

Prepared by: _____
NJDEP File No.: _____

GRANT OF CONSERVATION RESTRICTION
(Routine Mitigation Site)

This Grant of Conservation 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 (choose applicable statute(s)) the 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. 7:7, the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A, for a land use development, attached hereto as Exhibit A, and a Permit from the United States Army Corps of Engineers New York District (hereinafter "USACE"), USACE Permit File No. _____, pursuant to (choose applicable permit type) Section 10 of the Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. 403, Section 404 of the Clean Water Act, 33 U.S.C. 1344, and regulations at 33 C.F.R. 320-332, 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. 7:7-18, N.J.A.C. 7:7A-12 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; 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 33 C.F.R. Part 332 establishes the standards and criteria for the use of all types of compensatory mitigation to offset unavoidable impacts to Waters of the United States authorized through the issuance of Department of the Army permits pursuant to 33 U.S.C. Section 1344 and/or 33 U.S.C. Section 403; 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 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 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. Terms 27, 28 and 29 below shall only be considered by the Grantee in consultation with the USACE, in cases where the Grantee has 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 the 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. Removal, destruction or cutting of trees or plants, planting of trees or plants, introduction of non-native animals or 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. 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”), or any other activities constituting a regulated activity under N.J.A.C. 7:7A- 2.3, as amended, (“Regulated activities in transition areas”); or

- 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. 7:7-2.3, as amended; or
- j. Any other activities constituting a regulated activity under Section 10 of the Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. 403, Section 404 of the Clean Water Act, 33 U.S.C. 1344, or USACE Regulations at 33 CFR Parts 320-332, 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 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 its 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's satisfaction, within 30 days of recording this Grant. Grantor shall thereafter maintain such markers in good condition. Examples include fence posts, pipes in the ground, and survey markers.

7. This Conservation Restriction 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 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 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:

- (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;
- (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 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 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 the USACE, or under circumstances where the Violation cannot reasonably be cured within a time period dictated by the Grantee or the USACE, fails to begin curing such Violation within the time period dictated by the Grantee or the 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 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 or the USACE deems necessary or desirable to ensure compliance with the terms, conditions, covenants, obligations and purpose of this Conservation Restriction.

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. Grantor agrees that the Grantee's or USACE's remedies at law for any Violation of the terms of this Conservation Restriction 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 the 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 shall be at the discretion of the Grantee or the USACE, and any forbearance by the Grantee or the USACE to exercise either agency's rights under this Conservation Restriction in the event of any Violation by Grantor shall not be deemed or construed to be a waiver by the Grantee or the USACE of such term or of any subsequent Violation or of any of the Grantee's or USACE's rights under this Conservation Restriction. 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 and the USACE for any costs incurred by the Grantee or the USACE in enforcing the terms of this Conservation Restriction 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 reserves the right to transfer, assign, or otherwise convey the Conservation Restriction 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 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
And its successors and assigns

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

For mitigation sites other than a mitigation bank:

State of New Jersey
Department of Environment Protection
Division of Land Use Regulation
Mail Code 401-07B
P.O. Box 420
Trenton, NJ 08625-0420
Attn: Director, Division of Land Use Regulation

For mitigation bank sites:

State of New Jersey
Department of Environment Protection
Office of Policy Implementation
Mail Code 401-07B
P.O. Box 420
Trenton, NJ 08625-0420
Attn: Jill Aspinwall

To the United States Army Corps of Engineers:

New York District
Attention: Chief, Regulatory Branch
Room 16-406, 26 Federal Plaza
New York, NY 10278-0090

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 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 et seq., and (choose applicable rule(s)) the Coastal Zone Management Rules, N.J.A.C. 7:7, the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A; Section 10 of the Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. 403, Section 404 of the Clean Water Act, 33 U.S.C. 1344, and USACE regulations at 33 C.F.R 320- 332.

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 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 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 shall require the prior written approval of the Grantee with the agreement of the USACE, their successors or assigns. Sixty (60)-day advance notification to USACE is required before any action is taken to amend this Conservation Restriction, including transfer of title to, or establishment of any legal claims over, the compensatory mitigation site.

23. This Conservation Restriction 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 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. Liens, Taxes.

- 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.

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.
- b. If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Restriction, 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 and the Permits set forth the entire agreement of the parties with respect to the Conservation Restriction 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 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 upon each Grantor shall be joint and several.
- e. The covenants, terms, conditions and restrictions of this Conservation Restriction 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 have been inserted solely for convenience of reference and are not a part of this Conservation Restriction and shall have no effect upon construction or interpretation.
- g. Execution of this Conservation Restriction 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 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 in coordination with the USACE, prior to commencement of any modification. The Grantee, in coordination with 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 in coordination with the USACE approves the Grantor's modification, the Grantor shall amend this instrument by preparing and submitting to the Grantee and the 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 (hereinafter the "Modification Documents"); and
- b. An Amended Conservation Restriction that reflects the modifications to the original Conservation Restriction 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 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 was recorded.

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

31. Each owner of the Property is required to notify the county and/or municipality of the Conservation Restriction 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 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