

Prepared by:

**DEED OF DEDICATION AND PERPETUAL
MITIGATION AREA EASEMENT**

THIS DEED OF DEDICATION AND PERPETUAL MITIGATION AREA EASEMENT
is made this _____ day of _____ 2024 BY AND

BETWEEN

THE TOWNSHIP OF MIDDLETOWN, a Municipal Corporation of the State
of New Jersey whose post office address is Municipal Clerk, 1
Kings Highway, Middletown, New Jersey 07748-2085, referred to
herein as Grantor,

AND

THE STATE OF NEW JERSEY, whose address is 401 East State Street,
Trenton, New Jersey 08625, referred to herein collectively as
the Grantee,

WITNESSETH

WHEREAS, the Grantor is the owner of certain tracts of land,
located in the Township of Middletown, County of Monmouth, State
of New Jersey, and identified as **Block 121, Lot 1 and Block 276,
Lot 48**, on the official tax map of the Township of Middletown,
hereinafter the "Properties," and Grantor holds the requisite
interests to grant this Deed of Easement; and

WHEREAS, the Grantor and Grantee recognize that coastal
storm damage and tide-induced flooding in Port Monmouth,
Township of Middletown, New Jersey is a significant concern that
threatens the safety, and life and property, of the Grantor and
of all of the citizens of the State; and

WHEREAS, the Grantor and Grantee desire to participate with
each other and the United States Army Corps of Engineers ("Army
Corps") to construct the Raritan Bay and Sandy Hook Bay,
Hurricane and Storm Damage Reduction Project, Port Monmouth, New
Jersey, as defined in the January 31, 2014, Project Partnership
Agreement, executed between the New Jersey Department of
Environmental Protection ("Department") and the Army Corps,
hereinafter "Project"; and

WHEREAS, the Project is comprised of two Phases; and

WHEREAS, Phase I of the Project is the Shore Protection Reach, comprised of an engineered beach and dune with plantings, 2 pedestrian and 2 vehicular crossovers, a fishing pier extension, and a terminal groin. Phase I was completed in June of 2015 and is scheduled to have recurring renourishments at 10-year intervals throughout the 50-year life of the Project; and

WHEREAS, Phase II of the Project is comprised of five separate construction contracts which include the following project components: two pump stations, a tidegate, three road closure gates, concrete floodwalls, levees, road raisings along portions of Port Monmouth Road and Route 36 (Contracts 2-5), as well as wetland mitigation, hereinafter "Contract 1"; and

WHEREAS, The Grantee and the Army Corps have entered into a Project Partnership Agreement, hereinafter "PPA", for the construction of the Project; and

WHEREAS, the PPA stipulates that construction of the Project was authorized by Section 101(b)(23) of the Water Resources Development Act of 2000; and

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, (33 U.S.C. 2213) specifies the cost-sharing requirements applicable to the Project; and

WHEREAS, under the Construction heading, Chapter 4, Title X, Division A of the Disaster Relief Appropriations Act of 2013, Public Law 113-2 (127 Stat. 24 - 25) enacted January 29, 2013 (hereinafter "DRAA 13"), the Secretary of the Army is authorized, **at full Federal expense** using funds provided in DRAA 13, to complete construction of certain ongoing construction projects, which includes initial construction of all contracts of the Project, including initial construction of Contract 1; and

WHEREAS, The Grantor, Grantee, and the Army Corps agree that specifically, pursuant to Chapter 4, Title X, Division A of the Disaster Relief Appropriations Act of 2013, Public Law 113-2 (127 Stat. 24 - 25) enacted January 29, 2013, all activities under Contract 1 on the Properties in connection with the Project shall be performed and funded by the Army Corps until such time as the Department deems Contract 1 successful; and

WHEREAS, the Township of Middletown shall not be responsible, financially or otherwise, for any wetland mitigation activities under Contract 1 on the Properties in

connection with the Project prior to the time the Department deems the mitigation activities successful, at which point, and as with all Contracts making up the Project, the Army Corps will turn over Contract 1 to the Department; and

WHEREAS, Contract 1 is required to mitigate for impacts to the State's Freshwater and Coastal wetlands as well as Riparian lands resulting from the construction of Contracts 2-5, as conditioned in the following NJDEP authorized permits: Freshwater Wetlands Permits #1331-14-0001.4FWW160001;#1331-14-0001.4 FWW160002; #1331-14-0001.3 FWW160001; #1331-14-0001.3 FWW160002; #1331-14-0001.5 FWW180001; and #1331-14-0001.7 LUP210001, and Federal Consistency Permits and Water Quality Certificates # 1331-14-0001.4 CDT160001; 1331-14-0001.2 CDT60001; 1331-14-0001.5 CDT210001; 1331-14-0001.7 CDT210001; and

WHEREAS, the above listed permits provide the authorization for initial construction and monitoring of Contract 1; and

WHEREAS, as a condition of the above listed permits, the Grantor, as the owner of the Properties, will be required to place a Conservation Restriction Easement on these Properties selected for the construction of Contract 1, which will be recorded in the Monmouth County Clerk's Office; and

WHEREAS, in order to construct Contract 1, the Grantor and Grantee will need to execute a Perpetual Mitigation Area Easement on all or part of the Properties as further described on Attachment A; and

WHEREAS, the Army Corps and/or State of New Jersey will not participate in the Project unless the Grantee acquires all real property interests needed for the Project; and

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

WHEREAS, the Grantor desires to cooperate in allowing Contract 1 to take place on all or a portion of said Properties; and

WHEREAS, the Grantor acknowledges that it will benefit from the successful implementation of Contract 1.

NOW, THEREFORE, in consideration for the benefits to be received by the Grantor from the successful implementation of the Project, the Grantor grants and conveys to Grantee an irrevocable, assignable, perpetual and permanent easement as set forth herein:

GRANT OF EASEMENT: A perpetual and assignable right and easement to construct, operate, maintain, monitor, repair, and replace a wetland and riparian ecosystem in, on, over, and across the lands described in Attachment A for the purpose of mitigating the effects of the project authorized by the Act of Congress approved through Section 101(b)(23) of the Water Resources Development Act of 2000, including the right to excavate and remove soil and other materials, lower the ground surface elevation, and create tidal pools; to deposit sand, soil and other beneficial materials; to trim, cut, fell and remove trees, underbrush, thatch and other vegetation; to apply herbicides; to construct drainage systems; to plant grasses, shrubs, trees and other vegetation; to install and maintain nesting platforms; provided, however, that no structures or improvements shall be constructed or maintained on the land except as may be approved in writing by both the representative of the United States in charge of the project and a representative of the non-federal sponsor/permitting or mitigation approval agency, and that after said mitigation project has been and deemed successful by the permitting or mitigation approval agency, no excavation shall be conducted, no soil or fill material deposited, no fertilizers, herbicides, or pesticides shall be used, no trees or other plants may be cut, removed or planted, no non-native animals introduced or domesticated animals grazed, and no action taken that would alter the hydrology or hydraulics without such approval of the said representatives of the United States and the non-federal sponsor/permitting or mitigation approval agency; reserving, however, to the landowner, their heirs, successors and assigns, all such rights and privileges as may be used without interfering with or abridging the right and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

Duration of Easement: The easement granted hereby shall be in perpetuity, and in the event that the Township of Middletown or the State of New Jersey shall become merged with any other geopolitical 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.

Character of Property: Notwithstanding the foregoing, nothing herein is intended or shall be deemed to change the overall character of the Properties as property owned by the Grantor; nothing herein shall be deemed to grant to the Grantee or otherwise permit the Grantee or any other person to cross over or use any part of the Properties 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 Properties.

By the acceptance of this Deed of Easement, the Township 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. Middletown Township covenants that, in the event it sells, transfers, or otherwise disposes of the Properties in whole or in part on which the easement is located that Middletown Township will reserve to itself an easement covering the exact same area and along the exact same terms as are being conveyed to the Department in this Deed of Dedication and Mitigation Area Easement.
2. The enforcement of the terms of this Easement shall be at the discretion of the Grantee and any forbearance by Grantee 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 Grantee of such term or of any subsequent violation or of any of Grantee's rights under this Easement. No delay or omission by Grantee 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.
3. The interpretation and performance of this Deed of Easement shall be governed by the laws of the State of New Jersey.
4. 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.
5. 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.
6. 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.

7. Structures which are not part of Contract 1 are not authorized.
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 may be executed in counterparts by the respective Parties, which together will constitute the original Deed.

ATTACHMENT A