

Ronald Simone

From: Ronald Simone <rsimone@northwildwood.com>
Sent: Thursday, October 05, 2017 3:02 PM
To: 'stevemurraynw@gmail.com'
Cc: prosenello@northwildwood.com; kyecco@northwildwood.com; William J Kaufmann (william.kaufmann@cafierolaw.com)
Subject: Hereford Inlet Lighthouse Management Agreement
Attachments: LIGHTHOUSEMGMTAGREEMENT 9-29-17.pdf

Steve:

On behalf of Mayor Patrick Rosenello and the North Wildwood Administration, please find attached hereto proposed Hereford Inlet Lighthouse Management Agreement. At your earliest convenience, please distribute the attached to your board members for further review and consideration.

Thank you for acknowledging the above/attached and for your cooperation in this regard.

Very sincerely,
Ron

Ronald Simone, MPA
Administrative Assistant
City of North Wildwood
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HEREFORD INLET LIGHTHOUSE MANAGEMENT AGREEMENT

WHEREAS, the State of New Jersey is the owner of certain real property that is situated in the City of North Wildwood, in the County of Cape May, that has been developed with the Hereford Inlet Lighthouse (“Lighthouse”); and

WHEREAS, by Lease Agreement (“Lease”), dated April 9, 2009, the State of New Jersey, acting through the Department of Environmental Protection, Division of Parks and Forestry, leased the Lighthouse to the City of North Wildwood (“North Wildwood”) for the purpose of restoring, preserving, developing, improving, maintaining, operating and interpreting the Lighthouse as an historic site making it available for public visitation; and

WHEREAS, the Lease premises that North Wildwood, with the prior approval of the State of New Jersey, may enter into a Management Agreement with the Friends of the Hereford Inlet Lighthouse, Inc., a New Jersey not-for-profit corporation (“Friends”), under which the Friends would be permitted to assume certain obligations under the Lease; and

WHEREAS, as permitted by the Lease, North Wildwood and the Friends desire to enter into this Management Agreement on the terms and conditions set forth below (North Wildwood and the Friends may be collectively referred to as the “Parties” throughout this Management Agreement which may be referred to as the “Agreement”); and

WHEREAS, prior to the execution of this Management Agreement by North Wildwood and the Friends, it was submitted to the State of New Jersey and it has been approved by the State of New Jersey as to form;

NOW, THEREFORE, in consideration of the exchange of mutual covenants and conditions set forth herein and intending to be bound thereby the City of North Wildwood, with municipal offices located at 901 Atlantic Avenue, North Wildwood, New Jersey 08260, and the Friends of Hereford Lighthouse, Inc., a New Jersey not-for-profit corporation, having a mailing address of 414 W. 16th Avenue, North Wildwood, New Jersey 08260, agrees as follows:

1. **Incorporation of Preamble.** All of the statements of the preamble are repeated and are incorporated herein and are made a part hereof, by this reference thereto, as if set forth at length.
2. **Term.** The initial term (“Initial Term”) of this Agreement shall commence upon execution of this Agreement by the Parties and, unless sooner terminated as hereinafter provided, shall expire on December 31, 2018. Upon expiration of the Initial Term, North Wildwood shall have the option of renewing this Agreement for successive one year renewal terms. The exercise of said options to renew shall be authorized by adoption of a resolution of the North Wildwood City Council on recommendation of the Mayor of North Wildwood not later than sixty (60) days

prior to the expiration of the then existing term. Upon adoption of such a resolution, the North Wildwood City Clerk shall provide a true copy of the resolution to the Friends. Nothing contained herein shall be interpreted as allowing any term of this Agreement to extend beyond the term of the Lease which presently is set to expire on December 31, 2026.

3. **Management and Operation.**

a. **Guided Tours and Gift Shop Operation.** North Wildwood assigns to the Friends such rights as North Wildwood may have under the Lease to conduct guided tours of the Lighthouse and adjacent grounds and to supervise, direct, manage and operate the existing gift shop within the Lighthouse. In conducting guided tours of the premises and in operating and managing the gift shop the Friends agree:

- i. The hours when the Lighthouse shall be open to the public for guided tours and the gift shop hours shall be as set forth on Exhibit "A." Any deviations from that schedule shall be mutually agreed upon in writing by North Wildwood and the Friends. In the event of an actual or impending emergency that threatens the public's health, safety and well-being, without regard to whether the emergent conditions are occasioned by natural events, such as weather conditions, or by man-made conditions or by the occurrence of any event that is beyond the control of North Wildwood or the Friends, North Wildwood shall have the absolute authority to close the Lighthouse to the public without notice to the Friends and to keep the Lighthouse closed until such emergency no longer exists.
- ii. The gift shop shall be operated and managed to North Wildwood's reasonable satisfaction in a professional, businesslike and efficient manner in compliance with all statutes, laws, rules, regulations, orders and requirements imposed by any governmental body having jurisdiction over the operation of the gift shop

and in a manner that is consistent with current prudent business and management practices applicable to the operation and management of a gift shop comparable in size and location to the Lighthouse gift shop.

- iii. The Friends shall manage, administer and operate the gift shop in accordance with this Agreement and the standards herein established. The Friends shall supply all equipment required for the operation of the gift shop such as computers, cash registers, displays and consumable items such as tape, packaging and similar items. The Friends shall be responsible for supplying all salable gift shop inventory. Such inventory may include a variety of lighthouse, nautical and seashore themed items for visitors of all ages such as, by way of example and not by way of limitation, clothing featuring the Lighthouse, framed paintings and photographs of the Lighthouse, home decorations, lighthouse miniatures and books on the Lighthouse, local history and maritime history. North Wildwood shall have discretion to require the Friends to remove from sale to the public any item that North Wildwood, in its sole and absolute discretion, deems to be inconsistent with the purposes of the Lease, as set forth in paragraph 2 thereof, or which, in North Wildwood's opinion, reflects negatively on the City of North Wildwood or the image of the Lighthouse sought to be projected to the public by North Wildwood.
- iv. The Friends shall obtain and maintain in effect all licenses and permits required for operation of the gift shop and shall comply with any conditions stated in those licenses and permits. The Friends shall collect and pay any taxes associated with the conduct of guided tours and operation of the gift

shop if applicable including, without limitation, sale taxes, worker's compensation payments or employment taxes, as applicable.

- v. The Friends agree and warrant that it shall keep current and accurate schedules of its personnel and volunteers at all times that guided tours of the Lighthouse are conducted or that the gift shop is open, as well as any other times that personnel and volunteers of the Friends all working on behalf of the gift shop. The Friends agree to provide copies of said schedules to North Wildwood upon request. The Friends acknowledge that documents provided to North Wildwood may be subject to New Jersey's laws concerning public records.
- vi. The Friends, at its sole cost and expense, may conduct sales and marketing activities for the gift shop including, but not limited to, the design and production of marketing materials, logo marks and other such associated material. Consistent with paragraph 22 of the Lease, all promotional material and advertisement of the Lighthouse, including the material advertising any Special Events approved by North Wildwood (see paragraph 3b for definition of "Special Event"), shall indicate that the Lighthouse is administered by the State of New Jersey, Department of Environmental Protection, Division of Parks and Forestry. Further, no promotional material or advertisement of the Lighthouse shall be used unless first submitted to North Wildwood for approval by the State of New Jersey pursuant to paragraph 22 of the Lease.
- vii. The Friends shall recruit, select, hire, educate, train and coordinate the work schedules of all tour guides and gift shop personnel, be they employees or volunteers. All tour guides shall be fully familiar with the architectural and

operational history of the Lighthouse, including details regarding its restoration.

- viii. The Friends shall operate under its own name, seal and logo and North Wildwood hereby recognizes the Friends' right to use its own corporate or separate entity name.
- ix. The Friends warrant and agree to use sound and prudent financial business practices, follow generally accepted accounting practices for non-profit organizations and shall correctly report all required financial and other information as required by and in accordance with applicable law.
- x. The Friends agree and warrant that it shall prepare a written incident report upon any event of bodily injury and/or property damage, and shall provide North Wildwood with a copy of such written report within 24 hours of any such incident. Such incident reports shall include at a minimum: a) Date of incident; b) Time of incident; c) Location of the incident; d) Description of how the incident occurred; e) Description of bodily injury, if any, including type of injury involved; f) Description of property damage, if any; g) The names, addresses and contact information of any witnesses; h) Medical treatment rendered, if any; and i) Whether the North Wildwood Police and/or Fire Department were contacted. Nothing in this paragraph shall be interpreted as altering the obligation to immediately report to North Wildwood the occurrence of any casualty involving either bodily injury or property damage, as required by paragraph 9.
- xi. At all times during the term of this Agreement, or any renewal thereof, the Friends shall maintain its status as a tax-exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. Failure

to maintain such tax-exempt status shall result in immediate termination of this Agreement.

- xii. All public visitation fees, and any other fees associated with public access to the Lighthouse during Special Events sponsored by the Friends with North Wildwood approval shall be submitted to North Wildwood for approval by the State of New Jersey pursuant to paragraph 15 of the Lease prior to implementation of such fees.
- xiii. Consistent with paragraph 16B of the Lease, the maximum allowable price for all items offer for sale by the Friends to the public shall be no greater than the suggested manufacturer's retail price as provided by the manufacturer, wholesaler and/or supplier or as appears in catalogs provided by same.
- xiv. All revenue realizes by the Friends by the conduct of lighthouse tours and from the sale of items in the gift shop shall be the property of the Friends.

b. **Special Events.** The Friends may conduct "Special Events," as that term is defined in §376-1 of the Code of the City of North Wildwood upon the Lighthouse premises so long as the purpose of the Special Event is to enhance public awareness of the historic significance of the Lighthouse, the value of the area's natural beauty and/or its natural resources and/or is designed to enhance the membership of the Friends so long as the Special Event is approved in accordance with the procedures that are set forth in Chapter 376 of the Code of the City of North Wildwood pertaining to Special Events.

4. **Limitation on Authority, Conduct of Representatives.**

- a. **Limitation on Authority.** The Friends recognize that North Wildwood is not the owner of the Lighthouse and that North Wildwood occupies the Lighthouse pursuant to the Lease and that North Wildwood's authority over the Lighthouse is

limited by the terms and conditions of the Lease. Nothing in this Agreement is to be interpreted as creating a lease or sublease or landlord-tenant relationship between North Wildwood and the Friends. The Friends have no possessory interest in the Lighthouse and have no authority to enter into or sign any contract or other document on behalf of North Wildwood or to bind North Wildwood to the terms and conditions of any such contract or document. Furthermore, the Friends are not the agent or representative of North Wildwood and the Friends shall not, under any circumstances whatsoever, hold itself out to the public as North Wildwood's agent or representative. Nothing in this Agreement shall be interpreted as creating an agency relationship between North Wildwood and the Friends.

- b. **Conduct of Representatives.** The Friends recognize that members of the public may not be able to distinguish representatives of the Friends from employees of North Wildwood or employees of the State of New Jersey or employees of the United States. Therefore, the Friends shall at all times be responsible for the conduct and discipline of its employees, representatives, agents and volunteers. Only polite, courteous, competent and skilled persons shall be engaged in the performance of the Friends' rights and responsibilities under this Agreement and whenever North Wildwood shall notify the Friends in writing that any of the Friends employees, representatives, agents or volunteers, in North Wildwood's opinion, are incompetent, unfaithful, disorderly or have engaged in any impolite, discourteous, rude or similar conduct towards any member of the public or towards any official or employee of either the City of North Wildwood or the State of New Jersey or the United States then such person immediately shall be prohibited from performance of any of the Friends' rights and responsibilities

under this Agreement and shall not again be permitted to engage in the performance of any of the Friends' rights and responsibilities under this Agreement, except with the express written consent of North Wildwood.

5. **Inventory of Furniture, Fixtures, Equipment and Artifacts; After-Discovered**

Artifacts.

- a. **Inventory of Furniture, Fixtures, Equipment and Artifacts.** The Parties acknowledge that there are various items of furniture, fixtures, equipment, art objects, artifacts having historical significates, documents, historical photographs along with like or similar items of personal property (“furniture, fixtures, equipment and artifacts”), some of which may be owned by the United States, some of which may be owned by the State of New Jersey, some of which may be owned by North Wildwood and some of which may be owned by the Friends. Therefore, upon execution of this Agreement, but in no case more than thirty (30) days subsequent to its execution North Wildwood will engage the services of a reputable firm or individual experienced in conducting at museum or historical sites inventories of such furniture, fixtures, equipment and artifacts and cataloging same, for the purposes of compiling a full and complete inventory and record of all furniture, fixtures, equipment and artifacts. With regard to the furniture, fixture, equipment and artifacts, the inventory that is conducted pursuant to this paragraph should describe in detail each item inventoried including a description of the item, any distinctive markings that may be on the item, any make, model or serial numbers that may be on the item and it shall designate the owner of the item. The inventory may include a photographic record of any or all items that are inventoried and cataloged. North Wildwood and the Friends each shall provide the person(s) conducting the inventory with such assistance as may be requested. The inventory that is contemplated by this paragraph shall not be

deemed to include gift shop merchandise that has been purchased by the Friends for resale to the public. Upon completion of the inventory, copies shall be distributed to North Wildwood, the State of New Jersey and to the United States Coast Guard if any of the inventoried items are identified as being owned by the United States. In the event of a dispute between North Wildwood and the Friends regarding ownership of any item that is subject to the inventory contemplated by this paragraph then the owner of that item shall be deemed to be the State of New Jersey until such time, if ever, that the State of New Jersey designates a different owner.

- b. **After-Discovered Artifacts.** Any historic artifacts or items appearing to be of an historic nature which are uncovered or discovered during the Friends activities on the premises is the property of the State of New Jersey as is more particularly set forth in paragraph 41 of the Lease. As required by paragraph 41 of the Lease, any articles that may be of historic value which are discovered shall be left in place until inspected and examined by appropriate State of New Jersey personnel who will ascertain the item's historic significances, if any, and issues instructions regarding handling and removal. The discovery of any such items immediately shall be reported by the Friends to North Wildwood which, in turn, will report the discovery to the State of New Jersey in accordance with the provisions of paragraph 41 of the Lease.

6. **Care of Premises** –

- a. **Friends.** – The Friends shall:
 - i. Promptly comply with all laws, orders, rules and requirements of governmental authorities, insurance carriers, board of fire underwriters or similar groups.

- ii. On a daily basis maintain the portions of interior of the Lighthouse to which the public has access in a neat, clean, safe and sanitary condition, free of all trash, debris and recyclable materials.
- iii. Use all electric, plumbing and other utilities in the Lighthouse safely and in compliance with all applicable laws, ordinances and codes.
- iv. Use no more electricity than the wiring or feeders to the Lighthouse safely can carry.
- v. Do nothing to destroy, deface, damage or remove any part of the Lighthouse.
- vi. Keep nothing in the Lighthouse which is dangerous or explosive or which might increase the danger of fire or other casualty.
- vii. Do nothing to destroy the peace and quiet of residents and persons in the neighborhood nor engage in any activity that is a nuisance to the residential neighbors of the Lighthouse.
- viii. Be responsible for the prompt removal or lawful disposal of any hazardous waste that has accumulated upon the Lighthouse premises as a result of any of the activities conducted upon the Lighthouse premises by the Friends and its invitees and guests.

The Friends shall pay any expenses involved in complying with the above.

- b. North Wildwood. – Except for routine daily cleaning of the interior of the Lighthouse as described in paragraph a. above, it shall be the sole responsibility of North Wildwood to maintain the interior and exterior of the Lighthouse and adjacent grounds and the Friends shall not obstruct or interfere, in any manner whatsoever, North Wildwood's exercise of any of

its obligations under this paragraph. North Wildwood shall make necessary replacements of plumbing, cooling, heating, alarm, telecommunications and electrical systems except when made necessary by the act or neglect of the Friends or the Friend's employees, invitees and guests.

7. **Utilities** – North Wildwood shall pay for all public utilities serving the Lighthouse.

North Wildwood shall not, however, be held liable for any inconvenience or harm caused by stoppage or reduction of utilities and services beyond the control of North Wildwood.

8. **Signs** – The Friends shall not place or allow to be placed any signs of any kind whatsoever upon, within or about the Lighthouse premises or any part thereof, except of a design and structure and in or at such places as may be consented to by North Wildwood in writing and, if necessary under the Lease, approved by the State of New Jersey. In case North Wildwood or its agents, employees or representatives shall deem it necessary to remove any such signs in order to make any repairs, alterations or improvements upon the premises or any part thereof said signs may be so removed by North Wildwood, but shall be replaced at North Wildwood's own expense when said repairs, alterations or improvements shall have been completed. Any signs permitted by North Wildwood, at all times, shall conform with the provisions of paragraph 21 of the Lease and with all municipal ordinances or other laws and regulations applicable thereto.

9. **Fire and Other Casualty** – In the case of fire or other casualty of any nature whatsoever, the Friends shall give immediate notice thereof to North Wildwood. If the fire or other casualty and damage is the result of the intentional acts or carelessness, negligence or improper conduct of the Friends or of the Friend's members, agents, employees, guests, licensees or invitees the Friends shall be liable to North Wildwood and the State of New Jersey for any damage or loss suffered by North Wildwood or the State of New Jersey.

10. **Insurance; Indemnification and Hold Harmless Agreement** – As a condition precedent to North Wildwood’s execution of this Agreement, the Friends are required to submit to North Wildwood evidence (consisting of certificates of insurance) satisfactory to North Wildwood showing that the Friends have obtained all insurance coverage required herein. Nothing contained herein shall be construed as limiting the extent of the Friend’s liability for claims or damages resulting from or related to the performance by the Friends of any covenant under the terms of this Agreement or from or related to any of the Friends activities upon the Lighthouse premises.

All insurance required hereunder shall include the interests of North Wildwood and the State of New Jersey which shall be listed as an additional insureds on such policies. The Friends waive all rights against North Wildwood and the State of New Jersey for all losses and damages caused by any of the perils covered by such policies and all such policies shall contain provisions to the effect that, in the event of payment of any loss or damage, the insurer will have no rights of recovery against North Wildwood or the State of New Jersey.

The Friends acknowledge that North Wildwood and the State of New Jersey have insurable interests under the Friend’s insurance policies.

The Friends shall purchase and maintain, at its sole expense and with a company authorized to do business in the State of New Jersey and satisfactory to North Wildwood and the State of New Jersey, insurance as follows:

a. **Worker’s Compensation and Employer’s Liability Insurance** – Covering all of the Friends’ employees directly or indirectly engaged in the performance of obligations or activity under this Agreement and this insurance shall comply with the statutory requirements of the State of New Jersey.

b. **Commercial General Liability Insurance** – Comprehensive general liability insurance as broad as the standard coverage form currently in use in the State of New

Jersey which shall not be circumscribed by any endorsements limiting the breadth of coverage including protection and indemnity, broad form contractual liability, and broad form property endorsements against claims for bodily injury, death or property damage occurring on, in or about the Lighthouse premises or in any manner growing out of or connected with any activity conducted by the Friends, its agents, employees, volunteers, contractors, licensees and/or invitees, express or implied. Limits of liability shall not be less than One Million (\$1,000,000.00) Dollars per occurrence as a combined single limit and for property damage liability.

c. Other Insurance- Such other insurance and in such amounts as may from time to time reasonably may be required by North Wildwood or the State of New Jersey against other insurable risks which at the time are commonly insured against for premises similarly situated with due regard to the type of improvements and the type of use and operations to be conducted by the Friends under this Agreement.

d. Policy Limits – Specified above are minimum and wherever the law requires higher limits, the higher limits shall govern.

e. Periods of Coverage – All policies of insurance required under this Agreement shall remain in full force and effect until such time as the term of this Agreement or any extensions thereof come to an end.

f. Certificates – Certificates of insurance required above must be filed with North Wildwood, with copies to the State of New Jersey, before this Agreement is signed on behalf of North Wildwood and thereafter upon each renewal of each policy of insurance required by this Agreement to be maintained by the Friends. All certificates of insurance must provide for thirty (30) days prior written notice to North Wildwood and the State of New Jersey of policy cancellation or material change.

g. Indemnification and Hold Harmless Agreement – The Friends shall indemnify, save harmless and defend North Wildwood and the State of New Jersey, their

elected and appointed officials, their employees, agents, volunteers and others working on behalf of North Wildwood and the State of New Jersey, from and against any and all claims, losses, costs, attorney's fees, damages, or injury including death and/or property loss, expense claims or demands arising out of or caused or alleged to have been caused in any manner growing out of or connected with the use, non-use, occupancy or conduct of activities on the Lighthouse premises, including all suits or actions of every kind or description brought against North Wildwood or the State of New Jersey, either individually or jointly with the Friends, for or on account of any damage or injury to any person or persons or property, caused or occasioned or alleged to have been caused by, or on account of, the performance of any activity pursuant to or in connection with this Agreement, or through any act, omission or fault or alleged act, omission or fault of the Friends, its agents, employees, volunteers, contractors, licensees and invitees and anyone claiming by or through the Friends in performance of activities under this Agreement. This indemnification and hold harmless agreement shall apply in all instances whether North Wildwood or the State of New Jersey as well as their agents and employees are made a direct party to the initial action or claim or subsequently are made a party to the action by third-party in-pleading or are made a party to a collateral action arising, in whole or in part, from any of the issues emanating from the original cause of action or claim.

11. **Default**– It shall be considered default by the Friends whenever the Friends shall disregard or violate or fail to fully execute or perform any provision of this Agreement according to the terms of this Agreement.

In the event that there is a default by the Friends, North Wildwood may give the Friends written notice of such default and the opportunity to cure the default or may, in North Wildwood's sole and absolute discretion, immediately terminate this Agreement. If North Wildwood provides the Friends with notice of default and the opportunity to cure the default the Friends shall have five (5) days in which to cure the default.

12. **North Wildwood's Rights Upon Friend's Default** – Should an event of default without cure as heretofore provided occur then North Wildwood may, at its option, and notwithstanding the fact that North Wildwood may have other remedies at law or in equity, immediately terminate this Agreement.

If this Agreement shall be terminated as heretofore provided, North Wildwood shall have the right to do any or all of the following:

a. Re-enter the property, repossess the same and remove any persons therefrom so that North Wildwood may have, hold and enjoy the Lighthouse premises;

b. As agent for the Friends, take possession of any property or equipment of the Friends found upon the premises and, after taking possession thereof, to store the same at the Friends' expense or to sell the same at private or public sale and apply the proceeds to any monetary obligation incurred by the Friends in connection with this Agreement. The Friends waive any right to notice of execution or levy in connection therewith;

c. Carry out and perform such conditions and covenants not carried out or performed by the Friends and the costs and expenses, including attorney's fees, that are incurred by North Wildwood in carrying out and performing any such conditions, covenants or obligations immediately shall be due and owing from the Friends to North Wildwood;

d. Obtain injunctive relief or specific performance to which the Friends waive any objection; and

e. Collect damages from the Friends.

13. **Damages** – Suit or suits for the recovery of any damages resulting from the Friends' breach of any obligation or covenant under this Agreement may be brought by North Wildwood at any time and from time to time at its election and nothing contained herein shall be deemed to require North Wildwood to postpone suit until the date when the term would have expired if it

had not been so terminated as heretofore provided or under any provision of law or had North Wildwood not reentered the property.

14. **Compliance with Laws, Rules and Regulations** – At the Friends’ own costs and expense, the Friends promptly shall comply with all laws, ordinances, rules, regulations, requirements and directives of the federal, state and municipal governments or other public authorities and all of their departments, bureaus and subdivisions applicable to and affecting the Lighthouse premises, their use and occupancy, for the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the said Lighthouse premises and, during the term hereof, promptly shall comply with all orders, regulations, requirements and directives of any insurance company which has issued or is about to issue a policy of insurance covering the said Lighthouse premises for the prevention of casualty, damage or injury.

15. **Inspection and Repair** – The Friends agrees that the State of New Jersey and/or North Wildwood and their respective agents, employees or other representatives shall have the unrestricted right to enter into and upon the Lighthouse premises or the improvements thereon or any part thereof at any time for the purpose of examining the same or making such repairs or alterations therein as may be necessary for the safety and preservation thereof.

16. **Removal of Friend’s Property** – Any equipment, fixtures, goods or other property of the Friends not removed by the Friends upon the termination of this Agreement or upon any quitting, vacating or abandonment of the Lighthouse premises by the Friends shall be considered as abandoned and North Wildwood may keep the same as its own and shall have the right, without any notice to the Friends, to sell or otherwise dispose of the same, at the expense of the Friends, and shall not be accountable to the Friends for any part of the proceeds of such sale, if any.

17. **Non-Waiver by North Wildwood** – The various rights, remedies, options and elections of North Wildwood expressed herein are cumulative and the failure of North Wildwood to enforce strict compliance by the Friends of the conditions and covenants of this Agreement or to exercise any election or option, or to resort to or have recourse to any remedy herein conferred or the acceptance by North Wildwood of performance of any term or condition after any breach by the Friends, in any one or more instances, shall not be construed or deemed to be a waiver or a relinquishment for the future by North Wildwood of any such conditions and covenants, options, elections or remedies, but the same shall continue in full force and effect.

18. **Non-Performance by North Wildwood** – This Agreement and the obligations of the Friends to comply with the covenants and conditions hereof shall not be affected, curtailed, impaired or excused because of North Wildwood's inability to supply any service or material called for herein by reason of any rule, order, regulation or preemption by any governmental entity, authority, department, agency or subdivision or for any delay which may arise by reason of the negotiations for the adjustment of any fire or other casualty loss or because of strikes or other labor disputes or for any cause beyond the control of North Wildwood.

19. **Partial Invalidity of Agreement Terms** – The terms, conditions, covenants and provisions of this Agreement shall be deemed severable. If any clause or condition herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law or pre-existing aid agreement between North Wildwood and the State of New Jersey or the Lease shall in no way affect the validity of any other clause or provision and such other clause or provision shall remain in full force and effect.

20. **Waiver of Subrogation Rights** – The Friends waive all right of recovery against the State of New Jersey and/or North Wildwood and their respective agents, employees or other representatives for any loss, damages or injury of any nature whatsoever to property or persons for which the Friends are insured.

21. **Oral Agreements** – It is agreed and understood that no oral order, objection, claim or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever other than by a specifically agreed waiver or modification thereof in writing and, in the absence thereof, no evidence shall be introduced in any proceeding of any other waiver or modification.

22. **No Assignment or Subletting** – This Agreement may not be sold, assigned or transferred by the Friends.

23. **Legal Address and Written Notices** – All notices shall be given in writing and shall be delivered personally or by regular, first class mail and by certified mail, return-receipt requested or by nationally known delivery service (e.g. Fedex, United Parcel Service [U.P.S.], etc...) as follows:

a. If to North Wildwood, address to City of North Wildwood, 901 Atlantic Avenue, North Wildwood, New Jersey, 08260, Attention: City Clerk;

b. If to the Friends, address as listed upon the first page of this lease.

24. **Governing Law** – This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of New Jersey and all actions, suits and litigation arising under the terms of this Agreement to which North Wildwood is made a party shall be litigated in the Superior Court of New Jersey, Cape May County; however, nothing set forth herein shall be deemed to limit the ability of the North Wildwood to remove any litigation commenced against it in the Superior Court of New Jersey to the United States District Court if grounds for such removal are available to the North Wildwood.

25. **Navigational Aid.**

a. The light signal and other navigational aids located in, on and around the Lighthouse are active Federal Aids to Navigation (“Aids”) and are operated and maintained by

the United States Coast Guard. The Friends shall not, in any manner, interfere with the Aids or the electrical system used to power the Aids without the express written permission of the United States Coast Guard.

b. The United States Coast Guard maintains the right to relocate the Aids, add additional Aids or make any changes to the power system on any portion of the Lighthouse premises.

c. The Friends shall not be responsible for the operation, installation, maintenance, repair and utility costs for the Aids which shall be the exclusive responsibility of the United States Coast Guard or its designee.

26. **Miscellaneous** -

a. The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

b. North Wildwood and the Friends acknowledge that they have had adequate opportunity to review the contents of this Agreement with their respective legal counsel and have executed this Agreement with full and complete understanding of its terms. North Wildwood and the Friends further agree that no inference concerning the meaning or interpretation of this Agreement shall be drawn based upon the fact that it has been drafted by North Wildwood's legal counsel.

c. Upon execution of this Agreement, each party, by written notice to the other, shall designate an official who shall be responsible for the day-to-day administration of this Agreement. Either party may change the designation at any time; it being the intent of this paragraph that each party have a "point-person" responsible for the day-to-day administration of this Agreement. All written designations made hereunder shall provide a telephone number where the designee can be reached Monday through Friday between the hours of 8:30 a.m. and 4:30 p.m. and an email address.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year

first above written.

ATTEST:

CITY OF NORTH WILDWOOD

.

By: _____

Secretary

ATTEST:

FRIENDS OF HEREFORD INLET
LIGHTHOUSE, INC

By: _____

Secretary

President