

OCEAN COUNTY SUPERIOR COURT  
OCEAN COUNTY COURTHOUSE  
CIVIL LAW DIVISION  
TOMS RIVER NJ 08754

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (732) 929-2016  
COURT HOURS 8:30 AM - 4:30 PM

DATE: NOVEMBER 07, 2014  
RE: PW CAROLAN VS TOWNSHIP OF LONG BEACH  
DOCKET: OCN L -003379 14

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 4.

DISCOVERY IS PRESUMPTIVELY 450 DAYS BUT MAY BE ENLARGED OR SHORTENED BY THE JUDGE AND RUNS FROM THE FIRST ANSWER OR 90 DAYS FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE MANAGING JUDGE ASSIGNED IS: HON VINCENT J. GRASSO

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 002  
AT: (732) 929-4771 EXT 4771.


IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING. PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE WITH R.4:5A-2.

ATTENTION:

ATT: WILLIAM J. WARD  
CARLIN & WARD  
25 A VREELAND RD  
PO BOX 751  
FLORHAM PARK NJ 07932

JUAMH6

**Appendix XII-B1**

|   |  |  |   |  |
|---|--|--|---|--|
|    | <b>CIVIL CASE INFORMATION STATEMENT</b><br><b>(CIS)</b><br><br>Use for initial Law Division<br>Civil Part pleadings (not motions) under <i>Rule 4:5-1</i><br><b>Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>,<br/>         if information above the black bar is not completed<br/>         or attorney's signature is not affixed</b> |  | <b>FOR USE BY CLERK'S OFFICE ONLY</b><br>PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA<br>CHG/CK NO.:<br>AMOUNT:<br>OVERPAYMENT:<br>BATCH NUMBER: |  |
|   | ATTORNEY / PRO SE NAME<br>William J. Ward, Esq.  |  | TELEPHONE NUMBER<br>(973) 377-3350  |  |
|   | FIRM NAME (if applicable)<br>Carlin & Ward, P.C.   |  | COUNTY OF VENUE<br>Ocean  |  |
|   | OFFICE ADDRESS<br>25A Vreeland Road<br>P.O. Box 751<br>Florham Park, New Jersey 07932  |  | DOCKET NUMBER (when available)<br><i>PW 3379-14</i>   |  |
| NAME OF PARTY (e.g., John Doe, Plaintiff)<br>Carolan, Hekemian, Kline, Shanin & Tracy Specter, Kaplan, & North Beach 1003, LLC, Plaintiffs  |  | CAPTION<br>Tina Carolan, Robert S. Hekemian, Thomas R. Kline, Shanin Specter, Tracey Specter, Barbara Kaplan, North Beach 1003, LLC v. Township of Long Beach and the State of New Jersey  |   |  |
| CASE TYPE NUMBER<br>(See reverse side for listing)<br><i>multi-count</i><br><i>399, 612, 701</i>  |  | HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO<br><br>IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO<br>IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT. |   |  |
| RELATED CASES PENDING?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO   |  | IF YES, LIST DOCKET NUMBERS  |   |  |
| DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  |  | NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known)<br><input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN  |   |  |
| <b>THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.</b>  |  |  |   |  |
| CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION   |  |  |   |  |
| DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO   |  | IF YES, IS THAT RELATIONSHIP:<br><input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain)<br><input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS   |   |  |
| DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO   |  |  |   |  |
| USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION   |  |  |   |  |
| Do you or your client need any disability accommodations?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  |  | IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION  |   |  |
| Will an interpreter be needed?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO   |  | IF YES, FOR WHAT LANGUAGE?   |   |  |
| I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> . |  |  |   |  |
| ATTORNEY SIGNATURE: <i>William J. Ward</i> <i>11/4/14</i>   |  |  |   |  |



# CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under Rule 4:5-1

**CASE TYPES** (Choose one and enter number of case type in appropriate space on the reverse side.)

**Track I - 150 days' discovery**

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

**Track II - 300 days' discovery**

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE - PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE - PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

**Track III - 450 days' discovery**

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

**Track IV - Active Case Management by Individual Judge / 450 days' discovery**

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

**Multicounty Litigation (Track IV)**

- |  |   |
|--|---|
| 266 HORMONE REPLACEMENT THERAPY (HRT)  | 288 PRUDENTIAL TORT LITIGATION                            |
| 271 ACCUTANE/ISOTRETINOIN              | 289 REGLAN  |
| 274 RISPERDAL/SEROQUEL/ZYPREXA         | 290 POMPTON LAKES ENVIRONMENTAL LITIGATION                |
| 278 ZOMETA/AREIDIA                     | 291 PELVIC MESH/GYNECARE                                  |
| 279 GADOLINIUM                         | 292 PELVIC MESH/BARD                                      |
| 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL | 293 DEPUY ASR HIP IMPLANT LITIGATION                      |
| 282 FOSAMAX                            | 295 ALLODERM REGENERATIVE TISSUE MATRIX                   |
| 284 NUVARING                           | 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS |
| 285 STRYKER TRIDENT HIP IMPLANTS       | 297 MIRENA CONTRACEPTIVE DEVICE                           |
| 286 LEVAQUIN                           | 601 ASBESTOS  |
| 287 YAZ/YASMIN/OCELLA                  | 623 PROPECIA  |

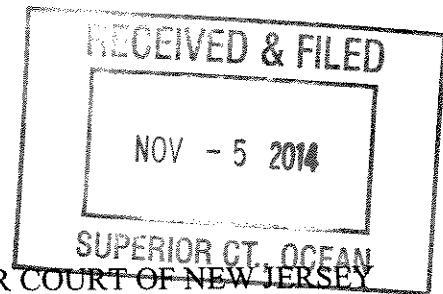
If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category

☐ Putative Class Action

☐ Title 59

WILLIAM J. WARD, ESQ. - 263091971  
CARLIN & WARD, P.C.  
25A Vreeland Road  
P. O. Box 751  
Florham Park, New Jersey 07932  
973-377-3350  
Attorneys for Plaintiffs



TINA CAROLAN, ROBERT S.  
HEKEMIAN, THOMAS R. KLINE,  
SHANIN SPECTER, TRACEY SPECTER,  
BARBARA KAPLAN, NORTH BEACH  
1003, LLC

Plaintiffs,

v.

TOWNSHIP OF LONG BEACH, and the  
STATE OF NEW JERSEY

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: OCEAN COUNTY

DOCKET NO: L-

PW 23379-14

Civil Action

**COMPLAINT**

Plaintiffs, by and through their attorneys, Carlin & Ward, P.C., by way of Complaint against Defendants, herein state:

**PRELIMINARY STATEMENT**

1. This matter arises from the ultra vires actions of the Defendant, Township of Long Beach, in purportedly taking title to the Plaintiffs' properties in a manner which is not authorized by law. The Township's actions demonstrate a concerted and intentional effort to bypass the procedural and constitutional requirements of New Jersey's Eminent Domain Act, N.J.S.A. 20:3-1 et seq. Plaintiffs' Complaint seeks to have this Court declare Defendants' actions to be void as a matter of law, without affect, and remove from the State/County/Municipal records any record and/or document which purports to give the Township and/or the State of New Jersey title, or any claim to, Plaintiffs' properties.

## **THE PARTIES**

### **The Plaintiffs**

2. Plaintiff, Tina Carolan, is the owner of the property located at 63 Long Beach Boulevard, Township of Long Beach, County of Ocean, State of New Jersey 08008, and more specifically identified as Block 20.68 Lot 1 on the Township of Long Beach's official tax map.

3. Plaintiff, Robert S. Hekemian, is the owner of the property located at 97C and 97D Long Beach Boulevard, Township of Long Beach, County of Ocean, State of New Jersey 08008, and more specifically identified as Block 20.109 Lots 1.03 and 1.04 on the Township of Long Beach's official tax map.

4. Plaintiff, Thomas R. Kline, is the owner of the properties located at 37B, 37C, 37E and 39A Long Beach Boulevard, Township of Long Beach, County of Ocean, State of New Jersey 08008, and more specifically identified as Block 20.37, Lots 1.02, 1.03 and 1.05 and Block 20.39, Lot 1.01 on the Township of Long Beach's official tax map.

5. Plaintiffs, Shanin Specter and Tracey Specter, are the owners of the property located at 79E Long Beach Boulevard, Township of Long Beach, County of Ocean, State of New Jersey 08008, and more specifically identified as Block 20.89 Lot 5 on the Township of Long Beach's official tax map.

6. Plaintiff, Barbara Kaplan, is the owner of the property located at 1067C Long Beach Boulevard, Township of Long Beach, County of Ocean, State of New Jersey 08008, and more specifically identified as Block 18.67 Lot 3 on the Township of Long Beach's official tax map.

7. Plaintiff, North Beach 1003, LLC, is a limited liability company, whose managing member is Carl Glaeser, and which owns the property located at 1003D Long Beach Boulevard, Township of Long Beach, County of Ocean, State of New Jersey 08008, and more specifically identified as Block 18.03 Lot 4 on the Township of Long Beach's official tax map.

8. For purposes of this Complaint, the properties set forth in Paragraphs 2 - 7 shall be collectively referred to as the "Plaintiffs' properties".

### **The Defendants**

9. Defendant, Township of Long Beach (hereinafter the "Township"), is a municipal corporation of the State of New Jersey with its principal place of business located at 6805 Long Beach Boulevard, Brant Beach, New Jersey, 08008.

10. Defendant, State of New Jersey (herein after the "State"), is the entity responsible for the operation of the governmental services within this State and is included as a Defendant because it is a beneficiary of the Township's purported taking. The relief being sought against the State is solely equitable in nature. Pursuant to R.4:4-4 service upon the State shall be accomplished by way of serving the Office of the Attorney General, Hughes Justice Complex, 25 Market Street, P.O. Box 080 Trenton, New Jersey 08625-0080.

### **ALLEGATIONS COMMON TO ALL COUNTS**

#### **The Shore Protection Project**

11. The United States Army Corps of Engineers (hereinafter the "ACOE") and the New Jersey Department of Environmental Protection (hereinafter the "NJ DEP") entered into a Project Cooperation Agreement (hereinafter "PC Agreement") dated August 17, 2005, for a shore protection project (hereinafter "the Project") extending from the Barnegat Inlet to Little Egg Inlet, Long Beach Island. A true copy of the PC Agreement is attached hereto as Exhibit A.

12. The Township is not a party to the PC Agreement nor has it produced any evidence that it is a party to any related agreement(s) with the NJ DEP and/or ACOE.

13. The PC Agreement states that the Project will include the expansion of the dune structure from Barnegat Inlet to Little Egg Inlet for the intended purpose of protecting the Project area's shore. The Project also includes on-going beach replenishment and nourishment of the

dune structure.

14. The PC Agreement obligates the ACOE to place suitable beach fill in the Project area in order to form a dune structure with an elevation of 22 feet NAVD.

15. Vegetation, including dune grass, is then to be planted on the completed dune structure thereby increasing the dune's height above the initial 22 feet.

16. The Project construction also includes the placement and movement of equipment in the Project area.

17. The PC Agreement provides that the initial construction of the Project will encompass properties within the Township, including, but not limited to, Plaintiffs' properties.

18. Before proceeding with the Project, the PC Agreement requires that easements be obtained from all the property owners in the Project area, including Plaintiffs.

#### **The Deed of Easement**

19. The form of easement required for the Project is entitled "Deed of Dedication and Perpetual Storm Reduction Easement" ("Deed of Easement"). A true copy of the Deed of Easement is attached hereto as Exhibit B.

20. The Deed of Easement, which states that it was prepared by the Township, calls for the Plaintiffs, and other similarly situated property owners, to grant an irrevocable, assignable, perpetual and permanent easement and right-of-way for the Project to the Township, the State, and their representatives, agents, contractors and assigns. (See Exhibit B at p. 2).

21. The Easement Areas as they pertain to Plaintiffs' properties are significant in size:

- (a) The Carolan Property – the Easement Area consists of approximately 16,153.64 sq. ft. or .37 acres
- (b) The Hekemian Property – the Easement Area consists of approximately 20,039.60 sq. ft. or .46 acres.
- (c) The Kline Property – the Easement Area consists of approximately 30,261.53 sq. ft. or .70 acres.

- (d) The Specter Property – the Easement Area consists of approximately 24,915.67 sq. ft. or .57 acres.
- (e) The Kaplan Property – the Easement Area consists of approximately 18,734.96 sq. ft. or .43 acres
- (f) The North Beach 1003, LLC Property – the Easement Area consists of approximately 25,523.56 sq. ft. or .59 acres.

True and accurate copies of the surveys depicting the easements prepared by Owen, Little & Associates, Inc., together with the easement descriptions for each of the aforementioned properties are attached hereto as Exhibit C.

22. The Plaintiffs have several objections to the proposed Deed of Easement sought by the Township as it contains numerous inaccuracies and misleading statements.

23. The Deed of Easement inaccurately states that the grantor/property owner, which in this case is each of the Plaintiffs, desires to cooperate in allowing the Project to take place on a portion of their Property.

24. The Deed of Easement inaccurately states that the grantor/property owner, which in this case is each of the Plaintiffs, will benefit from the successful implementation of the Project. (See Exhibit B at pp. 1 and 2).

25. Other than the purported “benefit,” the Deed of Easement does not provide the grantor/property owner with any consideration for the conveyance.

26. The Deed of Easement goes well beyond the intended purpose of the Project in that provides that the Township is to “perform any other work necessary and incident to the construction, periodic renourishment, and maintenance of the Long Beach Island Storm Damage Reduction Project **together with the right of public use and access**” (emphasis added). (See Exhibit B at p. 2 (d)).

27. Providing the public with access to and use of privately owned beach front land is unrelated to the Project and is unacceptable to the Plaintiffs.



28. The Township seeks to have Plaintiffs, and their fellow beachfront property owners, subsidize the Project by giving up large portions of their properties, agreeing to the terms of an inaccurate and overly broad Deed of Easement, and doing all of this without receipt of any compensation and/or an opportunity for due process.

29. The ACOE and the Township have refused to negotiate the terms and provisions set forth in the Deed of Easement. Given this refusal, and the numerous inaccuracies contained in the Deed of Easement, Plaintiffs, as well as many other ocean front homeowners, have not signed the Deed of Easement.

**Executive Orders 104 and 140**

30. On October 27, 2012, in anticipation of, and preparation for, Superstorm Sandy impacting the State, New Jersey's Governor, Chris Christie, signed Executive Order No. 104 declaring a State of Emergency.

31. Approximately 11 months later, on September 25, 2013, Governor Christie signed Executive Order No. 140. A true copy of Executive Order No. 140 is attached hereto as Exhibit D.

32. Executive Order No. 140 directed the Commissioner of the NJ DEP to create the Office of Flood Hazard Risk Reduction Measures (hereinafter "OFHRRM") which was tasked with the creation of protective sand dunes, berms, and engineered beaches (the "Flood Hazard Risk Reduction Measures").

33. The OFHRRM was to lead and coordinate the efforts of the NJ DEP in acquiring the necessary easements for the Flood Hazard Risk Reduction Measures/Project.

34. Executive Order No. 140 directed the Attorney General of the State, in conjunction with the OFHRRM, to take immediate actions to coordinate those legal proceedings necessary to acquire the requisite easements.

35. Executive Order No. 140 makes direct reference to the Eminent Domain Act, and as

such, recognizes and contemplates that such legal proceedings would include the initiation of condemnation proceedings to acquire the easements for the Project.

36. Executive Order No. 140 did not give municipalities, such as the Township, the authority to bypass the statutory procedures established by the Eminent Domain Act with respect to acquiring those easements necessary for the Project nor did Executive Order No. 140 reference, let alone authorize, the acquisition of the easement areas for the purpose of providing the right of public use of and access to the beach as proposed in the Deed of Easement.

#### **Township Ordinances 13-42, 14-27 and 14-31**

37. In furtherance of Executive Order No. 140, the Township responded by adopting several ordinances, which include Ordinance Nos. 13-42, 14-27 and 14-31 (collectively the "Ordinances") authorizing and calling for the acquisition of the necessary easements for the Project by way of Eminent Domain.

38. Ordinance No. 14-31 was entitled: "AN ORDINANCE OF THE TOWNSHIP OF LONG BEACH, COUNTY OF OCEAN, STATE OF NEW JERSEY, AUTHORIZING THE ACQUISITION OF CERTAIN INTERESTS IN REAL PROPERTIES BY NEGOTIATION, PURCHASE, CONDEMNATION OR EMINENT DOMAIN, SAID PROPERTIES BEING IDENTIFIED ON THE ANNEXED SCHEDULE."

39. With respect to acquiring the easements, the Ordinances mirrored and recited the procedures mandated and established by New Jersey's Eminent Domain Act, including, but not limited to, the need for the Township or condemning authority to file a verified complaint and declaration of taking, and the requirement to enter into pre-complaint bona-fide negotiations with the affected property owners in accordance with N.J.S.A. 20:3-6.

40. The minutes from the September 12, 2014 Township Board of Commissioners meeting at which Ordinance No. 14-31 was passed indicate that the "ordinance is also necessary to

be in compliance with Governor Christie's Executive Order 140 moving forward with the Federal Storm Protection Project."

**Township Resolution 14-1006.01**

41. On October 6, 2014, the Township adopted Resolution 14-1006.01 (the "Resolution"). A true copy of the Resolution is attached hereto as Exhibit E.

42. The Resolution references and acknowledges the existence of the Ordinances as well as Executive Order No. 140.

43. Instead of instituting eminent domain proceedings as called for by the Ordinances and contemplated by Executive Order No. 140, the Resolution attempts to bypass the statutory procedures established by the Eminent Domain Act.

44. In so doing, the Resolution conflicts with the Township's prior Ordinances and Executive Order No. 140, and is in direct violation of the penultimate provision contained therein which states:

**No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution, which will or might in any way conflict with any of the provisions of this Order, or which will in any way interfere with or impede its achievement (emphasis added). (See Exhibit D at p. 3).**

45. The Resolution is based on the Disaster Control Act (hereinafter the "DCA"), N.J.S.A. App. A:9-30 et seq.

46. The stated purpose of the DCA is as follows:

The purpose of this act is to provide for the health, safety and welfare of the people of the State of New Jersey and to aid in the prevention of damage to and the destruction of property during any emergency as herein defined.

N.J.S.A. App. A:9-33.

47. As it relates to this Complaint, the relevant portion of the DCA, N.J.S.A. App. A:9-

51.5, provides:

When the governing body of any municipality bordering on the Atlantic ocean or Delaware bay shall find that there exists a threat or danger to life and property by reason of the damage to or the destruction of sand barriers and other natural or manmade barriers which protect the municipalities, and that it is necessary to the health, safety and welfare of the municipality to repair, restore, replace or construct such protective barriers, such governing body may, by resolution, as an exercise of the police power of the State **designate the properties required for the purpose of providing such protective barriers and authorize the appropriate municipal or governmental officials or agencies or the representatives thereof to enter immediately upon such property to take control and possession thereof, and to do such acts as may be required, including removing, destroying or otherwise disposing of any property located thereon without first paying any compensation therefor.** (emphasis added).

48. Attached to the Resolution as Appendix B is a table of those "Properties" including, but not limited to, Plaintiffs' properties, which were designated by the Township, as property for which control and possession was required to be taken as part of the Project.

49. Instead of designating only the easement areas necessary for the Project, the table labeled as Appendix B to the Resolution, lists the "Properties" by their Tax Block, Lot and Address.

50. In so doing, the Township has improperly designated the entirety of those "Properties" listed in Appendix B as being subject to having control and possession taken for the Project.

51. Such a designation improperly includes the improved portions of Plaintiffs' properties.

52. There is no public purpose behind allowing the Township, or any other governmental entities, the right to enter upon and take control and possession of Plaintiffs' entire properties.

53. With respect to taking control and possession of those "Properties" listed in Appendix B, the Resolution provides in relevant part:

Pursuant to N.J.S.A. App. A:9-51.5, the Municipality hereby authorizes the

DEP and their representatives, including any other designated state and/or federal entities, **to enter the Properties within ten (10) days of the passage of this Resolution to take control and possession thereof**, and permits the DEP and their representatives to do such acts as may be required to repair, restore, replace, and/or construct the flood hazard risk reduction measures as contemplated in the project for the Municipality (emphasis added). (See Exhibit E at p. 3).

54. Pursuant to the express terms of the Resolution, the time frame within which the NJ DEP and their representatives, including any other designated state and/or federal entities to have entered and taken control and possession of the "Properties" expired on October 16, 2014, ten days after the Resolution's adoption by the Township.

55. The Township's efforts however, did not stop with providing for entry and taking "control and possession" of those "Properties" necessary to construct the dune.

56. The Township, without any authority, declared via the Resolution:

Pursuant to N.J.S.A. App. A:9-51.5, the Municipality hereby declares it has **taken a perpetual and assignable easement and right-of-way** for the flood hazard risk reduction measures, in, on, over, and across that land of the Properties described in Appendix B **in favor of itself and the State of New Jersey** for purposes of construction, preservation, patrol, operation, maintenance, repair, rehabilitation, and replacement of the flood hazard risk reduction measures, pursuant to the form of easement(s) attached to this Resolution as Appendix A; (emphasis added) (See Exhibit E at p. 3).

57. N.J.S.A. App. A:9-51.5 does not provide the Township, with the authorization to take/acquire title including, but not limited to, easements and/or rights-of-way.

58. The Township and State of New Jersey both possess the power of eminent domain, and if they desired or needed to acquire the easements from Plaintiffs, then they were required to institute the appropriate condemnation proceedings in order to take title to Plaintiffs' properties.

59. Throughout the course of the Township's actions, Plaintiffs were deprived of all rights to due process.

60. Upon information and belief, the Resolution was addressed during an Executive Session of the Township's Board of Commissioners without any public comment.

61. Plaintiffs did not receive any advance notice that the Township would be adopting the Resolution, even though the Resolution has a direct and negative impact on Plaintiffs' properties and their constitutional rights to receive due process and just compensation.

62. Only after its adoption did the Township provide Plaintiffs with a copy of the Resolution.

63. The copy of the Resolution which was ultimately provided to Plaintiffs did not contain all the Appendices. Those Appendices that were provided to Plaintiffs did not properly correlate to those documents referenced in the Resolution. For example, the Resolution states the Deed of Easement is annexed thereto as Appendix A, however Plaintiffs were not provided with an Appendix A. Instead an Appendix D appears to be the Deed of Easement.

64. Unbeknownst to Plaintiffs and without their consent, the Township sent the Resolution, which included the unsigned Deed of Easement attached thereto, to the Clerk of Ocean County for purposes of recording same in the County Deed Register.

65. On October 8, 2014, the Ocean County Clerk improperly accepted the Resolution and the unsigned Deed of Easement, and recorded same at Deed Book 15913, Page 900.

66. The Resolution and Deed of Easement now appear in the chain of title as a deed for all "Properties" listed on Appendix B to the Resolution, including Plaintiffs' properties.

67. The recording of the Resolution with the unsigned Deed of Easement serves as an improper conveyance and purports to give the Township and the State of New Jersey title to all or a portion of Plaintiffs' Properties, where no such title legally exists.

## COUNT I

### (DECLARATORY JUDGMENT)

68. Plaintiffs hereby re-allege and incorporate here by reference, all allegations set forth previously in this Complaint as if the same were set forth fully herein.

69. The Township has unlawfully bypassed the procedures required by the Eminent Domain Act.

70. The Township cannot, by way of Resolution, simply take an irrevocable, assignable, perpetual and permanent easement and right-of-way from Plaintiffs' properties without following the statutory procedures set forth in the Eminent Domain Act.

71. The Eminent Domain Act provides the exclusive procedure(s) for taking private property for public use.

72. If the Township wanted/needed to acquire easements over Plaintiffs' properties, it should have instituted a condemnation action and filed a verified complaint and declaration of taking, provided a detailed description of the taking, entered into pre-complaint bona fide negotiations with the Plaintiffs pursuant to N.J.S.A. 20:3-6, and deposited its estimate of just compensation with the Superior Court. Plaintiffs would then be afforded the right to object to the proposed taking and contest the issue of whether bona-fide negotiations have occurred.

73. Instead of following these statutory procedures, the Township invoked N.J.S.A. App. A:9-51.5 and proceeded to purportedly take, by way of Resolution, a "perpetual and assignable easement and right-of-way for the flood hazard risk reduction measures, in, on, over, and across that land of the Properties described in Appendix B in favor of itself and the State of New Jersey" (See Exhibit E at p. 3).

74. N.J.S.A. App. A:9-51.5 permits the Township, in times of emergency, to designate certain properties and immediately enter upon those properties taking control and possession thereof

for purposes of instituting construction or repair of protective barriers.

75. Entering upon property and taking control and possession of same as set forth in N.J.S.A. App. A:9-51.5 are characterized by the DCA as being an exercise of police power.

76. N.J.S.A. App. A:9-51.5 does not authorize a municipality to acquire title to property as the Township has purportedly done here.

77. A taking of title can never be accomplished by way of a proper exercise of police power.

78. Control and possession, as set forth in the N.J.S.A. App. A:9-51.5, do not encompass or equate to the acquisition of title.

79. The Township acted without statutory and/or legal authority when it adopted the Resolution which purports to take an easement with respect to Plaintiffs' properties.

80. The Township acted without statutory and/or legal authority when it adopted the Resolution which purports to allow government entities to enter upon and take control and possession of the entirety of Plaintiffs' properties.

81. The Township compounded its unauthorized actions by recording the Resolution and unsigned Deed of Easement with the County's Register of Deeds.

82. The unsigned Deed of Easement recorded with the Resolution by the Township contains numerous inaccuracies and runs contrary to the statutory authority provided to the Township by N.J.S.A. App. A:9-51.5.

**WHEREFORE**, Plaintiffs demand judgment against the Township and State of New Jersey as follows:

- A. Declaring that neither the Township nor the State of New Jersey has title, or a claim to title over those Properties listed in Appendix B of Resolution 14-1006.01, including, but not limited to, Plaintiffs' Properties; and
- B. Declaring null and void and/or vacating Township Resolution No. 14-1006.01; and



- C. Removing and Discharging from the County Deed Register and any other State/County/Municipal record the Resolution and Deed of Easement as they apply to those Properties listed in Appendix B of Resolution No. 14-1006.01 including, but not limited to, Plaintiffs' Properties; and
- D. Awarding Plaintiffs their reasonable attorneys' fees and costs associated with this action; and
- E. Awarding Plaintiffs such other relief as the Court may deem just and equitable

## **COUNT II**

### **(PREROGATIVE WRIT)**

83. Plaintiffs hereby re-allege and incorporate here by reference, all allegations set forth previously in this Complaint as if the same were set forth fully herein.

84. Resolution No. 14-1006.01 declares the Township has purportedly "taken" "a perpetual and assignable easement and right-of-way for the flood hazard risk reduction measures, in, on, over, and across that land of the Properties described in Appendix B in favor of itself and the State of New Jersey" (See Exhibit B at p. 3).

85. Resolution No. 14-1006.01 declares it gets its authority for the purported "taking" from N.J.S.A. App. A:9-51.5.

86. N.J.S.A. App. A:9-51.5 does not authorize the Township to acquire title to any portion of Plaintiffs' properties as the Township has purportedly done here.

87. N.J.S.A. App. A:9-51.5 does not authorize the Township to record with the County Clerk/Register of Deeds the Resolution and unsigned Deed of Easement which contains misleading statements and inaccuracies as previously set forth herein.

88. The adoption of Resolution No. 14-1006.01 is arbitrary, capricious and unreasonable, and Plaintiffs have been denied all rights to due process of law as provided for under the United States and New Jersey Constitutions.

89. The Township's actions run contrary to law, are unauthorized, and are void as being

ultra vires.

**WHEREFORE**, Plaintiffs demand judgment against the Township as follows:

- A. Declaring null and void and/or vacating Township Resolution No. 14-1006.01 in its entirety; and
- B. Removing and Discharging from the County Deed Register and any other State/County/Municipal record the Resolution and Deed of Easement as they apply to those Properties listed in Appendix B of Resolution No. 14-1006.01 including, but not limited to, Plaintiffs' Properties; and
- C. Awarding Plaintiffs their reasonable attorneys' fees and costs associated with this action; and
- D. Awarding Plaintiffs such other relief as the Court may deem just and equitable

### **COUNT III**

#### **(INVERSE CONDEMNATION)**

90. Plaintiffs hereby re-allege and incorporate here by reference, all allegations set forth previously in this Complaint as if the same were set forth fully herein.

91. To the extent that the Township has "taken", on behalf of itself and the State, title to all, or a portion, of Plaintiffs' properties pursuant to Resolution No. 14-1006.01, without first having instituted Eminent Domain proceedings, an inverse condemnation has occurred.

92. The Township's actions have violated the Plaintiffs' constitutional rights including, but not limited to, those afforded under the 5<sup>th</sup> Amendment to the United States Constitution and Article 1, Section 20 of the New Jersey Constitution.

93. Plaintiffs have improperly been deprived of all substantive and procedural due process and their constitutional rights to have received just compensation for the taking.

**WHEREFORE**, Plaintiffs demand judgment against the Township and State of New Jersey as follows:

- A. Declaring the Township has inversely condemned Plaintiffs' properties or a portion thereof; and

- B. Declaring that Plaintiffs have a right to due process to challenge the taking; and
- C. Ordering that the Township must pay just compensation for the taking with Plaintiffs reserving their rights to challenge the amount of just compensation to be paid as set forth in N.J.S.A. 20:3-1 et seq.; and
- D. Awarding Plaintiffs their reasonable attorneys' fees and costs associated with this action pursuant to N.J.S.A. 20:3-26(c); and
- E. Awarding Plaintiffs such other relief as the Court may deem just and equitable

**CARLIN & WARD, P.C.**  
**Attorneys for Plaintiffs**

By

  
WILLIAM J. WARD

Dated: 11/4/14

**TRIAL ATTORNEY DESIGNATION**

Pursuant to Rule 4:5-1, the undersigned is hereby designated as trial counsel for the Plaintiffs in this matter.

**CARLIN & WARD, P.C.**  
**Attorneys for Plaintiffs**

By

  
WILLIAM J. WARD

Dated: 11/4/14

**CERTIFICATION PURSUANT TO RULE 4:5-1**

Pursuant to Rule 4:5-1, the undersigned certifies that to the best of his knowledge the within matter is controversy is not the subject of any other action pending in any other Court or of a pending arbitration proceeding, nor is any action or arbitration proceeding contemplated, nor are other parties required to be joined in this action at this time.

**CARLIN & WARD, P.C.**  
**Attorneys for Plaintiffs**

By

  
WILLIAM J. WARD

Dated: 11/4/14

**CERTIFICATION PURSUANT TO RULE 4:69-4**

I hereby certify in accordance with Rule 4:69-4 that a request for all necessary transcripts, if any exist, of the Township's Board of Commissioners Executive Session with respect to the adoption of Resolution No. 14-1006.01 has been made.

**CARLIN & WARD, P.C.**  
**Attorneys for Plaintiffs**

By

  
WILLIAM J. WARD

Dated: 11/4/14

# **EXHIBIT A**

PROJECT COOPERATION AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
BARNEGAT INLET TO LITTLE EGG INLET,  
LONG BEACH ISLAND, NJ  
SHORE PROTECTION PROJECT

THIS AGREEMENT is entered into this 17<sup>th</sup> day of August, 2005, by and between the Department of the Army (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works) and the State of New Jersey, Department of Environmental Protection (hereinafter the "Non-Federal Sponsor"), represented by the Deputy Commissioner.

WITNESSETH, THAT:

WHEREAS, construction of the Barnegat Inlet to Little Egg Inlet, New Jersey Shore Protection Project, was authorized by Section 101(a)(1) of the Water Resources Development Act of 2000, Public Law 106-541;

WHEREAS, Section 934 of the Water Resources Development Act of 1986, Public Law 99-662, authorized the Government to extend Federal participation in periodic beach nourishment for shore protection projects for a period not exceeding 50 years after the commencement of the period of initial construction;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement for initial construction and periodic beach nourishment of the Barnegat Inlet to Little Egg Inlet, Long Beach Island, New Jersey Shore Protection Project (hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, provide that the Secretary of the Army shall not commence construction of any water resources Project, or separable element thereof, until each Non-Federal Sponsor has entered into a written agreement to furnish its required cooperation for the Project or separable element;

WHEREAS, Section 902 of Public Law 99-662 establishes the maximum amount of costs for the Project and sets forth procedures for adjusting such maximum amount; and

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the Project in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

#### ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean initial construction and periodic nourishment of the shore protection features as described in the Report of the Chief of Engineers, dated July 26, 2000 (hereinafter the "Chief's Report").

B. The term "initial construction" shall mean the placement of suitable beach fill to form a dune at an elevation of +22.0 feet NAVD, with a dune crest width of 30, side slopes of 1V:5H to the toe, a berm width of 125 feet from the centerline of the dune at an elevation of +8 feet NAVD, extending from Barnegat Inlet to Little Egg Inlet, generally referred to as Long Beach Island. The length of initial construction will be approximately 89,000 ft. The term "initial construction" shall also mean the planting of 347 acres of dune grass and protection of the dunes with 194,000 linear feet of sand fencing as described in the Chief's Report.

Municipalities participating in the initial construction include: Long Beach Township, Harvey Cedars, Surf City, Ship Bottom and Beach Haven. Sections of Long Beach Township within the initial construction include: Loveladies, North Beach, Brant Beach, Beach Haven Crest, Brighton Beach, Peahala Park, Beach Haven Park, Haven Beach, Beach Haven Terrace, Beach Haven Gardens, Spray Beach, North Beach Haven, Beach Haven Heights, Beach Haven Inlet and Holgate, as generally described in the Chief's Report.

C. The term "periodic nourishment of the shore protection features" shall mean the placement, after the end of the period of initial construction of the shore protection features, of suitable beach and dune fill material within the area of the initial construction of the shore protection features, or any functional portion of the initial construction of the shore protection features, as generally described in the Chief's Report.

D. The term "total Project costs" shall mean all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to initial construction of the shore protection features and periodic nourishment of the shore protection features of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and

design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; costs of historic preservation activities in accordance with Article XVII.A. and XVII.C. of this Agreement; actual construction costs; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas for which the Government affords credit in accordance with Article IV of this Agreement; and costs of audit in accordance with Article X.B and X.C. of this Agreement. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation; any costs due to betterments; or any costs of dispute resolution under Article VII of this Agreement.

E. The term "total costs of initial construction of the shore protection features" shall mean that portion of total Project costs allocated by the Government to initial construction of the shore protection features.

F. The term "total costs of periodic nourishment of the shore protection features" shall mean that portion of total Project costs allocated by the Government to periodic nourishment of the shore protection features.

G. The term "financial obligation for initial construction of the shore protection features" shall mean a financial obligation of the Government, other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas, that results or would result in a cost that is or would be included in total costs of initial construction of the shore protection features.

H. The term "financial obligation for periodic nourishment of the shore protection features" shall mean a financial obligation of the Government, other than an obligation pertaining to the provisions of lands, easements, rights-of-way, relocations, and borrow and dredged material disposal areas, that results or would result in a cost that is or would be included in total costs of periodic nourishment of the shore protection features.

I. The term "non-Federal proportionate share", with respect to initial construction of the shore protection features, shall mean the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Article II.E.2. of this Agreement to total financial obligations for initial construction of the shore protection features, as projected by the Government. The term shall mean, with respect to periodic nourishment of the shore protection features, the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Article II.H.2. of this Agreement to total financial obligations for periodic nourishment of the shore protection features, as projected by the Government.

J. The term "period of initial construction of the shore protection features" shall mean the time from the date the District Engineer first notifies the Non-Federal Sponsor in writing, in



accordance with Article VI.B. of this Agreement, of the scheduled date for issuance of the solicitation for the first construction contract to the date that the District Engineer notifies the Non-Federal Sponsor in writing of the Government's determination that initial construction of the shore protection features of the Project is complete.

K. The term "authorized periodic nourishment of the shore protection features period" shall mean a period of 50 years from the commencement of the period of initial construction of the shore protection features for the Project.

L. The term "highway" shall mean any public highway, roadway, street, or way, including any bridge thereof.

M. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad when such action is authorized as between the Non-Federal Sponsor and the facility owner in accordance with applicable legal principles of just compensation or as otherwise provided in the authorizing legislation for the Project or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

N. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

O. The term "functional portion of the initial construction of the shore protection features" shall mean a portion of the initial construction of the shore protection features of the Project that is suitable for tender to the Non-Federal Sponsor to operate and maintain in advance of completion of the entire Project. For a portion of the Project to be suitable for tender, the District Engineer must notify the Non-Federal Sponsor in writing of the Government's determination that the portion of the Project is complete and can function independently and for a useful purpose, although the balance of the Project is not complete.

P. The term "functional portion of each iteration of periodic nourishment of the shore protection features" shall mean a portion of each iteration of periodic nourishment of the shore protection features of the Project that is suitable for tender to the Non-Federal Sponsor to operate and maintain in advance of completion of the entire iteration of periodic nourishment of the shore protection features of the Project. For a portion of the iteration of periodic nourishment of the shore protection features of the Project to be suitable for tender, the District Engineer must notify the Non-Federal Sponsor in writing of the Government's determination that the portion of the iteration of periodic nourishment of the shore protection features of the Project is complete and can function independently and for a useful purpose, although the balance of the iteration of the periodic nourishment of the shore protection features of the Project is not complete.

Q. The term "betterment" shall mean a change in the design and construction of an

element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element.

## ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter, the "Congress") and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously construct the Project (including periodic nourishment of the shore protection features at such times during the authorized periodic nourishment of the shore protection features period as the Government, after consultation with the Non-Federal Sponsor, determines such placement to be necessary and economically justified), applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. The Government shall not issue the solicitation for the first construction contract until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the Project. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsor with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

2. Throughout the period of construction, the District Engineer shall furnish the Non-Federal Sponsor with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Project.

3. Notwithstanding paragraph A.1. of this Article, if the award of any contract would result in total cost of initial construction of the shore protection features exceeding \$71,822,000, or total costs of periodic nourishment of the shore protection features exceeding \$273,628,000, the Government and the Non-Federal Sponsor agree to defer award of that

contract and all subsequent contracts until such time as the Government and the Non-Federal Sponsor agree to proceed with further contract awards for the Project, but in no event shall the award of contracts be deferred for more than three years. Notwithstanding this general provision for deferral of contract awards, the Government, after consultation with the Non-Federal Sponsor, may award a contract or contracts after the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts must proceed in order to comply with law or to protect life or property from imminent and substantial harm.

4. As of the effective date of this Agreement, \$2,699,000 of Federal funds are currently projected to be available for the Project. The Government makes no commitment to request the Congress to appropriate additional Federal funds for the Project. Further, the Government's financial participation in the Project is limited to the Federal funds that the Government actually makes available to the Project. In the event the Government projects that the amount of Federal funds the Government will make available to the Project through the then-current fiscal year, or the amount of Federal funds the Government will make available for the Project through the upcoming fiscal year, is not sufficient to meet the Federal share of total project costs and the Federal share of costs for data recovery activities in accordance with Article XVII.C. and Article XVII.D. of this Agreement that the Government projects to be incurred through the then-current or upcoming fiscal year, as applicable, the Government shall notify the Non-Federal Sponsor in writing of the insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available for the Project will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the Project, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article XIII.B. of this Agreement.

B. The Non-Federal Sponsor may request the Government to accomplish betterments during the period of initial construction of the shore protection features. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

C. When the District Engineer determines that the entire Project is complete or that a portion of the Project has become a functional portion of the Project, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the "OMRR&R Manual") and with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project or the functional portion of the Project that have not been provided previously. Upon such notification, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of

the Project in accordance with Article VIII of this Agreement.

D. The Government shall assign all costs included or to be included in total Project costs and all contributions provided by the Non-Federal Sponsor to hurricane and storm damage reduction, to recreation, or to privately owned shores (where use of such shores is limited to private interests).

E. The Non-Federal Sponsor shall contribute 35 percent of the total costs of initial construction of the shore protection features assigned by the Government to hurricane and storm damage reduction plus 50 percent of the total costs of initial construction of the shore protection features assigned by the Government to recreation, plus 100 percent of the total costs of initial construction of the shore protection features assigned by the Government to privately owned shores (where use of such shores is limited to private interests) (hereinafter the "non-Federal share of initial construction of the shore protection features") in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the Non-Federal Sponsor must provide for the construction, operation, and maintenance of the initial construction of the shore protection features of the Project, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, and maintenance of the initial construction of the shore protection features of the Project.

2. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraph E.1. of this Article and of the Non-Federal Sponsor's contributions attributable to initial construction of the shore protection features under Articles V, X, XIV.A., XVII.A. and XVII.D. of this Agreement will be less than the non-Federal share of initial construction of the shore protection features, the Non-Federal Sponsor shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution equal to the non-Federal share of initial construction of the shore protection features.

3. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraphs E.1. and E.2. of this Article and of the Non-Federal Sponsor's contributions attributable to initial construction of the shore protection features under Articles V, X, XIV.A., XVII.A. and XVII.D. of this Agreement has exceeded the non-Federal share of initial construction of the shore protection features, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of the non-Federal share of initial construction of the shore protection features. After such a determination, the Government, in its sole discretion, may provide any remaining Project lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining Project relocations on behalf of the Non-Federal Sponsor.

F. The Non-Federal Sponsor may request the Government to provide lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the Non-Federal Sponsor during the period of initial construction of the shore protection features. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or performance of relocations by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

G. Upon completion of the period of initial construction of the shore protection features the Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the contributions provided by the Non-Federal Sponsor in accordance with paragraphs B., E. and F. of this Article and Articles V, X, XIV.A., XVII.A. and XVII.D. of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs B., E., and F. of this Article.

H. For each iteration of periodic nourishment of the shore protection features, the Non-Federal Sponsor shall contribute 35 percent of the total costs of periodic nourishment of the shore protection features assigned by the Government to hurricane and storm damage reduction plus 50 percent of the total costs of periodic nourishment of the shore protection features assigned by the Government to recreation, plus 100 percent of the total costs of periodic nourishment of the shore protection features assigned by the Government to privately owned shores (where use of such shores is limited to private interests) (hereinafter the "non-Federal share of periodic nourishment of the shore protection features") in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the Non-Federal Sponsor must provide for the iteration of periodic nourishment of the shore protection features, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the iteration of periodic nourishment of the shore protection features.

2. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraph H.1 of this Article and of the Non-Federal Sponsor's contributions

attributable to periodic nourishment of the shore protection features under Articles V., X., XIV.B., XVII.B. and XVII.D. of this Agreement will be less than the non-Federal share of periodic nourishment of the shore protection features, the Non-Federal Sponsor shall provide an additional cash contribution, in accordance with Article VI.B of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution equal to the non-Federal share of periodic nourishment of the shore protection features.

3. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraphs H.1 and H.2 of this Article and of the Non-Federal Sponsor's contributions attributable to periodic nourishment of the shore protection features under Articles V., X., XIV.B., XVII.B. and XVII.D. of this Agreement has exceeded the non-Federal share of periodic nourishment of the shore protection features, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of the non-Federal shares of periodic nourishment of the shore protection features. After such a determination, the Government, in its sole discretion, may provide any remaining periodic nourishment of the shore protection features lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining periodic nourishment of the shore protection features relocations on behalf of the Non-Federal Sponsor.

I. The Non-Federal Sponsor may request the Government to accomplish betterments during the authorized periodic nourishment of the shore protection features period. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

J. The Non-Federal Sponsor may request the Government to provide lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the Non-Federal Sponsor during the authorized periodic nourishment of the shore protection features period. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or performance of relocations by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XIV.C. of this

Agreement.

K. For each iteration of periodic nourishment of the shore protection features, the Government shall perform a final accounting in accordance with Article VI.F. of this Agreement to determine the contributions provided by the Non-Federal Sponsor toward the total costs of periodic nourishment of the shore protection features and costs due to betterments in accordance with paragraphs G., I., and J. of this Article and Articles V., X., XIV.A., XVII.B. and XVII.D. of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs G., I., and J. of this Article.

L. In the event the completed initial construction of the shore protection features or any functional portion of the initial construction of the shore protection features, is damaged or destroyed by a storm or other natural forces, the Government, subject to the availability of funds and Article II.A. of this Agreement, shall place suitable beach and dune fill material within the area of the completed initial construction of the shore protection features, or the functional portion of the initial construction of the shore protection features, as periodic nourishment of the shore protection features. The costs of such placement shall be included in the total costs of periodic nourishment of the shore protection features and cost shared in accordance with Article II.G. of this Agreement. In the event an uncompleted portion of the initial construction of the shore protection features is damaged or destroyed by a storm or other natural forces, the Government, subject to the availability of funds, shall place suitable beach and dune fill material within the area of the uncompleted initial construction of the shore protection features as initial construction of the shore protection features. The costs of such placement shall be included in the total costs of initial construction of the shore protection features and cost shared in accordance with Article II.D. of this Agreement. Nothing in this paragraph shall relieve the Non-Federal Sponsor of its obligations under Article VIII of this Agreement. Nothing in this paragraph shall preclude the Government from using Public Law 84-99 to accomplish any emergency repair and restoration work of the completed initial construction of the shore protection features, or a functional portion of the initial construction of the shore protection features.

M. The Non-Federal Sponsor shall not use Federal funds to meet the non-Federal share of initial construction of the shore protection features or the non-Federal share of periodic nourishment of the shore protection features under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

N. The Non-Federal Sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.

O. Not less than once each year the Non-Federal Sponsor shall inform affected interests of the extent of protection afforded by the Project.

P. The Non-Federal Sponsor shall publicize flood plain information in the area

concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.

Q. At least twice annually and after storm events, the Non-Federal Sponsor shall perform surveillance of the beach to determine losses of nourishment material from the Project design section and advance nourishment section and provide the results of such surveillance to the Government.

R. For so long as the Project remains authorized, the Non-Federal Sponsor shall ensure continued conditions of public ownership and use of the shore upon which the amount of Federal participation is based.

S. The Non-Federal Sponsor shall, to the extent of its powers, prescribe and enforce regulations to prevent obstruction of or encroachment on the Project that would reduce the level of protection it affords or that would hinder operation or maintenance of the Project.

T. The Non-Federal Sponsor shall provide and maintain necessary access roads, parking areas, and other public use facilities open and available to all on equal terms.

U. The Non-Federal Sponsor shall comply with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. § 701b-12), which requires a non-Federal interest to have prepared within one year after the date of signing this Agreement, a floodplain management plan. The plan shall be designed to reduce the impacts of future flood events in the Project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood protection provided by this Project. As required by Section 402, as amended, the Non-Federal Sponsor shall implement such plan not later than one year after completion of initial construction of the shore protection features of the Project. The Non-Federal Sponsor shall provide an information copy of the plan to the Government upon its preparation.

### ARTICLE III - LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for the initial construction, periodic nourishment, operation, and maintenance of the shore protection features of the Project, including those required for relocations, borrow materials, and dredged or excavated material disposal. The government shall indicate which of the required lands, easements, and rights-of-way are required for the initial construction of the shore protection features of the Project and which are required for the periodic nourishment of the shore protection features of the Project.



The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the end of the period of initial construction of the shore protection features, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for the construction, operation, or maintenance of the initial construction of the shore protection features of the Project set forth in such descriptions. Prior to the end of the authorized periodic nourishment of the shore protection features period, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for the periodic nourishment of the shore protection features, as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each contract for initial construction of the shore protection features or periodic nourishment of the shore protection features, the Non-Federal Sponsor shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that contract. For so long as the Project remains authorized, the Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the Project and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the initial construction, periodic nourishment, operation, and maintenance of the shore protection features of the Project. The Government shall indicate which of the required lands, easements, and rights-of-way are required for the initial construction of the shore protection features of the Project and which are required for the periodic nourishment of the shore protection features of the Project. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions of such improvements in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the end of the period of initial construction of the shore protection features, the Non-Federal Sponsor shall provide all improvements required for the construction, operation, or maintenance of the initial construction of the shore protection features of the Project, set forth in such descriptions. Prior to the end of the authorized periodic nourishment of the shore protection features period, the Non-Federal Sponsor shall provide all improvements required for the periodic nourishment of the shore protection features, as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government contract for initial construction of the shore protection features or periodic nourishment of the shore protection features, the Non-Federal Sponsor shall prepare plans and specifications for all improvements the Government determines to be required for the proper disposal of dredged or

excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for the initial construction, periodic nourishment, operation, and maintenance of the shore protection features of the Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Government shall delineate which of the necessary relocations are necessary for the initial construction of the shore protection features of the Project and which are necessary for the periodic nourishment of the shore protection features of the Project. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. Prior to the end of the period of initial construction of the shore protection features, the Non-Federal Sponsor shall perform or ensure the performance of all relocations required for the construction, operation, or maintenance of the initial construction of the shore protection features of the Project as set forth in such descriptions. Prior to the end of the authorized periodic nourishment of the shore protection features period, the Non-Federal Sponsor shall perform or ensure the performance of all relocations required for the periodic nourishment of the shore protection features, as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government contract for initial construction of the shore protection features or periodic nourishment of the shore protection features, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all relocations the Government determines to be necessary for that contract.

D. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to paragraphs A., B., or C. of this Article. Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contribution, include such value in total Project costs, and afford credit for such value toward the non-Federal share of initial construction of the shore protection features or the non-Federal share of periodic nourishment of the shore protection features.

E. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for the initial construction, periodic nourishment, operation, and maintenance of the of the shore protection features of the Project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in

connection with said Act.

#### ARTICLE IV - CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS

A. The Non-Federal Sponsor shall receive credit toward the non-Federal share of initial construction of the shore protection features for the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsor must provide for construction, operation, and maintenance of the initial construction of the shore protection features of the Project pursuant to Article III of this Agreement, and for the value of the relocations that the Non-Federal Sponsor must perform or for which it must ensure performance for construction, operation, and maintenance of the initial construction of the shore protection features of the Project pursuant to Article III of this Agreement. The Non-Federal Sponsor shall receive credit toward the non-Federal share of periodic nourishment of the shore protection features for the value of the additional lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsor must provide for periodic nourishment of the shore protection features of the Project pursuant to Article III of this Agreement, and for the value of the additional relocations that the Non-Federal Sponsor must perform or for which it must ensure performance for periodic nourishment of the shore protection features of the Project pursuant to Article III of this Agreement. However, the Non-Federal Sponsor shall not receive credit for the value of any lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that have been provided previously as an item of cooperation for another Federal Project. The Non-Federal Sponsor also shall not receive credit for the value of lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas to the extent that such items are provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

B. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph B.3. of this

Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. of this Article.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, or the Non-Federal Sponsor chooses not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph B.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph B.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60-day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60-day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph B.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for the construction, operation, and maintenance of the shore protection features of the Project, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article III.E. of this Agreement.

C. After consultation with the Non-Federal Sponsor, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

1. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a relocation of a highway, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of New Jersey would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and

administration costs; and documented incidental costs associated with performance of the relocation, but shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

4. Crediting for relocations performed within the Project boundaries is subject to satisfactory compliance with applicable federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. §§ 3141-3148 and 40 U.S.C. §§ 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. § 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. § 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. § 276c)). Crediting may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

D. The value of the improvements made to lands, easements, and rights-of-way for the proper disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

## ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of initial construction of the shore protection features or during the authorized periodic nourishment of the shore protection features period, as appropriate. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the period of initial construction, the Project Coordination Team shall generally oversee the Project, including issues related to design; plans and specifications;

scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a et seq.), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 et seq.) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for relocations; the Government's cost projections; final inspection of the initial construction of the shore protection features or functional portions of the initial construction of the shore protection features; final inspection of each iteration of periodic nourishment of the shore protection features or functional portion of each iteration of periodic nourishment of the shore protection features; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the shore protection features of the Project; and other related matters. This oversight shall be consistent with a Project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

E. The costs of participation in the Project Coordination Team shall be included in total Project costs and cost shared in accordance with the provisions of this Agreement.

## ARTICLE VI - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties and current projections of total Project costs, total costs of initial construction of the shore protection features, total costs of periodic nourishment of the shore protection features, and costs due to betterments. At least quarterly, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total Project costs, of total costs of initial construction of the shore protection features, of total costs of periodic nourishment of the shore protection features, of total costs due to betterments during the period of initial construction of the shore protection features or during the authorized periodic nourishment of the shore protection features period, as appropriate, of the maximum amount of total Project costs determined in accordance with Article XVIII of this Agreement, of the components of total Project costs, of the non-Federal share of initial construction of the shore protection features, of the non-Federal share of periodic nourishment of the shore protection features, of the Non-Federal Sponsor's total cash contributions required in accordance with Articles II.B., II.E., II.F., II.H., II.I., and II.J. of this Agreement, and of the non-Federal proportionate shares. On the effective date of this Agreement, total Project costs are projected to

be \$189,378,000 (May 2004 price level). The total costs of initial construction of the shore protection features are projected to be \$71,271,000 and total costs of periodic nourishment of the shore protection features and monitoring are projected to be \$118,107,000. The Non-Federal Sponsor's contribution required under Article II. E. 2. (initial construction) of this Agreement is projected to be \$25,707,300 and the Non-Federal Sponsor's contribution required under Article II.H.2. (periodic nourishment) of this Agreement is projected to be \$41,337,450. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the cash contribution required under Article II.E.2. of this Agreement in accordance with the following provisions.

1. Not less than 45 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for initial construction of the shore protection features, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for initial construction of the shore protection features through the first fiscal year of the period of initial construction of the shore protection features, including the non-Federal proportionate share of financial obligations for initial construction of the shore protection features incurred prior to the commencement of the period of initial construction of the shore protection features. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Philadelphia District" to the District Engineer or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor or presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. For the second and subsequent fiscal years of the period of initial construction of the shore protection features, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for initial construction of the shore protection features for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through and of the funding mechanisms specified in Article VI.B.1. of this Agreement.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for initial construction of the shore protection features incurred prior to the commencement of the period of initial construction of the shore



protection features; and (b) the non-Federal proportionate share of financial obligations for initial construction of the shore protection features as they are incurred during the period of initial construction of the shore protection features.

4. If at any time during the period of initial construction of the shore protection features the Government determines that the Non-Federal Sponsor must provide additional funds to cover the non-Federal proportionate share of projected financial obligations for initial construction of the shore protection features for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.B., II.F., II.I., or II.J. of this Agreement, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to pay for such additional work through any of the payment mechanisms specified in Article VI.B.1. of this Agreement. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet its contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

D. Upon completion of the initial construction of the shore protection features or termination of this Agreement during the period of initial construction of the shore protection features, and upon resolution of all claims and appeals relevant to the initial construction of the shore protection features, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total costs of initial construction of the shore protection features, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments during the period of initial construction of the shore protection features and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.B. of this Agreement during the period of initial construction of the shore protection features.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor is less than the non-Federal share of initial construction of the shore protection features plus costs due to any betterments provided in accordance with Article II.B. of this Agreement during the period of initial construction of the shore protection features, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the non-Federal share of initial

construction of the shore protection features plus costs due to any betterments provided in accordance with Article II.B. of this Agreement during the period of initial construction of the shore protection features by delivering a check payable to "FAO, USAED, Philadelphia District" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor exceeds the non-Federal share of initial construction of the shore protection features plus costs due to any betterments provided in accordance with Article II.B. of this Agreement during the period of initial construction of the shore protection features, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

E. The Non-Federal Sponsor shall provide the cash contribution required under Article II.H.2. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 45 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for each iteration of periodic nourishment of the shore protection features, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required for the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for periodic nourishment of the shore protection features through the first fiscal year of the authorized periodic nourishment of the shore protection features period, including the non-Federal proportionate share of financial obligations for periodic nourishment of the shore protection features incurred prior to the commencement of the authorized periodic nourishment of the shore protection features period. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Philadelphia District" to the District Engineer or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow account acceptable to the Government, with interest accruing to the Non-Federal Sponsor or presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. For the second and subsequent fiscal years of each iteration of periodic nourishment of the shore protection features, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for periodic nourishment of the shore protection features for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required

funds for that fiscal year available to the Government through any of the funding mechanisms specified in Article VI.E.1. of this Agreement.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for periodic nourishment of the shore protection features incurred prior to the commencement of the authorized periodic nourishment of the shore protection features period; and (b) the non-Federal proportionate share of financial obligations for periodic nourishment of the shore protection features as they are incurred during the authorized periodic nourishment of the shore protection features period.

4. If at any time during the authorized periodic nourishment of the shore protection features period the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for periodic nourishment of the shore protection features for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required, and the Non-Federal Sponsor, no later than 60 calendar days from receipt of such notice, shall make the additional required funds available through any of the payment mechanism specified in Article VI.E.1. of this Agreement.

F. Upon completion of each iteration of periodic nourishment of the shore protection features or termination of this Agreement during the authorized periodic nourishment of the shore protection features period, and upon resolution of all claims and appeals relevant to the periodic nourishment of the shore protection features, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total costs of periodic nourishment of the shore protection features, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments during the authorized periodic nourishment of the shore protection features period and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.I. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor is less than the non-Federal share of periodic nourishment of the shore protection features plus costs due to any betterments provided in accordance with Article II.I. of this Agreement during the authorized periodic nourishment of the shore protection features period, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the non-Federal share of periodic nourishment of the shore protection features plus costs due to any betterments provided in accordance with Article II.I. of this Agreement during the authorized periodic nourishment of the shore protection features period by delivering a check payable to "FAO, USAED, Philadelphia District" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor exceeds the non-Federal share of periodic nourishment of the shore protection features plus costs due to any betterments provided in accordance with Article II.I. of this Agreement during the authorized periodic nourishment of the shore protection features period, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

## ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

## ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION (OMRR&R)

A. Upon notification in accordance with Article II.C. of this Agreement and for so long as the Project remains authorized, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project, at no cost to the Government, in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the OMRR&R Manual and any subsequent amendments thereto.

1. At least twice annually and after storm events, the Non-Federal Sponsor shall perform surveillance of the beach, at no cost to the Government, to determine losses of nourishment material from the Project design section and advance nourishment section and provide the results of such surveillance to the Government.

2. The Non-Federal Sponsor shall grade and reshape the beach and dune profile using material within the Project area and maintain other Project features associated with the beach and dune.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for access to the Project for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor. If, after 30 calendar days from receipt of notice, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

#### ARTICLE IX - INDEMNIFICATION

Subject to the provisions of Article XIX of this Agreement, the Non-Federal Sponsor shall hold and save the Government free from all damages arising from the initial construction, periodic nourishment, operation, maintenance, repair, replacement, and rehabilitation of the shore protection features of the Project and any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, and other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in total Project costs and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in total Project costs and cost shared in accordance with the provisions of this Agreement.

#### ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. § 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army;" and all applicable federal labor standards requirements including, but not limited to, 40 U.S.C. §§ 3141-3148 and 40 U.S.C. §§ 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. § 276a et seq.), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. § 327 et seq.) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. § 276c)).

#### ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall

provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

### ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Barnegat Inlet to Little Egg Inlet Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. In the event future performance under this Agreement is suspended pursuant to Article II.A.4. of this Agreement, such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of total project costs and the Federal share of costs for data recovery activities in accordance with Article XVII.C. and Article XVII.D. of this Agreement the Government projects to be incurred through the then-current or upcoming fiscal year; or the Government or the Non-Federal Sponsor elects to terminate this Agreement. In the event that the Government and the Non-Federal Sponsor determine to suspend future performance under this Agreement in accordance with Article XIV.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsor agree to proceed or to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XIV.C. of this Agreement due to failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate this Agreement, or the failure of the Non-Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under Article XIV.C. of this Agreement, such suspension shall remain in effect until: the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate this Agreement; the Non-Federal Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XIV.C. of this Agreement; the Government continues work on the Project; or the Government terminates this Agreement in accordance with the provisions of Article XIV.C. of this Agreement.

C. In the event that this Agreement is terminated pursuant to this Article or Article II.A.4. or Article XIV.C. of this Agreement, both parties shall conclude their activities relating to the Project and conduct an accounting in accordance with Article VI.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the Project and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.B. and Article XVII.D. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article II.A.4. or Article XIV.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

#### ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter "CERCLA"), as amended, 42 U.S.C. §§ 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the initial construction, periodic nourishment, operation, and maintenance of the shore protection features of the Project. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor or the Government during the period of initial construction of the shore protection features for such investigations for hazardous substances shall be included in the total costs of initial construction of the shore protection features and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

2. All actual costs incurred by the Non-Federal Sponsor or the Government during the authorized periodic nourishment of the shore protection features period for such investigations for hazardous substances shall be included in the total costs of periodic nourishment of the shore protection features and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.



B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the initial construction, periodic nourishment, operation, and maintenance of the shore protection features of the Project, the Non-Federal Sponsor and the Government shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until both parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate initial construction of the shore protection features or periodic nourishment of the shore protection features of the Project, or, if already in initial construction of the shore protection features or periodic nourishment of the shore protection features, whether to continue with work on the Project, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the initial construction, periodic nourishment, operation, and maintenance of the shore protection features of the Project. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total Project costs. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

## ARTICLE XV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Administrator  
New Jersey Department of Environmental Protection  
Division of Engineering and Construction  
1510 Hooper Avenue  
Toms River, New Jersey 08753

If to the Government:

District Engineer  
Wanamaker Building  
100 Penn Square East  
Philadelphia, Pennsylvania 19107-3390

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

## ARTICLE XVI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

## ARTICLE XVII - HISTORIC PRESERVATION

A. The costs of identification, survey and evaluation of historic properties attributed to initial construction of the shore protection features of the Project shall be included in total costs of the initial construction of the shore protection features of the Project and cost shared in accordance with the provisions of this Agreement.

B. The costs of identification, survey and evaluation of historic properties attributed to periodic nourishment of the shore protection features of the Project shall be included in total cost of periodic nourishment of the shore protection features of the Project and cost shared in accordance with the provisions of this Agreement.

C. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. Section 469c (a)), the costs of mitigation and data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total Project costs, up to the statutory limit of one percent of the total amount authorized to be appropriated for the Project.

D. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery that exceed the one percent limit shall be included in total Project costs and cost shared in accordance with the provision of this Agreement.

## ARTICLE XVIII - SECTION 902 PROJECT COST LIMITS

The Non-Federal Sponsor has reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understands that Section 902 establishes the maximum cost for the Project. Notwithstanding any other provision of this agreement, the Government shall not make a new Project financial obligation, make Project expenditure, or afford credit toward total Project costs for the value of any contribution provided by the Non-Federal Sponsor, if such obligation, expenditure, or credit would result in total Project costs exceeding this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$71,822,000 for initial construction of the shore protection features and \$273,628,000 for periodic nourishment of the shore protection features, as calculated in accordance with ER 1105-2-100 using December 2003 price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902.

## ARTICLE XIX – OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the legislature of the State of New Jersey, where creating such an obligation would be inconsistent with New Jersey Constitution Article 8, Section 2, Paragraph 3, N.J.S.A. 59:13-1 *et seq.*, and N.J.S.A. 59:1-1 *et seq.* of the State of New Jersey.

B. The Non-Federal Sponsor intends to satisfy its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose, for each fiscal period, appropriations sufficient to cover the Non-Federal Sponsor's obligations under this Agreement for each year, and will use all reasonable and lawful means to secure the appropriations for that year sufficient to make the payments necessary to fulfill its obligations hereunder. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to discharge these obligations can and will lawfully be appropriated and made available for this purpose. In the event the budget or other means of appropriations does not provide fund in sufficient amounts to discharge these obligations, the Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payment under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to satisfy its obligations hereunder, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

DEPARTMENT OF THE ARMY

BY: \_\_\_\_\_

JOHN PAUL WOODLEY, JR.  
Assistant Secretary of the Army  
(Civil Works)

DATE: \_\_\_\_\_

BY:  \_\_\_\_\_

ROBERT J. RUCH  
Lieutenant Colonel, Corps of Engineers  
District Engineer

DATE: 17 Aug 05

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

BY:  \_\_\_\_\_

JOHN S. WATSON, JR.  
Assistant Commissioner  
New Jersey Department of Environmental  
Protection

DATE: 8/5/05

# CERTIFICATE OF AUTHORITY

I, Rachel Horowitz, do hereby certify that I represent the Attorney General of the State of New Jersey and that the New Jersey Department of Environmental Protection is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the State New Jersey in connection with Long Beach Island Island, NJ Shore Protection Project and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of The State of New Jersey have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 11th  
day of August 2005.

\_\_\_\_\_  
PETER C. HARVEY  
Attorney General  
State of New Jersey

Rachel Horowitz  
Deputy Attorney General

## CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

  
Deputy Commissioner  
New Jersey Department of Environmental Protection

DATE: 8/16/05

# **EXHIBIT B**

APPENDIX D

Prepared by:

TOWNSHIP OF LONG BEACH  
6805 LONG BEACH BOULEVARD  
BRANT BEACH, NJ 08008

DEED OF DEDICATION AND PERPETUAL STORM

DAMAGE REDUCTION EASEMENT

THIS DEED OF DEDICATION AND PERPETUAL STORM DAMAGE REDUCTION  
EASEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 2013 BY AND

BETWEEN: \_\_\_\_\_, whose address is  
\_\_\_\_\_, referred to herein as Grantor,

AND

THE TOWNSHIP OF LONG BEACH, a Municipal Corporation of the  
State of New Jersey whose post office address is 6805 LONG  
BEACH BOULEVARD, BRANT BEACH, NJ, 08008, 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 Long Beach, County of Ocean,  
State of New Jersey, and identified as Block, \_\_\_\_\_ Lot \_\_\_\_\_, on the  
official tax map of the Township of Long Beach, hereinafter the  
"Property," and Grantor holds the requisite interest to grant  
this Deed of Easement; and

WHEREAS, the Grantees recognize that the beach at Long  
Beach Island, 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 Long Beach Island Storm Damage Reduction Project,  
as defined in the August 17, 2005 Project Cooperation Agreement  
between the Department of the Army and the State of New Jersey,  
hereinafter the "Project"; 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 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 Township of Long Beach 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 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;

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 easement and right-of-way for the Long Beach Island Storm Damage Reduction Project in, on, over and across that land of the Property described as the area east of the established bulkhead line as shown on the Township of Long Beach official tax maps for the Blocks and Lots listed above for use by the State of New Jersey and the Township of Long Beach, 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 renourish 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 Long Beach Island Storm Damage Reduction Project together with the right of public use and access;
- e. Post signs, plant vegetation on said dunes and berms;
- f. Erect, maintain, and remove silt screens and snow fences;
- g. Facilitate preservation of dune and vegetation through the limitation of public access to dune areas;
- 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;
- i. The easement reserves to the Grantor, the Grantor's heirs, successors and assigns the right to construct a private 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. Prior approval of the plans and specifications for such structures must be obtained from the Township of Long Beach and the State of New Jersey. Such structures are to be considered subordinate to the construction, operation, maintenance, repair, rehabilitation, and replacement of the project. The easement 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, subject however to existing easements for utilities and pipelines, existing public highways, existing paved public roads and existing public streets. 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 Township of Long Beach, the State of New Jersey and/or any applicable Federal agency, as required.

j. **Duration of Easement:** The easement granted hereby shall be in perpetuity, and in the event that the Township of Long Beach 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.

**Release of Easement:** If construction of the Project has not begun on said Property by September 30, 2020, then the Grantees, upon written request of the Grantor, shall release this easement of record at the Grantee's sole cost and expense, consistent with all applicable laws in effect at the time the release is requested.

**Municipality to Maintain Beach:** The Township of Long Beach 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 Grantee or otherwise permit the Grantee 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 Grantee's 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.

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

Date \_\_\_\_\_

Accepted by the  
TOWNSHIP OF LONG BEACH, GRANTEE

Witnessed by:

BY: \_\_\_\_\_  
(Name of Official)

\_\_\_\_\_  
NOTARY PUBLIC OF THE  
STATE OF

Date \_\_\_\_\_

Accepted by the  
State of New Jersey, GRANTEE

Witnessed by:

BY: \_\_\_\_\_  
(Name of Official)

\_\_\_\_\_  
NOTARY PUBLIC OF THE  
STATE OF

Date \_\_\_\_\_

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_ :SS

I CERTIFY that on \_\_\_\_\_, 2013, \_\_\_\_\_, 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;
- 2) signed, sealed and delivered this Deed of Easement as his or  
her act and deed;
- 3) holds the requisite ownership interest and authority to  
execute this Deed of Easement; and
- 4) made this Deed of Easement for the full and actual  
consideration as set forth herein.

\_\_\_\_\_  
NOTARY PUBLIC OF THE  
STATE OF

# **EXHIBIT C**



**OWEN,  
LITTLE  
& ASSOCIATES  
INC.**

Engineers  
Planners  
Surveyors  
GIS Specialists

David E Owen, PE, PP, C.M.E., FASCE  
Frank J. Little, Jr., PE, PP, C.M.E.  
Douglas E Klee, PE, PP, C.M.E.  
William J. Berg, PLS.

**DESCRIPTION OF A NEW DEED OF DEDICATION AND  
STORM DAMAGE REDUCTION EASEMENT  
BEING ON A PORTION OF TAX MAP LOT 1, BLOCK 20.68,  
LONG BEACH TOWNSHIP, OCEAN COUNTY, NEW JERSEY**

All that certain lot, tract or parcel of land and premises, situate, lying and being in the Township of Long Beach, County of Ocean, State of New Jersey and being more particularly described as follows:

Beginning at a point of intersection formed by the common property line of Lot 1, Block 20.68 and Lot 5, Block 20.69, with the New Storm Damage Reduction Easement Line. Said Line also being the Township's Bulkhead Line. Said point also being distant the following two (2) courses from the intersection formed by the Northerly Right-Of-Way (R.O.W.) Line of East Seashell Lane (40 Feet Wide) with the Easterly R.O.W. Line of Long Beach Boulevard (100 Feet Wide). Running thence:

- A. Along the Easterly R.O.W. Line of Long Beach Boulevard, North 20°10'58", East 3,855.00 Feet to a point in the common property line of Lot 1, Block 20.68 and Lot 5, Block 20.69; thence
- B. Along said common property line, South 69°49'02", East, 490.00 Feet to the point and place of beginning. Running thence:
  1. Along said common property line, South 69°49'02", East, ± 120 Feet, to a point in the approximate Mean High Water Line of the Atlantic Ocean; thence:
  2. Southerly along said approximate Mean High Water Line of the Atlantic Ocean ± 125 Feet, to a point in the common property line of Lot 1, Block 20.68 and Lot 4, Block 20.67; thence:
  3. Along said common property line, North 69°49'02", West, ± 145 Feet to a point in the new SDRE/Bulkhead Line; thence:
  4. Along said SDRE/Bulkhead Line, North 22°35'33", East, 125.11 Feet to the point and place of beginning.

Containing: 16,153.64 SF. 0.37 Ac.

Being Intended to describe a New Deed of Dedication and Storm Damage Reduction Easement being on a portion of Tax Map Lot 1, Block 20.68. This portion of the New Storm Damage Reduction Easement area is intended to lie between the Township's Bulkhead Line and the approximate Mean High Water Line of the Atlantic Ocean. Said easement being further shown on a map entitled "Map To Accompany Deed of Dedication and Storm Damage Reduction Easement, Township of Long Beach, Ocean County, New Jersey". Said map was prepared by Owen, Little & Associates, Inc., Beachwood, New Jersey on April 21, 2014 and is on file as Project Number LB-13-DUNE (13-093426).



443 Atlantic City Blvd.  
Beachwood, NJ 08722  
732-244-1090  
Fax 732-341-3412

www.owenlittle.com  
info@owenlittle.com

Said Lot 1, Block 20.68 is further described in Deed Book 4827, Page 302. Said Deed was duly filed in the Office of the Ocean County Clerk, Toms River, New Jersey.

Subject to covenants, restrictions and easement, if any, of record, except those that have expired by their own limitations.

Prepared By:



William J. Berg, PLS

NJPLS License No. 24GS03622800

10/3/2019

Date

Not a certified copy







**OWEN,  
LITTLE  
& ASSOCIATES, INC.**

Engineers  
Planners  
Surveyors  
GIS Specialists

David E. Owen, P.E., P.E., C.M.E., FASCE  
Frank J. Little, Jr., P.E., P.E., C.M.E.  
Douglas E. Klee, P.E., P.E., C.M.E.  
William J. Berg, P.L.S.

**DESCRIPTION OF A NEW DEED OF DEDICATION AND  
STORM DAMAGE REDUCTION EASEMENT  
BEING ON A PORTION OF TAX MAP LOT 1.04, BLOCK 20.109,  
LONG BEACH TOWNSHIP, OCEAN COUNTY, NEW JERSEY**

All that certain lot, tract or parcel of land and premises, situate, lying and being in the Township of Long Beach, County of Ocean, State of New Jersey and being more particularly described as follows:

Beginning at a point of intersection formed by the common property line of Lot 1.04, Block 20.109 and Lot 2, Block 20.110, with the New Storm Damage Reduction Easement Line. Said Line also being the Township's Bulkhead Line. Said point also being distant the following two (2) courses from the intersection formed by the Northerly Right-Of-Way (R.O.W.) Line of East Seashell Lane (40 Feet Wide) with the Easterly R.O.W. Line of Long Beach Boulevard (100 Feet Wide). Running thence:

- A. Along the Easterly R.O.W. Line of Long Beach Boulevard, North 20°10'58", East 5,980.00 Feet to a point in the common property line of Lot 1.04, Block 20.109 and Lot 2, Block 20.110; thence
- B. Along said common property line, South 69°49'02", East, 525.46 Feet to the point and place of beginning. Running thence:
  1. Along the common property line of Lot 1.04, Block 20.109, and Lot 2, Block 20.110, South 69°49'02", East, ± 150 Feet, to the approximate Mean High Water Line of the Atlantic Ocean.
  2. Along said approximate Mean High Water Line of the Atlantic Ocean, Southerly ± 125 Feet, to a point in the common property line of Lot 1.04, Block 20.109 and Lot 4, Block 20.107; thence:
  3. Along said common property line, North 69°49'02", West, ± 170 Feet to a point in the New Storm Damage Reduction Easement Line; thence:
  4. Along said New Storm Damage Reduction Easement/Bulkhead Line, North 23°55'45", East, 125.27 Feet, to the point and place of beginning.

Containing: 20,039.60 SF/0.46 Ac.

Being intended to describe a New Deed of Dedication and Storm Damage Reduction Easement being on a portion of Tax Map Lot 1.04, Block 20.109. This portion of the New Storm Damage Reduction Easement area is intended to lie between the Township's Bulkhead Line and the approximate Mean High Water Line of the Atlantic Ocean. Said easement being further shown on a map entitled "Map To Accompany Deed of Dedication and Storm Damage Reduction Easement, Township of Long Beach, Ocean County, New Jersey". Said map was prepared by Owen, Little & Associates, Inc., Beachwood, New Jersey on June 18, 2014 and is on file as Project Number LB-13-DUNE (13-093426).



443 Atlantic City Blvd.  
Beachwood, NJ 08722  
732-244-1090  
Fax 732-341-3412

www.owenlittle.com  
info@owenlittle.com

Said Lot 1.04, Block 20.109 is further described in Deed Book 4926, Page 887. Said Deed was duly filed in the Office of the Ocean County Clerk, Toms River, New Jersey.

Subject to covenants, restrictions and easement, if any, of record, except those that have expired by their own limitations.

Prepared By:

WJB  
William J. Berg, PLS  
NJPLS License No. 24GS03622800

10/3/2014

Date

Not a certified copy

# LONG BEACH BOULEVARD

(ASPHALT SURFACE - 100' R.O.W.)

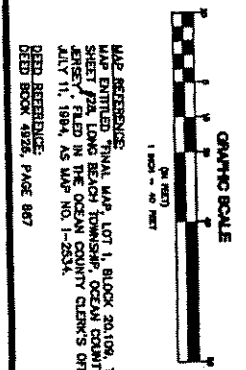
N 20°10'58" E  
5,880.00'  
(To North R.O.W.  
Of Seashell Lane)

COPYRIGHT 2014 OWEN, LITTLE & ASSOCIATES, INC.  
THIS DOCUMENT AND THE DATA AND DESIGN INFORMATION  
HEREIN, ARE THE PROPERTY OF OWEN, LITTLE & ASSOCIATES, INC.  
AND ARE NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM  
OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING  
PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE  
AND RETRIEVAL SYSTEM, WITHOUT PERMISSION IN WRITING  
FROM OWEN, LITTLE & ASSOCIATES, INC. ANY VIOLATION  
OF THIS COPYRIGHT NOTICE IS SUBJECT TO PROSECUTION  
UNDER FEDERAL AND STATE LAWS.

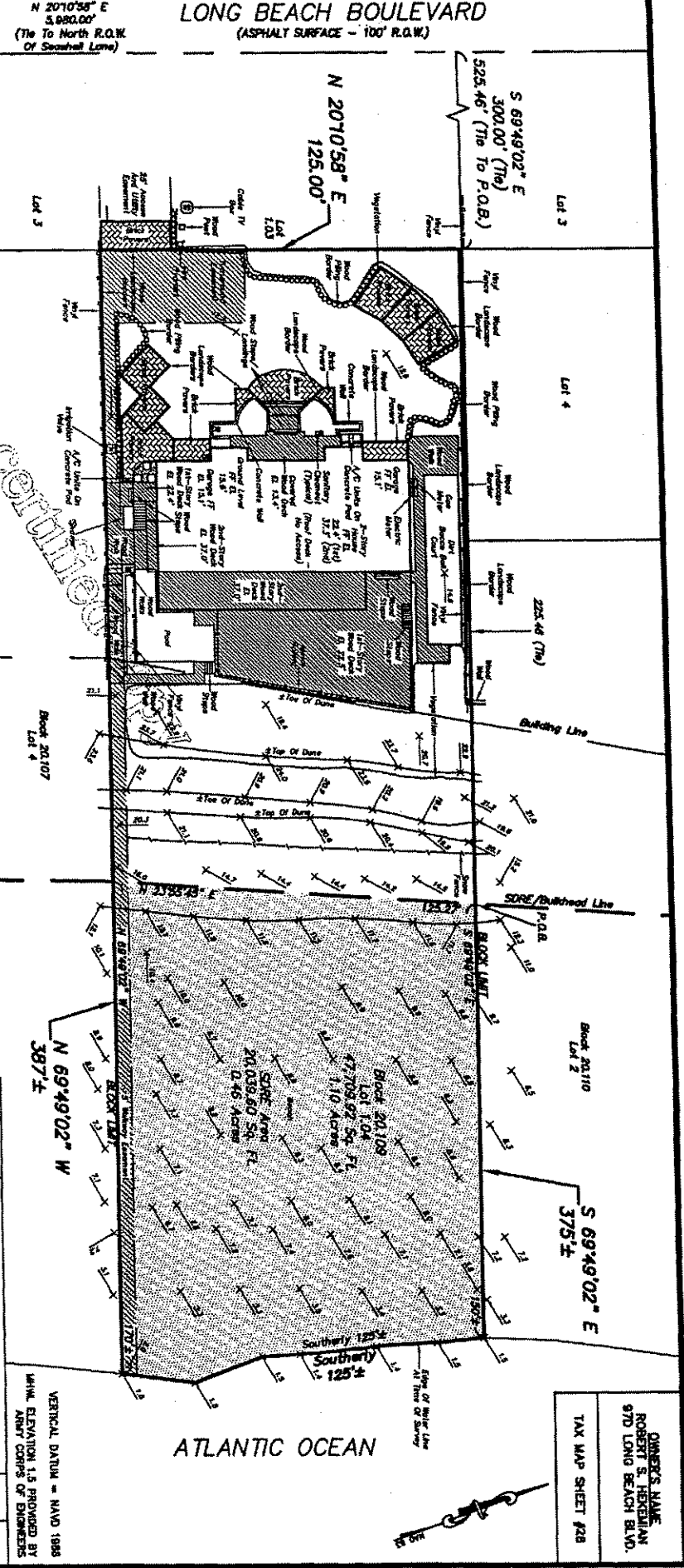
THIS DRAWING HAS BEEN PREPARED FOR THE PURPOSE OF  
OBTAINING A PERMIT TO CONSTRUCT A ROADWAY AND  
SHALL NOT BE USED FOR ANY OTHER PURPOSE WITHOUT THE  
WRITTEN PERMISSION OF OWEN, LITTLE & ASSOCIATES, INC.  
APPROVED FOR CONSTRUCTION.

LEGEND  
EASEMENT AREA  
RIGHT OF WAY  
STORM DRAINAGE  
REDUCTION EASEMENT  
ELEVATION  
GROUND ELEVATION

NOTE:  
THIS IS NOT A SURVEY. THE INFORMATION SHOWN HEREON WAS  
OBTAINED FROM DEEDS, FIELD NOTES, AND ALL LOTS ARE  
SUBJECT TO WHAT A COMPLETE AND ACCURATE SURVEY MAY REVEAL.



|   |         |  |                         |         |
|---|---------|--|-------------------------|---------|
| NO.   | DATE    | REVISION DESCRIPTION   | DRAWN                   | CHECKED |
| 1   | 10/5/14 | MAP TO ACCOMPANY<br>DEED OF DEDICATION AND STORM DRAINAGE REDUCTION<br>EASEMENT DEDICATION | WILLIAM J. BERG, P.L.S. |         |
| <p>PROJECT: P/O LOT 104<br/>TOWNSHIP OF LONG BEACH<br/>BLOCK 20,109<br/>NEW JERSEY</p> <p>SCALE: 1" = 40'</p> <p>DATE: 5/19/14<br/>DRAWN: JMB<br/>CHECKED: WJB<br/>APPROVED FOR CONSTRUCTION: WJB</p> |         |  |                         |         |



OWNER'S NAME  
ROBERT S. HICKELMAN  
970 LONG BEACH BLVD.  
TAX MAP SHEET #28



**OWEN,  
LITTLE  
& ASSOCIATES  
INC.**

Engineers  
Planners  
Surveyors  
GIS Specialists

David E. Owen, P.E., P.L., C.M.E., F.A.S.C.E.  
Frank J. Little, Jr., P.E., P.L., C.M.E.  
Douglas F. Klee, P.L., P.E., C.M.E.  
William J. Berg, P.L.S.

**DESCRIPTION OF A NEW DEED OF DEDICATION AND  
STORM DAMAGE REDUCTION EASEMENT  
BEING ON A PORTION OF TAX MAP LOT 1.05, BLOCK 20.37,  
LONG BEACH TOWNSHIP, OCEAN COUNTY, NEW JERSEY**

All that certain lot, tract or parcel of land and premises, situate, lying and being in the Township of Long Beach, County of Ocean, State of New Jersey and being more particularly described as follows:

Beginning at a point of intersection formed by the common property line of Lot 1.05, Block 20.37 and Lot 1.04, Block 20.35, with the New Storm Damage Reduction Easement Line. Said Line also being the Township's Bulkhead Line. Said point also being distant the following two (2) courses from the intersection formed by the Northerly Right-Of-Way (R.O.W.) Line of East Seashell Lane (40 Feet Wide) with the Easterly R.O.W. Line of Long Beach Boulevard (100 Feet Wide). Running thence:

- A. Along the Easterly R.O.W. Line of Long Beach Boulevard, North  $20^{\circ}10'58''$ , East 7,094.00 Feet to a point in the common property line of Lot 1.05, Block 20.37 and Lot 1.04, Block 20.35; thence
- B. Along said common property line, South  $69^{\circ}49'02''$ , East, 415.64 Feet to the point and place of beginning. Running thence:
  1. Along said New Storm Damage Reduction Easement/Bulkhead Line, North  $22^{\circ}34'34''$ , East, 136.12 Feet to a point in the common property line of Lot 1.05, Block 20.37 and Lot 1.04, Block 20.39; thence
  2. Along said common property line, South  $69^{\circ}49'02''$ , East,  $\pm 221$  Feet to a point in the approximate Mean High Water Line of the Atlantic Ocean; thence
  3. Along said approximate Mean High Water Line of the Atlantic Ocean, Southerly  $\pm 136$ , to a point in the common property line of Lot 1.05, Block 20.37 and Lot 1.04, Block 20.35; thence
  4. Along said common property line, North  $69^{\circ}49'02''$ , West,  $\pm 225$  Feet to the point and place of beginning.

Containing: 30,261.53 SF/0.70 Ac.

Being intended to describe a New Deed of Dedication and Storm Damage Reduction Easement being on a portion of Tax Map Lot 1.05, Block 20.37. This portion of the New Storm Damage Reduction Easement area is intended to lie between the Township's Bulkhead Line and the approximate Mean High Water Line of the Atlantic Ocean. Said easement being further shown on a map entitled "Map To Accompany Deed of Dedication and Storm Damage Reduction Easement, Township of Long Beach, Ocean County, New Jersey". Said map was prepared by Owen, Little & Associates, Inc., Beachwood, New Jersey on July 9, 2014 and is on file as Project Number LB-13-DUNE (13-093426).



443 Atlantic City Blvd.  
Beachwood, NJ 08722  
732-244-1090  
Fax 732-341-3412

www.owenlittle.com  
info@owenlittle.com

Said Lot 1.05, Block 20.37 is further described in Deed Book 15479, Page 573. Said Deed was duly filed in the Office of the Ocean County Clerk, Toms River, New Jersey.

Subject to covenants, restrictions and easement, if any, of record, except those that have expired by their own limitations.

Prepared By:

*WJB*

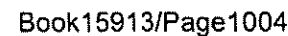
William J. Berg, PLS

NJPLS License No. 24GS03622800

*10/2/2014*

Date

*This is a Certified copy*





David E. Owen, P.E., P.E., C.M.E., FASCE  
 Frank J. Little, Jr., P.E., P.E., C.M.E.  
 Douglas F. Klee, P.E., P.E., C.M.E.  
 William J. Berg, M.S.

**DESCRIPTION OF A NEW DEED OF DEDICATION AND  
 STORM DAMAGE REDUCTION EASEMENT  
 BEING ON A PORTION OF TAX MAP LOT 5, BLOCK 20.89,  
 LONG BEACH TOWNSHIP, OCEAN COUNTY, NEW JERSEY**

All that certain lot, tract or parcel of land and premises, situate, lying and being in the Township of Long Beach, County of Ocean, State of New Jersey and being more particularly described as follows:

Beginning at a point of intersection formed by the common property line of Lot 5, Block 20.89 and Lot 1.05, Block 20.93, with the New Storm Damage Reduction Easement Line. Said Line also being the Township's Bulkhead Line. Said point also being distant the following two (2) courses from the intersection formed by the Northerly Right-Of-Way (R.O.W.) Line of East Seashell Lane (40 Feet Wide) with the Easterly R.O.W. Line of Long Beach Boulevard (100 Feet Wide). Running thence:

- A. Along the Easterly R.O.W. Line of Long Beach Boulevard, North 20°10'58", East 4,855.00 Feet to a point in the common property line of Lot 5, Block 20.89 and Lot 1.05, Block 20.93; thence
- B. Along said common property line, South 69°49'02", East, 468.33 Feet to the point and place of beginning. Running thence:
  1. Along the common property line of Lot 5, Block 20.89, and Lot 1.05, Block 20.93, South 69°49'02", East, ± 173 Feet, to the approximate Mean High Water Line of the Atlantic Ocean.
  2. Along said approximate Mean High Water Line of the Atlantic Ocean, Southerly ± 147 Feet, to a point in the common property line of Lot 5, Block 20.89 and Lot 4, Block 20.87; thence
  3. Along said common property line, North 69°49'02", West, ± 169 Feet to a point in the New Storm Damage Reduction Easement Line; thence
  4. Along said New Storm Damage Reduction Easement/Bulkhead Line, North 18°39'19", East, 146.55 Feet, to the point and place of beginning.

Containing: 24,915.67 SF/0.57 Ac.



443 Atlantic City Blvd.  
 Beachwood, NJ 08722  
 732-244-1090  
 Fax 732-341-3412

www.owenlittle.com  
 info@owenlittle.com

Being intended to describe a New Deed of Dedication and Storm Damage Reduction Easement being on a portion of Tax Map Lot 5, Block 20.89. This portion of the New Storm Damage Reduction Easement area is intended to lie between the Township's Bulkhead Line and the approximate Mean High Water Line of the Atlantic Ocean. Said easement being further shown on a map entitled "Map To Accompany Deed of Dedication and Storm Damage Reduction Easement, Township of Long Beach, Ocean County, New Jersey". Said map was prepared by Owen, Little & Associates, Inc., Beachwood, New Jersey on June 18, 2014 and is on file as Project Number LB-13-DUNE (13-093426).

Said Lot 5, Block 20.89 is further described in Deed Book 4995, Page 296. Said Deed was duly filed in the Office of the Ocean County Clerk, Toms River, New Jersey.

Subject to covenants, restrictions and easement, if any, of record, except those that have expired by their own limitations.

Prepared By:

William J. Berg, PLS  
William J. Berg, PLS  
NJPLS License No. 24GS03622800

10/3/2014  
Date

Not a Certified copy







**OWEN  
LITTLE  
& ASSOCIATES  
INC.**

Engineers  
Planners  
Surveyors  
GIS Specialists

David F Owen, P.E., P.E., C.M.E., F.A.S.C.E.  
Frank J. Little, Jr., P.E., P.E., C.M.E.  
Douglas E. Klee, P.E., P.E., C.M.E.  
William J. Berg, P.L.S.

**DESCRIPTION OF A NEW DEED OF DEDICATION AND  
STORM DAMAGE REDUCTION EASEMENT BEING ON  
A PORTION OF TAX MAP LOT 3, BLOCK 18.67,  
LONG BEACH TOWNSHIP, OCEAN COUNTY, NEW JERSEY**

All that certain lot, tract or parcel of land and premises, situate, lying and being in the Township of Long Beach, County of Ocean, State of New Jersey and being more particularly described as follows:

Beginning at a point of intersection formed by the common property line of Lot 1, Block 18.65 and Lots 1, 2 & 3, Block 18.67 with the New Storm Damage Reduction Easement (SDRE) Line. Said line also being the Township's Bulkhead Line. Said Line further being distant the following two courses from the Township's Southerly Border with the Borough of Surf City:

- A. Northerly along the Easterly Right of Way (ROW) Line of Long Beach Boulevard (100 Feet wide), North  $31^{\circ}52'18''$  East, 3,300.00 Feet to a point in the common Property Line of Lot 1, Block 18.65 and Lots 1, 2 & 3, Block 18.67; thence:
  - B. Along said common Property Line, South  $58^{\circ}07'42''$  East, 320.00 Feet to the point and place of beginning. Running thence:
    1. Along the new SDRE/Bulkhead Line, North  $31^{\circ}52'18''$  East, 100.00 Feet to a point in the common Property Line of Lot 3, Block 18.67 and Lot 2, Block 18.69; thence:
    2. Along said common Property Line, South  $58^{\circ}07'42''$  East,  $\pm 182$  Feet to a point in the approximate Mean High Water Line of the Atlantic Ocean; thence:
    3. Southerly along said approximate Mean High Water Line,  $\pm 100$  Feet to a point in the common Property Line of Lot 1, Block 18.65 and Lot 3, Block 18.67; thence:
    4. Along said common Property Line, North  $58^{\circ}07'42''$  West,  $\pm 191$  Feet, to the point and place of beginning.

Containing: 18,734.96 SF/0.43 AC



443 Atlantic City Blvd.  
Beachwood, NJ 08722  
732-244-1090  
Fax 732-341-3412

www.owenlittle.com  
info@owenlittle.com

Being intended to describe a New Deed of Dedication and Storm Damage Reduction Easement being on a portion of Tax Map Lot 3 Block 18.67. This portion of the new SDRE area is intended to lie between the Township's Bulkhead Line and the approximate Mean High Water Line of the Atlantic Ocean. Said easement being further shown a map entitled "Map To Accompany Deed of Dedication and Storm Damage Reduction Easement Description, Township of Long Beach, Ocean County, New Jersey". Said map prepared by Owen, Little & Associates, Inc., Beachwood, New Jersey on November 10, 2013 and is on file as Project Number LB-13-DUNE (13-093426).

Said Lot 3, Block 18.67 is further described in Deed Book 5655, Page 35. Said Deed was duly filed in the Office of the Ocean County Clerk, Toms River, New Jersey.

Subject to covenants, restrictions and easements, if any, of record, except those that have expired by their own limitations

Prepared By:

  
William J. Berg, PLS

NJPLS License No. 24G503622800

10/3/2014

Date

10/3/14

Continued

|     |      |                      |       |         |
|-----|------|----------------------|-------|---------|
| NO. | DATE | REVISION DESCRIPTION | DRAWN | CHECKED |
|     |      |                      |       |         |

MAP TO ACCOMPANY  
DEED OF DEDICATION AND STORM DAMAGE REDUCTION  
EASEMENT DESCRIPTION

| OWNER'S NAME      |
|-------------------|
| KAPLAN, BARBARA   |
| #1067C LONG BEACH |
| BOULEVARD         |



**OWEN  
LITTLE  
& ASSOCIATES  
INC.**

Engineers  
Planners  
Surveyors  
GIS Specialists

David E Owen, PE, EE, CME, PASCE  
Frank J. Little, Jr., PE, EE, CME  
Douglas F. Klee, PE, EE, CME  
William J. Berg, PLS

**DESCRIPTION OF A NEW DEED OF DEDICATION AND  
STORM DAMAGE REDUCTION EASEMENT BEING ON  
A PORTION OF TAX MAP LOT 4, BLOCK 18.03,  
LONG BEACH TOWNSHIP, OCEAN COUNTY, NEW JERSEY**

All that certain lot, tract or parcel of land and premises, situate, lying and being in the Township of Long Beach, County of Ocean, State of New Jersey and being more particularly described as follows:

Beginning at a point by the common property line of Lot 4, Block 18.01 and Lot 4, Block 18.03 with the New Storm Damage Reduction Easement (SDRE) Line. Said line also being the Township's Bulkhead Line. Said point further being distant the following two courses from the Township's Southerly Border with the Borough of Surf City:

- A. Along the Easterly Right of Way (ROW) Line of Long Beach Boulevard (100 feet wide), North  $31^{\circ}53'52''$  East, 100.00 Feet to a point on the common property line of Lots 3 and 4, Block 18.01 and Lots 3 and 4, Block 18.03; thence:
  - B. Along said common property line, South  $58^{\circ}06'08''$  East, 435.71 Feet to the point and place of beginning. Running thence:
    1. Along the SDRE/Bulkhead Line, North  $23^{\circ}46'04''$  East, 101.02 Feet to a point in the Southerly Property Line of Lot 1, Block 18.05; thence:
    2. Along said Southerly Property Line, South  $58^{\circ}06'08''$  East,  $\pm 254$  Feet to a point in the approximate Mean High Water Line of the Atlantic Ocean; thence:
    3. Southerly along said approximate Mean High Water Line  $\pm 100$  Feet to a point in the common property line of Lot 4, Block 18.01 and Lot 4, Block 18.03; thence:
    4. Along said common property line, North  $58^{\circ}06'08''$  West,  $\pm 255$  Feet to the point and place of beginning.

Containing: 25,523.56 SF/0.59 AC



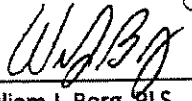
443 Atlantic City Blvd.  
Beachwood, NJ 08722  
732-244-1090  
Fax 732-341-3412  
[www.owenlittle.com](http://www.owenlittle.com)  
[info@owenlittle.com](mailto:info@owenlittle.com)

Being intended to describe a New Deed of Dedication and Storm Damage Reduction Easement being on a portion of Tax Map Lot 4 Block 18.03. This portion of the new SDRE area is intended to lie between the Township's Bulkhead Line and the approximate Mean High Water Line of the Atlantic Ocean. Said easement being further shown a map entitled "Map To Accompany Deed of Dedication and Storm Damage Reduction Easement Description, Township of Long Beach, Ocean County, New Jersey". Said map prepared by Owen, Little & Associates, Inc., Beachwood, New Jersey on October 28, 2013 and is on file as Project Number LB-13-DUNE (13-093426).

Said Lot 4, Block 18.03 is further described in Deed Book 15565, Page 1717. Said Deed was duly filed in the Office of the Ocean County Clerk, Toms River, New Jersey.

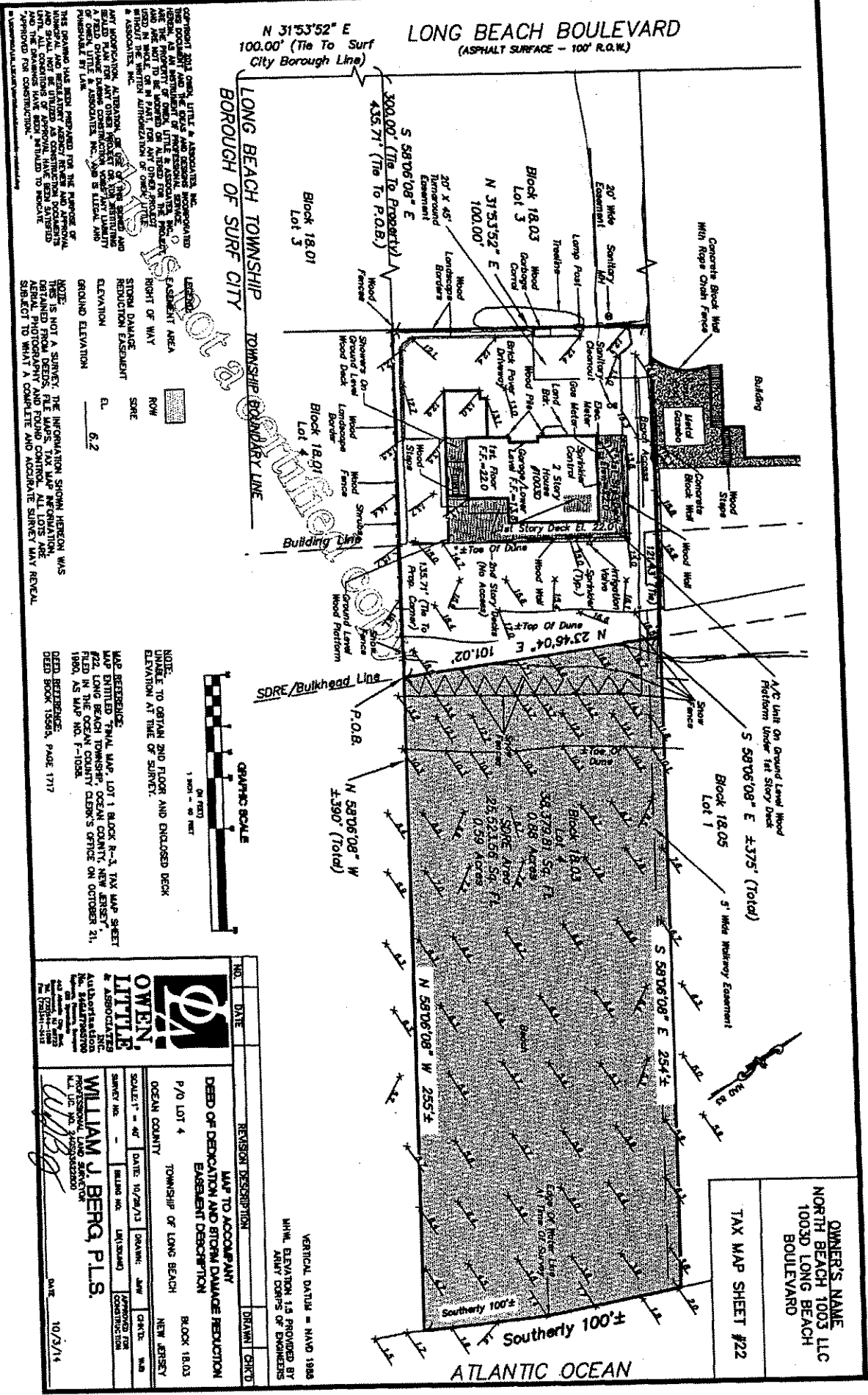
Subject to covenants, restrictions and easements, if any, of record, except those that have expired by their own limitations.

Prepared By:

  
William J. Berg, PLS

NJPLS License No. 24GS03622800

11/3/2014  
Date



THIS DOCUMENT AND THE DATA HEREON ARE THE PROPERTY OF OWEN, LITTLE & ASSOCIATES, INC. AND ARE NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF OWEN, LITTLE & ASSOCIATES, INC.

THE DATA HEREON HAS BEEN PREPARED FOR THE PURPOSE OF THE SURVEY AND IS NOT TO BE USED FOR ANY OTHER PURPOSE, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION, EASEMENT, OR ANY OTHER PURPOSE. THE DATA HEREON IS NOT TO BE USED FOR ANY OTHER PURPOSE, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION, EASEMENT, OR ANY OTHER PURPOSE.

**LEGEND**

EXISTING AREA

RIGHT OF WAY

STORY DAMAGE

REDUCTION EASEMENT

ELEVATION

GROUND ELEVATION

FL. 6.2

**NOTE:**

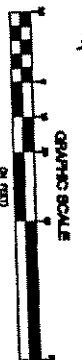
UNABLE TO OBTAIN 2ND FLOOR AND ENCLOSED DECK ELEVATION AT TIME OF SURVEY.

**MAP REFERENCES:**

MAP ENTITLED "FINAL MAP, LOT 1 BLOCK 18-3, TAX MAP SHEET #22, LONG BEACH TOWNSHIP, OCEAN COUNTY, NEW JERSEY" FILED IN THE OCEAN COUNTY CLERK'S OFFICE ON OCTOBER 21, 1980, AS MAP NO. P-1058.

**DEED REFERENCES:**

DEED BOOK 15593, PAGE 1717



|     |      |   |       |         |
|-----|------|---|-------|---------|
| NO. | DATE | REVISION DESCRIPTION  | DRAWN | CHECKED |
|     |      | MAP TO ACCOMPANY DEED OF DEDICATION AND EASEMENT DAMAGE REDUCTION |       |         |
|     |      | P/O LOT 4 TOWNSHIP OF LONG BEACH                                  |       |         |
|     |      | OCEAN COUNTY  |       |         |
|     |      | SCALE: 1" = 40'   |       |         |
|     |      | DATE: 10/25/13  |       |         |
|     |      | BY: [Signature]   |       |         |
|     |      | FOR: [Signature]  |       |         |
|     |      | WILLIAM J BERG, P.L.S.  |       |         |
|     |      | DATE: 10/2/14   |       |         |

OWNER'S NAME  
NORTH BEACH 1003 LLC  
1003D LONG BEACH  
BOULEVARD

TAX MAP SHEET #22

# **EXHIBIT D**



New Jersey Administrative Code  
Executive Orders  
Governor Chris Christie (2010 Pt. II)  
Governor Chris Christie (2010 Part II)

N.J.A.C. Executive Order No. 140 (2013)

Executive Order No. 140 (2013) Orders and Directs Attorney General to Coordinate Acquisition  
of Easements; Creates Office of Flood Hazard Risk Reduction Measures to Lead Effort

Currentness

Issued: September 25, 2013.

Effective: September 25 2013.

WHEREAS, beginning on October 28, 2012, and continuing through October 30, 2012, Superstorm Sandy struck the State of New Jersey, causing unprecedented damage and destruction; and

WHEREAS, oceanfront and other flood-prone communities lacking the benefits of flood hazard risk reduction measures including protective sand dunes, berms, and engineered beaches (collectively "Flood Hazard Risk Reduction Measures") experienced significantly more catastrophic damage than surrounding communities; and

WHEREAS, recognizing the dangers posed by the absence of Flood Hazard Risk Reduction Measures, the United States Congress appropriated funds for the creation, improvement, and reconstruction of these important protections; and

WHEREAS, working collaboratively with the United States Army Corps of Engineers, New Jersey has begun the process of designing Flood Hazard Risk Reduction Measures for appropriate areas of the New Jersey coastline; and

WHEREAS, these essential Flood Hazard Risk Reduction Measures must be comprehensively constructed across the areas impacted by Superstorm Sandy and throughout the regions at risk for similar damage from future storms; and

WHEREAS, some of the land on which this system of Flood Hazard Risk Reduction Measures must be built is privately owned; and

WHEREAS, recognizing the clear and quantifiable benefit that Flood Hazard Risk Reduction Measures confer on their property, as well as their families, neighbors, and communities, many oceanfront property owners have voluntarily granted easements for the construction of Flood Hazard Risk Reduction Measures; and

WHEREAS, despite the responsible actions of these many property owners, other residents have frustrated the State's rebuilding and resiliency plans by refusing to grant easements, thereby jeopardizing the construction of Flood Hazard Risk Reduction Measures for all of New Jersey's citizens, undermining the essential benefits of these systems, and subjecting entire communities to unnecessary risks and dangers; and

WHEREAS, these recalcitrant property owners have had ample time and notice to voluntarily agree to grant these easements to help to ensure the health, safety, and welfare of their communities; and

WHEREAS, the continued absence of Flood Hazard Risk Reduction Measures in coastal communities creates an imminent threat to life, property, and the health, safety, and welfare of those communities; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. App. A:9-33, et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4, and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers; and

WHEREAS, in light of the significant and widespread dangers posed by Superstorm Sandy, and in order to protect the health, safety, and welfare of the people of the State of New Jersey, on October 27, 2012, I signed Executive Order No. 104 declaring and proclaiming that a State of Emergency exists in the State of New Jersey; and

WHEREAS, in Executive Order No. 104, and in accordance with N.J.S.A. App. A:9-34 and -51, I expressly reserved the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties, or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against this emergency; and

WHEREAS, employing the procedures set out in N.J.S.A. 20:3-1 et seq., public entities are empowered to condemn private property for public purposes, including the creation of Flood Hazard Risk Reduction Measures; and

WHEREAS, pursuant to N.J.S.A. 12:3-64, the New Jersey Department of Environmental Protection ("DEP") is authorized to acquire any lands in the State that it deems advisable, and may enter upon and take property in advance of making compensation therefore where for any reason it cannot acquire the property by agreement with the owner; and

WHEREAS, pursuant to N.J.S.A. App. A:9-51.5, municipalities are authorized to enter upon and take possession and control of property necessary for the construction of Flood Hazard Risk Reduction Measures; and

WHEREAS, all of the aforementioned authority is necessary to protect the public health, safety, and welfare from future natural disasters; and

WHEREAS, in order to ensure the prompt and coordinated acquisition of easements or other interests in real property necessary to facilitate the timely completion of a comprehensive system of Flood Hazard Risk Reduction Measures, it is necessary to create a single State entity responsible for the rapid acquisition of property vital to these reconstruction efforts;

NOW, THEREFORE, I, CHRIS CHRISTIE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and the statutes of this State, do hereby ORDER and DIRECT:

1. The Commissioner of Environmental Protection shall create in the DEP the Office of Flood Hazard Risk Reduction Measures (the "Office"). The Office shall be headed by a Director appointed by the Commissioner to serve at the Commissioner's pleasure and who shall report to the Commissioner on the work of the Office. The Office shall lead and coordinate the efforts of the DEP to acquire the necessary interests in real property to undertake Flood Hazard Risk Reduction Measures and shall perform such other duties as the Commissioner may from time to time prescribe.

2. The Attorney General of the State of New Jersey, in conjunction with the Office, shall immediately take action to coordinate those legal proceedings necessary to acquire the necessary easements or other interests in real property for the system of Flood Hazard Risk Reduction Measures.

3. The Office is authorized to call upon any department, office, division, or agency of this State for information or assistance as deemed necessary to discharge the duties of the Office. Each department, office, division, or agency is hereby required, to cooperate with the Office and to provide such assistance as is necessary to accomplish the purpose of this Order. Notwithstanding anything in this Order to the contrary, the Office shall not supplant the function of any department, office, division, or agency.

4. No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution, which will or might in any way conflict with any of the provisions of this Order, or which will in any way interfere with or impede its achievement.

5. This Order shall take effect immediately.

#### **Credits**

Printed October 21, 2013 in the New Jersey Register at 45 N.J.R. 2289(a).

Current through amendments included in the New Jersey Register, Volume 46, Issue 20, dated October 20, 2014

No. 140 (2013), NJ ADC EX. ORD. No. 140 (2013)

---

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.

# **EXHIBIT E**

R&L  
Long Beach Twp.  
1805 Long Beach Blvd.  
Brent Beach NJ 08008

INSTR # 2014089667  
OR BK 15913 PG 900  
RECORDED 10/08/2014 02:46:21 PM  
SCOTT M. COLABELLA, COUNTY CLERK  
OCEAN COUNTY, NEW JERSEY

RESOLUTION PURSUANT TO N.J.S.A. App. A:9-51.5  
TOWNSHIP OF LONG BEACH  
OCEAN COUNTY, NEW JERSEY

RESOLUTION 14-1006.01

AUTHORIZING THE TOWNSHIP OF LONG BEACH AND THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, AND THE REPRESENTATIVES THEREOF, TO ENTER UPON AND TAKE POSSESSION OF THAT PORTION OF THE REAL PROPERTY(IES) SHOWN ON THE CURRENT TAX MAP OF THE TOWNSHIP OF LONG BEACH, THE BLOCK(S) AND LOT(S) OF WHICH ARE APPENDED HERETO IN APPENDIX B, FOR THE PURPOSE OF REPAIR, RESTORATION, REPLACEMENT AND/OR CONSTRUCTION OF FLOOD HAZARD RISK REDUCTION MEASURES

**WHEREAS**, Superstorm Sandy caused extensive damage to life and property in the municipalities along much of the Atlantic Coast of New Jersey, including the Township of Long Beach (hereinafter "the Municipality"); and

**WHEREAS**, the damage caused to the Municipality and the State of New Jersey ("the State") by Superstorm Sandy included, among other things, significant erosion of coastal sand dunes and shorelines resulting in near total destruction of the coastal properties, as well as damage to public infrastructure owned and maintained by the Township of Long Beach; and

**WHEREAS**, due to the damage that the Municipality sustained as a result of Superstorm Sandy, the Municipality has adopted Ordinances 13-42, 14-27, 14-30 and 14-31 authorizing the acquisition of certain interests in properties by negotiation, purchase, condemnation or eminent domain in furtherance of Executive Order 140; and

**WHEREAS**, in response to the devastation from Superstorm Sandy, the United States Congress has appropriated funds for the creation, improvement, and reconstruction of flood hazard risk reduction measures across New Jersey's coastline, including in the Municipality; and

**WHEREAS**, the Municipality is in the process of a shore protection project in conjunction with the New Jersey Department of Environmental Protection ("DEP"), and/or other federal/state entities, the purpose of which is the creation, improvement, and/or reconstruction of flood hazard risk reduction measures in the Municipality for the protection of the Municipality and the property and citizens thereof; and

**WHEREAS**, as part of the design of these flood hazard risk reduction measures, governmental entities have identified all property interests that must be obtained for construction of the flood hazard risk reduction measures, and these required property interests include a perpetual easement the form of which is included as Appendix A to this Resolution; and

**WHEREAS**, some owners of the property where easements are necessary for the flood hazard risk reduction measures have voluntarily provided the needed property interests to the Municipality and/or other public entities; and

**WHEREAS**, other property owners where easements are necessary for the flood hazard risk reduction measures have not provided the needed property interests, and those property owners and their respective properties (collectively, the "Properties") are identified on the tax map of the Municipality in Appendix B to this Resolution; and

**WHEREAS**, Superstorm Sandy has compromised, damaged and/or destroyed existing flood hazard risk reduction measures that have previously protected the Municipality from flooding caused by tidal waters; and

**WHEREAS**, the Municipality's governing body has decided that repairing, restoring, replacing, and/or constructing the flood hazard risk reduction measures at, upon, and/or around the Properties is necessary for the protection of the public health, safety, and welfare, as well as the protection of the Properties, the surrounding properties, the affected residences, and the subject neighborhood, and that the flood hazard risk reduction measures will allow the Municipality and the region as a whole to be more resilient and better able to withstand the next storm and its aftermath; and

**WHEREAS**, the Municipality has performed title work to determine the record owner(s) of the Properties, and the Municipality has made efforts to negotiate the voluntary transfer of the real property interests necessary for the flood hazard risk reduction measures, but those efforts have not been successful for the Properties listed in Appendix B; and

**WHEREAS**, the owner(s) of record of the Properties had last-known address(es) detailed in Appendix B; and

**WHEREAS**, using public funds, federal and/or state entities intend to begin construction of the flood hazard risk reduction measures in the Municipality in or about January 1, 2015; and

**WHEREAS**, the flood hazard risk reduction measures currently planned to be constructed in the Municipality consist of replenished beaches and engineered sand dunes; and

**WHEREAS**, that project cannot proceed until the Municipality provides to federal and/or state entities perpetual easement(s) in the form of Appendix A for the easement area on each of the Properties as set forth in Appendix C to this Resolution, and thus failure to provide the necessary easement(s) before the construction of the flood hazard risk reduction measures would delay, increase the cost of, and potentially frustrate the project's construction; and

**WHEREAS**, the potential delay and increase in cost is a matter of urgency and importance, and would result in substantial harm to the public health, safety, and welfare; and

**WHEREAS**, on October 27, 2012 the Governor issued Executive Order No. 104, wherein he declared a state of emergency because of Superstorm Sandy, and expressly reserved the right to utilize and employ all available resources of the State government and each and every political subdivision of the State, whether of persons, properties, or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against the declared emergency; and

**WHEREAS**, on September 25, 2013 the Governor issued Executive Order No. 140, wherein he declared that the construction of flood hazard risk reduction measures along New Jersey's coastline, including in the Municipality, is necessary to protect the public health, safety, and welfare from future natural disasters, and that reliance on certain statutory authority for the acquisition of property, including but not limited to N.J.S.A. App. A:9-51.5, is necessary for such efforts; and

**WHEREAS**, in Executive Order No. 140, the Governor ordered that no municipality, county, or other agency or political subdivision of the State shall enact or enforce any order, rule, regulation, ordinance, or resolution, which will or might in any way conflict with the provisions of Executive Order No. 140, or which will in any way interfere with or impede its achievement; and

**WHEREAS**, pursuant to N.J.S.A. App. A:9-51.5, if the Municipality, which borders the Atlantic Ocean, finds that there exists a threat or danger to life and property by reason of the damage to or the destruction of sand barriers and other natural or manmade barriers which protect the Municipality, and that it is necessary to the health, safety, and welfare of the Municipality to repair, restore, replace, or construct such flood hazard risk reduction measures, then the Municipality may, by resolution, as an exercise of the police power of the State, designate properties required for the purpose of providing such protective barriers and authorize the appropriate municipal or government officials or agencies or the representatives thereof to enter upon such property within ten (10) days of the passage of such a resolution to take control and possession thereof, and to do such acts as may be required without first paying any compensation therefor; and

**WHEREAS**, the passage of such a resolution would enable the project for the flood hazard risk reduction measures to continue without delay in the Municipality;

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Commissioners of the Township of Long Beach, County of Ocean, New Jersey as follows:

1. Pursuant to N.J.S.A. App. A:9-51.5, the Municipality finds that there is a threat or danger to life and property caused by Superstorm Sandy due to the compromise of, damage to and/or destruction of flood hazard risk reduction measures that protect the Municipality; and
2. The portion(s) of the real properties identified in Appendix B (the "Properties") are hereby designated as property required for control and possession by the Municipality, its representatives and any other governmental entities or agencies, or the representatives thereof, in order to construct and maintain the flood hazard risk reduction measures for the protection of the public health, safety, and welfare, as well as the protection of the Properties, the surrounding properties, the affected residences, and the subject neighborhood, and that the flood hazard risk reduction measures will allow the Municipality and the region as a whole to be more resilient and better able to withstand the next storm and its aftermath; and
3. Pursuant to N.J.S.A. App. A:9-51.5, the Municipality hereby authorizes the DEP and their representatives, including any other designated state and/or federal entities, to enter the Properties within ten (10) days of the passage of this Resolution to take control and possession thereof, and permits the DEP and their representatives to do such acts as may be required to repair, restore, replace, and/or construct the flood hazard risk reduction measures as contemplated in the project for the Municipality; and
4. Pursuant to N.J.S.A. App. A:9-51.5, the Municipality hereby declares it has taken a perpetual and assignable easement and right-of-way for the flood hazard risk reduction measures in, on, over, and across that land of the Properties described in Appendix B in favor of itself and the State of New Jersey for purposes of construction, preservation, patrol, operation, maintenance, repair, rehabilitation, and replacement of the flood hazard risk reduction measures, pursuant to the form of easement(s) attached to this Resolution as Appendix A; and
5. A certified copy of this Resolution certified by the Clerk of the Municipality shall be recorded with the Ocean County Clerk's Office and recorded in the book for deeds; and
6. A copy of this Resolution shall also be provided to the owners of record via certified mail, return receipt requested, and regular mail, at their last known address within two (2) business days of the date of this Resolution; and

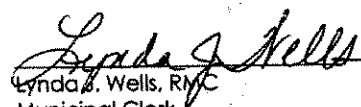
7. To prevent a delay in the project and any resulting costs, entry upon and possession of the Properties may be made without first paying any compensation therefor; and
8. In accordance with N.J.S.A. App. A:9-51.7, the owners of the Properties retain the right to obtain just compensation, if any, for the possession of the Properties, subject to all appropriate setoffs for benefits conferred on the property by the flood hazard risk reduction measures; and
9. To ensure that the owners of the Properties receive the just compensation, if any, required by N.J.S.A. App. A:9-51.7 and/or any other applicable law, the Municipality will proceed under the negotiation and valuation provisions of the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq. to value the impact of the flood hazard risk reduction measures on the affected property owners; and
10. In accordance with Executive Order No. 140, the Municipality will cooperate with the Office of Flood Hazard Risk Reduction Measures within the DEP for any negotiation or valuation proceedings under the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq., and will make that Office a party to any legal proceedings instituted in connection with the Municipality's efforts to obtain the real property interests contemplated by this Resolution.

PASSED ON: October 6, 2014

  
Joseph H. Mancini, Mayor

**CERTIFICATION**

I, **LYNDA J. WELLS**, Municipal Clerk for the Township of Long Beach do hereby certify that the foregoing Resolution 14-1006.01 was duly adopted by the Board of Commissioners at their meeting held on Monday, October 6, 2014.

  
Lynda J. Wells, RMC  
Municipal Clerk



## APPENDIX 'B'

| BLOCK | LOT(s)     | ADDRESS                         |
|-------|------------|---------------------------------|
| 1.02  | 2          | 5416 West Avenue                |
| 1.11  | 1.01       | 5403 S Long Beach Boulevard     |
| 1.78  | 1 C1 / 1&2 | 3101 S LONG BEACH BLVD- U1      |
| 1.78  | 1 C2/ 1&2  | 3101 S LONG BEACH BLVD- U2      |
| 1.78  | 1 C3/ 1&2  | 3101 S LONG BEACH BLVD- U3      |
| 1.78  | 1 C4 / 1&2 | 3101 S LONG BEACH BLVD- U4      |
| 1.78  | 1C5/ 1&2   | 3101 S LONG BEACH BLVD- U5      |
| 1.78  | 1C6 / 1&2  | 3101 S LONG BEACH BLVD- U6      |
| 1.17  | 7          | W. Roosevelt Avenue             |
| 1.23  | 3          | E. Pershing Avenue              |
| 1.75  | 2          | W. Webster Avenue               |
| 1.75  | 3          | W. Webster Avenue               |
| 4.09  | 7          | 214 E 14 <sup>th</sup> Street   |
| 4.44  | 3          | E 20 <sup>th</sup> Street       |
| 6.29  | 6,7,8      | E South 31 <sup>st</sup> Street |
| 8.23  | 1          | 12213 Ocean Avenue              |
| 11.09 | 6          | 125 W Louisiana Avenue          |
| 11.06 | 7          | 125 E Nebraska Avenue           |
| 11.25 | 14         | 122 E Alabama Avenue            |
| 11.32 | 8.01       | 115 E Jerome Avenue             |
| 12.15 | 8.03       | 124 E Ocean View Drive          |
| 15.24 | 1.01       | 6607 Ocean Boulevard            |
| 15.24 | 1.02       | 6605 Ocean Boulevard            |
| 15.27 | 2          | 6507 Ocean Boulevard            |
| 15.56 | 1          | 5713 Ocean Boulevard            |
| 18.03 | 4          | 1003D Long Beach Boulevard      |
| 18.27 | 3          | 1027C Long Beach Boulevard      |

|          |      |                            |
|----------|------|----------------------------|
| ✓ 18.61  | 1.03 | 1061C Long Beach Boulevard |
| ✓ 18.67  | 3    | 1067C Long Beach Boulevard |
| ✓ 18.105 | 1.02 | 1105B Long Beach Boulevard |
| ✓ 18.105 | 1.03 | 1105C Long Beach Boulevard |
| ✓ 18.125 | 1    | 1125 Long Beach Boulevard  |
| ✓ 20.03  | 4    | 7 E Seashell Lane          |
| ✓ 20.25  | 1.01 | 25B Long Beach Boulevard   |
| ✓ 20.35  | 1.04 | 35D Long Beach Boulevard   |
| ✓ 20.37  | 1.05 | 37E Long Beach Boulevard   |
| ✓ 20.45  | 4    | 45D Long Beach Boulevard   |
| ✓ 20.47  | 4    | 47D Long Beach Boulevard   |
| ✓ 20.67  | 4    | 61D Long Beach Boulevard   |
| ✓ 20.69  | 5    | 65E Long Beach Boulevard   |
| ✓ 20.68  | 1    | 63 Long Beach Boulevard    |
| ✓ 20.82  |      | 73A Long Beach Boulevard   |
| ✓ 20.87  | 4    | 77D Long Beach Boulevard   |
| ✓ 20.89  | 5    | 79E Long Beach Boulevard   |
| ✓ 20.107 | 4    | 95D Long Beach Boulevard   |
| ✓ 20.109 | 1.04 | 97D Long Beach Boulevard   |
| ✓ 20.110 | 2    | 99D Long Beach Boulevard   |
| ✓ 20.113 | 1.04 | 103D Long Beach Boulevard  |
| ✓ 20.115 | 6    | 107F Long Beach Boulevard  |
| ✓ 20.117 | 7    | 7 Coast Avenue             |
| ✓ 20.127 | 1.03 | 131D Long Beach Boulevard  |
| ✓ 20.129 | 1.10 | 135E Long Beach Boulevard  |