appreciation of the Conservation Values such as environmental education and passive recreation, including the existing uses of hiking/horse riding trails, are and shall remain permitted uses.

IV. **Rights of Grantor.** The ownership rights of the Grantor extend to Grantor's personal representatives, heirs, successors, and assigns, and include, but are not limited to, the right to sell or otherwise transfer the Property and the right to exclude any member of the public from the Property.

V. **Rights of Grantee.** To accomplish the conservation purposes of this Easement the following rights are conveyed to the Grantee:

A. **Enforcement.** Grantee has the right to preserve and protect the Conservation Values of the Property.

B. **Inspection.** Grantee and its agents shall be permitted access to, and have the right to enter upon, the Property for the purposes of inspection in order to enforce and assure compliance with the terms and conditions of this Easement.

VI. **Responsibilities of Grantor and Grantee not affected.** Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligations of the Grantor as owner of the Property. This shall apply to:

A. **Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property.

B. **Upkeep and Maintenance.** The Grantor, as owner of the Property, shall continue to be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Property. Nothing in this Easement shall require the Grantor to take any action to restore the condition of the Property after any Act of God or other event over which it had no control.

C. **Liability and Indemnification.** Grantor shall hold harmless, indemnify, and defend Grantee and its employees, agents, and contractors, and their successors and assigns from and against all liabilities, penalties, costs, losses, damages, expenses, or claims including, without limitation, attorneys fees, arising from or in any way connected with injury to or the death of any person or physical damage to any property resulting from any act, omission, condition, or other matter related to, or occurring on or about, the Property, regardless of cause, unless due solely to the negligence or wrongful willful acts or omissions of the indemnified parties. Grantor's agreement to hold harmless and indemnify Grantee shall not affect any statutory protections available to the Grantor under the Landowner's Liability Act, N.J.S.A 2A:42A-2, et seq.

VII. **Remedies.** The Grantee shall have the right to prevent and correct violations of the terms of this Easement. Enforcement of the terms of this Easement shall be at the discretion of the Grantee and any failure on behalf by the Grantee to exercise its rights hereunder shall not be deemed or construed to be a waiver of the Grantee of those rights. This shall be true regardless of the number of violations of the terms of this Easement by the Grantor that occur or the length of time it remains unenforced. If the Grantee finds what it believes is a violation of the terms of this Easement, it may without limitation as to other available legal recourse, at its discretion take any of the following action:

A. **Notice of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation in accordance with a plan approved by the Grantee.

B. **Judicial Relief.** If Grantor fails to cure the violation within 45 days after receipt of written notice from the Grantee, or under circumstances where the violation cannot reasonably be cured within a 45-day period, fails to begin curing such violation, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin ex parte the violation by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to such injury. The Grantor acknowledges that any actual or threatened failure to comply or cure will cause irreparable harm to the Grantee and that money damages will not provide an adequate remedy.

C. **Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of Conservation Values. Without limiting Grantors' liability, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

D. **Costs of Enforcement.** In any case where a court finds that a violation has occurred, all costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit, and attorney's fees, and any costs of restoration necessitated by Grantor's violation of the Easement shall be borne by the Grantor.

VIII. **Development Rights.** Grantor hereby grants to Grantee all development rights or credits that are now or hereafter allocated to, implied, reserved or inherent in the Property, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield on the Property or any other property.

**IX. Grantor's Warranties.**

A. **Title.** Grantor warrants good and sufficient title to the Property, free from all encumbrances and hereby promises to defend the same against all claims that may be made against it. Grantor warrants the Property to be free from all mortgages, liens, encumbrances, restrictions, covenants, and conditions.

B. **Hazardous Substances.** Grantor warrants no actual knowledge of the presence of any hazardous substance, as that term is defined at N.J.S.A. 58:10-23.11b, on the Property. Grantor hereby promises to defend and indemnify Grantee against all litigation, claims, demands, penalties, and damages by non-parties, arising from or connected with any discharge of hazardous substances or other violation of federal, state, or local environmental laws.

X. **Amendment of Easement.** This easement may be amended only with the written consent of Grantee and Grantor. Any such amendment shall be consistent with the purposes of this Easement and with the laws of the State of New Jersey and any regulations promulgated pursuant to those laws.

XI. **Interpretation.** This Easement shall be interpreted under the laws of the State of New Jersey, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

XII. **Perpetual Duration.** This Easement shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to the Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.

XIII. **Notices.** Any notices required by this Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee at the following addresses, unless a party has been notified of a change of address:

To Grantor:  
Business Administrator  
Borough of Sayreville  
167 Main Street  
Sayreville, New Jersey 08872

To Grantee:  
New Jersey Dept. of Environmental Protection  
c/o Chief, Office of Natural Resource Restoration

PO Box 420  
501 East State Street  
Trenton, NJ 08625

XIV. Throughout this Easement, the singular shall include the plural, and the masculine shall include the feminine unless the text indicates otherwise.

**IN WITNESS WHEREOF**, the Grantor has hereunder set his/her/their hand and seal on the day and year first written above.

\_\_\_\_\_  
Witness as to Signature of Grantor

\_\_\_\_\_  
[Name] Grantor

By:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Full Name Signed Above

\_\_\_\_\_  
Title

STATE OF NEW JERSEY )

)

ss.

COUNTY OF )

On \_\_\_\_\_, \_\_\_\_\_ personally appeared before me who I am satisfied is the person named in and who executed this Instrument and they acknowledged that they signed, sealed and delivered the same as their act and deed, for the uses and purposes therein expressed, and that the full and actual consideration paid or to be paid for this easement as such consideration is defined in P.L. 1969, c49 is reflected in the Consent Judgment, dated \_\_\_\_\_, referenced above.

\_\_\_\_\_

Attachments:

Schedule A – Metes and Bounds Description and reduced survey of Property

Schedule B – Map of Land subject to Conservation Easement (“Property”)

Schedule C – Present Condition Report

**SCHEDULE A – METES AND BOUNDS DESCRIPTION OF THE PROPERTY**

Metes and bounds description of the Easement Property based upon a survey prepared in accordance with New Jersey Green Acres, “Minimum Specifications for Land Surveys and Property Descriptions,” which is available at: <http://www.state.nj.us/dep/greenacres>.

**SCHEDULE B – MAP OF PROPERTY SUBJECT TO CONSERVATION EASEMENT**

## SCHEDULE C –DESCRIPTION OF THE PROPERTY

1. Property location information, including:
  - (I) Street address, municipality and county; and
  - (i) Municipal tax block and lot numbers;
2. Property ownership information:
  - (i) Name and address of each owner of the Property;
  - (ii) Description of any existing legal easements or other encumbrances, including how each easement or encumbrance will, or will not, inhibit implementation of or compliance with the compensatory restoration remedial action work plan the Department has approved;
3. Property description information, including:
  - (i) Size, in acres;
  - (ii) A preliminary assessment report for the Property prepared pursuant to N.J.A.C. 7:26E-3.13, including, without limitation, an aerial photographic history of the property;
  - (iii) Land use history of the Property and within a 1,000 feet radius of the property, including a map and a written description and location of any past or present utility, building, road, or other improvement on the Property;
  - (iv) Contemporary digital photographs of the Property;
  - (v) Geographical information system maps compatible with the "New Jersey Department of Environmental Protection Mapping the Present to Protect New Jersey's Future: Mapping and Digital Data Standards," in N.J.A.C. 7:1D, Appendix A. For additional guidance see the most recent version of the Department's "Guidance for the Submission and Use of Data in GIS Compatible Formats Pursuant to Technical Requirements for Site Remediation" at <http://www.state.nj.us/dep/srp/regs/techgis/techgis05.htm>, that;
    - (A) Are on 8.5 inch by 11 inch paper (using multiple sheets if necessary), scaled at one inch to 200 feet or less, and clean, clear, and legible;
    - (B) Include a bar scale, a north arrow, a legend, the applicable Site Remediation Program Interest name and Site Remediation Program Interest number, the outline of the municipal tax blocks and lots on which the Property is located, physical structures on the Property, including buildings, roads, parking lots, pavement, and other improvements, surface water and wetlands

located within the boundaries of the Property and within one-half mile of the Property, streets and roads, and their names, all ground water recharge rates for the Property published by the New Jersey Geological Survey, known contaminated sites within one-half mile of the Property, open space, public property, other preserved property within one-half mile of the Property from the Recreation and Open Space Inventory published by NJDEP, and the date prepared;

(C) A description of the land use on the proposed Property and in the surrounding area;  
and

(D) A topographic map that shows the location of the land proposed for transfer and or preservation.