

Prepared by: _____

NJDEP File No.: _____

GRANT OF CONSERVATION RESTRICTION/EASEMENT

(Public Access to the Waterfront)

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 Grantee has issued to Grantor Permit # _____, (the “Permit”), attached hereto as **Exhibit A** and made a part hereof, which permits certain construction described therein, and requires among other conditions public access to the waterfront, pursuant to the (**choose applicable statute(s)**) Waterfront Development Law, N.J.S.A. 12:5-3, the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 *et seq.*, as amended, and the corresponding Rules on Coastal Zone Management, N.J.A.C. 7:7*et seq.*, as amended, specifically (**choose applicable rule(s)**) N.J.A.C. 7:16.9 Public Access, N.J.A.C. 7:7-9.46, Hudson River Waterfront Area; and

WHEREAS, by virtue of the Property's location directly on the [**name of adjacent tidal waterway**], the waterfront area of the Property possesses great scenic, aesthetic and recreational qualities for the public enjoyment; and

WHEREAS, pursuant to the Public Trust doctrine, all applicable case laws and duly adopted regulations, as a condition to the Permit, Grantor must provide for public access over a portion of the Property including its water's edge, by creating and maintaining in perpetuity a walkway as well as parking spaces reserved for use by the public (collectively “Easement Areas”), as more specifically 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 Easement Area, attached hereto as **Exhibit C**; 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 for recreational use by the public.

NOW THEREFORE, in consideration for the issuance of the Permit and for the 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 as shown in **Exhibit B** and as described in **Exhibit C**.
2. The parties agree that the Conservation Restriction/Easement shall be in full force and effect as to the entire Easement Areas as shown in **Exhibit B** and described in **Exhibit C**, including those areas upon which the public parking spaces and the walkway(s) have not yet been constructed as of the date of this Conservation Restriction/Easement, and will be accessible to the public at all times in perpetuity.
3. Nothing contained in this Conservation Restriction/Easement shall be deemed or construed to give or grant to the Grantee, the public, or anyone else, any rights to use any portion of the Property except the Easement Areas.
4. Grantor, its successors and assigns, shall maintain the Easement Areas pursuant to the Maintenance Plan, prepared by _____, and dated _____, attached hereto as **Exhibit D** and made a part hereof.
5. The Easement Areas shall be available for public recreational purposes. Recreational uses shall not include any activity that violates federal, state, county or municipal law. No construction shall be permitted within the Easement Areas, other than the public parking spaces and the walkways.
6. The Easement Areas shall be available for waterfront public access purposes, being those recreational activities including, but not limited to, jogging, bicycling, walking, viewing, fishing and other similar recreational activities consistent with

- and compatible with public enjoyment of the Easement Areas preserved by the Conservation Restriction/Easement herein granted.
7. In no event shall the Grantor charge a fee for access to or use of any portion of the Easement Areas, including for use of parking spaces preserved by the Conservation Restriction/Easement herein granted.
 8. In no event shall Grantor erect, place or maintain any gate or any obstruction whatsoever across any portion of the Easement Areas that blocks or impedes physical access to the Easement Areas by the public at any time.
 9. The Grantor shall not construct, install or maintain any structure, building or other improvement within the Easement Areas, except those appearing on plans and specifications approved by the Grantee in writing pursuant to the Permit.
 10. The boundaries of the Easement 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 the edge of a walkway, curbing, fence post, pipe in the ground, survey markers, and a shrub or tree line.
 11. Grantor's liability with respect to the Easement Area is subject to the limitations contained in N.J.S.A. 2A:42A-8 and 2A:42A-8.1 (Landowner Liability Act).
 12. Any activity on or use of the Easement Areas by Grantor which is inconsistent with the Public Trust Doctrine, the purposes of this Conservation Restriction / Easement, or not in conformance with the final plans and specifications approved by the Grantee in writing pursuant to the Permit, **Exhibit A**, cited herein or any other permit subsequently issued by the Grantee regulating the Property shall be prohibited.
 13. 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 former shall govern.
 14. This Conservation Restriction/Easement shall be a burden upon and shall run with the Property, and shall bind Grantor, its heir, successors and assigns, in perpetuity.
 15. Grantor shall provide the Grantee telephonic and written notice of any transfer or change in ownership of any portion of the Easement Areas, 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.

16. 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 Easement Areas 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 deems necessary or desirable to ensure compliance with the terms, conditions, covenants, obligations and purpose of this Conservation Restriction/Easement.
17. If the Grantee, in its discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Easement Areas, the Grantee may pursue its remedies under paragraph 16 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.
18. 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.

19. 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.
20. 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 Easement Areas, provided it is in accordance with N.J.S.A. 13:8B-1 et seq
21. 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 15 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

22. 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.
23. 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 Easement Areas. Grantor shall keep the Easement Areas 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 Easement 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 Easement Areas, or to take such other actions as may be necessary to protect the Grantee's interest in the Easement Areas and to assure the continued enforceability of this Conservation Restriction/Easement.
24. 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 the 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 the property or under the Public Trust Doctrine.
 - 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.
25. The Grantor reserves unto itself the right to undertake de minimis modifications of the Easement 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.
26. If the Grantee approves the Grantor's proposed modification, the Grantor shall amend this instrument by preparing and submitting to the Grantee for prior review and approval:
- a. A revised Plan and legal description (metes and bounds) 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 this 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.
27. The Grantor shall record the documents listed in paragraph 26, above, in the same manner and place as this original Conservation Restriction/Easement was recorded.
28. This Grant of Conservation Restriction/Easement may only be removed pursuant to N.J.S.A. 13:8B-1 et seq.
29. The Grantor reserves unto itself the right to abandon the project entitled _____, Permit File Number _____ (the “Project” as depicted and described in 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 or water 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 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)

_____ (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
NJDEP Approved Plan
Legal Description of Restricted Area (metes and bounds)
Maintenance Plan

EXHIBIT A
PERMIT NO. _____

**EXHIBIT B
EASEMENT AREA PLAN**

EXHIBIT C
LEGAL DESCRIPTION OF EASEMENT AREA

EXHIBIT D
MAINTENANCE PLAN

1. Grantor agrees to maintain the Easement Areas at Grantor's expense.
2. Parking spaces reserved for the public cannot be removed without prior written approval by the Department.
3. "Maintenance" includes:
 - a. Removal of snow, ice, leaves, litter, debris, graffiti, and unauthorized signage from the Easement Areas,
 - b. Regular emptying of trash receptacles,
 - c. Maintaining the surface of the Easement Areas and the area underneath in good repair, reconstruction of any portion of the Easement Areas that may be necessary due to deterioration or destruction of the Easement Areas due to any cause including but not limited to wear and tear, fire, storm, subsidence or flood,
 - d. Maintenance and regular cleaning of drainage basins, grates or any other structure that may be designed to receive surface water runoff from the Easement Areas, maintenance of any lighting fixtures, trash receptacles and benches appearing on the final plans approved by the Department in writing pursuant to Permit No. _____ or any permit subsequently issued by the Department regulating the Property, and any other action consistent with these obligations which is necessary to effectuate permanent and convenient public access to the Easement Areas.