Prepared by: _____
NJDEP File No.:_____

GRANT OF CONSERVATION RESTRICTION/EASEMENT
(Non-Routine Mitigation Site/Mitigation Banks)

This Grant of Conservation Restriction/Restriction is made this _____ day of _____, 20___, by _____, whose address is_____, Borough/Township, County of _____, State of New Jersey, hereinafter referred to as "Grantor", in favor of the State of New Jersey Department of Environmental Protection, 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) Coastal Wetlands Permit, Freshwater Wetlands Permit NJDEP File No. _____, pursuant to the (choose applicable statute(s)) Wetlands Act of 1970, N.J.S.A. 13:9A, the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1, and (choose applicable rule(s)) the Coastal Zone Management Rules, N.J.A.C. 7:7E, and Coastal Permit Program Rules, N.J.A.C. 7:7, the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A, for a land use development, attached hereto as Exhibit A, and a United States Army Corps of Engineers (USACE) Permit, USACE Permit File No._____, pursuant to the Rivers and Harbors Act of 1899, 33 U.S.C. 403, the Clean Water Act, 33 U.S.C. 1344, and regulations at 33 C.F.R. 320-331, attached hereto as Exhibit B; and

WHEREAS, the Permits issued to the Grantor are conditioned upon the Grantor’s recording of a Grantee and USACE approved conservation restriction/easement, pursuant to (choose applicable rule) N.J.A.C. 7:7-1.5(b)18, N.J.A.C. 7:7A-15.2 (i) for the mitigation site area (hereinafter the "Restricted Area" or "mitigation site area") as shown on a plan, entitled _____, prepared by _____, dated
_____, attached hereto as Exhibit C, (hereinafter the “Plan”), and more particularly described on a legal description of the Restricted Area, attached hereto as Exhibit D; and

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

WHEREAS, wetland mitigation site areas are a significant natural area and are an integral portion of a wetlands ecosystem; and

(Choose following paragraph for wetlands construction, restoration, enhancement; delete if preservation)

WHEREAS, the Grantor, having the authority to do so, intends to construct a wetland mitigation project, known as (insert name of mitigation bank/site), at the wetland mitigation site; and

WHEREAS, the Grantee and the USACE desire to preserve the wetland mitigation site area in its (choose applicable state) natural state, enhanced state, so as to preserve and protect wetlands, open waters, and resident animal and plant species on the Restricted Area, including the air space and subsurface forever in its natural state; and

WHEREAS, the Grantee is authorized by N.J.S.A. 13:1D-9 to formulate comprehensive policies for the conservation of the natural resources, to promote environmental protection and prevent pollution of the environment of the State by N.J.S.A. 13:9A and N.J.S.A. 13:9B, and is authorized by N.J.S.A. 13:8B-3 to acquire and enforce conservation restrictions; and USACE policy provides for protection of aquatic resources in perpetuity pursuant to Regulatory Guidance Letter 02-02; and

WHEREAS, the Grantor, having the authority to do so, intends to enter into this Conservation Restriction 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 and the USACE:

1. Grantor hereby conveys, transfers, assigns and grants to the Grantee a Conservation Restriction / Easement with respect to that portion of the Property as designated as the Restricted Area shown in Exhibit C and as described in Exhibit D.

2. Paragraphs 27, 28 and 29 below shall only be considered by the Grantee and the USACE in cases where the Grantee and USACE have determined that the de minimis modifications are in the public interest.

3. The Grantor shall ensure that the following activities shall not occur within the Restricted Area, with the exception of those activities that are specifically a construction or maintenance component of the mitigation plan approved as part of the DEP Permit or USACE Permit:

   (a) Removal, excavation, or disturbance of the soil;
   (b) Dumping or filling with any materials;
   (c) Installation of structures;
   (d) Placement of pavement or other impervious surface;
   (e) There shall be no removal, destruction or cutting of trees or plants, planting of trees or plants, introduction of non-native animals and plants, grazing of domestic animals, or disturbance or change in the natural habitat in any manner, except as provided in par. 8 (c) below.
   (f) The use of fertilizers, herbicides or pesticides that are not specifically approved under the wetlands mitigation plan;
   (g) Taking any action to alter the hydrology of the Restricted Area; (choose condition (h) or (i) with applicable statute(s) & rule(s))
   (h) Any other activities constituting a regulated activity under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. or N.J.A.C. 7:7A-2.2 (a) and 2.2 (b), as amended ("Regulated

activities in freshwater wetlands and State open waters"). Any other activities constituting a regulated activity under N.J.A.C. 7:7A- 2.6, as amended, ("Regulated activities in transition areas");

(i) Any other activities constituting a regulated activity under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq. or N.J.A.C. 7:7-2.2(a), as amended; or

(j) Any other activities constituting a regulated activity under the Rivers and Harbors Act of 1899, 33 U.S.C. 403, the Clean Water Act, 33 U.S.C. 1344 or USACE Regulations at 33 C.F.R. Parts 320-331 as amended.

4. The Restricted Area, including its air space and its subsurface, and any portion thereof shall not be included as part of the gross area of other property not subject to this Conservation Restriction / Easement for the purpose of determining density, lot coverage, or open space requirements, under otherwise applicable laws, regulations or ordinances controlling land use and building density.

5. There shall be no other acts or uses detrimental to the preservation of the Restricted Area, including its air space and its subsurface in their natural state as a valuable component of a wetlands ecosystem.

6. The Grantor shall mark the boundaries of the Restricted Area using unobtrusive, permanent visual markers in a manner of the Grantee's and the USACE choosing, and to the Grantee's and the USACE satisfaction, within 30 days of recording this Grant. Grantor shall thereafter maintain such markers in good condition. Examples include fence post, pipe in the ground, and survey markers.

7. This Conservation Restriction / Easement shall be a burden upon and shall run with the Property, and shall bind Grantor, its successors and assigns, in perpetuity. The Grantor shall give notice of this Conservation Easement/Restriction to all holders of any easements in the Restricted Area within 30 days of recording by the County Clerk or Recorder.

8. It is the purpose of this 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, and to the USACE as third-party rights of enforcement, 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;

(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;

(c) The right, but not the obligation, to monitor the condition of the rare plant and animal populations, plant communities, and natural and/or constructed habitats on the Restricted Area, and to manage them, if necessary, for their continued survival and quality on the Restricted Area. Such activities shall be in accordance with management practices of the Department of Environmental Protection, which may include, but not be limited to, mowing, fencing, trapping, or prescribed burning, but these practices shall not be inconsistent with the maintenance or monitoring obligations under the (reference the appropriate mitigation proposal or permit condition) approving the mitigation.

9. Grantor shall provide the Grantee and the USACE 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 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.

10. In addition to, and not in limitation of, any other rights of the Grantee or the USACE hereunder or at law or in equity, if the Grantee or the USACE determines that a breach, default or violation ("Violation") of this Conservation Restriction / Easement has occurred or that a Violation is threatened, the Grantee or the USACE 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 USACE, or under circumstances where the Violation cannot reasonably be cured within a time period dictated by the Grantee or USACE fails to begin curing such Violation within the time period dictated by the Grantee or USACE, or fails to continue diligently to cure such Violation until finally cured, the Grantee or the USACE 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, or
(c) to seek or enforce such other legal and/or equitable relief or remedies as the Grantee or USACE deems necessary or desirable to ensure compliance with the terms, conditions, covenants, obligations and purpose of this Conservation Restriction / Easement.

11. If the Grantee or the USACE, in either agency’s discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Restricted Area, the Grantee or the USACE may pursue its remedies under paragraph 10 above without prior notice to Grantor or without waiting for the period provided for cure to expire. The Grantee's or the USACE’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 or USACE remedies at law for any Violation of the terms of this Conservation Restriction / Easement are inadequate and that the Grantee or USACE 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 or USACE 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.

12. Enforcement of the terms of this Conservation Restriction / Easement shall be at the discretion of the Grantee or the USACE and any forbearance by the Grantee or the USACE 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 or USACE of such term or of any subsequent Violation or of any of the Grantee's or USACE’s rights under this Conservation Restriction / Easement. No delay or omission by the Grantee or the USACE 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.

13. Grantor agrees to reimburse the Grantee or the USACE for any costs incurred by the Grantee or USACE in enforcing the terms of this Conservation Restriction / Easement against Grantor, including, without limitation, the reasonable costs of suit and attorneys' fees.

14. Subject to the provisions of paragraph 21 of this Grant, the Grantee and the USACE reserve the right to transfer, assign, or otherwise convey this Conservation Restriction / Easement to any other entity or person to facilitate the operation of and/or public use and enjoyment of the Restricted Area.

15. 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 Grantor:

To the Grantee:
State of New Jersey
Department of Environmental Protection
Division of Land Use Regulation
And its successors and assigns
As of this date of this Conservation Restriction / Easement, Grantee's address for the purposes of notice is:

N.J. Department of Environmental Protection
Division of Land Use Regulation
Mail Code 501-02A; P.O. Box 420
Trenton, NJ 08625-0420
Attention: Director, Division of Land Use Regulation

To the United States Army Corps of Engineers:

Philadelphia District
Regulatory Branch
The John Wanamaker Building
100 Penn Square East
Philadelphia, Pennsylvania 19107
Attention: Chief, Regulatory Branch

OR:

New York District
Regulatory Branch
Room 1937, 26 Federal Plaza
New York, NY 10278-0090
Attention: Chief, Regulatory Branch

16. 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.

17. The Grantor reserves to itself, its successors or assigns, all rights as owners of the Property, including the right to engage in all uses of the Restricted Area not inconsistent with the purpose of this Conservation Restriction / Easement and the right to manage the Restricted Area in accordance with the (choose applicable statute(s)) Wetlands Act of 1970, N.J.S.A. 13:9A, the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1, the Rivers and Harbors Act of 1899, 33 U.S.C. 403, the Clean Water

Act, 33 U.S.C. 1344, and (choose applicable rule(s)) the Coastal Zone Management Rules, N.J.A.C. 7:7E, Coastal Permit Program Rules, N.J.A.C. 7:7, the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A and the USACE Regulations at 33 CFR 320-330

18. This instrument conveys no additional right of access by the general public to any portion of the Property.

19. 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 Exhibits A or 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.

20. 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, it shall run with the land and be binding on all heirs, successors and assigns.

21. The Grantee agrees that it will assign its rights under this Conservation Restriction / Easement only 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.

22. 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 and the USACE, their successors or assigns.

23. This Conservation Restriction / Easement shall survive any merger of the fee and restriction interest in the Restricted Area.

24. In the event of a conflict between this Conservation Restriction / Easement and the final plans and specifications approved by the Grantee or the USACE in writing pursuant to either agency's Permit, the latter shall govern.

25. Taxes, Liens.

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 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 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.

26. Miscellaneous.

a. Unless superseded by federal law, 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 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.
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 may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same instrument.

27. The Grantor may undertake de minimis modifications of the Restricted Area that are approved by the Grantee and the USACE in writing prior to commencement of the modification. The Grantee and the USACE may approve a 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.

28. If the Grantee and the USACE approves the Grantor's modification, the Grantor shall amend this instrument by preparing and submitting to the Grantee and USACE for 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 and 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.

29. The Grantor shall record the documents listed in paragraph 28, above, in the same manner and place as this original Conservation Restriction / Easement was recorded.

30. This Grant of Conservation Restriction / Easement may only be removed pursuant to N.J.S.A. 13:8B-1 et seq.

31. Pursuant to N.J.A.C. 7:7A-15.14 (c) each owner of the Property is required to notify the county and/or municipality of the Conservation Restriction / Easement whenever any application for a local approval involving this Property is submitted.

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 or Recorder.

_____ (Grantor)

By: _____ (Signature names and title)
ATTEST:
_____
, Secretary
(Seal)

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
USACE Approved Permit
NJDEP Approved Restricted Area Plan
Metes and Bounds description schedule