

Supplementary Agreement Regarding Grant of Easement to Toms River Township and the New Jersey Department of Environmental Protection

This Supplementary Agreement ("Agreement") is made as of this ____ day of April, 2013, by and between

SILVER BEACH ASSOCIATION, a nonprofit corporation of the State of New Jersey, whose address is P.O. Box 3, Normandy Beach, New Jersey 08739

referred to as the "Owner"

and

TOWNSHIP OF TOMS RIVER, a municipal corporation of the State of New Jersey having offices at 33 Washington Street, Toms River, NJ 08753

referred to as the "Township."

The word "Owner" shall also include all future owners of the "Property" (hereinafter defined) and such Owner's successors and/or assigns, and the word "Township" shall also include all of the Township's successors and/or assigns.

B A C K G R O U N D

A. The Owner owns the property known as Lot 114 in Block 1089 and Lot 115 in Block 1091 on the tax maps of the Township, which property contains a beach adjoining the Atlantic Ocean (the "Property").

B. The Owner has, at the request of the Township, entered into an easement agreement between itself as grantor and the Township and New Jersey Department of Environmental Protection ("DEP") as the grantees entitled Deed of Dedication and Perpetual Storm Reduction Easement ("Beach Restoration Easement"), which easement has been executed by the Owner simultaneously with this Agreement.

C. The purpose of the Beach Restoration Easement is to allow and facilitate the construction of an engineered "Dune System" as said term is defined in the Beach Restoration Easement. The Beach Restoration Easement also provides further rights to governmental authorities referred to in the Beach Restoration Easement to allow them to undertake additional beach restoration actions in the future that may include the replenishment of the beach on Owner's property and construction of enhanced dunes to mitigate future damage from storm events.

D. In the interim, the Township has agreed to assist oceanfront property owners who have executed the Beach Restoration Easement by restoring the dunes on the owner's beachfront property to the same condition as they were in prior to damage caused by the weather event commonly known and referred to as Superstorm Sandy, subject to the receipt by the Township of reimbursement by the U.S. Federal Emergency Management Agency ("FEMA"), whether such funds are received directly or indirectly (e.g. through the State of New Jersey).

E. The Owner and the Township wish to memorialize certain agreements concerning the rights and obligations of the parties to this Agreement all of which shall serve to supplement the Beach Restoration Easement, but which do not modify the rights or obligations of other parties to the Beach Restoration Easement, other than the rights and obligations of the Township.

Now, Therefore, Be It Agreed, in consideration of the Owner's execution of the Beach Restoration Easement at the request of the Township, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Township and Owner agree as follows:

- a) Dune Restoration Work. The Township shall use its best efforts to restore the dunes on the Owner's property to substantially the same condition as such dunes were in prior to Superstorm Sandy, ("Dune Restoration Work"), subject to the receipt by the Township of reimbursement by U.S. Federal Emergency Management Agency ("FEMA"), whether such funds are received directly or indirectly (e.g. through the State of New Jersey)
- b) Hazardous Materials. No sand material used by the Township in connection with the Dune Restoration Work may contain any Hazardous Materials. The term "Hazardous Materials" shall mean and include asbestos, polychlorinated biphenyls, petroleum products and any other hazardous or toxic materials, wastes and substances which are defined as such in any Environmental Law. As used in this paragraph, the term "Environmental Law" shall mean and include CERCLA, 42 U.S.C. 9601, et seq., RCRA, 42 U.S.C. 6901, et seq., ECRA, as amended and reenacted as ISRA, N.J.S.A. 13:1K-6 et seq., the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., all other similar existing and future federal, state and municipal statutes and ordinances governing the environment, all as amended from time to time, and all rules and regulations promulgated thereunder. In this regard, the Township agrees to hold harmless and indemnify the Owner from, for and against any loss or damage to person or property incurred by Owner for the Township's breach of this provision. This provision shall survive any future modification and/or termination of this Agreement.
- c) CAFRA Permit. The Owner is the holder of a certain CAFRA Permit No. 1507-02-0270.2 (CAF 080001) issued by the State of New Jersey, Department of Environmental Protection on March 31, 2009 and recorded in the Ocean County Clerk's Office on April 21, 2009 in OR Book 14268 at Page 1420 (the "Permit"). The Permit is valid through March 31, 2014. The Permit allows the Grantor to perform certain work in the "oceanfront beach area." No provision of the Beach Restoration Easement or this Agreement is intended by the parties hereto to modify, extinguish, diminish and/or adversely affect the benefits conferred upon the Owner by virtue of the Permit and the parties hereto will interpret the Beach Restoration Easement and this Agreement in a manner that is subject to the terms and conditions set forth in the Permit.
- d) Completion of Dune Restoration Work. The Dune Restoration Work shall be completed no later than December 31, 2013, however, no work to be performed hereunder shall take place during the customary summer vacation season between Memorial Day and Labor Day.
- e) Future Storm Damage; Claims by Township. In the event of future storm damage or other casualty event affecting beaches owned or operated by the Township for which the Township

makes application to the state or federal government or any agency thereof ("Governmental Agency"), to the extent that the Owner's beach has suffered damage from such storm, the Township agrees to include the damage to the Property in such application. If any Governmental Agency provides relief to the Township that includes a financial payment related to the claim concerning the Property, whether paid directly to the Township or to any other Governmental Agency for use by the Township, the Township shall use such financial payment in connection with restoration work on the Township-owned beaches and those privately-owned beaches where the owner of same has granted the Township a Beach Restoration Easement. Where the monetary relief provided by a Governmental Agency does not set forth the amount to be allocated to each property for which relief has been claimed, the Township shall equitably apportion the use of such monies without regard to the private or public status of the property. This paragraph shall not apply in those instances where the law or regulations of the relevant governmental agency permit private property owners to seek direct reimbursement for restoration of property damage caused by future storm damage or other casualty.

- f) Nature of Improvements. Notwithstanding any term of the Beach Restoration Easement to the contrary, the Township shall not construct or otherwise require any improvements on the Property, other than the Dune Restoration Work, including, without limiting the generality of the foregoing, bathrooms, showers, food concessions, or boardwalks, unless Owner provides written consent therefore, which consent Owner may withhold for any reason in its unfettered discretion.
- g) Beach Access Fee. Notwithstanding any term of this Agreement or the Beach Restoration Easement to the contrary, the Owner shall be entitled to charge members of the public an access or badge fee that is consistent with the access fee provisions of the CAFRA Permit referenced in Paragraph (c) above. The Owner shall not be required to issue annual, seasonal or monthly badges and shall, in the exercise of its sole and absolute discretion, be permitted to issue solely daily beach badges to provide beach access. If, for any reason whatsoever, the CAFRA Permit is no longer in effect and no other permit providing conditions concerning beach access fees shall be applicable, the Owner may charge the equivalent of the access or badge fee that the Owner charges to its own members ("Members"); provided, however, the Owner shall only be required to make daily badges available to members of the public who are not Members of the Owner, whether or not Owner makes badges of a longer duration available to its Members or renters of Members, and the Township shall not make or join in any claim that asserts any right of the public to more favorable treatment with respect to fees related to access or badge fees.
- h) Beach Access Parking. Notwithstanding any term of the Beach Restoration Easement to the contrary, the Township shall not require Grantor to set aside or make available parking for non-members of Owner.
- i) More Favored Terms. The Owner has entered into this Agreement in reliance on the understanding that any other similarly situated property owner that seeks the Township to restore its dunes will receive terms in connection with such restoration that are not more favorable to the Owner than the terms contained herein. In the event the Township agrees to terms more favorable to an owner of beach front property in connection with the restoration of dunes on such owner's property, this Agreement will be deemed amended to incorporate such more favorable terms.

- j) Binding Effect; Governing Law. The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, and shall be deemed to be covenants running with the land and survive any termination of this Agreement by virtue of non-performance by the Township, or otherwise. Additionally, Owner shall continue to have the right to adopt its own rules and regulations without interference from the Township with respect to the use of the Property as well as the fees its charges for beach badges. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.
- k) Owner's Continuing Right to Restore Dunes and Beach Area. Notwithstanding anything to the contrary provided herein, the Owner reserves the right to (i) perform work upon the beach area and/or dunes on the Property at any time including, but not limited to, dune maintenance/restoration activities thereon at any time, including those activities that may be duplicative of the Township's proposed work on the Property.
- l) Headings. The headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.
- m) Entire Agreement. This Agreement constitutes the entire agreement between the parties to this Agreement with respect to the subject matter hereof. The parties do not rely upon any statement, promise or representation not expressed in this Agreement, and this Agreement once executed and delivered may not be modified or altered in any respect except by a writing executed and delivered by the parties hereto or their successors or assigns.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

Attest:

J. Mark Mutter, Township Clerk

Attest::

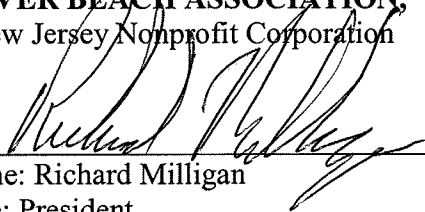


Name: Janet Doremus
Title: Secretary

TOWNSHIP OF TOMS RIVER
a municipal corporation of the State of New Jersey

By: _____
Name: Thomas F. Kelaher,
Title: Mayor

SILVER BEACH ASSOCIATION,
a New Jersey Nonprofit Corporation

By: 

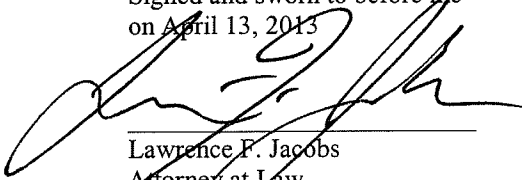
Name: Richard Milligan
Title: President

STATE OF NEW JERSEY)
) SS.:
COUNTY OF OCEAN)

I CERTIFY that on April 13, 2013, JANET DOREMUS personally came before me and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the Secretary of SILVER BEACH ASSOCIATION, a nonprofit corporation of the State of New Jersey, named in this document;
- (b) this person signed this document as attesting witness for the proper corporate officer who is RICHARD MILLIGAN, the PRESIDENT of the corporation;
- (c) this person knows the proper corporate seal of the corporation and the proper corporate seal was affixed;
- (d) this document was signed and delivered by the corporation as its voluntary act and deed by virtue of authority from its Members and/or Board of Directors; and
- (e) this person signed this acknowledgement to attest to the truth of these facts.


JANET DOREMUS, Secretary

Signed and sworn to before me
on April 13, 2013

Lawrence F. Jacobs
Attorney at Law
State of New Jersey

STATE OF NEW JERSEY)
) SS.:
COUNTY OF OCEAN)

I CERTIFY that on _____, 2013 J. Mark Mutter personally came before me and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the Township Clerk of the Township of Toms River, the municipal corporation named in this document;
- (b) this person signed this document as attesting witness for the proper corporate officer who is Thomas F. Kelaher, the Mayor of the corporation;
- (c) this person knows the proper corporate seal of the corporation and the proper corporate seal was affixed;
- (d) this document was signed and delivered by the corporation as its voluntary act and deed by virtue of the adoption of a proper resolution by the Township Committee; and
- (e) this person signed this acknowledgement to attest to the truth of these facts.

J. Mark Mutter, Township Clerk

Signed and sworn to before me
on _____, 2013
