

APPENDIX D

Prepared by:

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 MUNICIPALITY OF the Borough of Bay Head, a Municipal Corporation of the State of New Jersey whose post office address is PO Box 248, Bay Head, NJ 08742, 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 Borough of Bay Head, County of Ocean, State of New Jersey, and identified as Block (s) _____, Lot (s) _____, on the official tax map of the Borough of Bay Head, hereinafter the "Property," and Grantor holds the requisite interest to grant this Deed of Easement; and

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

WHEREAS, the Grantees desire to participate with each other and the United States Army Corps of Engineers to construct the Manasquan Inlet to Barnegat Inlet Storm Damage Reduction Project, as defined in the December 30, 2003 Chiefs Report issued by the Department of the Army 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 Borough of Bay Head 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 Manasquan Inlet to Barnegat Inlet Storm Damage Reduction Project in, on, over and across that land of the Property described as the area east of a line designated as the "Dune Reference Line" as delineated on a five (5) sheet map set entitled "Borough of Bay Head, Dune Reference Line, June 2013" as signed and sealed by Mr. Robert Mainberger, PE, of Hatch Mott MacDonald and adopted by the Borough through Resolution # _____ dated _____ that is defined as follows:

Beginning at a point of the State Plane Coordinate System of 1983 (SPCS 83) on the North American Datum of 1983 (NAD 83) of (N) 452822.84, (E) 620525.94 on the common municipal boundary line of the Borough of Bay Head with the Borough of Point Pleasant Beach; thence

1. S 00 Degrees, 45 Minutes, 54 Seconds W, 216.24 feet; thence
2. S 08 Degrees, 14 Minutes, 53 Seconds W, 712.61 feet; thence
3. S 07 Degrees, 41 Minutes, 53 Seconds W, 272.11 feet; thence
4. S 08 Degrees, 06 Minutes, 07 Seconds W, 395.68 feet; thence
5. S 09 Degrees, 31 Minutes, 11 Seconds W, 55.01 feet; thence
6. S 07 Degrees, 29 Minutes, 04 Seconds W, 402.75 feet; thence
7. S 06 Degrees, 12 Minutes, 55 Seconds W, 70.19 feet; thence
8. S 08 Degrees, 59 Minutes, 16 Seconds W, 399.98 feet; thence
9. S 08 Degrees, 08 Minutes, 09 Seconds W, 55.05 feet; thence
10. S 07 Degrees, 48 Minutes, 30 Seconds W, 401.23 feet; thence
11. S 07 Degrees, 05 Minutes, 47 Seconds W, 46.67 feet; thence
12. S 11 Degrees, 36 Minutes, 59 Seconds W, 2,259.88 feet; thence
13. S 09 Degrees, 56 Minutes, 17 Seconds W, 1,241.34 feet; thence
14. S 09 Degrees, 07 Minutes, 46 Seconds W, 136.10 feet; ending at a point of the SPCS 83, NAD 83 of (N) 446252.57, (E) 619438.02 on the common municipal boundary line with the Borough of Mantoloking and the Borough of Bay Head.

- a. Construct, preserve, patrol, operate, maintain, repair, rehabilitate, and replace a public beach, dune system, and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand, to accomplish any alterations of the contours on said land, to construct berms and dunes, and to nourish and re-nourish periodically;
- b. Move, temporarily store and remove equipment and supplies;
- c. Erect and remove temporary structures;
- d. Perform any other work necessary and incident to the construction, periodic renourishment, and maintenance of the Manasquan Inlet to Barnegat Inlet 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;

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 Borough of Bay Head 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 Borough of Bay Head, the State of New Jersey and/or any applicable Federal agency, as required.

Duration of Easement: The easement granted hereby shall be in perpetuity, and in the event that the Borough of Bay Head 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, 2025, 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 Borough of Bay Head. The Municipality agrees, consistent with all Federal, State and local statutes and regulations, that at all times it shall use its best, good-faith efforts to cause the beach area abutting Grantor's lands to be maintained, consistent with any applicable Federal, State or local laws or regulations, notwithstanding any action or inaction of the State of New Jersey, Department of Environmental Protection or the United States Army Corps of Engineers to maintain the beach area.

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

revetment will not be altered by this easement. The project will be constructed and maintained over the revetment.

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

Accepted by the
Property Owner, GRANTOR

Witnessed by:

GRANTOR

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

Date _____

Accepted by the
Borough of Bay Head, GRANTEE

Witnessed by:

BY: _____
William W. Curtis, Mayor

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

Date _____

Accepted by the
State of New Jersey, GRANTEE

Witnessed by:

BY: _____
(Name of Official)

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

Date _____

STATE OF NEW JERSEY, _____ 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 NEW JERSEY