



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF THE COMMISSIONER
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

BOB MARTIN
Commissioner

August 27, 2015

The Silver Beach Association
ATTN: Dan McGrath - President
PO Box #3
Normandy Beach, NJ 08739

Dear Dan McGrath:

The State of New Jersey continues to work hard to acquire all the easements needed to begin the Shore Protection Project in Northern Ocean County. I appreciate the voluntary cooperation you have already shown by signing an easement for your property. Now I am writing to ask for your further assistance to help this project get underway.

As I believe you know, the Army Corps has rejected the easement deed you previously provided because of their concerns about the Side Agreement that you also signed. The Army Corps insists on having a single document which contains both the easement and the elements of the side agreement.

To address the Army Corps' concerns, which have delayed progress on this project, we have worked with your local officials to draft a single easement document that contains both the original easement and the important elements of the side agreement. I have enclosed this new document for your review and approval.

I understand the inconvenience executing a new document poses for you, especially given your cooperation to date. So if have any questions or concerns about the enclosed document, please call Kelley Staffieri or Georgeann Gray of the Department of Environmental Protection's Bureau of Coastal Engineering at 732-255-0767 so that we can address them.

When you are ready to sign the document, please do so before a witness and notary, and return it in the enclosed reply envelope. If it would be more convenient for us to arrange the witness and notary please call Kelley Staffieri or Georgeann Gray and they will schedule an appointment at a location convenient to you for signing the new document.

Thank you in advance for you continued cooperation, which will assist DEP in moving forward as soon as possible with this critical shore protection project.

Sincerely Yours,

Bob Martin
Commissioner

Prepared by:

I. RELEASE OF EASEMENT,

**II. RESCISSION of SUPPLEMENTARY AGREEMENT REGARDING GRANT OF
EASEMENT,**

and

**III. DEED OF DEDICATION AND PERPETUAL STORM
DAMAGE REDUCTION EASEMENT**

THIS RELEASE, RESCISSION AND DEED OF DEDICATION AND PERPETUAL
STORM DAMAGE REDUCTION EASEMENT is made this _____ day of
_____ 20__ BY AND BETWEEN

Silver Beach Association
a New Jersey non-profit corporation

whose address is

PO Box 3, Normandy Beach, NJ 08739

referred to herein as Grantor,

AND

THE Township of Toms River ("Municipality"), a Municipal
Corporation of the State of New Jersey whose post office address
is Municipal Clerk, 33 Washington Street, Toms River, New Jersey
08753, **AND THE STATE OF NEW JERSEY** referred to herein
collectively as the Grantees,

WITNESSETH

WHEREAS, Grantor is the owner of that certain tract of
land, located in the Township of Toms River, County of Ocean,
State of New Jersey, and identified as **Block 1089; 1091, Lot
114; 115**, on the official tax map of the [Municipality],
hereinafter the "Property," and Grantor holds the requisite
interest to grant this Deed of Easement; and,

WHEREAS, the Grantor and Grantees recognize that the beach at Toms River, New Jersey is subject to constant erosion and degradation, thereby destroying a valuable natural resource and threatening the safety and property of the Grantor and of all of the citizens of the State; and,

WHEREAS, the Grantees desire to participate with each other and the United States Army Corps of Engineers to construct the **Manasquan Inlet to Barnegat Inlet, New Jersey Hurricane and Storm Damage Reduction Project**, as defined in the July 18, 2014 Project Partnership Agreement between the Department of the Army and the State of New Jersey, hereinafter "Project"; and,

WHEREAS, construction of the Project includes periodic renourishment, which may be performed solely by the Grantees or in conjunction with the United States Army Corps of Engineers; and,

WHEREAS, in order to accomplish part of the Project, Grantees need a Perpetual Storm Damage Reduction Easement on portions of said Property herein described; and,

WHEREAS, the United States Army Corps of Engineers and/or State of New Jersey will not participate in the Project unless the Grantees acquire the real property interest herein described in all real property needed for the Project; and,

WHEREAS, the Grantor, at the request of the Municipality, entered into an easement agreement between itself as grantor and the Municipality and New Jersey Department of Environmental Protection ("DEP") as grantees entitled Deed of Dedication and Perpetual Storm Reduction Easement ("Beach Restoration Easement") on _____, 2014, which was recorded at the Ocean County Clerk's Office on _____. 2014; and

WHEREAS, the Grantor and the Municipality also entered into a Supplemental Agreement, which was recorded at the Ocean County Clerk's Office on _____, 2014, which contained provisions related not only to the Beach Restoration Easement, but also to Superstorm Sandy emergency funding received from U.S. Federal Emergency Management Agency ("FEMA"), municipal dune maintenance, and other substantive elements; and

WHEREAS, it is in the best interest of the parties to execute this Deed of Easement to clarify the respective rights and obligations of the parties; and to release and nullify the prior executed easement; and to rescind and nullify the prior

executed supplementary agreement, each described below by recording date and book and page number herein; and,

WHEREAS, the Municipality shall consider this revised Deed of Easement in establishing the full assessed value of any lands subject to such restrictions; and,

WHEREAS, the Grantor currently has the right to operate its beach during the summer as a public beach by selling beach badges and/or seasonal passes in a manner consistent with N.J.A.C. 7:7-16.9; and,

WHEREAS, the Grantor desires to cooperate in allowing the Project to take place on a portion of said Property; and,

WHEREAS, the Grantor acknowledges that it will benefit from the successful implementation of the Project; and,

WHEREAS, the Grantor acknowledges that after successful implementation of the Project the beach and dune are still subject to the forces of nature which can result in both erosion and accretion of the beach and dune; and,

NOW, THEREFORE, in consideration for the mutual benefits to be received by the parties from the successful implementation of the Project:

I. The parties do hereby release, terminate, and extinguish, on behalf of themselves, their personal representatives, heirs, successors and assigns, by this Release of Easement and operation of law, any claim to and all its right, title, and interest to the Easement recorded on _____, 20____, in the real property records of Ocean County, New Jersey in Deed Book _____, Page _____ as though the easement had never been created; AND

II. The parties do hereby release, terminate, and extinguish, on behalf of themselves, their personal representatives, heirs, successors and assigns, by this Release of Supplementary Agreement Regarding Grant of Easement and operation of law, any claim to and all its right, title, and interest to the Supplementary Agreement Regarding Grant of Easement recorded on _____, 20____, in the real property records of Ocean County, New Jersey in Deed Book _____, Page _____ as though the Supplementary Agreement Regarding Grant of Easement had never been created; AND

III. The Grantor grants and conveys to Grantees, the State of New Jersey and the Municipality an irrevocable, assignable, perpetual and permanent easement as set forth herein:

GRANT OF EASEMENT: A perpetual and assignable easement and right-of-way for the Manasquan Inlet to Barnegat Inlet, New Jersey Hurricane and Storm Damage Reduction Project, in, on, over and across that portion of land of the Property, known as **Block 1089; 1091 Lot 114; 115** as shown on the Municipality's official tax map and further depicted on the plot plan attached hereto as Exhibit A, for use by the State of New Jersey, the Municipality, and the United States Army Corps of Engineers and its contractors, and each of their representatives, agents, contractors and assigns to:

a. Construct, preserve, patrol, operate, maintain, repair, rehabilitate, and replace a public beach, dune system, and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand, to accomplish any alterations of the contours on said land, to construct berms and dunes, and to nourish and re-nourish periodically;

b. Move, temporarily store and remove equipment and supplies;

c. Erect and remove temporary structures;

d. Perform any other work necessary and incident to the construction, periodic renourishment, and maintenance of the Manasquan Inlet to Barnegat Inlet, New Jersey Hurricane and Storm Damage Reduction Project together with the right of public use and access;

e. Post signs and plant vegetation on said dunes and berms;

f. Erect, maintain, and remove silt screens and snow fences;

g. Facilitate preservation of the dunes and vegetation through the limitation of access to dune areas; and

h. Trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures, and obstacles within the limits of the easement;

subject however to existing easements for utilities and pipelines, existing public highways, existing paved public roads and existing public streets.

The Grantor reserves to the Grantor, the Grantor's heirs, successors and assigns the right to construct a dune overwalk structure in accordance with any applicable Federal, State, or local laws or regulations, provided that such structure shall not violate the integrity of the dune in shape, dimension, or function, and that prior approval of the plans and specifications for such structures must be obtained from the [Municipality] and the State of New Jersey, and provided further that such structures are to be considered subordinate to the construction, operation, maintenance, repair, rehabilitation, and replacement of the Manasquan Inlet to Barnegat Inlet New Jersey Hurricane and Storm Damage Reduction Project. The Grantor further reserves to the Grantor, the Grantor's heirs, successors, and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby conveyed to the Grantees. Grantor hereby expressly agrees not to grade or excavate within the easement area or to place therein any structure or material other than a dune walkover as referenced above without prior approval of the plans and specifications for said activities from the Municipality, the State of New Jersey and/or any applicable Federal agency, as required.

Duration of Easement: The easement granted hereby shall be in perpetuity, and in the event that the Municipality or the State of New Jersey shall become merged with any other geo-political entity or entities, the easement granted hereby shall run in favor of surviving entities. The covenants, terms, conditions and restrictions of this Deed of Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the land.

Municipality to Maintain Beach: The Municipality agrees, consistent with all Federal, State and local statutes and regulations, that at all times it shall use its best, good-faith efforts to cause the beach area abutting Grantor's lands to be maintained, consistent with any applicable Federal, State or local laws or regulations, notwithstanding any action or inaction of the State of New Jersey, Department of Environmental Protection or the United States Army Corps of Engineers to maintain the beach area.

Character of Property: Notwithstanding the foregoing, nothing herein is intended or shall be deemed to change the overall character of the Property as private property; nothing herein

shall be deemed to grant to the Grantees or otherwise permit the Grantees or any other person to cross over or use any part of the Property which is not within the Easement Area; nothing herein is intended or shall be deemed to alter the boundary lines or setback lines of the Property.

By the acceptance of this Deed of Easement, the Municipality agrees, to the extent allowed by applicable law, that the Lands burdened by the easement herein described shall not be excluded from the calculation of minimum square footage requirements when construing applications under the Zoning Ordinance of the Municipality.

Miscellaneous:

1. The enforcement of the terms of this Easement shall be at the discretion of the Grantees and any forbearance by Grantees to exercise their rights under this Easement in the event of any violation by Grantor shall not be deemed or construed to be a waiver by Grantees of such term or of any subsequent violation or of any of Grantees' rights under this Easement. No delay or omission by Grantees in the exercise of any right or remedy upon any violation by Grantor shall impair such rights or remedies or be construed as a waiver of such rights or remedies.

2. The interpretation and performance of this Deed of Easement shall be governed by the laws of the State of New Jersey.

3. If any provision of this Deed of Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

4. Any notice, demand, request, consent, approval or communication under this Deed of Easement shall be sent by regular first class mail, postage prepaid and by Certified Mail, Return Receipt Requested, addressed to the mailing addresses set forth above or any other address of which the relocating party shall notify the other, in writing.

5. The captions in this Deed of Easement have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

6. Structures not part of the project are not authorized. The Municipality shall not construct seasonal bathrooms, showers, or food concessions on the Property.

7. Consistent with New Jersey law, during the summer season when lifeguard and other beach amenity services (e.g., beach maintenance, trash removal) are provided by the Grantor to the public, Grantor may charge fees for daily and seasonal beach badges and/or passes, provided Grantor allows audit of its records, and access and use of the beach, in accordance with N.J.A.C. 7:7-16.9 (t), (u), (v), (w) and (y), in effect as of the date hereof whether or not subsequently appealed or modified.

8. Grantor represents and warrants he/she/it holds the requisite ownership interest and authority to execute this Deed of Easement; and has made this Deed of Easement for the full and actual consideration as set forth herein.

9. This Deed of Easement may be executed in counterparts by the respective Parties, which together will constitute the original Deed of Easement.

10. The Grantor currently holds a CAFRA Permit issued by DEP. The Permit allows the Grantor to perform certain work in the "oceanfront beach area" provided that such work does not conflict with the terms this Deed of Easement or inhibit any of grantee's rights hereunder. To the extent Grantor wishes to continue to maintain the oceanfront beach area, Grantor must ensure its CAFRA permit is valid on an ongoing basis, which may include renewing said permit from time to time, and shall comply with all rules and regulations related to the Permit. Maintenance and restoration of the beach by the Grantor that results in an alteration of the Corps Project's engineered design is prohibited pursuant to DEP regulations underlying the CAFRA permit (see generally N.J.A.C. 7:7-1.1, et seq.) and this Deed of Easement unless prior written authorization is granted by DEP and/or the Army Corps. The Grantor shall continue to have the right to maintain beach area of the Property outside of the Corps Project, so long as the Grantor has a valid CAFRA Permit for such activities. Maintenance shall be consistent with the Municipality's CAFRA permit and state aid agreement for the Project.

11. In the event of future storm damage or other casualty event affecting beaches owned or operated by the Municipality, this Deed of Easement shall not preclude the Municipality from pursuing other federal funding programs for relief. Any relief

resulting from the Municipality's efforts shall be equitably apportioned by the Municipality without regard to the private or public status of the property.

12. The Municipality shall not require the Grantor to set aside or make available parking for non-members of the Grantor.

IN WITNESS WHEREOF, with the parties understanding and agreeing to the above, they do hereby place their signatures on the date at the top of the first page.

Accepted by the
PROPERTY OWNER, GRANTOR

Witnessed by:

GRANTOR

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

Date _____

STATE OF NEW JERSEY

COUNTY OF _____ SS.:

I CERTIFY that on _____ 20__,

[INSERT GRANTOR(S) NAME(S)]

personally came before me and this person acknowledged under oath, to my satisfaction that this person (or if more than one, each person);

- 1) is named in and personally signed this Deed of Easement; and
- 2) signed, sealed and delivered this Deed of Easement as his or her act and deed.

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

Accepted by the
TOWNSHIP OF TOMS RIVER, GRANTEE

Witnessed by:

BY: _____
Thomas F. Kelaheer
Mayor

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

Date _____

Accepted by the
STATE OF NEW JERSEY, GRANTEE

Witnessed by:

BY: _____
David Rosenblatt,
Director
Office of Flood Hazard Risk
Reduction Measures

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

Date _____