

SITE ACCESS AGREEMENT

THIS SITE ACCESS AGREEMENT is made by and between,

DENHOLTZ BOAT CLUB COURT, LLC, with an address of:
14 Cliffwood Avenue, Suite 200, Matawan, New Jersey 07747
referred to in this Agreement as "GRANTEE"

and

BOROUGH OF RED BANK, with an address of:
90 Monmouth Street, Red Bank, New Jersey 07701
referred to in this Agreement as "GRANTOR".

I. Background

A. GRANTOR owns property commonly known as Marine Park and identified as Block 9, Lot 5 on the Tax Map of the Borough of Red Bank (the "Premises").

B. GRANTEE desires a non-exclusive right of access to a portion of the Premises, as depicted on Exhibit A hereto, by officers, employees, contractors, agents, and authorized representatives of the GRANTEE in order to store vehicles and equipment ("Construction Staging") in connection with GRANTEE's construction project located upon real properties identified as Block 9.01, Lots 6.01 & 7 on the Tax Map of the Borough of Red Bank (the "Project").

C. In consideration of \$30,000.00 paid to GRANTOR upon execution of this Agreement, GRANTOR shall grant GRANTEE a right of access to the Premises to undertake Construction Staging for the Project upon the terms and conditions set forth in this Agreement.

II. Right and Conditions of Access

In consideration of the mutual covenants contained in this Agreement and \$30,000.00 paid by GRANTEE to GRANTOR before the delivery hereof, GRANTOR hereby grants to GRANTEE the non-exclusive and limited right to enter upon the Premises for the purpose of Construction Staging for the Project upon the following terms and conditions:

1. In consideration of its receipt of access to and use of the Premises, GRANTEE hereby agrees to pay thirty-thousand dollars (\$30,000.00) to GRANTOR upon execution and before delivery of this Agreement.

2. GRANTEE agrees that the Construction Staging for the Project will be conducted in accordance with the descriptions and depiction of the affected portion of the Premises attached hereto as Exhibit A, and without interrupting surrounding property owners' use and enjoyment of their respective properties. If impact is anticipated, Construction Staging for the Project will be performed when the Premises has minimal use, so as not to interfere with the public's use of the

Premises to the greatest extent possible.

3. Upon termination of GRANTEE's access, GRANTEE shall restore the Premises, including, but not limited to any damage to the Premises' improvements to the satisfaction of the GRANTOR or its appointed engineer. GRANTEE further agrees to pave the affected portion of the Premises depicted on Exhibit A, in accordance with the reasonable request(s) of GRANTOR.

4. Upon completion of all Construction Staging for the Project hereunder, GRANTEE shall remove all vehicles, equipment, materials, litter, debris, and any other items of whatever form or description and leave the Premises broom-swept in the same condition as at the commencement of the Construction Staging for the Project, as well as satisfy the paving provisions hereinabove.

5. During the course of Construction Staging for the Project and until the time of its completion, GRANTEE shall: (1) keep the Premises free of dirt, stone, mud and other debris; (2) maintain and keep all storm drainage within and near the Premises free from accumulation of debris and leaves; and (3) shall utilize appropriate barriers, as approved by the Red Bank Borough Police Department, to ensure that no unauthorized access, dangerous conditions, or attractive nuisances exist on the Premises.

6. During the course of Construction Staging for the Project and until the time of its completion, GRANTEE shall be responsible for the cleaning and sweeping of the public roadways at the point of entrance to and exit from the Premises to avoid the accumulation of debris and to maintain the public roadways in a clean and safe condition. In the event that GRANTEE fails to maintain the roadways in accordance with the foregoing standard, GRANTOR may cause same to be done and the Director of the Department of Public Utilities, or his designee, shall certify GRANTOR'S expense in connection therewith to the Borough CFO, who shall invoice for said expenses to GRANTEE with payment due within thirty (30) days.

7. GRANTOR, its consultants, employees, and agents shall be given free access to observe Construction Staging for the Project at the Premises to ensure compliance with this Agreement. GRANTOR, its representatives, consultants, employees or agents shall not supervise, direct or have control over the GRANTEE'S Construction Staging during such observations or as a result thereof, nor shall they have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by GRANTEE, for safety precautions and programs incident to the work of GRANTEE, or for any failure of GRANTEE to comply with applicable laws, rules, regulations, ordinances, codes or orders. GRANTEE is not an agent or employee of the GRANTOR.

8. GRANTEE shall indemnify and hold harmless GRANTOR, its officers, employees, agents, and servants from and against any and all claims, demands, suits, actions, recoveries, judgments, costs, and expenses including attorney's fees incurred or suffered on account of property damage or loss and/or personal injury, including loss of life, of any person, agency, corporation, or governmental entity which shall arise out of the course or in consequence to any acts or omissions of GRANTEE, its employees, agents, servants, or subcontractors in the conduct of the Project and/or the Construction Staging for the Project at the Premises.

9. GRANTEE shall maintain such insurance as will protect GRANTOR from claims under workers' compensation acts and any other claims for damages for personal injury, including death, and/or damage to property which may arise from the Construction Staging for the Project, whether such activities are performed by GRANTEE or by subcontractors or anyone directly or indirectly employed by GRANTEE. GRANTOR also shall be named as an insured on all liability policies. Certificates of such insurance shall be filed with the Red Bank Borough Administrator prior to commencement of the Construction Staging. Insurance certificates must provide for thirty (30) day notice of cancellation. The amounts of each line shall not be less than the following:

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|--|----------------|
| a. Commercial General Liability | \$1,000,000.00 |
| b. Automobile Liability- Owner, Non-Owner, and Hired | \$1,000,000.00 |
| c. Professional Liability | \$1,000,000.00 |
| d. Workers Compensation | Statutory |
| e. Employers' Liability | Statutory |

10. All Construction Staging and use of the Premises and the restoration and paving work referenced hereinabove shall be completed on or before March 1, 2020. In the event that GRANTEE, its contractors, agents, vendors, and/or representatives fail to vacate the Premises by March 1, 2020, GRANTEE shall pay liquidated damages for the loss of use of the Maple Cove Parking Lot as follows:

- a. \$250 per day from March 1, 2020 to March 31, 2020;
- b. \$500 per day from April 1, 2020 to April 30, 2020; and
- c. \$1,000 per day beginning May 1, 2020.

11. In the event that GRANTOR is required to take any legal action to enforce any obligation of GRANTEE hereunder, including, but not limited to GRANTEE's failure to vacate the Premises by March 1, 2020 or failure to make any payment due hereunder, GRANTEE shall be responsible for payment of all costs and expenses of litigation, including but not limited to GRANTOR's reasonable attorney fees and costs.

12. The right of access to the Premises shall commence as of the date this Agreement is executed, and shall terminate on March 1, 2020. Nothing in this Agreement shall be construed as a continuing obligation for the parties to negotiate terms for an additional extension of this Agreement.

13. This Agreement shall be governed by the laws of the State of New Jersey. The parties acknowledge that this Agreement has been executed and delivered in the State of New Jersey, and the parties submit to the jurisdiction of the courts of the State of New Jersey.

14. Neither GRANTOR, nor GRANTEE shall not assign any rights or delegate any obligations or responsibilities imposed under this Agreement without approval of the other parties to this Agreement, which approval shall not be unreasonably withheld.

15. All references in this Agreement to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender and number as the text of this Agreement may require.

16. This Agreement shall be binding upon GRANTOR, its successors and permitted assigns and shall inure to the benefit of GRANTEE, its successors and assigns.

Signed by the Parties:

BOROUGH OF RED BANK

Dated: _____

By: _____

Title: _____

DENHOLTZ BOAT CLUB COURT, LLC

Dated: _____

By: _____

Title: _____