

«Application_Type»-«Project_Number»-«Variable_Number»
«Project_Name»
«ContractNumber»

COVENANT AND RESTRICTION FOR PUBLIC ACCESS

This Covenant and Restriction for Public Access ("Covenant" or "Agreement"), made this _____ day of _____, 20____, by and between the **THE PEOPLE OF THE STATE OF NEW YORK**, acting by and through their Commissioner of Parks, Recreation and Historic Preservation (hereinafter referred to as the "STATE") having an address at Albany, New York 12238 (For USPS Mail) with offices at 625 Broadway, Albany, New York 12207 (For Physical Delivery) and «Applicant» (the "OWNER") with offices at «Contract_Address1»,«Contract_Address2»,«Contract_City», New York «Contract_Zip».

WHEREAS the OWNER has been awarded a grant in the amount of «Award_Amount» for «Purpose» (e.g.: **construction of a new ball fields, rehabilitation of play structures, etc.**) (the "PROJECT") by the STATE; and,

WHEREAS the OWNER has title to the property on which the grant funded work will take place said title being more particularly described in a deed from «Grantor» to OWNER dated «Deed_Date» and recorded on <<recorded date if different with signed date >> in the «County_Recorded» County Clerk's office on Liber book # «Deed_Liber» of Deeds at page «Deed_Page» (hereinafter referred to as the "SUBJECT PROPERTY"); and,

WHEREAS, the OWNER agrees to maintain the use, appearance, and public accessibility of the SUBJECT PROPERTY as set forth in greater detail in Schedule A, and the boundaries of the SUBJECT PROPERTY as outlined in Schedule B that are attached to and made part of this Covenant.

Now THEREFORE, in consideration of the receipt of the grant referred to above, the OWNER does hereby covenant and agree to the following restriction:

1. Term. This restriction shall be binding upon the OWNER for «Term» years from the date of the recording of this Covenant.

2. Scope. The OWNER agrees that it shall provide public access to the SUBJECT PROPERTY and the use and appearance and public accessibility of the SUBJECT PROPERTY shall not be changed in the future without the prior written approval of the STATE.

a. The OWNER further agrees that improvements to the SUBJECT PROPERTY undertaken as part of the PROJECT will not be sold, altered or converted without the prior written approval of the STATE.

b. The OWNER agrees to maintain the PROJECT in reasonably good repair for the term of this Covenant.

3. Violations. In the event of a violation of any of the provisions of this covenant the STATE may, at its option and following reasonable notice to the OWNER, exercise any or all the following remedies:

a. Enter the SUBJECT PROPERTY, correct any violation of the terms of this Covenant, restore the PROJECT to its prior condition, and hold the OWNER or any successor in interest responsible for the cost thereof.

b. Institute suit against the OWNER to enjoin such violations and, if appropriate, require the restoration of the PROJECT to its prior condition.

c. Reimburse the STATE for the grant award amount.

4. In addition to the remedies set forth above, the STATE shall have all legal and equitable remedies to enforce the OWNER'S obligations under this Agreement, and in the event the OWNER, or any successor in interest is found to have violated such obligations, the OWNER, or such successor shall reimburse the STATE for any costs and expenses incurred regarding the enforcement of this Covenant, including court costs and attorney's fees.

5. Waivers. A waiver of any breach of any term, condition or limitation of this Covenant shall not constitute a waiver of any other or any later breach of any covenant, term, condition or limitation, nor shall it otherwise prevent the enforcement of such breach.

6. Severability. The parties to this Covenant agree that all covenants, easements and restrictions in this Agreement shall be severable, and that should any covenant, easement or restriction in this agreement be declared invalid or unenforceable, the remaining covenants, easements and restrictions shall not terminate.

7. Binding Upon Successors. The foregoing representation, covenants, terms and conditions are expressly understood as being binding upon the OWNER, and heirs, executors, administrators, assigns and successors of the OWNER and all other persons whatsoever, real or artificial, having or claiming any interest in the SUBJECT PROPERTY or the PROJECT and, together with this paragraph, shall be inserted in all instruments which dispose of any interest in the SUBJECT PROPERTY or the PROJECT, but whether or not so inserted, shall be deemed by all persons to have been inserted.

8. Recording of Covenant. The STATE shall record this instrument in the County Clerk's Office and shall provide the OWNER with proof of such recording.

IN WITNESS WHEREOF, the OWNER and the STATE have hereunto set their hands the day and year first above written.

«Applicant»

Signed _____

By _____

Title _____

The People of the State of New York through the Commissioner of Parks, Recreation and Historic Preservation

By: _____

XXXXXX

Its: Executive Deputy Commissioner

«Applicant»

STATE OF NEW YORK)
) SS.:

County of _____)

On the ____ day of _____ in the year 20__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public, State of New York

The People of the State of New York through the Commissioner of Parks, Recreation and Historic Preservation

STATE OF NEW YORK

)

) SS.:

County of _____

)

On the ____ day of _____ in the year 20__, before me, the undersigned, personally appeared **XXXXX**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public, State of New York

Schedule A:

Project Narrative and Terms of Use, Appearance, and Public Accessibility

Set up as follows:

A. PROJECT: *description of facilities, use, appearance and public access*. Then add as last sentence: *The facilities improved by this PROJECT are to be maintained in a safe condition and remain accessible to the public throughout the term of this Covenant.*

B. FEES: (where applicable)

[HAS PROJECT]

The OWNER shall not prohibit the use of or access to any facility that is part of the PROJECT or impose a fee for any use of and access to any facility that is part of the PROJECT without the prior written approval of the STATE.

[PARKS AND HP PROJECTS]

The OWNER may charge a reasonable fee for the use of or access to any facility that is part of the PROJECT.

1. Except for the imposition of a differential fee schedule for non-residents of the municipality in which the PROJECT is located, the establishment of any preferential user fee for any person or entity is prohibited. Fees charged to non-residents shall not exceed twice those charged to residents.
2. Where there is no charge for residents but a fee is charged to non-residents, non-resident fees cannot exceed fees charged for residents at comparable State or local public facilities.
3. Reservation, membership or annual permit systems available to residents must also be available to non-residents and the period of availability must be the same for both residents and non-residents.
4. This provision does not apply to non-resident fishing and hunting license fees.

SAMPLE LANGUAGE
SUBJECT TO CHANGE